

## Australian Privacy Principles and Australian Capital Territory Privacy Principles Policy

The Universal Declaration of Human Rights, at Article 12, states the following:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Consistent with this fundamental human right to privacy ADACAS is committed to ensuring that the security, privacy and confidentiality of the personal information of ADACAS clients are respected and protected. ADACAS therefore seeks to comply with the requirements of the following:

- *Privacy Act 1988* (Commonwealth) including the Australian Privacy Principles (referred to in this document as the APP);
- *Health Records (Privacy and Access) Act (ACT) 1997*; and
- Any other relevant legislation that may be in force.

It is recognised that ADACAS is a health service provider and a health record keeper as defined by the *Health Records (Privacy and Access) Act (ACT) 1997* and thus is bound by the provisions of that Act.

### **Definitions**

Consistent with the *Privacy Act 1988*:

“Personal Information” means 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.

“Sensitive information” means information or an opinion about a client’s racial or ethnic origins; political opinions; membership of a political association; religious beliefs or affiliations; philosophical beliefs; membership of a professional or trade associations; membership of a trade union; sexual orientation or practise; criminal record; health information about an individual; genetic information about an individual that is not otherwise health information; biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or biometric templates.

#### **a. The Type of Personal Information Held by ADACAS**

ADACAS will only keep information relating to its clients, as detailed below:

- \* Personal information about the client, e.g. name, address, telephone number, date of birth etc; and
- \* Information required by advocates so that they are able to provide advocacy support to clients.

**b. Integrity of Personal Information**

ADACAS will take such steps as are reasonable in the circumstances to ensure that the personal information that the organisation collects, having regard to the purpose of the use or disclosure of such information, is accurate, up to date, relevant and complete.

**c. Relevance of Information**

Only information that is relevant or necessary to the client's involvement with ADACAS will be collected. ADACAS staff, contractors, consultants and board members may only access a client's personal information for the purposes of performing ADACAS work detailed in either this or another ADACAS policy.

**d. Means of Collection of Information**

ADACAS will collect information by communicating with clients and other persons such as service providers, government agency representatives, friends, family members etc with whom the client has authorised ADACAS advocates to communicate. In collecting information ADACAS staff will only collect personal information by lawful and fair means. ADACAS will not collect personal information unless the information is reasonably necessary for the organisation's functions or activities. Advocates will ensure that clients are aware that ADACAS is collecting personal information about the client either at or before the time of collection or, if that is not practicable, as soon as practicable after.

**e. Initial Meeting with the Client to Open the Case**

During the initial contact when advocates first commence working with clients, the purpose for which personal information is collected and used, and who will have access to it, will be communicated to the client. The client must know why the information is being collected, who will have access to it as well as how the client can access his/her records or information. The client must further understand that in requesting advocacy support with ADACAS, a professional advocacy relationship is entered into with the organisation as a whole and that other advocates may provide advocacy support where necessary. Clients are further provided with verbal information about the ADACAS APP Policy and the option of receiving written material about their case. If advocacy continues beyond a twelve month period then the information will be repeated to the client every twelve months.

At the time of the first contact with the client the advocate will provide information to the client regarding the following matters:

- (i) The identity and contact details of ADACAS;
- (ii) That ADACAS intends to collect personal information from someone other than the client and will seek consent from the client to do this;
- (iii) The purposes for which ADACAS collects the information;
- (iv) The main consequences (if any) for the client if all or some of the personal information is not collected by ADACAS;

(v) Any other organisation or person to which ADACAS usually discloses personal information of the kind collected by ADACAS and with which the advocate intends to communicate. This will include seeking permission from the clients to collect information for the Minimum Data Set and obtaining an authority to access information and contact individuals/organisations on behalf of the client in the course of conducting work on the case;

(vi) That this policy contains information about how the client may access the personal information about the client that is held by ADACAS and seek correction of such information; and

(vii) That this policy contains information about how the client may complain about a breach of the Australian Privacy Principles, and how ADACAS will deal with such a complaint.

ADACAS will not collect sensitive information about a client unless the client consents to the collection of the information and the information is reasonably necessary for one or more of ADACAS' functions or activities and relates solely to the clients who have regular contact with ADACAS in connection with receiving advocacy support.

Most ADACAS clients will not have cases that require contact with overseas individuals or organisations. Advocates will advise clients that they are unlikely to disclose personal information to overseas recipients. If this is required as part of the advocacy work the advocate will advise that this is likely to happen and will request the client's authority to contact individuals or organisations located overseas.

#### **f. Purpose of Information Collection**

ADACAS collects and uses personal information for the purposes of:

- Carrying out advocacy for ADACAS clients;
- Accounting to ADACAS funders for the monies provided to deliver advocacy;
- Identifying and advocating in relation to issues that affect our client beneficiary groups, requiring a systemic response;
- Informing the development of ADACAS education and awareness programs;
- Protecting its legal position in relation to advocacy work undertaken for clients; and
- Community development and capacity building.

#### **g. Use of Information**

The information must not be used for any other purpose than for advocacy purposes unless:

- (a) The client has consented to its use for another purpose;
- (b) The use is necessary to prevent or lessen a significant risk to the life or health of a person;
- (c) The individual would reasonably expect ADACAS to use or disclose the information for a secondary purpose and the secondary purpose is directly related to the primary purpose, i.e. conducting advocacy work (in such a case ADACAS staff must make a written note of the use or disclosure);

(d) ADACAS reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement-related activities conducted by, or on behalf of, an enforcement body;

(c) The use is required or authorised by law or a court or tribunal order; or

(d) The information is for the purpose of managing, funding or assessing the quality of the health service provided.

**h. Probability of ADACAS Disclosing Personal Information to Overseas Recipients**

In light of the nature of ADACAS' work and the fact that all of its clients are residing in Australia it is unlikely that ADACAS will need to disclose personal information to overseas recipients. However, in the event that an advocate discloses personal information about an individual to a person who is an overseas recipient ADACAS must take reasonable steps to ensure that the overseas recipient does not breach the Australian Privacy Principles or the Territory Privacy Principles.

**i. Accessibility of Privacy Policy**

The ADACAS APP Policy will be made available upon request to any member of the public and is free of charge. It will be displayed on the ADACAS website. If a person requests the policy in a particular form ADACAS will take such steps that are reasonable in the circumstances to provide the person a copy in the requested form. ADACAS will also develop an Easy English version of the policy.

**j. Safeguarding Personal Information**

ADACAS will take reasonable steps to protect any information it collects from misuse, interference or loss and from unauthorised access, modification or disclosure.

Any staff member, contractor, consultant or board member who is permitted to access the personal information of a client in accordance with the provisions contained in this policy will be required to sign a confidentiality agreement and to abide by the provisions of this policy.

Files will be kept in lockable filing facilities or in a limited access file on the computer. ADACAS staff will ensure that the information is protected from misuse, interference, loss, unauthorised access, modification or disclosure.

When people who are not employed by ADACAS on a regular basis and do not require access to client information in order to perform their jobs work in the ADACAS office premises, e.g. electricians, cleaners, etc., staff will ensure that files are not left on desks or other exposed areas and will ensure that they are kept in a secure, locked area for the duration of the person's visit to the ADACAS office premises. Staff will further ensure that client information is not left on any whiteboards located in the office, Regular visitors to the office will be required to sign a confidentiality agreement. When advocates are out of the office doing advocacy work, for example visiting clients, attending meetings etc, they will ensure that client information is kept secure.

## **k. Dealing with Unsolicited Personal Information**

If a staff member receives personal information and the information was unsolicited ADACAS management must, within a reasonable period after receiving the information, determine whether or not ADACAS could have collected the information in the manner outlined in section d of this policy “Means of Collecting Information” as if ADACAS had solicited the information. The unsolicited information may be used or disclosed for the purposes of making a determination with regards to whether or not ADACAS could have obtained the information via its usual means of collecting information. If it is determined that ADACAS could not have collected the personal information via its normal means of collecting information and the information is not contained in a Commonwealth or Territory record then ADACAS must, as soon as practicable, but only if it is lawful and reasonable to do so, destroy the information or ensure that the information is de-identified. ADACAS management will make the determination with regards to whether or not this should happen.

## **l. Releasing Information**

Consistent with advocacy principles, ADACAS will always seek to obtain client consent before releasing any information relating to a client’s case. However, in exceptional and/or unusual circumstances ADACAS may choose to release information in accordance and consistent with the exceptions outlined in the *Health Records (Privacy and Access) Act (ACT) 1997* and the *Privacy Act (Cth) 1988*. Where possible, the CEO or in the absence of the CEO, the Deputy CEO will be consulted before any information is released. There may be circumstances where it is not possible to obtain the CEO or the Deputy CEO’s authorisation beforehand and thus in emergency situations an advocate may decide whether the release of such information is authorised and consistent with the exceptions outlined in this section.

ADACAS will not release information about a client without the client first having provided for this release, except in the following circumstances:

- (i) In circumstances where a staff member has been advised by the client that they are going to harm themselves or others, and/or cause damage to property, and disclosure is necessary to prevent or lessen a serious and imminent risk to the life or health of a person. In such a scenario the policy on Best Interests and Expressed Wishes will be followed:
- (iii) The client would reasonably expect ADACAS to use or disclose the information for a secondary purpose and the secondary purpose is:
  - If the information is sensitive information – directly related to the primary purpose i.e. the advocacy; or
  - If the information is not sensitive information related to the primary purpose of advocacy;
- (iv) In an emergency situation where neither the client nor their authorised representative is able to give consent and it is vital for the person’s health or well-being that their personal information is provided to another person or service. In such a case, the CEO or the Deputy CEO would ideally be consulted and a file note made detailing the circumstances;
- (v) The disclosure is to an immediate family member, where that disclosure is made for compassionate reasons, is a disclosure that would be expected by the client, and is not contrary to previously expressed wishes of the client;

- (vi) The disclosure is made to legal guardians, people appointed by the client under an enduring power of attorney that has been activated, legal representatives of a client who has died or parents of a younger person;
- (vii) The disclosure is not contrary to any wishes previously expressed by the client that ADACAS is, or should reasonably be, aware of;
- (viii) Where the information is used in an aggregated or de-identified form and cannot be used to identify the person;
- (ix) The use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order;
- (x) A permitted general situation exists in relation to the use or disclosure of the information by ADACAS, as defined by the Privacy Act;
- (xi) A permitted health situation exists in relation to the use or disclosure of the information by ADACAS as defined by the Privacy Act;
- (x) ADACAS reasonably believes the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body. In such a scenario ADACAS must make a written note of the use or disclosure.

**m. Client Consent**

The consent, when provided by clients, should be for the release of information for specific purposes or to specific organisations. This consent can be withdrawn by the client at any time. Where possible, a client's consent should be confirmed by the client in writing and recorded in the case file notes. Where the client is unable to provide written consent, a written record will be prepared documenting the consent.

In some cases, clients will be requested to sign a specific release form for the collection and reporting of statistical data, e.g. HACC MDS forms. Clients have the option of refusing permission for this statistical data to be collected and reported, and this refusal in no way prohibits them from accessing advocacy support from ADACAS. Clients may further withdraw permission for the release of information at any time.

**n. Information not to be used in Direct Marketing**

ADACAS must not use or disclose information for the purposes of direct marketing, unless they fall within the exceptions outlined in 7.2 of the Australian Privacy Principles.

**o. Client Access to Personal Information**

Any client may have access to the personal information held about them by ADACAS. The client will not incur a charge for the making of the request or for giving access to the personal information

If a client wishes to access their personal information they should inform the advocate who will arrange for this to occur.

Access required by a client must be given as follows:

- a. For a request to inspect the record, at a time and place specified in writing;
- b. For a request to receive a copy of the record or summary; or
- c. For a request to view a record and have its contents explained, at a time and place specified in writing.

Within fourteen days after the day of receiving the request, ADACAS must:

- a. Give access to the record in accordance with the Act;
- b. Give notice if the record, or part of the record, cannot be produced and provide the reasons; or
- c. Given notice if the record, or part of the record, is exempt from access and state the ground for the exemption.

Urgent requests for access must be completed within seven days after the request is received.

Access must be provided to the information in the manner requested by the client, if it is reasonable and practicable to do so. If ADACAS cannot provide access in the manner requested by the client it must take reasonable steps to give access in a way that meets the needs of both ADACAS and the client. Access may be given through the use of a mutually agreed intermediary.

Any refusal to give the client the information requested in the manner requested by the client must be explained to the client in writing. Such an explanation should outline the reasons for the refusal; the mechanisms available to complain about the refusal and any other matter prescribed by regulation.

Information relating to other clients or people should not be recorded in a client file unless it is directly relevant to the case.

**p. Access to Personal Information to a Representative of the Client**

Access to the personal information of a client held by ADACAS will only be granted to a representative of the client if the person claiming to be a representative satisfies the following conditions:

- (a) Has been acting as a representative of the client during the period that ADACAS had been providing advocacy support for the client;
- (b) Does not have a conflict of interest in relation to the advocacy being provided to the client;
- (c) Is the legal guardian of the client or holds a relevant power of attorney which authorises access to the personal information of the client;
- (d) Has the written permission of the client to access their current personal advocacy information as their representative, and the authorisation for this to occur is in the client's file; or
- (e) Has been given verbal permission by the client to access their current personal advocacy information as their representative. Where verbal permission and not written permission is available the advocate should confirm this with the client at a time when the representative is not present and subsequently note the details of the conversation on their file.

If a person under the age of 18 is considered to mature enough to consent to advocacy support, then that person should be considered to be the client, not their parent.

Request for access by representatives of clients should be in writing and be accompanied by evidence that the person has the authority to act on the client's behalf.

**q. Exemptions to Access**

There are circumstances where a record or part of a record will not be made available to a client to whom the record relates:

- (a) If the record relates to a report under the *Children and Young People Act 2008* or a notification under the *Children Services Act 1986* and the person who made the report could be identified from information in the record;
- (b) If access would constitute a breach of confidence;
- (c) ADACAS reasonably believes that giving access would pose a serious threat to the life, health or safety of an individual, to public health or public safety;
- (d) Giving access would have an unreasonable impact on the privacy of other individuals;
- (e) The request for access is frivolous or vexatious;
- (f) The information relates to existing or anticipated legal proceedings between ADACAS and the client, and would not be accessible by the process of discovery in those proceedings;
- (g) Giving access would reveal the intentions of ADACAS in relation to negotiations with the client in such a way as to prejudice those negotiations;
- (h) Giving access would be unlawful;
- (i) Denying access is required or authorised by or under an Australian law or a court/tribunal order; or
- (j) Both of the following apply:
  - (i) ADACAS has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to ADACAS' functions or activities has been, is being or may be engaged in;
  - (ii) Giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body.
- (k) Giving access would be likely to prejudice the taking of appropriate action in relation to the matter;

If ADACAS refuses to give access to personal information for any of the reasons outlined above or in the manner requested by the client ADACAS must take such steps as are reasonable in the circumstances to give access in a way that meets the needs of ADACAS and the client. In such a situation, ADACAS must give the client a written notice that sets out:

- (a) The reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so;
- (b) The mechanisms available to complain about the refusal; and
- (c) Any other matter prescribed by the regulations.

Access must be given through the use of a mutually agreed intermediary.

**r. Access to Personal Information by a Staff Member**

If a staff member or board member seeks to access information held about them by ADACAS, they should inform the Office Manager who will arrange for this to occur. Exemptions to Access will apply to staff members as outlined in section q of this policy.

**s. Correction of Personal Information**

If ADACAS hold personal information about a client and either:

- (a) ADACAS is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out of date, incomplete, irrelevant, or misleading; or
- (b) The client requests ADACAS to correct the information;

then ADACAS will either correct the record by adding a later entry or, if necessary, separate it from the main record such as in a sealed envelope. In accordance with the *Health Records Act ACT (1997)* ADACAS cannot, even if the record is found to be inaccurate, delete, destroy or amend the record itself.

If:

- (a) ADACAS adds a later entry about a client that the organisation previously disclosed to another APP organisation; and
- (b) The client requests that ADACAS notify the other APP organisation of the later entry;

Then ADACAS must take such steps as are reasonable in the circumstances to give that notification unless it is impracticable or unlawful to do so.

**t. Refusal to Correct Information**

If ADACAS refuses to correct the personal information as requested by the client, ADACAS must give the client a written notice that sets out:

- (a) The reasons for the refusal except to the extent that it would be unreasonable to do so;
- (b) The mechanisms available to complain about the refusal; and
- (c) Any other matter prescribed by the regulations.

**u. Request to Associate a Statement**

If:

- (a) ADACAS refuses to correct the personal information as requested by the client; and
- (b) The clients requests ADACAS to associate with the information a statement that the information is inaccurate, out of date, incomplete, irrelevant or misleading;

ADACAS must take such steps as are reasonable in the circumstances to associate the statement in such a way that will make the statement apparent to users of the information.

**v. Dealing with Requests**

If a request is made to correct personal information or to associate a statement ADACAS must respond to the request within 30 days after the request is made and not charge the client for the making of the request, for correcting the personal information or for associating the statement with the personal information (as the case may be).

**w. Complaints**

A client may, at any time, complain about a breach of the Australian Privacy Principles or the ACT Privacy Principles by ADACAS. A complaint may be made in writing or by any other means to the management of ADACAS. It should detail the nature of the complaint in accordance with the ADACAS complaints process and identify the complainant or be made anonymously. The CEO or senior management will conduct an investigation of the complaint and report their findings back to the complainant.

**x. Employee Information Security**

Private details, such as addresses, email addresses and phone numbers, of ADACAS employees, board members or contractors should not be made known to clients or others, by any employee, contractor or board member of ADACAS.

**y. When Advocacy Ends**

Original documents provided by a client will be returned to them within one month of the end of the advocacy relationship.

Where a person who receives advocacy is over the age of 18 at the time the information is collected:

- (a) Personal information (including health records) will be kept for a minimum of seven years after the end of the advocacy relationship, after which time it will be destroyed.

Where a person is under the age of 18 at the time the information is collected:

- (a) Personal information (including health records) may be kept for seven years after the end of the advocacy relationship or until the person attains the age of 25 (whichever is longest) after which time it will be destroyed.

ADACAS will maintain a register of records that have been destroyed for seven years after the day the record is made.

Records may be kept by ADACAS for longer than seven years after the case is closed if needed for the purpose for which it was collected or for another lawful purpose. If it is no longer needed for the purpose for which it was collected the record must be destroyed.

## Document Control

Policy Name	Policy Number	Date of Implementation	Date for Review
Australian Privacy Principles and Australian Capital Territory Privacy Principles Policy	21	when approved	

Approved by	Position	Date approved	Notes/Approved / Rejected
Fiona May	CEO	5 December 2014	Replaces Australian Privacy Principles Policy