

	<b>Policy Name and Number</b>	2.4 Privacy and Consent to Personal Information
	<b>Executive Sponsor</b>	CEO
	<b>Owner</b>	Executive Assistant
	<b>Effective date</b>	6 May 2021
	<b>Authorised by</b>	Management Team
	<b>Review date</b>	May 2023 (every two years)

### 1. Policy Purpose

Inspiro will collect, use, disclose, store, release and destroy personal information it holds in compliance with all Commonwealth and Victorian legislation relating to confidentiality and privacy, including where relevant, the *Privacy Act 1988* (Cth), section 141 of the *Health Services Act 1988* (Vic), the *Health Records Act 2001* (Vic) and section 346 of the *Mental Health Act 2014* (Vic).

Inspiro will:

- maintain the privacy of personal information it holds; and
- ensure the personal information it holds is handled in an appropriate manner and according to applicable privacy legislation.

### 2. Scope

This policy deals with the collection, storage, use, disclosure and destruction of personal information at Inspiro.

This policy does not deal with the collection, storage, use, disclosure or destruction of Inspiro worker information.

This policy applies to all Inspiro workers.

### 3. Definitions

**APPs:** The Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).

**Client-Parent:** the parent who brought a child under 18 years of age for treatment.

**Consent:** In the privacy context and for the purposes of this policy, "consent" means a person's permission or authority to collect and handle their personal information in a particular way (including the use and disclosure of their personal information). Consent in the privacy context should not be confused with other types of consent (e.g. permission for specific treatments, for participation in research, for surgical procedures etc).

Consent can either be express (e.g. verbally communicated or on a signed consent form) or implied. It is best practice to seek express consent wherever possible, particularly where significant privacy implications are involved.

Consent may be implied where it is reasonable to conclude from a person's words or actions or other circumstances that they consent, e.g. when a client provides their health information to a health professional during a consultation, there is implied consent that the health professional will collect that information and use it for the purposes of the consultation.

The four key elements of consent are:

- **Informed:** the individual is adequately informed before giving consent (e.g. in a privacy statement). For example, an individual must be aware of the implications of

providing or withholding consent, such as whether access to a health service cannot proceed if the client does not consent to their personal information being collected.

- **Voluntary:** the individual gives consent voluntarily, and is not coerced or pressured into providing consent.
- **Current and specific:** the consent is current and specific, and for example, consent is not sought to use personal information for a long, bundled list of purposes which may or may not be relevant.
- **Capacity:** the individual has the capacity to understand and communicate their consent.

Consent will be effective if all the above elements are present.

Where consent is required for Inspiro to handle the personal information of an individual under the age of 18, Inspiro workers must determine on a case-by-case basis whether that individual has the capacity to consent. An individual under the age of 18 has capacity to consent when they have sufficient understanding and maturity to understand the consequences of agreeing to have their personal information handled in the way proposed, and can communicate their consent. To determine capacity refer to the Mature Minor definition in Policy 2.10 Informed Consent, section 6.2.

If a person under 18 lacks the maturity or understanding to provide consent, the consent of their parent or guardian must be obtained.

**Health information:** A type of both personal information and sensitive information (see definitions below). Health information includes:

- information or an opinion about a person's health, a person's wishes about the future provision of health services, or a health service provided or to be provided to a person, where that information or opinion is also personal information;
- other personal information collected to provide or in providing a health service to a person;
- other personal information collected in connection with a person's donation, or intended donation of body parts or substances, or organs;
- genetic information about an individual in a form that is, or could be, predictive of the health of the individual or a genetic relative of the individual.

**HPPs:** The Health Privacy Principles contained in the *Health Records Act 2001* (Vic).

**Health Records Act:** *Health Records Act 2001* (Vic).

**Personal Information:** Information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) Whether the information or opinion is true or not; and
- b) Whether the information or opinion is recorded in a material form or not. (Privacy Act, Section 6)

**Privacy Act:** The *Privacy Act 1988* (Cth).

**Reasonable steps:** A number of the APPs require Inspiro to take 'reasonable steps' in the circumstances to fulfil an obligation (for example, to provide an individual with the details of the collection of their information). What is reasonable is a question of fact in each individual case. It is an objective test that has regard to how a reasonable person, who is properly informed, would be expected to act in the circumstances. What is reasonable can be influenced by current standards and practices. It is the responsibility of Inspiro to be able to justify that its conduct was reasonable. It will be discussed on a case by case basis as and when required.

**Sensitive information:** is defined as (Privacy Act, Section 6):

- a) Information or an opinion about an individual's:
- i. racial or ethnic origin; or
  - ii. political opinions; or
  - iii. membership of a political association; or
  - iv. religious beliefs or affiliations; or
  - v. philosophical beliefs; or
  - vi. membership of a professional or trade association; or
  - vii. membership of a trade union; or
  - viii. sexual orientation or practices; or
  - ix. criminal record,
- that is also personal information; or
- b) health information about an individual (see definition above); or
- c) genetic information about an individual that is not otherwise health information; or
- d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or
- e) biometric templates.

**Worker(s):** includes all permanent, casual, contract, volunteer and temporary staff and vocational trainees.

#### **4. Responsibilities**

The following persons have the following specified responsibilities in relation to the delivery of this policy.

- Policy implementation: Inspiro workers, management, CEO
- Policy authorisation: CEO
- Policy maintenance: Executive Assistant

#### **5. Applicable privacy laws**

The primary legislation that will apply to Inspiro and its workers in handling personal information is the Privacy Act and APPs (which is Commonwealth legislation). The APPs, amongst other things, govern the collection, use, disclosure, and storage and security of an individual's personal information.

In addition, the following State laws will also apply to Inspiro along with the Privacy Act in respect of the handling of health information:

- the Health Records Act and HPPs (however, the relevant obligations under the HPPs are substantially the same as in the APPs); and
- section 141 of the *Health Services Act 1988* (Vic), which applies in relation to **disclosure** of client personal information; and
- section 346 of the *Mental Health Act 2014* (Vic), which applies to **disclosure** of client personal information where they are a mental health service consumer, to the extent that Inspiro provides publicly funded mental health community support services which are not funded by the National Disability Insurance Scheme (**NDIS**).

This Policy primarily refers to the Privacy Act and APPs, but notes the equivalent obligations and any relevant additional obligations under the additional State legislation listed above.

## 6. Policy

### 6.1. Key responsibilities

The CEO is responsible for ensuring organisational compliance with legislation relevant to this policy and may delegate this responsibility to members of the Management Team.

The CEO is responsible for any reporting related to this legislation.

The Management Team are responsible for ensuring all new workers are informed and comply with this policy.

### 6.2. Collection of personal and sensitive information including health information (APPs 3 and 5, HPP 1)

Inspiro may only collect personal information (other than health information or other sensitive information) if the information is reasonably necessary for one or more of its functions or activities.

Inspiro may only collect an individual's health information (or other sensitive information) where the information is reasonably necessary for its functions or activities, and generally only with the individual's consent or where another specified exception exists under the APPs (such as where the collection is required under law, or it is unreasonable or impracticable to obtain consent and the collection is required to prevent a serious threat to the life, health or safety of any person).

For example, the collection of an individual's health information will be necessary for Inspiro to provide them with health services.

If Inspiro has collected personal information about an individual, it will take reasonable steps to notify the individual, or otherwise ensure the individual is aware, of certain matters, including:

- the purposes for which the information was collected;
- the persons to whom the information will be disclosed (if any);
- Inspiro's name and contact details (including the position title, telephone number and email address of the contact who handles enquiries in relation to the Privacy Act). A generic phone number and email address (hello@inspiro.org.au and main phone number) will be used;
- the manner in which the individual may access their information;
- the main consequences (if any) for the person if the information is not collected;
- whether the information will be disclosed to overseas recipients, and if so the countries in which those recipients will be located;
- how the individual may seek correction of their information; and
- how the individual may complain about a breach of their privacy rights.

Notification must be provided before, or at the time the personal information is collected, or if not practicable, as soon as practicable after collection.

Any special needs of the individual will to be taken into account (e.g. non-English speaking, disabled), and Inspiro will take all reasonable steps to ensure that the details of collection of the individual's personal information is provided in an accessible way.

### **6.3. Use and disclosure of personal information (APP 6, HPP 2, section 141 *Health Services Act 1988* (Vic) and section 346 *Mental Health Act 2014* (Vic))**

Inspiro workers must generally only use or disclose an individual's personal information for the main purpose (or 'primary purpose') for which the information was collected. For example, the main purposes of initial collection of client information by Inspiro (e.g. contact details, and details of their health condition) will be to provide health services. In that case Inspiro can use or disclose the client information for those main purposes.

Use or disclosure of personal information for other purposes will be considered use for a 'secondary purpose'. For example, if Inspiro was to use that client information to respond to a client complaint, that use would be for a secondary purpose, and if Inspiro wanted to share client information with an external clinician treating the client for an unrelated condition, that would be disclosure for a secondary purpose.

Inspiro workers must not use or disclose personal information for a 'secondary purpose' unless an exception applies. Relevant exceptions include:

- where the person consents;
- where the person 'reasonably expects' the use or disclosure, and:
  - if the information is health information or other sensitive information, the use or disclosure is directly related to the purpose for which the information was collected;
  - for other personal information, the use or disclosure is related to the purpose for which the information was collected;
- the use is required by law, for example, where there is a Court order or other law (such as infectious disease notification) requiring Inspiro to use or disclose personal information in a certain way;
- where the use is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim (e.g. legal proceedings);
- where the disclosure is required in connection with a notification, claim or possible claim to Inspiro's insurer; or
- where it is unreasonable or impracticable to obtain the individual's consent, and the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

Note that section 141 of the *Health Services Act 1988* (Vic) and section 346 of the *Mental Health Act 2014* (Vic) also apply to disclosure of client personal information by Inspiro, but these laws allow disclosure of client personal information in the same circumstances discussed above.

Any disclosure to a third party (e.g. discussion with a health professional or other person external to Inspiro) will be recorded within the client file.

Client consent (or parent or guardian consent in the case of children who are not capable of giving informed consent) must be obtained to consult or share information about a client with other workers within Inspiro or any person external to the service and must be recorded within the client file.

Aside from where the law specifically allows (as discussed above), Inspiro workers will not use or disclose information for purposes which are unrelated to the treatment or care of client, without the consent of a client.

### **6.4. Quality, security and retention of personal information (APPs 10 and 11, HPPs 3 and 4)**

Inspiro must take all reasonable steps to ensure that the personal and sensitive information held is accurate, complete, up-to-date and relevant, also having regard to the purposes for which the information is used or disclosed by Inspiro.

Inspiro must take reasonable steps to protect the personal information it holds against misuse, interference, and loss, and from unauthorised access, modification or disclosure.

Inspiro must retain personal information (including client health information) for the time periods required by law, including under HPP 4.

HPP 4 generally requires retention of health information of adults for at least 7 years after the last health service was provided to them, and for children, until they turn 25, but longer periods may apply. For example, Inspiro may also need to retain personal information where the use of that information is necessary for the establishment, exercise or defence of legal proceedings (as permitted by the APPs), and may also be required under law to retain such information where it may be required as evidence in a legal proceeding (as may be required for example, under crimes legislation). An individual's personal information which falls into this category must be retained until such legal proceedings have been completed, or until the information is no longer reasonably likely to be required in legal proceedings.

After the required retention periods are met for personal information and the information is not needed for any lawful purpose, Inspiro must securely permanently de-identify or dispose of the information.

De-identification or destruction of personal information will take place in adherence to relevant legislation and guidelines.

External service contractors are required as part of their contract conditions to comply with this Inspiro Privacy Policy and must demonstrate compliance with both State and Commonwealth privacy laws.

#### **6.5. Openness and privacy policy requirements (APP 1, HPP 5)**

Inspiro will have a privacy policy and related documentation available to the public relating to its policy on the management of personal information in accordance with legislative requirements.

#### **6.6. Access and correction (APPs 12 and 13, HPP 6)**

Inspiro must allow individuals to access their personal information on their request, unless a specified exception applies.

Exceptions to access by an individual to their personal information include where access:

- would pose a serious threat to the life, health or safety of any individual or public health or safety;
- would unreasonably impact on the privacy of other individuals;
- would be unlawful; or
- must be denied in accordance with a law or court order.

Individuals may also seek correction of their personal information if the information is inaccurate, out of date, incomplete, irrelevant or misleading, and Inspiro must take reasonable steps to make such corrections, having regard to the purpose for which the information is held.

Inspiro must respond to requests for access to, and correction of, personal information within a reasonable time and in any case within 30 days, and provide written reasons to the individual where access or correction is refused (except where this would be unreasonable given the grounds for refusal).

Removal of any part or whole document is not permissible. The document remains the property of Inspiro.

Where a practitioner is requested to explain the contents of health records to clients the fee permitted by the Health Records Act will be applied.

With respect to access to health information under the Health Records Act, under Part 5 of that Act and HPP 6, this access right applies to all health information collected by Inspiro on or after 1 July 2002.

A right of access also applies to the following health information collected before 1 July 2002, including:

- the individual's health or disability history;
- the findings of an examination or investigation;
- a diagnosis or preliminary diagnosis;
- a plan or proposed plan of management;
- services provided or actions taken;
- genetic information that is or could be predictive of health; and
- other personal information about a donation of body parts, organs or body substances.

A right of access to personal information (including health information) may be exercised in the following ways if requested by the individual or otherwise agreed by Inspiro and the individual and the form of access is reasonable and practicable:

- inspection of the information or, if the information is in an electronic form, a printout of that information, and having the opportunity to take notes of its contents;
- the provision of a copy of the information;
- the provision of an accurate summary, instead of a copy, if Inspiro and the individual agree that a summary is appropriate; or
- an opportunity to view the information, and in the case of health information it may explained by an Inspiro practitioner.

Access may also be granted in the above ways to health information collected by Inspiro before 1 July 2002, where Inspiro agrees to this, or otherwise Inspiro is required to provide the individual with an accurate summary of the health information.

### **6.7. Identifiers (APP 9, HPP 7)**

Under HPP 7 Inspiro may only assign a number to identify a person if this is reasonably necessary to carry out its functions efficiently. Inspiro assigns a numerical identifier to client files, in order to facilitate effective health information management. Dental client files are identified by using the client's surname and first initial. No other identifiers appear on the outside of health records.

Under APP 9, Inspiro must not adopt 'government related identifiers' (such as drivers licence or passport numbers, Medicare numbers or Centrelink Reference Numbers) in order to identify individuals unless required or authorised by law.

Inspiro must not use or disclose an individual's government related identifier unless an exception applies under the APPs, which include where:

- the use or disclosure is reasonably necessary to verify the identity of the individual; or

- the use or disclosure is reasonably necessary for Inspiro to fulfil its obligations to a Commonwealth agency or State or Territory authority (such as under a funding/service agreement); or
- the use of disclosure is required or authorised by law or under a court or tribunal order.

#### **6.8. Anonymity and pseudonymity (APP 2 , HPP 8)**

Inspiro gives individuals the option of not identifying themselves in relation to their contact with Inspiro (including by use of a pseudonym under APP 2), unless doing so would be unlawful or impracticable.

#### **6.9. Trans border and overseas disclosure of personal information (APP 8. HPP 9)**

No information will be transferred by Inspiro outside Victoria unless the organisation receiving it is subject to laws substantially similar to the HPPs.

If Inspiro wishes to disclose personal information to a recipient overseas, APP 8 will apply.

Before personal information is disclosed overseas, under APP 8.1 Inspiro must take reasonable steps to ensure that the overseas recipient does not breach the APPs (such as by making this a contractual requirement of the recipient), unless an exception applies.

Relevant exceptions include where:

- the overseas recipient is subject to similar laws to the APPs which protect personal information and there are mechanisms that an individual can use to enforce those laws; or
- Inspiro expressly informs the individual that their information will be disclosed overseas and APP 8.1 will not apply, and the individual consents.

#### **6.10. Transfer/closure of service (HPP 10)**

Should Inspiro cease to operate, action will be taken in accordance with HPP 10, including provision of notice to current and past clients accessing its services in accordance with HPP 10.

#### **6.11. Making information available to another service provider (HPP 11)**

Should an individual client request it in writing, health information relating to their contact with Inspiro will be provided to another health service provider in accordance with HPP 11.

#### **6.12. Dealing with unsolicited personal information (APP 4)**

- Unsolicited information is information received where Inspiro has taken no active step to collect the information (e.g. referrals, unsolicited CVs, student placement enquiries, misdirected mail/email).
- If the information could have been collected in accordance with APP 3 (which deals with solicited information) it can be retained and must be dealt with as solicited information in accordance with APPs 5 to 13.
- If the information could not have been collected under APP 3 it must be destroyed or de-identified as soon as practicable if it is lawful to do so.

#### **6.13. Direct marketing (APP 7 and *Spam Act 2003 (Cth)*)**

- Inspiro will not use personal or sensitive information for the purpose of direct marketing (communicating directly to an individual to promote goods and



services) unless in accordance with an individual's consent or otherwise as permitted by APP 7 and the *Spam Act 2003* (Cth).

- Where Inspiro is permitted to use personal information for the purpose of direct marketing, Inspiro will always provide a means for an individual to 'opt out' and must comply with this request.
- Inspiro will provide the source of an individual's personal information if requested to do so by the individual.

#### **6.14. Procedures relating to consent to share client information**

Privacy and consent is discussed with all clients at intake through Initial Needs Identification. The Service Coordination Tool, Consumer Consent Template will be completed at this time. Specific release of information will be discussed with the client during consultations and recorded on the consent form and also signed by the client where practical to do so. If written/signed consent is not possible, verbal consent once given is recorded on the consent template or in the progress notes.

In order to give consent, clients need to understand what will happen to their information following clear advice from the Inspiro worker. Clients must be able to make their own decision about the sharing of information.

Written/signed consent for MBS clients regarding the use and disclosure of information is obtained using the MBS Consumer Personal Details and Consent to Share Information form.

NB: for the purposes of this policy, consent to share information is not to be confused with consent to treatment.

#### **6.15. Procedures relating to requests for information from non-custodial parents**

No personal information of a child client can be provided to a non-custodial parent (without parental responsibility/authority for such matters) without consent. Either the child, if capable, provides informed consent to the disclosure, or the child's parent/guardian with parental responsibility/authority for such matters provides the consent to disclosure of the information, or a court orders that information must be provided. Mere acknowledgement by Inspiro that the child is a client may be a breach of privacy if made without consent.

#### **6.16. Procedures relating to requests to access information**

The CEO is appointed Privacy Officer to respond to requests to access information. All requests for information must be in writing. Clients requesting information must specify the document sought (NB. some documents/information are exempted from being accessed). Requests for access to client information will be processed in accordance with any Inspiro policies and procedures for access to client information (**Client Access Policies**). Subject to the Client Access Policies:

- The Privacy Officer will consider and approve access to the information requested where appropriate and lawful and arrange access as described in this policy above. Removal of any part or whole document is not permissible and the document will remain the property of Inspiro.
- If access to a document is denied, the Privacy Officer will give an explanation in writing including avenues of client appeal.
- The CEO is responsible for providing reports on requests to access information as required by legislation or funding agreement.

#### **6.17. Procedures for subpoenas and solicitors' requests**

All external requests for client information are to be directed to the CEO.

- The CEO will ensure subpoenas and other court orders are complied with.
- Requests by solicitors for information or reports must be in writing and require the written permission of the client before any client information is provided.
- As an additional security measure, the client will be contacted to verify their permission to release the nominated information to a third party.

#### **6.18. Quality assurance**

The Management Team and CEO will monitor privacy issues through file audits, supervision and intake practices.

### **7. References and Related Documentation**

- [Policy 0.3 Policy and Document Control](#)
- [Policy 1.7 Client Records](#)
- *Health Records Act 2001* (Vic)
- *Privacy Act 1988* (Cth)
- *Health Services Act 1988* (Vic)
- *Mental Health Act 2014* (Vic)
- Employment Collection Notice G:/Corporate/HR/Industrial Relations/Employment Collection Notice 20130207
- SCT Consumer Consent Template  
<http://www.health.vic.gov.au/pcps/coordination/sctt2009.htm>
- DoH brochure "Your Information: It's Private"  
<http://www.health.vic.gov.au/pcps/downloads/publications/languages/english.pdf>
- MBS consumer details and consent form <G:\Administration\Standard Forms\MBS\MBS CONSUMER PERSONAL DETAILS AND CONSENT TO SHARE INFORMATION.pdf>
- Website Privacy Statement  
[http://www.inspiro.org.au/images/uploads/documents/Website\\_Privacy\\_Statement.pdf](http://www.inspiro.org.au/images/uploads/documents/Website_Privacy_Statement.pdf)
- No Wrong Door Referral Tools when supporting a referral to an external service  
<http://www.nowrongdoor.com.au/about/tools>

### **8. Policy Review**

To recommend improvements, see Policy 0.3 – Policy and Document Control.

The Management Team will review this policy every two years

Authorised at the Policy/Procedure review and endorsement meeting 6 May 2021

- Implemented: 14 May 2002
- Reviewed: 20 April 2009
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