



Privacy and Confidentiality

QUALITY AREA 7: GOVERNANCE AND LEADERSHIP

Introduction

Astelier Children's Centres Pty Ltd (ACN 109035421) recognises and respects the importance of privacy and confidentiality as an individual right and a basis for building partnerships. Our service requires personal information from families to provide appropriate and responsive care. This policy has been developed to comply with the *Australian Privacy Principles (APPs) (2014)* and pursues the highest standard in the protection and preservation of privacy and confidentiality.

Goals

We will:

Maintain private and confidential files for educators and staff, children and their families. We will develop systems for the appropriate use, storage and disposal of records.

Ensure the information in these files is used only for the education and care of the child enrolled in the service and only shared with relevant or authorised people as defined within authorisations of the Education and Care Services National Regulations.

Strategies

Our education and care service aims to meet these goals through the adoption of this specific *Privacy and Confidentiality policy* and our *Privacy Collection* statement which will guide our practices in this area.

The Approved Provider will:

Collection of Information

- Ensure that each family, staff, volunteers and student and committee member is provided with a **Privacy Collection Statement** upon enrolment, that includes details about how they can access their personal information, have this corrected as needed, make a complaint about a breach of privacy, if one occurs.
- Ensure each staff member, committee members, volunteers and student information is correct in personnel and other files. This includes information on qualifications, working with children checks or equivalent, criminal history checks, staff entitlements, contact and emergency information, health and immunisation information, and any relevant medical and legal information. This would include any other relevant information collected by the service.
- Ensure that information collected from families, educators, committee members and the community is maintained in a private and confidential manner at all times.

- Ensure that such information is not divulged or communicated (directly or indirectly) to another person other than the ways outlined as appropriate in the Education and Care Services National Regulations R181, which says information can be communicated:
 - To the extent necessary for the education, care or medical treatment of the child
 - To the parent of the child to whom the information relates (except for information in staff records)
 - To the regulatory authority or an authorised officer
 - As authorised, permitted or required to be given by or under any act or law, and
 - With written consent of the person who provided the information.
- Ensure families are informed upon enrolment how images/photographs of their children will be used on the Internet and/or publications and gain written approval.
- Provide families with information on the *Complaints Handling* policy if any privacy or confidentiality procedure has been breached. Individuals can make a complaint to the Approved Provider if they believe there has been a breach of their privacy in relation to the Australian Privacy Principles. The breach will be assessed by the Approved Provider within 14 days. Where the information collected is incorrect, the information will be corrected. Where a serious breach of privacy is found, appropriate actions will be negotiated between the Approved Provider and the individual to resolve the situation, in line with the *Complaints Handling* policy.
- Ensure information provided by families, staff and committee members is only used for the purpose it was collected for.

Notifiable Data Breaches (NDB)

The Notifiable Data Breaches (NDB) scheme requires all businesses regulated by the Privacy Act (including education and care services) to provide notice to the Office of the Australian Information Commissioner and affected individuals of any data breaches (i.e. data leaks) that are “likely” to result in “serious harm.”

- An eligible data breach arises when the following three criteria are satisfied:
 - There is unauthorised access to or unauthorised disclosure of personal information, or loss of personal information, that an entity holds
 - This is likely to result in serious harm to one or more individuals, and
 - The entity has not been able to prevent the likely risk of serious harm with remedial action.
- Should there be a NDB at our service, the approved provider will undertake a reasonable and expeditious assessment to determine if the data breach is likely to result in serious harm to any individual affected.
- A failure to notify that is found to constitute a serious interference with privacy under the Privacy Act may result in a fine of up to \$360,000 for individuals or \$1.8 million for organisations.
- Individuals at likely risk of serious harm will be notified promptly.

The Approved Provider and/or Nominated Supervisor will access The Australian Government – Office of the Australian Information Commissioner website for:

- The Notifiable Data Breach Form to support their investigation and notification: www.oaic.gov.au/_data/assets/pdf_file/0008/2240/oaic-ndb-form-for-training-purposes-only.pdf
- The Notifiable Data Breaches Scheme for more information: www.oaic.gov.au/privacy-law/privacy-act/notifiable-data-breaches-scheme

The Nominated Supervisor will:

- Ensure each family’s information is correct in enrolment records. This includes information on immunisation updates, income and financial details (credit card or bank information), contact details of family and emergency contact information, children’s developmental records, Family Assistance information, and any medical or legal information – such as family court documentation

– required by our education and care service. This would include any information required to be recorded under the Education and Care National Law and Regulations, the Family Assistance Law other relevant information collected to support the enrolment of a child.

- Provide families with details on the collection of personal information collected via the *Privacy Collection Statement*. This information will include:
 - The types of information collected by our education and care service;
 - The purpose of collecting information;
 - What types of information will be disclosed to the public or other agencies; and when and why disclosure may occur;
 - How information is stored at the service;
 - Approaches used to keep information secure;
 - Who has access to the information;
 - The right of the individual to view their personal information;
 - The length of time information needs to be archived; and
 - How information is disposed.
- Will ensure information provided by families and staff is only used for the purpose it was collected for.

Storage of Information

- Ensure that education and care service records, personnel records, CCS information (in the case of CCS approved services), data gathered for other funding requirements (i.e. Start Strong in NSW) and children's and families information is stored securely reducing the chance of unauthorised access, use or disclosure and remains private and confidential within the education and care environment at all times.

Access to Information

- Will ensure that information kept is not divulged or communicated, directly or indirectly, to anyone other than:
 - Medical and developmental information that is required to adequately provide education and care for the child;
 - The Department of Education, or an authorised officer; or
 - As permitted or required by any Act or Law.
- Individuals will be allowed access to their personal information as requested. Individuals must request this information in writing from the Approved Provider or Nominated Supervisor. Authorised persons may request to view any information kept on their child.
- Information may be denied under the following conditions:
 - Access to information could compromise the privacy of another individual;
 - The request for information is frivolous or vexatious; and
 - The information relates to legal issues, or there are legal reasons not to divulge the information such as in cases of custody and legal guardianship.

Information Exchange Provisions:

States and territories including Victoria, The Australian Capital Territory (ACT), Northern Territory (NT) South Australia (SA), Tasmania and Western Australia (WA) support sharing of information in relation to child protection and mandatory reporting.

Refer to your state or territory on information sharing and child protection legislation.

In NSW there are Information Exchange provisions:

The *Children Legislation Amendment Act 2009* increased the information sharing provisions of the *Children and Young Persons (Care & Protection) Act 1998*. These provisions authorise agencies i.e. Astelier Children's Centres, to exchange/share information that relates to a child or young person's safety, welfare or well-being. Astelier Children's Centres must comply with a request for information (provided it relates to the safety, welfare or well-being of a child or young person) if they believe that the provision of information may assist the recipient agency and vice versa.

This legislation overrides other laws that prohibit or restrict the disclosure of personal information i.e. Privacy and Information Act 1998. Should information need to be exchanged, our service will seek and gain consent from the parent/carer that information about them/their child may be provided, or is being provided to other 'prescribed bodies'.

Circumstances in which our service would not seek to inform the parent/carer about exchanging information would include:

- If it was likely to further jeopardise a child or young person's safety, welfare or wellbeing
- If it would place Astelier Children's Centres employees at risk of harm
- If Astelier Children's Centres were unable to contact a parent and the matter was urgent.

Educators will:

- Maintain children's information and store documentation according to policy at all times.
- Not share information about the education and care service, management information, other educators or children and families, without written permission or legislative authority.
- In keeping with the Early Childhood Australia (ECA) *Code of Ethics (2016)*, the Education and Care Services National Regulations and the Australian Privacy Principles, educators and staff employed by our education and care service bound to respect the privacy rights of children enrolled and their families; educators and staff and their families and any other persons associated with the service. Educators will sign a Confidentiality Statement as it relates to privacy and confidentiality of information.

Evaluation

- All information pertaining to the education and care service, educators and families is maintained in a private and confidential manner in accordance with the *Privacy Act 1988* and the *Education and Care Services National Regulations*.
- This policy will be monitored to ensure compliance with legislative requirements and unless deemed necessary through the identification of practice gaps, the service will review this Policy every 12 months.
- Families and staff are essential stakeholders in the policy review process and will be given opportunity and encouragement to be actively involved.
- This policy links to the *Governance and Management* policy.

Related Guidelines, Standards, Frameworks

- National Quality Standard, Quality Area 7: Governance and Leadership - Standard 7.1 Element 7.1.2

Related Legislation

- Education and Care Services National Law
- Education and Care Services National Regulations: 168(2)(l), 181, 182, 183
- Australian Privacy Principles
- Privacy Act 1988 (Privacy Act)
- Australian Child Protection Legislation <https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>

Sources

- ACECQA's Guide to the National Quality Framework - www.acecqa.gov.au/nqf/about/guide
- Australian Privacy Principles – www.oaic.gov.au
- Office of the Australian Information Commissioner – www.oaic.gov.au
- Privacy Act 1988 (Privacy Act) – www.oaic.gov.au/privacy-law/privacy-act
- Early Childhood Australia – www.earlychildhoodaustralia.org.au