Australian Government

Disability Employment Services

DES Privacy Guidelines

V1.0

Disclaimer
This document is not a stand-alone document and does not contain the entirety of Disability Employment Services Providers' obligations. It should be read in conjunction with the Disability Employment Services Grant Agreement and any relevant guidelines or reference material issued by the Department of Social Services under or in connection with the Disability Employment Services Grant Agreement.

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Document Change History

Version	Effective Date	End Date	Change & Location
1.0	1 July 2019		Original version of document

Policy Intent

These Guidelines assist DES Providers with notifying and obtaining consent from DES Participants for collecting, using and disclosing 'personal information', including police, Working with Children and Working with Vulnerable People checks.

All agencies, including the Department of Social Services (Department), Providers, and Host Organisations have obligations under the *Privacy Act 1988* (Cth) (Privacy Act) to ensure that 'personal information' (including sensitive information) is collected, held, used and disclosed in accordance with that Act.

Information that a Provider holds about a Participant will be 'personal information', even if it is only a limited amount of information. The information or opinion does not have to be true and does not have to be recorded in material form. This includes information contained in paper files or computer systems and in documents provided by the Participant, including résumés and application forms. A Provider will also hold other 'personal information' about employers or persons associated with a Host Organisation.

Providers may handle 'sensitive information' including:

- information about a Participant's racial or ethnic origin, such as whether they identify as being Aboriginal or Torres Strait islander
- information about a Participant's criminal convictions such as information on any time served in prison or
- health information about Participants such as information about medical issues.

With limited exceptions under the Privacy Act, a Participant's consent is required for the collection and subsequent use and disclosure of 'sensitive information'.

Disability Employment Services Grant Agreement Clauses:

Clause 75.1(a) – Compliance with laws and government policies.
Clause 80.1 – Provision of Program Services
Clause 106 – General requirements for a Job Plan

Explanatory Note:

All capitalised terms have the same meaning as in Disability Employment Services Grant Agreement.
In this document, "must" means that compliance is mandatory and "should" means that compliance represents best practice.

1. The Australian Privacy Principles

The Australian Privacy Principles (APPs) set out in Schedule 1 of the Privacy Act are principle-based laws that govern the way 'personal information' (including 'sensitive information') must be handled.

'Personal information' means information or opinion about an identified individual or an individual who is reasonably identifiable. The information or opinion does not have to be true and does not have to be recorded in material form.

'Sensitive information' is a subset of 'personal information' and is subject to a higher level of protection under the Privacy Act because its misuse could have greater adverse consequences for the individual concerned. 'Sensitive information' is information regarding certain characteristics of an individual, as specified in section 6(1) of the Privacy Act.

A flexible approach to implementing the APPs is encouraged, however compliance is mandatory.

The APPs should be embedded in daily operations. For example, DES Providers should regularly and openly discuss with Participants how their personal (including sensitive) information is being handled. Providers are encouraged to tailor their privacy practices to suit the needs of Participants and their own businesses whilst also meeting their privacy obligations.

Failure to comply with the APPs is considered to be an interference with the privacy of a Participant. A Participant who considers that their privacy has been interfered with can contact the Department to make a complaint. Alternatively, they can contact the Australian Information Commissioner who has powers to investigate possible interferences with privacy, either following a complaint by a Participant, or on the Commissioner's own initiative. In some circumstances, compensation may be paid to a Participant whose privacy has been breached.

For more information on the APPs refer to the Office of the Australian Information Commissioner's quick reference tool.

2. Notifiable Data Breaches (NDB) Scheme

All Providers with personal information security obligations under the Privacy Act must also comply with the requirements of the Notifiable Data Breaches Scheme1 when dealing with breaches of privacy.

Each breach of privacy must be assessed promptly in accordance with the requirements of the NDB scheme to determine whether an 'eligible data breach' has occurred and, if required, notification is to be provided to affected Participants and to the Office of the Australian Information Commissioner.

The Deeds and Funding Agreements under which Providers operate also require immediate notification to be made to the Department about any unauthorised access to, or disclosure of, personal information, or a loss of personal information the Provider holds. This applies to all breach incidents, whether or not they are an 'eligible data breach' for the purposes of the NDB scheme.

Details about the NDB scheme are available from the Office of the Australian Information Commissioner website.

3. Requests for access to or correction of a Participant's personal information

Under APP 12, individuals have a statutory right to request access to or correction of their own personal information held by their Provider. If a Provider receives a request under APP 12, they generally must process that request in accordance with the Privacy Act.

[1] Commenced on 22 February 2018

If a DES participant is seeking access to their personal information, DES Providers are required to comply with the DES Grant Agreement which states the Provider must allow Participants access to records that contain their personal information and provide them with copies of these records if requested by the Participant.

In accordance with the DES Grant Agreement, certain requests must be directed to the Department for consideration where they encompass records containing information falling within the following categories:

- records also containing information about another person
- medical/psychiatric records (other than those actually supplied by the Participant, or where it is clear that the Participant has a copy or has previously sighted a copy of the records)
- psychological records
- information provided by other third parties.

If the Provider has other particular concerns about the documents (for example, because they are sensitive in nature), they should refer the request to the Department to consider.

If someone is seeking access to personal information on behalf of another Participant, Providers must obtain written authority from the Participant whose personal information is being sought before releasing any documents. If the Provider is unable to obtain written authority, they should direct the individual to submit a formal Freedom of Information request to the Department of Social Services Freedom of Information team at foi@dss.gov.au.

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4. Referring Participants to the Department in relation to privacy matters

Generally, requests or complaints under the Privacy Act should be directed to a Participant's Provider where possible. However, a Participant can also contact the Department to query how their personal information is handled, request access to or correction of their personal information, or make a privacy complaint in relation to the Department or a Provider.

For general employment service matters, Participants should be provided with the following privacy contact details for the Department, on request:

By post:

DSS Feedback

GPO Box 9280

Canberra ACT 2601

By email: complaints@dss.gov.au

By telephone: 1800 634 035.

For further information refer to the Department of Social Services Privacy Policy.

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5. Notifying a Participant of Provider privacy requirements and seeking consent

During the initial interview or initial appointment, the DES Provider must ensure Participants are aware of the types of personal information they may be required to provide and how this information will be handled. Information is collected for the Department and the Provider to provide Participants with appropriate employment services and support, including:

- delivering employment services and help to find a job; or assisting in preparation for employment
- helping to evaluate and monitor the programs and services provided by the Department and its contracted Providers

- contacting Participants about their participation in the Department's programs and, where applicable, their mutual obligation or compulsory participation requirements
- helping to resolve complaints made by Participants or Providers
- involving Participants in surveys conducted by the Department or on behalf of the Department.

During the initial interview or initial appointment, the DES Provider must also seek the Participant's consent to collect and use their sensitive information by asking the Participant to sign the relevant Privacy Notification and Consent Form of the following:

Attachment A – DES Privacy Notification and Consent Form

If the Participant refuses to sign the Privacy Notification and Consent Form this may limit the number of options and types of services the Provider can offer. The Participant should be made aware of this at the initial interview or initial appointment.

[DES Grant Agreement 2018 clause reference: 41. (Personal and Protected Information) and 92. (Initial Interviews)]

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6. Participant privacy requirements when conducting the Job Seeker Classification Instrument (JSCI)

The JSCI measures a Participant's relative level of labour market disadvantage.

Information collected in the JSCI is personal (including sensitive) information under the Privacy Act. The Privacy Notification and Consent Forms attached to this Guideline outline how this information is collected, held, used and disclosed in accordance with the Privacy Act.

When conducting the JSCI, Providers must:

- notify the Participant and obtain consent for the collection of personal (including sensitive) information
- advise that the information provided is protected by the Privacy Act
- obtain consent for the collection of sensitive 'personal information' collected in the process of conducting the JSCI
- ensure they comply with the Privacy Act at all times.

💻 **System step:** The JSCI Change of Circumstances screen in the IT system includes a Privacy Statement that should be provided to or read to the Participant each time the JSCI is conducted.

🗐 **Documentary evidence**: Best practice is for Providers to ask the Participant to sign the relevant Privacy Notification and Consent Form attached to this Guideline when:

- the JSCI is conducted
- the JSCI Change of Circumstances Reassessment is conducted
- where new personal (including sensitive) information is being collected, or
- it has been a long time since the consent was last provided to and signed by the Participant.

🗐 **Documentary evidence**: Consent can be given verbally or in writing. Where the Participant provides written consent, the signed copy must be retained on file.

💻 **System step:** If verbal consent is given for the collection of sensitive information, the Provider should make a record of the verbal agreement in the Participant's record in ESS Web in the job seeker comments section.

More information on Assessments (JSCI and ESAt) can be found in the relevant programs' assessments guideline.

DES Grant Agreement 2018 clause reference: 41 (Personal and Protected Information) and 120 (Change of Circumstances Reassessment during Period of Service)

7. Releasing the Employment Services Assessment (ESAt) report

An ESAt is used by the Department of Human Services to identify if a Participant has multiple or complex barriers to employment and may require more intensive support.

The ESAt report may be released to a Participant except where it contains information that may be prejudicial to the health of the Participant as identified by the following statement: *This report does contain information, which if released to the client, might be prejudicial to his/her health.*

If the Participant requests an ESAt report that contains the above statement, the Participant should contact the Department's Freedom of Information team at foi@dss.gov.au.

8. Privacy Requirements when sharing information with third parties

When referring Participants to Activities, employment opportunities or Host Organisations, Providers may need to share personal information about the Participant with a third party organisation. It is important that all Provider staff are aware of their obligations in relation to the disclosure of another Participant's personal information.

Providers are encouraged to regularly review and discuss privacy matters with the Participant, obtaining explicit written consent to the collection, use and disclosure wherever possible to ensure compliance with their privacy obligations.

It is important that Provider staff receive privacy training as Providers who conduct the checks /or have access to the results need to be aware of their privacy obligations.

Note: Participants under the age of 18 are permitted to sign the Privacy Notification and Consent Form as long as they do not have a guardian or administrator appointed. If appointed, the guardian or administrator should sign the Privacy Notification and Consent Form.

9. Privacy implications when conducting 'checks' and sharing information with a third party

If a Participant is offered paid work (either part or full-time) the Employer may seek a police/Working with Children check or require disclosure of the Participant's health/medical information, however the Employer should be responsible for sourcing the checks and should seek the health/medical information directly from the Participant.

In all other instances the Provider should refer Participants to a third party and may need to arrange for 'checks' to be undertaken prior to placement. 'Checks' refers to police checks, Working with Children checks, Working with Vulnerable People checks, and Visa Entitlement Verification Online (VEVO) checks.

The Provider can choose an organisation to process police checks, however Working with Children or Vulnerable People checks will be processed by the relevant state or territory authority. A VEVO check will be processed on the Department of Home Affairs website.

The Provider must comply with relevant legal obligations in their respective state or territory to ensure Participants and/or supervisors have the appropriate checks in place prior to commencing the Participant in an Activity. Refer to the relevant program's activity management or participation guideline for information on what checks are required for an Activity.

A check form may include an 'Applicant's Consent' or an 'Applicant's Declaration' which will allow the information from a check to be given to a Provider. The information in the check will need to be taken into account when determining the Participant's suitability for placement in an Activity.

The Provider must ensure the Participant understands why the check is being undertaken, what information will be collected, and how that information will be used.

The Provider must not disclose the Participant's information to other parties unless consent is obtained using the relevant Privacy Notification and Consent Form to ensure the Participant understands what type of information is being released, for what purpose and to which parties.

The results of checks should be treated as sensitive information, and be handled in accordance with the Records Management Instructions of the relevant Deed, the Department's Security Policies, and any Privacy Act obligations.

If the Participant and/or supervisor request a copy of the results of their check, the Provider must ensure the Participant and/or supervisor provides proof of identity before they are provided with a copy.

[DES Grant Agreement 2018 clause reference: 16 (Criminal Records Checks and other measures), 41 (Personal and Protected Information), 44 (Records the Provider must keep), 45 (Access by Participants and Employers to Records held by the Provider) and 100 (Safety and Supervision)]

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10. Disclosing the result of a police check to a third party

Before commencing a Participant in a placement with a third party, the Provider must ensure required police checks have been finalised. The third party will advise the Provider if the placement requires Participant to have checks completed for the paid work or Activity.

If a police check of a Participant indicates an offence that has a direct bearing on the placement, the Provider may be under a duty of care to the Host Organisation and have a legal obligation to disclose this, even where the police check was not required by the Host Organisation. Rather than disclose sensitive, personal information, in these instances, the Provider must consider another placement.

Where there is no legal requirement or obligation to disclose the information to the Host Organisation the results of the police check must not be disclosed.

If the Participant's police check indicates an offence that is not relevant to the Activity/place/course (e.g. driving related offences, where driving is not part of the Activity/course) the Provider needs to decide the best course of action for the Participant.

It should be noted even where a particular criminal record may not appear to be directly relevant to an Activity, it may be indirectly relevant. For example, numerous recent drink driving offences may be relevant where no driving is required as part of the Activity, if they are indicative of a drinking problem and part of the Activity/course requires the safe operation of dangerous machinery.

In these circumstances, the Provider needs to consider the results of the check and use careful judgment to decide the best course of action for the Participant, subject to any overriding legal obligations, such as the existence of a duty of care. Unless there is a specific legal obligation to disclose the results of the check, a Provider can generally only disclose the information to the Host Organisation with the Participant's consent. If the Host Organisation then reasonably decides it cannot accommodate that Participant in the placement, the Provider should seek another placement that does not require a check and complies with any Court ordered restrictions, or with a Host Organisation that will accommodate the Participant.

[DES Grant Agreement clause reference: 16 (Criminal Records Checks and other measures) and 41 (Personal and Protected Information)]

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11. Managing the privacy implications when sharing a Participant's 'sensitive information' with third parties

Certain information regarding a Participant is 'sensitive information' for the purposes of the Privacy Act and should be handled carefully and afforded a greater level of protection from unnecessary disclosure to third parties.

'Sensitive information' includes the Participant's criminal history, religious beliefs, race, and medical history/issues. For example, the results of a police check may contain sensitive information about a Participant's criminal convictions and/or any time served in prison.

Under the Privacy Act, sensitive information can only be disclosed for the purpose it was collected unless an exception applies, such as where the Participant has consented or it is required or authorised by law. That is, where information in a check is obtained for the purpose of undertaking paid employment or a placement with a Host Organisation, then it is within the primary purpose to disclose the results to the Employer/Host Organisation so that the Participant can undertake that employment or placement.

The disclosure of sensitive information in checks may be authorised or required by law, or in circumstances where a duty of care arises. Determining whether a duty of care exists must be assessed on a case by case basis and it may be necessary to seek legal and/or other professional advice in this regard.

It may be necessary for the Provider to consider whether there is a duty of care such that the Participant:

- should not be referred to that Host Organisation as a result of the sensitive information, or
- may only be referred to that Host Organisation if the sensitive information is disclosed (for example, for the health and safety of other persons).

If the Provider determines that a duty of care exists, the following principles should be taken into account in deciding whether to share a Participant's sensitive information:

- the currency, accuracy and reliability of the information and the relevance of the information to the proposed placement
- whether the Host Organisation needs to know the information (e.g. does the information indicate a risk to the Participant or others?)
- whether the disclosure is relevant to the servicing of the Participant
- whether the information is relevant to the placement.

That is:

- Is there a duty of care such that the Participant should not be referred to that Host Organisation as a result of the sensitive information? or,
- Is there a duty of care such that the Participant may only be referred to that Host Organisation if the sensitive information is disclosed (for example, for the health and safety of other persons)?

Wherever possible, disclosing sensitive information to a third party should be discussed with the Participant to clarify what information, if any, they are comfortable to give their consent to disclose. This discussion should take place at the same time the Participant is requested to sign the relevant Privacy Notification and Consent Form and a record of the conversation should be retained.

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12. Disclosing a Participant's medical information to a third party

Any health or medical information relating to a Participant will also be sensitive information and should be handled carefully to prevent unauthorised disclosure to a third party in relation to a placement.

When a Provider is aware of a health or medical issue the Participant has disclosed, this should always be considered in making referrals. This is because, amongst other things, the health of the Participant could be affected or exacerbated by the placement.

In these circumstances, the Provider should consider, subject to the Participant's consent, passing on the information to the relevant third party. The Provider should discuss the information with the third party to determine whether the Participant can be accommodated and whether the placement will be suitable. If the Provider, in conjunction with the third party decides the place is not suitable or they cannot mitigate the associated risk, the Provider should seek another suitable placement that does not pose a health risk to the Participant.

Example 1 – The Provider has organised four weeks of unpaid work experience in a bakery, however the Participant has advised they have a mild nut allergy. Following a risk assessment and consultation with the Host Organisation, it is agreed the Participant will undertake the placement but steps will be taken to ensure the Participant is protected appropriately and suitable medical contingencies will be put in place.

[DES Grant Agreement 2018 clause reference: 41 (Personal and Protected Information)]

Personal Information is directly relevant to a placement.

Example 2 – The Provider organises a placement e.g. NWEP with their Host Organisation in local parkland which is close to a school.

The Working with Children and police check indicates that the Participant has convictions which preclude him/her from being within 100 metres of a school.

The Provider finds another placement not close to schools or other organisations involving children in order to ensure the Participant complies with his/her Court ordered agreement/restrictions.

Personal information is not directly relevant to a placement.

Example 3 – A Provider identifies a placement at a school canteen. The Host Organisation requests a Working with Children check as required by legislation. The Provider applies for a Working with Children check (which includes a police check).

The Working with Children check indicates that the Participant is permitted to work with children but discloses a recent Driving Under the Influence charge. After conducting the required Risk Assessments (place and Participant), the Provider is satisfied that the results of the police check are not relevant to the Participant's ability to safely carry out the activity.

In this case, the personal information would not be required to be disclosed to the Host Organisation.

The Provider needs to consider each case on its merits as to whether the check is relevant and should be passed to the Host Organisation. Results of checks must not be passed to Host Organisations in all cases.

[DES Grant Agreement 2018 clause reference: 41 (Personal and Protected Information) and 44 (Records the Provider must keep)]

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13. Releasing protected information to a third party (including the police) using a Public Interest Certificate

Information held about Participants may be governed by both the Privacy Act and social security law. Importantly the same piece of information may be both personal information under the Privacy Act and protected information under social security law. For example, the name and contact details of a Participant who receives a social security benefit or payment, will likely be both personal and protected information, disclosure of which will be governed by both social security law and privacy law.

However, there are certain provisions in the social security law that enables the disclosure of protected information in some circumstances. Section 208 of the *Social Security (Administration) Act 1999* makes provision for the Secretary of the Department of Social Services to allow use or disclosure of protected information by issuing a Public Interest Certificate (PIC).

Additionally, information held about DES participants may also be governed by the *Disability Services Act 1986* (Disability Services Act) in addition to the Privacy Act and social security law. Information acquired in the performance of duties or exercise of powers in relation to the provision of rehabilitation services by the Commonwealth under the Disability Services Act is protected information. Section 28 of the Disability

Services Act makes provision for the Secretary of the Department of Social Services to allow use or disclosure of protected information by issuing a PIC.

A PIC identifies the information that can be released about a DES Participant; who it can be released to; who can release the information; and allows the information to be released.

Except in the specific circumstances described in the Class PIC below, Providers will need to approach the Department through their Relationship Manager to arrange a PIC from the Department of Social Services to cover the release of protected information as soon as they become aware of a circumstance where they wish to, or are being asked to, disclose protected information.

Class PIC for DES Providers

The Secretary of the Department of Social Services has issued a Class PIC that authorises DES Providers to disclose protected information only where there is a threat to someone's life, health or welfare (Threats).

In the case of Threats, the protected information can only be released to: emergency services (including the police); health service Providers; and child protection agencies.

Once the Provider's site manager or more senior manager has released the information, the Provider must notify their Funding Account Manager using the Notification Form – Release of Personal Information using the Class Public Interest Certificate (PIC).

Only people who are appropriately authorised by the PIC can release protected information. For more information on who has authority and the requirements around releasing protected information under the Class PIC please refer to the PIC Factsheet.

Providers are required to obtain a separate PIC for situations that are not covered by the Class PIC.

[DES Grant Agreement clause reference: 44 (Records the Provider must keep) and 41 (Personal and Protected Information)]

Attachment A - DES Privacy Notification and Consent Form

Disability Employment Services Privacy Consent Form

Privacy and Your Personal Information

Your personal information is protected by law. Under the *Privacy Act 1988 (Cth)* (Privacy Act), the Department of Social Services (the Department), its employees, agents and contracted service Providers — including your Disability Employment Services (DES) Provider — is regulated in the ways they collect, hold, use and disclose personal information.

Your personal information is collected by your DES Provider on behalf of the Department, which is obligated under the terms of its DES Grant Agreement to comply with the Privacy Act when collecting, using and disclosing your personal information. Your personal information is collected for the purposes of administering DES and providing you with employment services and assistance, including to:

- determine your eligibility for participation in DES, including to assess your work environment requirements;
- assist you to find a job, which is undertaken by DES Providers on behalf of the Department;
- provide you with employment, education and training opportunities;
- assist you, where necessary and appropriate, to obtain specialist DES services;
- evaluate and monitor the programs and services provided to you by DES Providers, the Department and other contracted Providers including third party Providers;
- contact you about your participation in the DES program, and if applicable, your mutual obligation requirements;
- if necessary and appropriate, contact potential and actual employers on your behalf to negotiate your employment conditions and any specific requirements to ensure your work environment can accommodate your circumstances;
- ensure compliance by DES Providers with their obligations under the DES Grant Agreement, including by contacting your employer if you are successful in finding work to verify any claims related to your employment submitted to the Department by your DES Provider;
- help to resolve complaints made by you or your DES Provider; and
- include you in surveys conducted by the Department or on behalf of the Department.

If you do not provide some or all of your personal information, the Department may not be able to provide you with appropriate employment services and assistance.

For the purposes of administering DES and providing you specialised disability support services, your personal information may be collected from, and given to, third parties, including:

- DES Providers;
- the Department of Social Services, Services Australia, the Department of Education, Skills and Employment, the Department of Home Affairs, the Department of the Prime Minister and Cabinet and their respective contracted service Providers, and other Commonwealth agencies or entities as necessary or required;
- contracted Providers of other government agencies where those Providers are delivering services to you;
- parties who deliver employment services to you; or
- actual and potential employers.

Your personal information will be disclosed between DES Providers in the event you transfer to a different Provider, regardless of the reason.

Your personal information may also be used by the Department or given to other parties where you have agreed, or where it is otherwise permitted, including where it is required or authorised by or under an Australian law, such as social security law, a court or tribunal order, or where a duty of care exists.

Department of Social Services' Privacy Policy

The Department's Privacy Policy contains more information about the way the Department will manage your personal information, including information about how you may access your personal information held by the Department and your DES Provider, and seek correction of such information. The Department's Privacy Policy also contains information on how you can complain about a breach of your privacy rights and how the Department will deal with such a complaint.

The Department's Privacy Policy is available on the Department's website at https://www.dss.gov.au/privacy-policy. You can also request a copy from the Department via email at DESadmin@dss.gov.au.

Collection of sensitive information

In order to provide you with appropriate employment services and assistance, your Provider may also collect sensitive information, which is a type of personal information. Sensitive information may include details of your cultural or linguistic background, any criminal record, health and medical information, and membership of a professional or trade association.

Declaration by Disability Employment Services (DES) Participant[2]

I agree to the collection of my personal information and sensitive information in accordance with this Privacy Notification and Consent form.

Name of person making the declaration:_____

Signature:_____ Date:_____

Declaration by Legal Guardian or Administrator of Participant (if applicable)[3]

I am the appointed legal Guardian or Administrator of the Participant and as such, I am authorised to sign this declaration for and on behalf of the Participant (please tick box)

Yes ☐

Declaration by Disability Employment Services (DES) Provider

I am an authorised DES Provider and I declare that I have discussed this form and explained to the Participant the reasons why their personal information and sensitive information will be collected, and the purposes for which their personal and/or sensitive information may be used and disclosed in accordance with this Privacy Notification and Consent form.

Name of person making the declaration:_____

Signature:_____ Date:_____

Name of DES Provider (Organisation Name):_____

[2] **Note:** Participants under the age of 18 years can sign this declaration as long as they do not have a legal Guardian or Administrator appointed.

[3] **Note:** Where the Participant has been appointed a legal Guardian or Administrator, that person must sign this declaration in place of the Participant and check the applicable tick box.