

## PRIVACY POLICY

DOCUMENT NUMBER:	EWPS-SM-01
RELEASED:	2010
REVISED:	2021
TO BE REVIEWED:	2023

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### BACKGROUND

Early childhood services are obligated by law, service agreements and licensing requirements to comply with the privacy and health records legislation when collecting personal and health information about individuals.

The *Health Records Act 2001* (Part 1, 7.1) and the *Privacy and Data Protection Act 2014 (Vic)* (Part 1, 6 (1)) include a clause that overrides the requirements of these Acts if they conflict with other Acts or Regulations already in place. For example, if there is a requirement under the *Education and Care Services National Law Act 2010* or the *Education and Care Services National Regulations 2011* that is inconsistent with the requirements of the privacy legislation, services are required to abide by the *Education and Care Services National Law Act 2010* and the *Education and Care Services National Regulations 2011*.

### Legislation and standards

Relevant legislation and standards include but are not limited to:

- *Associations Incorporation Reform Act 2012 (Vic)*
- *Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2020*
- *Family Violence Protection Amendment (Information Sharing) Act 2017*
- *Education and Care Services National Law Act 2010*
- *Education and Care Services National Regulations 2011*: Regulations 181, 183
- *Freedom of Information Act 1982 (Vic)*
- *Health Records Act 2001 (Vic)*
- *National Quality Standard, Quality Area 7: Leadership and Service Management*
  - Standard 7.3: Administrative systems enable the effective management of a quality service
- *Privacy and Data Protection Act 2014 (Vic)*
- *Privacy Act 1988 (Cth)*
- *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)*
- *Privacy Regulations 2013 (Cth)*
- *Public Records Act 1973 (Vic)*

The most current amendments to listed legislation can be found at:

- Victorian Legislation – Victorian Law Today: <http://www.legislation.vic.gov.au/>
- Commonwealth Legislation – ComLaw: <http://www.comlaw.gov.au/>

## DEFINITIONS

The terms defined in this section relate specifically to this policy. For commonly used terms e.g. Approved Provider, Nominated Supervisor, Regulatory Authority etc. refer to the *General Definitions* section of this manual.

**Freedom of Information Act 1982:** Legislation regarding access and correction of information requests.

**Health information:** Any information or an opinion about the physical, mental or psychological health or ability (at any time) of an individual.

**Health Records Act 2001:** State legislation that regulates the management and privacy of health information handled by public and private sector bodies in Victoria.

**Identifier/Unique identifier:** A symbol or code (usually a number) assigned by an organisation to an individual to distinctively identify that individual while reducing privacy concerns by avoiding use of the person's name.

**Personal information:** Recorded information (including images) or opinion, whether true or not, about a living individual whose identity can reasonably be ascertained.

**Privacy and Data Protection Act 2014:** State legislation that provides for responsible collection and handling of personal information in the Victorian public sector, including some organisations, such as early childhood services contracted to provide services for government. It provides remedies for interferences with the information privacy of an individual and establishes the Commissioner for Privacy and Data Protection.

**Privacy Act 1988:** Commonwealth legislation that operates alongside state or territory Acts and makes provision for the collection, holding, use, correction, disclosure or transfer of personal information. The Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) introduced from 12 March 2014 has made extensive amendments to the Privacy Act 1988. Organisations with a turnover of \$3 million per annum or more must comply with these regulations.

**Privacy breach:** An act or practice that interferes with the privacy of an individual by being contrary to, or inconsistent with, one or more of the information Privacy Principles (refer to Attachment 2: *Privacy principles in action*) or the new Australian Privacy Principles (Attachment 7) or any relevant code of practice.

**Public Records Act 1973 (Vic):** Legislation regarding the management of public sector documents.

**Sensitive information:** Information or an opinion about an individual's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preference or practices, or criminal record. This is also considered to be personal information.

### **Additional definitions as per ELAA:**

Child Information Sharing Scheme, Child Safe Standards, Confidential information, Data breach, Discloser, Family Violence Information Sharing Scheme, Information Sharing Entities, Multi-Agency Risk Assessment and Management Framework, Notifiable Data Breaches scheme, Risk Assessment Entity.

## SOURCES AND RELATED POLICIES

### Sources

- *Child Care Service Handbook 2012-2013*: Section 4.9  
<http://docs.education.gov.au/documents/child-care-service-handbook>
- Guidelines to the Information Privacy Principles:  
<http://www.oaic.gov.au/privacy/privacy-act/information-privacy-principles>
- ELAA *Early Childhood Management Manual, Version 2 2013*
- Office of the Health Services Commissioner: [www.health.vic.gov.au/hsc/](http://www.health.vic.gov.au/hsc/)
- Privacy Compliance Manual: <http://www.nfplaw.org.au/privacy>
- *Privacy Guide: A guide to compliance with Victorian and Federal privacy laws*:  
<http://www.nfplaw.org.au/sites/default/files/Privacy%20Guide.pdf>
- Privacy Victoria: [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au)

## **Service policies**

- *Child Safe Environment Policy*
- *Code of Conduct Policy*
- *Complaints and Grievances Policy*
- *Delivery and Collection of Children Policy*
- *Enrolment and Orientation Policy*
- *Information Technology Policy*
- *Staffing Policy*
- *Inclusion and Equity Policy*

## **The following sources have been added 2021 by ELAA:**

- Child Information Sharing Scheme Ministerial Guidelines
- Ministerial Guidelines for the Family Violence Information Sharing Scheme
- Guidelines to the Information Privacy Principles
- Office of the Health Complaints Commissioner
- Privacy Guide, 2020
- Information Sharing and Family Violence Reforms Contextualised Guidance
- Information Sharing and Family Violence Reforms Toolkit
- Office of the Victorian Information Commissioner, Child information sharing scheme and privacy law in Victoria
- Family Violence Multi-Agency Risk Assessment and Management Framework

## **PROCEDURES**

### **The Approved Provider is responsible for:**

- ensuring all records and documents are maintained and stored in accordance with Regulations 181 and 183 of the *Education and Care Services National Regulations 2011*
- ensuring the service complies with the requirements of the Privacy Principles as outlined in the *Health Records Act 2001*, the *Privacy and Data Protection Act 2014 (Vic)* and, where applicable, the *Privacy Act 1988 (Cth)* and the *Privacy Amendment (Enhancing Privacy Protection ) Act 2012 (Cth)*, by developing, reviewing and implementing processes and practices that identify:
  - what information the service collects about individuals, and the source of the information
  - why and how the service collects, uses and discloses the information
  - who will have access to the information
  - risks in relation to the collection, storage, use, disclosure or disposal of and access to personal and health information collected by the service
- ensuring parents/guardians know why the information is being collected and how it will be managed
- providing adequate and appropriate secure storage for personal information collected by the service, including electronic storage
- developing procedures that will protect personal information from unauthorised access
- ensuring the appropriate use of images of children, including being aware of cultural sensitivities and the need for some images to be treated with special care
- developing procedures to monitor compliance with the requirements of this policy
- ensuring all employees and volunteers are provided with a copy of this policy, including the *Privacy Statement* of the service (refer to Attachment 4)

- ensuring all parents/guardians are provided with the service's *Privacy Statement* (refer to Attachment 4) and all relevant forms
- informing parents/guardians that a copy of the complete policy is available on request
- ensuring a copy of this policy, including the *Privacy Statement*, is prominently displayed at the service and available on request
- establishing procedures to be implemented if parents/guardians request that their child's image is *not* to be taken, published or recorded, or when a child requests that their photo *not* be taken.

**The Nominated Supervisor is responsible for:**

- assisting the Approved Provider to implement this policy
- reading and acknowledging they have read the *Privacy and Confidentiality Policy* (refer to Attachment 3)
- providing notice to children and parents/guardians when photos/video recordings are going to be taken at the service
- ensuring educators and all staff are provided a copy of this policy and that they complete the *Letter of acknowledgement and understanding* (Attachment 3)
- obtaining informed and voluntary consent of the parents/guardians of children who will be photographed or videoed.

**Certified Supervisors and other educators are responsible for:**

- reading and acknowledging they have read the *Privacy and Confidentiality Policy* (refer to Attachment 3)
- recording information on children, which must be kept secure and may be requested and viewed by the child's parents/guardians and representatives of the Department of Education and Training during an inspection visit
- ensuring they are aware of their responsibilities in relation to the collection, storage, use, disclosure and disposal of personal and health information
- implementing the requirements for the handling of personal and health information, as set out in this policy
- respecting parents' choices about their child being photographed or videoed, and children's choices about being photographed or videoed.

**Parents/guardians are responsible for:**

- providing accurate information when requested
- maintaining the privacy of any personal or health information provided to them about other individuals, such as contact details
- completing all permission forms and returning them to the service in a timely manner
- being sensitive and respectful to other parent/guardians who do not want their child to be photographed or videoed
- being sensitive and respectful of the privacy of other children and families in photographs/videos when using and disposing of these photographs/videos.

**Volunteers and students, while at the service, are responsible for following this policy and its procedures.**

**Evaluation**

In order to assess whether the values and purposes of the policy have been achieved, the Approved Provider of Eltham Woods will:

- regularly seek feedback from everyone affected by the policy regarding its effectiveness
- monitor the implementation, compliance, complaints and incidents in relation to this policy

- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of the service's policy review cycle, or as required
- notify parents/guardians at least 14 days before making any changes to this policy or its procedures.

**Attachments**

- Attachment 1: Additional background information
- Attachment 2: Privacy Principles in action
- Attachment 3: *Letter of acknowledgment and understanding*
- Attachment 4: *Privacy Statement*
- Attachment 5: Permission form for photographs and videos
- Attachment 6: Special permission notice for publications/media
- Attachment 7: Australian Privacy Principles

## SPECIFIC PROCEDURES AT ELTHAM WOODS PRESCHOOL

We believe your privacy is important. This policy states our personal information handling practices, as required by the applicable legislation, Information Privacy Principle (IPP) 5 and Health Privacy Principle (HPP) 5.

### **Distribution of this policy**

This policy will be:

- Displayed at the services,
- Made available on request to anyone who asks for it,
- Provided to all Committee members, employees and anyone who handles personal information at the service.

### **Type of personal and health information to be collected**

We will only collect the information we need, and for which we have a purpose that is legitimate and related to one of our functions or obligations.

The type of information we collect and hold includes (but is not limited to) personal information, including health information, regarding:

- Children and parents/guardians before and during the child's attendance at a service (this information is collected in order to provide and/or administer our services to children and parents/guardians).
- Job applicants, employees, members, volunteers and contractors (the information is collected in order to manage the relationship and fulfil our legal obligations),
- Contact details of other parties with which the service deals.

We will collect information on the following identifiers:

- Health Care Card for children attending pre-school in order for them to receive the State Government Fee Subsidy. Failure to provide this would result in the parents/guardian not obtaining the Fee Subsidy.
- Tax File Number for all employees related to the deduction and forwarding of tax to the Australian Tax Office. Failure to provide this would result in maximum tax being deducted.
- For *childcare services only* Customer Reference Number (CRN) for children attending childcare services in order for them to access Childcare Benefit. Failure to provide this would result in the parents/guardians not obtaining the Childcare Benefit.

*Personal information provided by individuals either in relation to themselves or their children using the service.* We will generally collect personal information about an individual by way of forms filled out by parents/guardians or job applicants, face to face interviews and telephone calls.

When collecting personal information we will provide individuals, from whom we collect information, with a copy of our Collection Statement (Appendix 1). If the reason for collecting the information varies from the Collection Statement, the Collection Statement will be amended to cover the area required while still meeting the privacy principle requirements of HPP 1.4 (Health Records Act 2001) and IPP 1.3 (Information Privacy Act 2000).

## **Notification of individuals or the parents/guardians of personal or health information collected**

*What happens when we receive personal information from a source other than the individual or the parent/guardian?* The person receiving the information, will notify the individual or the parent/guardian of the child to whom the information relates, of the receipt of this information and as part of the notification, will advise that they have a right to request access to the information.

Access will be granted in accordance with the relevant legislation. Please note the legislation allows us to deny access, in accordance with the limited reasons for denial that are contained in the legislation.

## **Use of personal information**

We will use the personal information we collect for the primary purpose of collection. We may also use the information for such secondary purposes that are related to the primary purpose of collection and can be reasonably expected, or to which the individual concerned has consented.

The personal information collected in relation to:

- Children and parents/guardians
- Committee members
- Job applicants, employees, contractors, volunteers and students,

will be used as set out as follows:

Personal information and health information collected in relation to:	Primary purpose of collection	Examples of how the service will use personal information, including sensitive and health information include:
Children and parents/guardians	To enable us to provide for the education and care of the child attending the service.	<ul style="list-style-type: none"> <li>• Day to day administration;</li> <li>• Provision of a place for their child in the service;</li> <li>• Duty rosters;</li> <li>• Looking after children's educational, care and safety needs;</li> <li>• For correspondence with parents/guardians relating to their child's attendance;</li> <li>• To satisfy the service's legal obligations and to allow it to discharge its duty of care.</li> </ul>
Committee members	For the management of the service by the Committee of Management.	<ul style="list-style-type: none"> <li>• For communication with and between Committee members, employees and members of the association;</li> <li>• To satisfy the service's legal obligations.</li> </ul>
Job applicants, employees contractors, volunteers and students	<p>To assess and (if necessary) to engage the applicant, employees, contractor, volunteers or students, as the case may be.</p> <p>To administer the employment, contract or placement.</p>	<ul style="list-style-type: none"> <li>• Administering the individual's employment, contract or placement, as the case may be;</li> <li>• Health and safety; Insurance purposes;</li> <li>• Satisfying the service's legal obligations, for example in relation to the Children's Services Act 1996 and the Children's Services Regulations 1998;</li> <li>• Listing the names and qualifications of staff on material provided to prospective users.</li> </ul>

### Disclosure of personal information, including health information

We may disclose some personal information held about an individual to:

- Government departments or agencies as part of their legal and funding obligations;
- Local Government in relation to enrolment details for planning purposes;
- Organisations providing services related to staff entitlements and employment;
- Insurance providers in relation to specific claims;



- Law enforcement agencies;
- Health organisations and/or family in circumstances where the person requires urgent medical assistance and is incapable of giving permission;
- Anyone to whom the individual authorises the service to disclose information.

### 1.1 Treatment of sensitive information

Sensitive information will be used and disclosed only for the purpose for which it was collected or a directly related secondary purpose, unless the individual agrees otherwise, or the use or disclosure of the sensitive information is allowed by law.

### Management and security of information

In order to protect the personal information from misuse, loss, unauthorised access, modification or disclosure, the Committee and staff will ensure that in relation to personal information:

- Access will be limited to staff who require this information in order to do their jobs.
- It will not be left in areas that allow for unauthorised access.
- The physical storage of all materials will be in a secure cabinet or area.
- Computerised records containing personal or health information will require password access.
- There is security in transmission:
  - Emails will only be sent to a person authorised to receive this material.
  - Faxes will only be sent to a secure fax, which does not allow unauthorised access.
  - Telephone. Only limited personal information will be provided over the telephone to persons authorised to receive that information.
- Transfer of information interstate and overseas will only occur with the permission of the person concerned or their parent/guardian.

### Data quality

We will endeavour to ensure that the personal information we hold is accurate, complete, up to date and relevant to our functions or activities.

### Access to information and updating personal information

***Individuals have the right to ask for access to personal information we hold about them without providing a reason for requesting access.***

Under the privacy legislation, an individual has the right to:

- ask for access to personal information that the service holds about them;
- to access this information and
- to make corrections if they consider the data is not accurate, complete or up to date.

There are some exceptions set out in the Acts where access may be denied in part or in total. An example of some of the exemptions are where:

- The request is frivolous or vexatious;
- Providing access would have an unreasonable impact on the privacy of other individuals;
- Providing access would pose a serious threat to the life or health of any person;
- The service is involved in the detection, investigation or remedying of serious improper conduct and providing access would prejudice that.

### **Process for considering access requests**

A person may seek access, to view or update their personal/health information:

- If it relates to action on behalf of their child, by contacting the Teacher/Coordinator;
- For all other requests, by contacting the President or Secretary.

Personal information may be accessed in the following way:

- View and inspect information
- Take notes
- Obtain a copy.

Requests for access or to update personal information should nominate the type of access required, and specifying where possible, what information they seek. No reason is required in relation to why the request is made. The person seeking information, if the employee or Committee member does not know them, must provide a visible form of identification.

The employee or Committee member receiving the request will record the request and the date received. Each request will be acknowledged within 14 days, but preferably within 2 working days. Requests will be complied with within 30 days. However there could be a delay in responding if the timeline occurs over a period when the service is closed.

Committee and employees will provide access in line with the Privacy Acts. If the requested information is not given, the reasons for denied access will be given in writing to the person requesting the information.

In accordance with the legislation we reserve the right to charge for information provided, in order to cover the costs involved in providing the information.

### **Anonymity**

Wherever it is lawful and practicable, individuals will have the option of not identifying themselves when entering transactions with our service.

### **Disposal of information**

We will not store personal information longer than necessary.

In disposing of personal information we will ensure that it is either shredded or destroyed in such a way that no one can access the information.

The Committee is responsible for ensuring the overall responsibility for the implementation of this policy.

Both the Committee of Management and employees are responsible for the collection, use, disclosure, access, storage and disposal of information in line with this policy and the Privacy Principles set out in the Victorian Health Records Act 2001 and the Information Privacy Act 2000.

Further information can be obtained from:

- Health Services Commissioner (03) 8601 5200 or 1800 136 066 or [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc)
- Victorian Privacy Commissioner (03) 8619 8719 or 1300 666 444 or [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au)

We will from time to time, review and update this Privacy Policy to take account of new laws and technology, changes to its operations and practices, and to make sure it remains appropriate to the changes in the environment in which it operates.

## POLICY CHANGE RECORD

<b>Date</b>	<b>Revision Description</b>	<b>Authority</b>
29/8/2011	Policy number EWPS-16 assigned	EWPS Vice President
22/10/2011	Standard EWPS Policy format applied	EWPS Vice President
2018	ELAA current application	EWPS President
2021	Review	EWPS President