ACWA
AUSTRALIAN COMMUNITY WORKERS ASSOCIATION

# Professional Practice Series



## Keeping records and client confidentiality

Few among us approach record keeping with enthusiasm. Often, we see it as something that gets in the way of our real work. But for the community work profession, maintaining accurate records serves an important purpose: to better the services we offer clients and to document outcomes.

Inherently linked to this, as well as to client interactions in general, is the principle of confidentiality. For a productive client-practitioner relationship to develop your clients need to be confident that you will respect their privacy and only share their information in limited and pre-specified circumstances. Without building this level of trust, it will be next to impossible to achieve positive outcomes.

### The supporting principles

Organisations develop information and record management systems to standardise how records are created, stored, maintained, accessed, and ultimately destroyed. Storage systems may hold financial, legal, and administrative material, but when it comes to client records, there are some specific considerations. A standardised set of records not only provides you with a reference point but also an information base from which to identify and facilitate appropriate services for your client. Records also ensure continuity of service for your client, particularly in the event of staff change over. Through good record keeping your actions, decisions and recommendations are transparent thus safeguarding both your client and yourself. In addition, you should be aware of the circumstances within which client information can or must be shared.

Explaining confidentiality and its limits is a key part of building relationships with your clients and fundamental to obtaining informed consent regarding the sharing of their personal information. The use of confidential information for purposes outside the provision of welfare and community services, such as for research, case studies or testimonials, for example, is unethical unless you have gained specific consent or the data is thoroughly de-identified.

As a community worker both you and your employer are legally bound to adhere to the law. Legislative requirements and regulations supersede all other policies and guidelines, including those set by your employer.

Examples of relevant legislation include privacy acts, government codes for un-registered health practitioners, and mandatory reporting laws.

Community service organisations are responsible for ensuring that their own policies comply with legal requirements, but you also have a role to play by tracking changes and bringing any discrepancies to the attention of your employer.

It is a given that all professionals should conduct themselves in an ethical manner when handling personal and sensitive information about a client. Most professions have a code of ethics and professional standards or guidelines. Ethical codes may be binding on members of a professional association, or all members of a profession and breaches may have different treatments including de-registration or suspension. As a community worker you have the *Australian Community Workers Code of Ethics* and the *Australian Community Work Practice Guidelines,* both of which deal with confidentiality.

## Providing services, informed consent and exceptions to confidentiality

Before any service agreement is made, a potential client (or clients in the case of couples, families, or groups) must be aware of:

- The nature of the service and its scope
- The choices they can make about the service and the consequences of non-participation if some or all the service is a legal requirement
- Any potential risks
- Costs and payment policies including cancellation fees
- The client/practitioner relationship and its boundaries
- Confidentiality and its limits including who has access to their record and under what circumstances information will be shared
- The possibility that you may discuss their case details during professional supervision
- Their right to access their own file and the procedure for doing so
- The process for recording or amending any representation, notation, or omission in their file
- Any ethical or organisational codes of conduct that the practitioner adheres to
- The process for making a complaint internally and the names of any external bodies who can receive a complaint (for example, professional and regulatory bodies)
- Any other relevant information that they need to make an informed decision about whether they wish to engage in the service.

Explaining this information to the client alone is not enough; informed consent means that it must be understood. Presenting a lot of new information all at once can be overwhelming for new clients so always use plain language and stop for questions throughout your explanation.

It is good practice to provide information in a written form so that clients can take a copy home with them. It is important to recognise that people may experience all kinds of barriers when you provide them with information so have it available in different formats and languages. Most organisations require a new client to sign a form to verify that they understand the parameters within which a service is being provided. It's down to your skills to make sure that they do.

## Pretend you're taking notes for someone else

Client records typically include basic personal details, referral information, intake and assessment information, case plans, contact schedules, ongoing session notes, referrals, case closure details and other information you deem relevant to case management.

A client file should always be accurate and up-to-date with additions clearly dated. If you are a new practitioner you should get into the habit of adding case notes as soon as possible after contact with a client. Notes should be clear, concise, and legible to others - avoid shorthand and slang. There is also no room for personal judgments; keep in mind that client themselves may request, and have the right, to see their file.

## Paper or electronic? Privacy rights apply to both

Always store client records in a safe and secure location with restricted access.

Protect physical files with a lock or security mechanism. If a single room is dedicated to the storage of files then practitioners should have their own lockable filing cabinet or drawers within it. Limited access to the room is also recommended.

For electronic files, password-protection and security encryption are necessary. Files should also be securely backed up so they can be retrieved in the event of error or technical malfunction. Keep this in mind when it comes to deleting files – both copies will need to be destroyed.

Your responsibility to protect client information continues when you are using the files. This means you should only view files in private areas and, once finished, return them to secure storage. If you are accessing files electronically make sure you log out of the system, this is particularly important for workers with remote access to files who may misplace, lose, or have laptops stolen.

If an employee leaves the organisation or moves to a different role, their access to the files should cease immediately. This is good practice and may involve retrieving keys, updating the access register, or changing passwords.

## Storage and destruction

In the absence of any other policy, regulation, or organisational requirement ACWA recommends that community workers retain client records for a minimum of seven years after the last client contact or after the file has been closed. In the event the client is a child, maintaining the record until they are 25 years old is prudent.

In the case of conflicting policies, regulation or requirements relating to the retention of client records, adopt the longest specified timeframe. For example, if one policy says five years and another requires seven years, keep the file for seven years. These policies still apply in the case of the death of either the client or worker. If you are a private practitioner you should have a plan in place for how this will be managed.

Once the retention period has lapsed the records should be destroyed securely. For hard copy records, this should involve, at a minimum, a good quality shredder.

## Confidentiality and the exceptions to the rule

*All information concerning clients should be kept confidential except:*

- *where, with the permission of the client, referrals are to be made or other professional consultation, opinion or advice is sought;*
- *failure to disclose would breach the terms of the worker's employment; or*
- *where failure to disclose would contravene mandatory reporting requirements or other legal obligations*

*(Source: Australian Community Workers Code of Ethics, 2017)*

Privacy and confidentiality requirements are incorporated into laws and codes of ethics so, for the most part, there are consistent rules to follow. Like client record retention, confidentiality does not end with cessation of a client relationship.

Navigating privacy within co-ordinated service delivery and a workplace can have its challenges. There are circumstances where information will be shared with the consent of the client, however, you should limit this to relevant details only. Never volunteer more information than necessary to another service provider on the (possibly false) assumption that they already possess that knowledge.

Occasionally, it may be pertinent to discuss case issues and options with your manager or seek professional advice. In these cases, even with the client's consent, it is good practice to limit any identifying details. This means leaving out information that could reasonably be used to identify a client (for example, gendered pronouns) or is irrelevant to the advice being sought.

## To act or not to act - breaking confidentiality and responding to requests to do so

Responding to requests to divulge confidential details or, in rarer cases, initiating disclosure yourself, can be confronting. You need to balance the best interests of your client, your commitment to your employer, the reputation of the profession, community expectations and, of course, public safety.

Requests can come from clients themselves, their family, third parties or by way of a court order. Whatever the case, you should consider the parameters of the request and whether:

- you are legally compelled to comply;
- your client (or clients) voluntarily consent;
- the request, or its scope, is proper; and
- there is an impact on the client.

Always advocate for non-disclosure where you believe disclosure would adversely affect the client.

If your client is a couple, family or a group, permission must be sought from all parties where voluntary consent is being sought, or where one member wishes to gain access to the record.

No matter the circumstances, you should always approach the disclosure of confidential information with diligence and common sense. Do not release information or allow access to files by a person who has no authority to view them. It is not a given, for example, that a person with professional status such as a police or court officer is automatically entitled to access files. Find out from your employer or manager how such requests are handled by the organisation and get written instructions specific to your matter. If you need to mail information use registered post, record the tracking number, and include a clear return to sender address.

Remember: if you do need to break confidentiality, limit disclosure to the relevant information. In most cases only part of a record or a summary is sufficient. Also consider whether it is necessary to redact information in a file that refers to a third party. For example, if a client is in group therapy and session notes include reference to another participant.

## Requests from clients and their family

Service users should have the right to access their own file and you should set a procedure for managing this. If you work for a government agency a client may need to submit a freedom of information request first (also called an access, or right to information, application depending on location).

If you do not believe it will be in the best interest of your client for them to see their full file consider preparing a summary instead. Regardless of your decision, we recommend you sit with your client as they read their file so you can provide professional support, answer questions, and debrief them as necessary.

If your client is a child or a minor, access to their files is not an automatic parental right. Practitioners should always be honest with a child as to the circumstances within which access to their file, or information about their case, may be given to a parent or guardian. You should also find out the child's wishes in respect to this, so your decision-making process can be informed should you receive a request. The best interests of the child and any potential adverse effects of disclosure should also form part of your consideration.

## Requests from third parties

Third parties can be anyone not directly connected to the client or their service delivery such as a colleague, journalist or even an insurance company. It is highly unlikely that you are obliged to give any information to such a third party, so follow your organisation's policies and procedures if a request is made. You can, of course, consult with your client to see if they grant permission, or wish you to provide information to a third party. You can simply refuse if you believe it is an improper request.

If you and your client decide against disclosure, you do not need to provide a specific reason. You may, however, find this helps prevent a request from escalating, in which case directing the party to the applicable confidentiality policy, code of ethics or practice guidelines should be enough.

## Legal requests and subpoenas

If you receive a legal request, report the request to your employer for guidance on the matter. If you are self-employed you may wish to seek independent legal or professional advice. While you must follow the law, typically there will be a process for challenging the scope of the requested information if you have concerns that it overreaches.

Do not alter or destroy any part of the existing client record once you have received a legal request. In some instances, it may be against the law to do so.

## Practitioner initiated disclosure

Community workers have a duty of care to prevent harm to their clients and the public. On occasion you may find yourself in situations where you have a legal or ethical obligation to disclose confidential information you learn through your work.

Such is the case, for example, if your role is governed by mandatory reporting requirements and you suspect child abuse or neglect. Mandatory reporting thresholds and the reporting processes differ between state and territories but are readily accessible online. These requirements are enforceable and failure to disclose can result in criminal penalties.

Ethical responsibilities may also compel you to break confidentiality but, unlike mandatory reporting, these are often not backed by clear guidelines or a reporting framework.

A 'duty to warn' can arise if you believe there is a direct, credible, and imminent threat to the safety of your client or another person. This can include suicide, self-harm, or intention to harm another. You may also consider disclosure if you receive credible information from your client that they have committed or intend to commit a serious criminal offence. Depending on the circumstances, you may not legally be required to disclose this information. However, failure to warn can expose you to claims of neglecting your duty of care. This is aside from the harm that may result if a threat to safety proves true.

Professional judgment plays a large role in initiating this type of non-mandated disclosure and this comes with risk. For this reason, any policy that defines your practice threshold for releasing information under this duty should be included when informing clients of the circumstances of disclosure. You will still need to use your judgement, and if necessary the expertise of others, to determine factors like the credibility of threats.

In conclusion, consider the standards and values to which you subscribe and inform yourself of your legal, employment, and ethical obligations. What does your profession, employer, and the broader community expect from you? What legislation governs your work and how do you provide the best possible service within that context? In short what would you expect if the roles were reversed and you were a client relying on the integrity, skills, and knowledge of a practitioner?

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