PRIVACY AND CONFIDENTIALITY POLICY AND PROCEDURE

Purpose and Scope

This policy and procedure sets out staff responsibilities relating to collecting, using, protecting and releasing personal information, in compliance with privacy legislation. It applies to all:

- Ability Plus Disability Services staff
- aspects of Ability Plus Disability Services' operations and
- staff and participant personal information.

This policy and procedure should be read in conjunction with Ability Plus Disability Services' *Records and Information Management Policy and Procedure*. It meets relevant legislation, regulations and Standards as set out in *Schedule 1, Legislative References*.

Applicable NDIS Practice Standards

Information Management

Outcome

Management of each participant's information ensures that it is identifiable, accurately recorded, current and confidential. Each participant's information is easily accessible to the participant and appropriately utilised by relevant workers.

Indicators

- Each participant's consent is obtained to collect, use, and retain their information or to disclose their information (including assessments) to other parties, including details of the purpose of collection, use and disclosure. Each participant is informed in what circumstances the information could be disclosed, including that the information could be provided without their consent if required or authorised by law.
- Each participant is informed of how their information is stored and used, and when and how each participant can access or correct their information and withdraw or amend their prior consent.

Privacy and Dignity

Outcome

Each participant accesses supports that respect and protect their dignity and right to privacy.

Indicators

- Consistent processes and practices are in place that respect and protect the personal privacy and dignity of each participant.
- Each participant is advised of confidentiality policies using the language, mode of communication and terms that the participant is most likely to understand.
- Each participant understands and agrees to what personal information will be collected and why, including recorded material in audio and/or visual format.

Interaction of Applicable Legislation and Associated Definitions

Privacy Act 1988 (Cth) - regulates how personal information about individuals is handled. The Act includes thirteen Australian Privacy Principles (APPs). The APPs set out standards, rights, and obligations for the handling, holding, use, accessing and correction of personal information. The Act protects the privacy of an individual's information where it relates to Commonwealth agencies and private businesses (including not-for-profit organisations) with a turnover of more than $3 million. **All** organisations that provide a health service and hold health information (other than in a staff record) are covered by the Act.

Health Information – personal information or an opinion about:

- the health, including an illness, disability, or injury, (at any time) of an individual
- an individual's expressed wishes about the future provision of health services to the individual or
- a health service provided, or to be provided, to an individual

that is also:

- Personal Information
- Other Personal Information collected to provide, or in providing, a health service to an individual
- Other Personal Information collected in connection with the donation, or intended donation, by an individual of his or her body parts, organs, or body substances or
- 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.

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

- whether the information or opinion is true or not and
- whether the information or opinion is recorded in a material form or not.

Sensitive Information – personal 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 orientation or practices
- criminal record

that is also:

- Personal Information
- 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.

National Disability Insurance Scheme Act 2013 (Cth) – regulates how personal information about NDIS participants is handled by the National Disability Insurance Agency. This limits how the Agency collects and uses personal information and when and to whom information can be disclosed. The Agency must also comply with the *Privacy Act 1988 (Cth)*.

Protected Information – information:

- about a person that is or was held in the records of the Agency or
- to the effect that there is no information about a person held in the records of the Agency.

Victoria

Privacy and Data Protection Act 2014 (Vic) – regulates how personal information is handled by Victorian public sector agencies.

Personal Information – information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the Health Records Act 2001 applies.

Sensitive Information – personal 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 preferences or practices or
- criminal record

that is also personal information.

Health Records Act 2001 (Vic) – regulates how health information is handled by the Victorian public and private sectors.

Health Information –

- personal information or an opinion about:
    - the physical, mental, or psychological health (at any time) of an individual
    - a disability (at any time) of an individual
    - an individual's expressed wishes about the future provision of health services to them
    - a health service provided, or to be provided, to an individual
- that is also personal information or
    - other personal information collected to provide, or in providing, a health service
    - other personal information about an individual collected in connection with the donation, or intended donation, by the individual of their body parts, organs, or body substances or
    - other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

Health service –

- an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it:
    - to assess, maintain or improve the individual's health
    - to diagnose the individual's illness, injury, or disability
    - to treat the individual's illness, injury or disability or suspected illness, injury, or disability or
- a disability service, palliative care service or aged care service
- the dispensing on prescription of a drug or medicinal preparation by a pharmacist registered under the Health Practitioner Regulation National Law or
- a service, or a class of service, provided in conjunction with an activity or service referred to above that is prescribed as a health service.

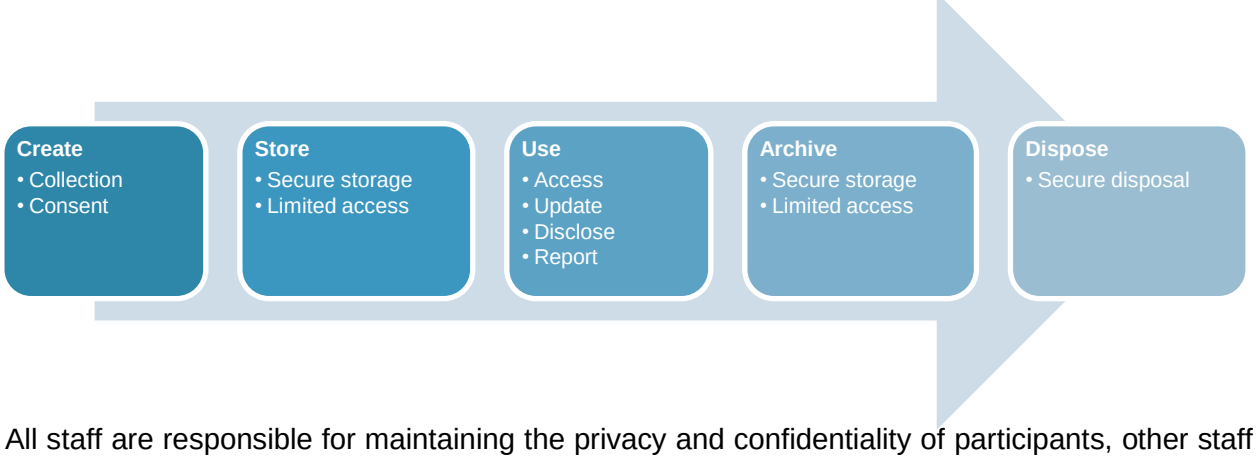
Private sector service providers must comply with the ***Privacy Act 1988 (Cth)*** and ***Health Records Act 2001 (Vic)*** when handling health information.

The ***Office of the Health Services Commissioner*** conciliates complaints between consumers and health care providers.

Policy

Ability Plus Disability Services recognises, respects, and protects everyone's right to privacy, including the privacy of its participants and staff. All individuals (or their legal representatives) have the right to decide who has access to their personal information.

Ability Plus Disability Services' privacy and confidentiality practices support and are supported by its records and information management processes (see the *Records and Information Management Policy and Procedure*). Privacy and Confidentiality processes interact with the information lifecycle in the following ways:



All staff are responsible for maintaining the privacy and confidentiality of participants, other staff and Ability Plus Disability Services.

Procedures

General

Ability Plus Disability Services' Privacy Officer is General Manager. The Privacy Officer is responsible for ensuring Ability Plus Disability Services complies with the requirements of the *Privacy Act 1988 (Cth)* as well as *Health Records Act 2001 (Vic)*. This includes developing, implementing, and reviewing processes that address:

- why and how Ability Plus Disability Services collects, uses, and discloses personal information
- what information Ability Plus Disability Services collects about individuals and its source
- who has access to the information
- information collection, storage, access, use, disclosure, and disposal risks
- how individuals can consent to personal information being collected, withdraw, or change their consent and change information about them held by Ability Plus Disability Services
- how Ability Plus Disability Services safeguards and manages personal information, including how it manages privacy queries and complaints and
- how information that needs to be updated, destroyed, or erased is managed.

The Privacy Officer reviews these processes regularly, through annual Privacy Audits (see Ability Plus Disability Services' *Privacy Audit Form* and *Schedule 2. Internal Review and External Audit Schedule)*.

All staff are responsible for complying with this policy and procedure and their privacy, confidentiality, and information management responsibilities. Staff must keep personal information about participants, other staff, and other stakeholders confidential, in accordance with the confidentiality provisions in their employment or engagement contract.

As per Ability Plus Disability Services' *Human Resources Policy and Procedure*, all staff must undergo Induction, which includes training in privacy, confidentiality and information management. Staff knowledge and application of confidentiality, privacy and information management processes are monitored on a day-to-day basis and through annual Performance Reviews. Additional formal and on-the-job training is provided to staff where required.

Ability Plus Disability Services' *Privacy Statement* must be provided to all participants when they access the service, prominently displayed in Ability Plus Disability Services' premises and summarised in Ability Plus Disability Services' *Participant Handbook, information pack* and website.

The *Privacy Statement* and a full copy of this policy and procedure must be provided upon request.

Photos and Videos

Photos, videos, and other recordings are a form of personal information. Staff must respect people's choices about being photographed or videoed and ensure images of people are used appropriately. This includes being aware of cultural sensitivities and the need for some images to be treated with special care.

Information Collection and Consent

Participant Information Collection and Consent

Ability Plus Disability Services will only request personal information that is necessary to:

- assess a potential participant's eligibility for a service
- provide a safe and responsive service
- monitor the services provided and
- fulfil government requirements for non-identifying and statistical information.

Personal participant information that Ability Plus Disability Services collects includes, but is not limited to:

- contact details for participants and their representatives or family members
- details for emergency contacts and people authorised to act on behalf participants
- participants' health status and medical records
- medication records
- service delivery intake, assessment, monitoring and review information
- assessments, reviews, and service delivery records
- external agency information
- feedback and complaints
- incident reports
- consent forms

Prior to collecting personal information from participants or their representatives, staff must explain:

- that Ability Plus Disability Services only collects personal information that is necessary for safe and effective service delivery
- that personal information is only used for the purpose it is collected and is stored securely
- what information is required
- why the information is being collected and how it will be stored and used
- the occasions when the information may need to be shared and who or where the information may be disclosed to
- the participant's right to decline providing information
- the participant's rights in terms of providing, accessing, updating, and using personal information, and giving and withdrawing their consent and
- the consequences (if any) if all or part of the information required is not provided.

Participants and their families must be provided with Ability Plus Disability Services' *Privacy Statement* and informed that a copy of this policy and procedure is available on request.

Staff must provide privacy information to participants and their families in ways that suit their individual communication needs. Written information can be provided in different languages and Easy English or explained verbally by staff. Staff can also help participants access interpreters or advocates where required.

After providing the above information, staff must use a *Consent Form* to:

- confirm the above information has been provided and explained and
- obtain consent from participants or their legal representatives to collect, store, access, use, disclose and dispose of their personal information.

Participants and their representatives or families are responsible for:

- providing accurate information when requested
- completing *Consent Forms* and returning them in a timely manner
- being sensitive and respectful to other people who do not want to be photographed or videoed and
- being sensitive and respectful of the privacy of other people in photographs and videos when using and disposing of them.

NDIS Audits

Ability Plus Disability Services complies with the requirements of the *National Disability Insurance Scheme (Approved Quality Auditors Scheme) Guidelines 2018* whereby participants are automatically included in audits against the *NDIS Practice Standards*. Participants may be contacted at any time by a NDIS Approved Quality Auditor for an interview, or for their participant file and plans to be reviewed.

Participants who do not wish to participate in these processes can notify any staff member, who must inform the Privacy Officer in writing. Their decision will be respected by Ability Plus Disability Services and will be documented in their participant file. Upon commencement of any audit process, Ability Plus Disability Services notifies its Approved Quality Auditor of participants who have opted-out of the audit process.

Staff Information Collection and Consent

Personal staff information that Ability Plus Disability Services collects includes, but is not limited to:

- tax declaration forms
- superannuation details
- payroll details
- employment / engagement contracts
- personal details
- emergency contact details
- medical details
- NDIS Worker Screening Checks, Police Checks and Working with Children Checks
- qualifications
- First Aid, CPR, Anaphylaxis, and other relevant certificates
- personal resumes

Where relevant, forms used to collect the above information will also obtain the staff member's consent to collect, store, access, use, disclose and dispose of their personal information.

Storage

Refer to the *Records and Information Management Policy and Procedure* for details on how Ability Plus Disability Services securely stores and protects staff and participant personal information.

Access

Staff personal information must only be accessed by Office Staff, who may only access the information if it is required to perform their duties.

Staff must only access participants' personal information if it is required to perform their duties.

Staff and participants have the right to:

- request access to personal information Ability Plus Disability Services holds about them, without providing a reason for requesting access
- access this information and
- make corrections if they believe the information is not accurate, complete, or up to date.

All participant access or correction requests must be directed to a relevant staff member responsible for the maintenance of the participant's personal information. All staff access or correction requests must be directed to the Privacy Officer. Within 2 working days of receiving an access or correction request, the responding staff member will:

- provide access, or explain the reasons for access being denied
- correct the personal information, or provide reasons for not correcting it or
- provide reasons for any anticipated delay in responding to the request.

An access or correction request may be denied in part or in whole where:

- the request is frivolous or vexatious
- it would have an unreasonable impact on the privacy of other individuals
- it would pose a serious threat to the life or health of any person or
- it would prejudice any investigations being undertaken by Ability Plus Disability Services or any investigations it may be the subject of.

Any participant access or correction requests that are denied must be approved by the Privacy Officer and documented on the participant's file.

Any staff access or correction requests that are denied must be approved by the Directors/General Managers and documented on the staff member's file.

Disclosure

Participant or staff personal information may only be disclosed:

- for emergency medical treatment
- to outside agencies with the person's or for a child, their parent, or guardians' permission
- with written consent from someone with lawful authority or
- when required by law, or to fulfil legislative obligations such as mandatory reporting.

If a staff member is in a situation where they believe that they need to disclose information about a participant or other staff member that they ordinarily would not disclose, they must consult the Privacy Officer before making the disclosure.

International Disclosure

Under the *Privacy Act 1988*, before Ability Plus Disability Services discloses personal information to an overseas recipient, it must take reasonable steps to ensure the overseas recipient does not breach the Principle 8 of the Australian Privacy Principles (APPs). This may apply where software or other online programs host data in overseas servers.

The Privacy Officer is responsible for undertaking these investigations.

This requirement does not apply if:

- the overseas recipient is subject to a law or binding scheme that has the effect of protecting the information in a way that is substantially like protection given under the APPs and
- there are mechanisms available to enforce that protection.

Freedom of Information

Any data Ability Plus collects and holds as part of service delivery and staffing may be accessed as part of the Freedom of Information Act 1982.

The right to access copies of document (except exempt documents) we hold.
Ask for information we hold about them to be changed or annotated if it is incomplete, out of date, incorrect or misleading

See a review of our decision not allow them to access to a document or not to amend their personal records.

Participants or Staff that have left Ability Plus service may lodge a request via Ability Plus Freedom of Information Form.

Reporting

Notifiable Data Breaches Scheme

The Notifiable Data Breaches (NDB) Scheme is a national scheme that operates under the *Privacy Act 1988 (Cth)*. requires organisations to report certain data breaches to people impacted by the breach, as well as the Australian Information Commissioner.

A data breach occurs when personal information about others is lost or subject to unauthorised access. A data breach may be caused by malicious action, human error or a failure in information management or security systems.

Examples of data breaches include:

- loss or theft of devices (such as phones, laptops, and storage devices) or paper records that contain personal information
- unauthorised access to personal information by a staff member
- inadvertent disclosure of personal information due to 'human error', for example an email sent to the wrong person and
- disclosure of an individual's personal information to a scammer, because of inadequate identity verification procedures.

In addition to harm caused to people who are the subject of data breaches, an incident like this may also cause Ability Plus Disability Services reputational and financial damage.

Further detail about the NDB Scheme is contained in the *Data Breach Preparation and Response — A Guide to Managing Data Breaches in Accordance with the Privacy Act 1988 (Cth)*, published by the Office of the Australian Information Commissioner (OAIC).

Ability Plus Disability Services' *Data Breach Response Plan* outlines its strategy for containing, assessing, and managing data breach incidents.

Notifiable Data Breaches

A Notifiable Data Breach, also called an 'eligible data breach', occurs when:

- there is unauthorised access to or disclosure of personal information, or information is lost in circumstances where unauthorised access or disclosure is likely to occur
- the disclosure or loss is likely to result in serious harm to any of the people that the information relates to. In the context of a data breach, serious harm may include serious physical, psychological, emotional, financial, or reputational harm and
- Ability Plus Disability Services has been unable to prevent the likely risk of serious harm through remedial action.

If Ability Plus Disability Services acts quickly to remediate a data breach and as a result it is not likely to result in serious harm, it is not considered a Notifiable Data Breach.

Detecting Data Breaches

Examples of data breaches include:

- loss or theft of devices (such as phones, laptops, and storage devices) or paper records that contain personal information
- unauthorised access to personal information by a staff member, for instance, a staff member browsing sensitive participant records without a legitimate purpose or a computer network being compromised by an external attacker resulting in personal information being accessed without authority
- unauthorised disclosure of personal information due to 'human error', for example an email sent to the wrong person and
- disclosure of an individual's personal information to a scammer, because of inadequate identity verification procedures.

In reality, and particularly with respect to electronic data, data breaches can be difficult to detect. As such, all staff are responsible for:

- adhering to all Ability Plus Disability Services Policies, Procedures and processes relating to data creation, storage, use, archiving and disposal
- only transporting hard copy files and electronic storage devices in a secure, lockable container and with approval from the Directors/General Managers
- implementing password protection and two-factor or multi-factor authentication on devices and software used to access Ability Plus Disability Services information
- ensuring all operating systems, browsers and plugins used on devices to access Ability Plus Disability Services information are up to date with patches and fixes and have appropriate security maintenance software installed and active and
- completely shutting down devices used to access Ability Plus Disability Services information at least once a week, to ensure updates are installed.

The Directos/General Managers are responsible for ensuring that:

- security maintenance software is installed on all Ability Plus Disability Services computers, to detect breaches as well as any peculiar activity
- all operating systems, browsers and plugins used on Ability Plus Disability Services devices are up to date with patches and fixes

- software systems used by staff lock users out after multiple failed login attempts
- they are listed as a key contact person for notification from third party software providers in the event those systems are breached and
- they are subscribed to a data breach notification service so they are kept abreast of possible data breaches that could impact Ability Plus Disability Services.
- annual Privacy Audits are undertaken in accordance with *Schedule 2. Internal Review and External Audit Schedule* and
- all staff are adequately and regularly trained in all Ability Plus Disability Services Policies, Procedures and processes relating to data creation, storage, use, archiving and disposal.

Password Management

All staff must:

- regularly reset their passwords
- use passwords of at least 8 characters that include letters, numbers, and symbols
- if credentials have been compromised, reset passwords as soon as possible
- refrain from reusing the same password across critical services such as banking and social media sites or sharing passwords for a critical service with a non-critical service and
- ensure new passwords do not follow a recognisable pattern.

Reporting a Data Breach

All staff must report all potential or actual data breaches (including unusual activity in electronic systems and loss or theft of files or storage devices) as soon as possible to the Privacy Officer, who will determine Ability Plus Disability Services' response and whether the breach needs to be reported under the NDB Scheme.

If Ability Plus Disability Services acts quickly to remediate a data breach and as a result it is not likely to result in serious harm, it is not considered a Notifiable Data Breach.

Responding to a Data Breach

If the Privacy Officer suspects that a data breach is notifiable under the NDB Scheme, they must make an assessment to determine if this is the case.

If the Privacy Officer believes that the data breach is notifiable under the NDB Scheme, they must notify Ability Plus Disability Services' Data Breach Response Team. This team is responsible for:

- leading the response team and reporting to the Directos/General Managers
- coordinating the team and provide support to its members
- bringing privacy expertise to the team
- identifying legal obligations and provide advice
- General Manager to assess the risks from the breach
- helping establish the cause and impact of a data breach that involves ICT systems
- assisting in reviewing security and monitoring controls related to the breach (for example, access, authentication, encryption, audit logs) and provide advice on recording the response to the data breach
- identifying if the breach was due to the actions of a staff member and
- assisting in communicating with affected individuals and dealing with the media and external stakeholders.

The Data Breach Response Team must notify all impacted individuals of the breach as soon as is practicable.

All data breach incidents (whether notifiable or not) must be responded to in accordance with Ability Plus Disability Services' *Data Breach Response Plan* and recorded in Ability Plus Disability Services' *Incident Register*, with relevant actions tracked in its *Continuous Improvement Plan* where appropriate.

Where a breach is referred to the Data Breach Response Team, its response will be based on the following steps:

- **Step 1:** Contain the data breach
- **Step 2:** Assess the data breach and the associated risks
- **Step 3:** Notify individuals and the Australian Information Commissioner and
- **Step 4:** Prevent future breaches.

See Ability Plus Disability Services' *Data Breach Response Plan* for further detail.

Notifiable Data Breaches Involving More Than One Entity

The NDB Scheme recognises that personal information is often held jointly by more than one entity. For example, one entity may have physical possession of the information, while another has legal control or ownership of it. Examples include:

- where information is held by a cloud service provider
- subcontracting or brokering arrangements and
- joint ventures.

In these circumstances, an eligible data breach is considered the responsibility of both entities under the NDB Scheme. However, only one entity needs to take the steps required by the NDB Scheme and this should be the entity with the most direct relationship with the people affected by the data breach. Where obligations under the Scheme (such as assessment or notification) are not carried out, both entities will be in breach of the Scheme's requirements.

Other Reporting Requirements

The Privacy Officer must immediately notify the NDIS Commission and Office of the Health Services Commissioner if they become aware of a breach or possible breach of privacy legislation.

Data breaches may also trigger reporting obligations outside of the *Privacy Act 1988*, such as to:

- Ability Plus Disability Services' financial services provider
- police or other law enforcement bodies
- the Australian Securities and Investments Commission (ASIC)
- the Australian Taxation Office (ATO)
- the Australian Cyber Security Centre (ACSC)
- Federal, State or Territory Government departments
- professional associations and regulatory bodies and
- insurance providers.

Victorian Protective Data Security Standards

The Victorian Protective Data Security Standards (VPDSS) form part of the Victorian Protective Data Security Framework (VPDSF) and establish 18 high level mandatory requirements to protect data security across the Victorian public sector, including service delivery organisations.

The standards cover information, personnel, ICT, and physical security. Each standard is supported by four protocols. The Standards are regulated by the Office of the Victorian Information Commissioner (OVIC).

While Ability Plus Disability Services is not required to directly report to OVIC or complete the VPDSS compliance documents published on the OVIC website (which public sector agencies are required to do), it is required to comply with the VPDSS.

To ensure Ability Plus Disability Services' full compliance with the Standards, the Privacy Officer will:

- work with the Victorian Government with respect to the risk-based reporting arrangements it is developing to ensure Ability Plus Disability Services is taking suitable steps to protect participant data
- to establish an initial cybersecurity baseline, consider implementing the Australian Signals Directorate's 'Essential Eight', which are a prioritised list of practical actions organisations can take to make their computers more secure. More detail can be found at: https://www.asd.gov.au/publications/protect/essential-eight-explained.htm
- assess Ability Plus Disability Services' compliance with the Essential Eight and remediate any identified gaps
- subscribe to the 'Stay Smart Online' website at: https://www.staysmartonline.gov.au. This website provides advice about smart online behaviour and how to respond to online threats and
- assess Ability Plus Disability Services against Question 13 of the Department of Health and Human Services' Organisation Compliance Checklist (regarding protective data security). The checklist can be found at http://fac.dhhs.vic.gov.au/organisation-compliance-checklist.

Archiving and Disposal

Refer to the *Records and Information Management Policy and Procedure* for details on how Ability Plus Disability Services archives and disposes of participants' personal information.

Supporting Documents

Documents relevant to this policy and procedure include:

- *Records and Information Management Policy and Procedure*
- *Consent Form*
- *Data Breach Response Plan*
- *Continuous Improvement Plan*
- *Participant Handbook*
- *Privacy Statement*
- *Privacy Audit Form*
- *Employee Handbook*

Monitoring and Review

This policy and procedure will be reviewed at least every three years by the Directors/General Managers. Reviews will incorporate staff, participant and other stakeholder feedback.

Ability Plus Disability Services' feedback collection mechanisms, such as staff and participant satisfaction surveys, will assess:

- satisfaction with Ability Plus Disability Services' privacy and confidentiality processes
- whether stakeholders have received adequate information about privacy and confidentiality and
- the extent to which participants and their supporters feel their privacy and confidentiality has been protected.

Ability Plus Disability Services' *Continuous Improvement Plan* will be used to record improvements identified and monitor the progress of their implementation. Where relevant, this information will be considered as part of Ability Plus Disability Services' service planning and delivery processes.

DOCUMENT CONTROL

Version No.	Issue Date	Document Owner
4	**21/02/2024**	**Director**
Version History		
Version No.	**Review Date**	**Revision Description**
1	June 2018	Policy and Procedure Development: National *NDIS Practice Standards*
2	June 2020	Updated to meet the NDIS Practice Standards
3	March 2022	Updated to meet the NDIS Practice Standards
4	Feb 2024	Change of Privacy Officer to General Manager, include Freedom of Information, include General Manager responsibilities with Directors