



**Boorndawan Willam**  
Aboriginal Healing Service

## Privacy and Confidentiality Policy and Procedure

### Purpose

The purpose of policy and procedure ('Policy') is to ensure that Boorndawan Willam Aboriginal Healing Service ('BWAHS') protects the privacy of any personal information (including sensitive information) and health information that it collects, uses, discloses and stores in accordance with its obligations under law.

### Objective

The objective of this Policy is to guide the protection of personal and health information of individuals kept by BWAHS by:

- i.) Aligning procedures and processes to relevant laws and regulations pertaining to Privacy and data protection.
- ii.) Managing, storing and responsibly sharing confidential information within the parameters of prior consent of clients and governing scheme like MARAM.
- iii.) Defining processes, responsibilities and limitations when receiving and/or handling personal, confidential and sensitive information regardless of whether it is for BWAHS clients and staff or not.

BWAHS is bound by privacy legislation, including but not limited to:

- *Privacy and Data Protection Act 2014* (Vic) and the Information Privacy Principles (IPP's)
- *Health Records Act 2001* (Vic) and the Health Privacy Principles (HPP's)
- *Privacy Act 1988* (Cth) and the Australian Privacy Principles (APP's), herein collectively referred to as 'the privacy legislation'

Further, as a family violence service provider, BWAHS also has specific obligations regarding the collection, use and disclosure of information pursuant to the following:

- Family Violence Information Sharing Scheme, under the *Family Violence Protection Act 2008* (Vic)
- Child Information Sharing Scheme, under the *Child Wellbeing and Safety Act 2005* (Vic)
- *Children, Youth and Families Act 2005* (Vic)
- Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM)

### Scope

This Policy applies to all personal information (including sensitive information) and health information collected, stored, used and disclosed about any individual by BWAHS, including but not limited to clients of BWAHS. Any individual employed or otherwise engaged by BWAHS i.e., contractors, Board members ('BWAHS

staff') is required to comply with the requirements of this Policy, the underlying privacy legislation, and all family violence service provider requirements.

## **Procedure**

### **Collection of personal (including sensitive information) and health information**

#### **Types of information BWAHS collects**

The types of personal or health information BWAHS collects depends on the nature of an individual's contact or interaction with BWAHS and the services being provided (where applicable).

Personal information collected by BWAHS may include (but is not limited to):

- Name, address and contact details.
- Personal circumstances (age, gender, and information about children).
- Health information.
- Financial matters (payment and bank account details).
- Identity (date and country of birth).
- Government identifiers.

#### **How BWAHS collects personal and health information**

BWAHS collects personal and health information that is necessary to perform its functions and activities, including the various programs and services it provides ('the primary purpose').

In most cases, the primary purpose of BWAHS collecting personal information or health information about an individual will be for BWAHS to deliver various family violence services to that individual.

BWAHS may also collect personal and health information to meet statutory requirements.

If it is reasonable and practicable to do so, BWAHS will collect personal and health information about an individual only from that individual.

When collecting information directly from an individual and when collecting information from someone else about an individual, BWAHS will take reasonable steps to ensure the individual is aware of the following:

- Why the information is being collected (including the purposes for the collection and any relevant laws requiring the collection).
- Who it may be disclosed to.
- The main consequences if the individual does not disclose the information (if collecting information directly from the individual).
- How the individual may contact BWAHS and gain access to the information collected.

However, there may be exceptions in the privacy legislation that do not require reasonable steps to be taken, and these will be assessed by BWAHS on a case-by-case basis.

Unless the use or disclosure of personal or health information is for the primary purpose of collection, or it is for a secondary purpose and one of the permissible exceptions under the privacy legislation applies, BWAHS will remove identifying details from information it collects.

\*References: APP 3; IPP 1; HPP 1.

### **How BWAHS collects sensitive information**

BWAHS may collect sensitive information about an individual where:

- The individual has consented to the collection.
- The collection is required or authorised under law.
- The collection is necessary to prevent or lessen a serious threat to the life or health of any individual, where the individual with whom the information concerns is physically or legally incapable of giving consent to the collection or physically cannot communicate consent to the collection.
- The collection is necessary for the establishment, exercise or defense of a legal or equitable claim.

BWAHS may also collect sensitive information about an individual if:

- The collection is necessary for research or the compilation or analysis of statistics relevant to government funded targeted welfare or educational services.
- The information being collected relates to an individual's racial or ethnic origin and the purpose of the collection is to provide government funded targeted welfare or educational services.
- There is no reasonably practicable alternative to collecting the information for either purpose.
- It is impracticable for the organisation to seek the individual's consent to the collection.

\*References: APP 3; IPP 10.

### Use and disclosure of personal (including sensitive information) and health information by BWAHS

BWAHS uses and discloses personal (including sensitive information) and health information for:

- The primary purpose for which it was collected.
- A purpose related to that for which it was collected (secondary purpose) where the legislative requirements for using or disclosing for a secondary purpose are met.

That is, in addition to using or disclosing personal and health information for the primary purpose for which it was collected, BWAHS may use or disclose personal information (including sensitive information) or health information when:

- The secondary purpose relates to the primary purpose of collection (or directly relates to the primary purpose in the case of sensitive or health information) and an individual would reasonably expect BWAHS to use or disclose it in this way.

- The individual to whom the information is about has given consent for the use or disclosure.
- BWAHS is required, authorised or permitted by or under Australian law to use or disclose the information. For example, BWAHS may be required, authorised or permitted to use or disclose information:
  - Pursuant to an Australian law.
  - Pursuant to an order of an Australian court or tribunal as part of court proceedings, including pursuant to a subpoena.

BWAHS will assess any requirement to use or disclose information pursuant to an Australian law or court/tribunal order, on a case-by-case basis and where required, will seek appropriate legal advice.

Information collected about an individual may be shared within BWAHS between programs, provided the requirements of the privacy legislation and the relevant Information Sharing Schemes are met.

BWAHS collects, uses, holds and discloses personal and health information about a range of matters, including, but not limited to:

- Individuals accessing services.
- Managing contracts and funding agreements.
- Employment and personnel matters concerning BWAHS staff and contractors.
- Complaints received and feedback provided.
- Investigating incidents.
- Planning, monitoring and evaluating functions and services.
- Meeting legislative requirements.
- Meeting the reporting requirements of government and external agencies.

There are circumstances where BWAHS is authorised and/or required by law to collect, use, store or disclose an individual's information. For example, in certain circumstances, BWAHS may be required to make reports to the Department of Families, Fairness and Housing under the *Children, Youth and Families Act 2005 (CYFA)*.

\*Reference: APP 6; IPP 2; HPP 2; Family Violence Information Sharing Scheme; Child Information Sharing Scheme, under the *Child Wellbeing and Safety Act 2005*; *Children, Youth and Families Act 2005* (Vic); and Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM).

### **Anonymity**

Wherever it is lawful and practicable, an individual will be given the option of remaining anonymous when interacting with BWAHS. A circumstance where it is not practicable for the individual to remain anonymous is where BWAHS is responsible for providing a full range of specific services to the individual.

\*Reference: APP 2; IPP 8; HPP 8.

Security and accuracy of personal (including sensitive information) and health information held by BWAHS

BWAHS has measures in place to protect personal information (including sensitive information) and health information from misuse, loss, unauthorised access, modification or disclosure. These measures include but are not limited to the following:

- Computer security programs.
- Password protected computers.
- Use of a file register.
- Use of locked filing cabinets.

BWAHS will take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.

In relation to health information, BWAHS will take reasonable steps to destroy or permanently de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by the *Health Records Act 2001* (Vic), the regulations made under the *Health Records Act 2001* (Vic), or any other law.

BWAHS will take reasonable steps to ensure that any personal and health information it collects, uses and discloses is accurate, complete and up to date, and having regard to the purpose for which health information is to be used, that it is relevant to BWAHS's current functions and activities.

\*Reference: APP 10 and 11; IPP 3 and 4; HPP 3 and 4.

### **Access and correction**

An individual may ask for access to their information or request a correction to their information by contacting BWAHS.

When contacted, BWAHS will let the individual know whether it holds information about the individual and any further steps that that individual should take to obtain access to the information.

\*Reference: APP 12 and 13; IPP 6; HPP 6.

### **Making a complaint about a privacy breach**

An individual may make a complaint about a potential privacy breach by contacting [bwahs@bwahs.com.au](mailto:bwahs@bwahs.com.au).

BWAHS undertakes to resolve privacy complaints and breaches in a timely and fair manner. An individual may also make a privacy complaint to:

- The Health Complaints Commissioner in relation to a complaint relating to health information at <https://hcc.vic.gov.au/make-complaint>.
- The Office of the Victorian Information Commissioner in relation to a complaint relating to personal or sensitive information at [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au).
- The Office of the Australian Information Commission in relation to a complaint relating to personal or sensitive information at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

BWAHS will also comply with its obligations, if any, under the *Privacy Act 1988* (Cth) - **Notifiable Data Breach Scheme**.

### **Transfer of information outside Victoria**

BWAHS adheres to the requirements of the privacy legislation when transferring personal and health information outside of Victoria.

The only circumstances in which personal and health information may be transferred or stored outside of Victoria is when the transfer or storage meets one (or more) of the following criteria:

- BWAHS reasonably believes that the recipient of the information is subject to a law, binding scheme or binding contract that provides substantially similar protection to the Victorian privacy legislation.
- The individual has provided consent for the transfer.
- The transfer is necessary for the performance of a contract between the individual and BWAHS, or for the implementation of pre-contractual measures taken in response to the individual's request.
- The transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between BWAHS and a third party.
- The transfer is for the benefit of the individual, and it is impracticable to obtain the individual's consent to the transfer, but if it were practicable to obtain consent the individual would be likely to give it.
- BWAHS has taken reasonable steps to ensure that information which it has transferred will not be held, used or disclosed by recipients inconsistently with the Victorian privacy legislation.
- In the case of health information, the transfer is required or authorised by law.

\*Reference: APP 8; IPP 9; HPP 9.

## **Responsibilities**

### **Staff Responsibilities**

It is the responsibility of all BWAHS staff to familiarise themselves with their obligations regarding the collection, use, disclosure and handling of personal information (including sensitive information) and health information.

### **Management responsibilities**

In addition to the responsibilities for staff listed above, management are also expected to:

- Ensure this policy is reviewed regularly.
- Ensure that staff have access to relevant information regarding their privacy obligations.

A breach of this Policy may result in disciplinary action in accordance with BWAHS's Disciplinary Policy.

## **Definitions**

<p>Personal Information</p>	<p>Personal information is defined in the <i>Privacy Act 1988</i> (Cth) as 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.</p> <p>Personal information is defined in the <i>Privacy and Data Protection Act 2014</i> (Vic) as ‘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 <i>Health Records Act 2001</i> (Vic) applies.’</p> <p>Personal information is defined in the <i>Health Records Act 2001</i> (Vic) as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information about an individual who has been dead for more than 30 years.</p>
<p>Sensitive Information</p>	<p>Sensitive information is a subset of personal information. It is defined in the <i>Privacy and Data Protection Act 2014</i> (Vic) as information or an opinion about an individual:</p> <ul style="list-style-type: none"> <li>• Racial or ethnic origin.</li> <li>• Political opinions.</li> <li>• Membership of a political association.</li> <li>• Religious beliefs or affiliations.</li> <li>• Philosophical beliefs.</li> <li>• Membership of a professional or trade association.</li> <li>• Membership of a trade union.</li> <li>• Sexual preferences, orientation, or practices.</li> <li>• Criminal records, that is also personal information.</li> </ul> <p>The <i>Privacy Act 1988</i> (Cth) includes the above definitions as sensitive information but also adds:</p> <ul style="list-style-type: none"> <li>• Health information about an individual.</li> <li>• Genetic information about an individual that is not otherwise health information.</li> <li>• Biometric information that is to be used for the purpose of automated biometric verification or biometric identification.</li> <li>• Biometric templates.</li> </ul>

Health Information	<p>Health information is defined in the <i>Health Records Act 2001</i> (Vic) as follows:</p> <ul style="list-style-type: none"> <li>• Information or an opinion about: <ul style="list-style-type: none"> <li>○ The physical, mental or psychological health (at any time) of an individual.</li> <li>○ A disability (at any time) of an individual.</li> <li>○ An individual expressed wishes about the future provision of health services.</li> <li>○ A health service provided, or to be provided, to an individual.</li> </ul> </li> <li>• That is also personal information (see definition of personal information under the <i>Health Records Act 2001</i> below).</li> <li>• Other personal information collected to provide, or in providing, a health service.</li> <li>• Other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs, or body substances.</li> <li>• 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.</li> <li>• The definition does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of the <i>Health Records Act 2001</i> (Vic) generally or for the purposes of specified provisions of that Act.</li> </ul> <p>Under the <i>Privacy Act 1988</i> (Cth), health information is defined as information or an opinion about:</p> <ul style="list-style-type: none"> <li>• The health, including an illness, disability or injury, (at any time) of an individual.</li> <li>• An individual's expressed wishes about the future provision of health services to the individual.</li> <li>• A health service provided, or to be provided, to an individual that is also personal information.</li> <li>• Other personal information collected to provide, or in providing, a health service to an individual.</li> <li>• 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.</li> <li>• 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.</li> </ul>
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### **Legislation**

Privacy and Data Protection Act 2014 (Vic) Health  
Records Act 2001 (Cth)  
Privacy Act 1988 (Cth)  
Children, Youth and Families Act 2005 (Vic) Family  
Violence Protection Act 2008 (Vic) Child Wellbeing  
and Safety Act 2005 (Vic)

### **Related Policies or procedures** Dat Data

Breach Policy and Procedure Data Breach  
Response Plan  
Data Breach Report Incident Report Form Staff  
Privacy and Confidentiality Agreement Code of Ethical  
Conduct

### **Related Guidelines**

Family Violence Information Sharing Scheme Child  
Information Sharing Scheme  
Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM)