
Confidentiality and Privacy Policy

1. Introduction

The Commonwealth *Privacy Act 1988* and other applicable laws for Government Contracted Service Providers such as the Privacy Principles (SA) and *Northern Territory Information Act 2002*, protect anyone from information being used without their consent. The privacy laws establish national standards for the handling of personal information by private sector organisations and aim to ensure that personal information held by private sector organisations will be stored, used and disclosed in a fair and appropriate way.

Refer to the Employee Records Policy for the policy and procedure to be followed regarding employee records.

The Privacy Law gives Individuals the right to:

- know if their personal information is being collected by private sector organisations
- know what personal information is held about them
- know how the personal information is being used and who is given the personal information
- correct the personal information if it is wrong.

2. Purpose

The purpose of this Policy is to outline Lutheran Care's (LC) commitment under privacy laws to ensuring the privacy and confidentiality of all people accessing our services. It outlines the procedures for collecting, storing, disclosing and disposing of the personal information of people appropriately.

3. Scope

For the purpose of this policy, 'people' includes children, families, staff, foster carers, foster carers' family, management, ancillary staff (administrative staff, kitchen staff, cleaners, maintenance personnel), students, volunteers and visitors.

4. Policy

All LC workers and volunteers will respect the confidentiality of **all** people accessing our services.

LC workers are expected to:

- abide by the confidentiality clause in their contract of employment
- adhere to our policies and procedures
- honour our Code of Conduct
- discuss, record and retain only that information necessary to undertake their duties for the benefit of the client and LC
- keep the confidences of information about LC and its clients:

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- when working at different geographical locations or with other agencies
 - **after the end of their employment** - in respect of all confidential information other than information forming part of the employee's overall general skill and knowledge.

Any employee found to be in breach of this confidentiality obligation, whilst still employed by LC will be disciplined, and in serious instances, dismissed.

LC ensures that all information collected from persons will be considered private and confidential and not disclosed without the prior knowledge or consent from the individual or legal representative. For children, their legal representative is their parent or guardian.

LC staff and volunteers will inform people prior to collecting information of the circumstances when information will be disclosed to other parties¹.

Before collecting personal information, LC will inform people:

- of the purpose for collecting information
- what types of information will be disclosed to the public or other agencies
- when disclosure will happen
- why disclosure needs to occur
- how information is stored
- the strategies used to keep information secure
- who has access to the information
- the right of the individual to view their personal information
- the length of time information needs to be archived
- how information is disposed of.

If, in fulfilling their duties for LC, another organisation allows a worker to have privileged information about clients from their agency, those clients become clients also of LC for the duration of any contract or task. To fulfill their duties the worker may then use information about those clients.

Information obtained in the course of providing or receiving an agency service will not be shared unless the worker believes a person is in immediate danger – from others or as a result of their own actions – and when they believe adverse outcomes can be predicted unless service provision is coordinated. Information will then be shared as per the SA Government's Information Sharing Guidelines (ISG Appendix).

The ISG Decision Making Steps and Practice Guide sets out clearly the steps to be followed. The decision to share without consent must be approved by a manager or supervisor and documented according to the lines of approval in the ISG.

Decisions to share without consent as well as any refusal of a request to share information or where an organisation refuses to share must also be recorded.

¹ For the purpose of this policy, 'other parties' means those individuals or legal/government agencies bodies who may require the disclosure of personal information for reasons including mandatory reporting and the Information Sharing Guidelines, i.e. relevant government authorities.

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A guide to cultural issues to be considered is provided in section 7 of the Information Sharing Procedure.

When the information sharing relates to a child or young person their consent should be sought in addition to the consent of a parent or caregiver except when compelling moral, ethical or legal reasons exist.

5. Procedure

5.1 Collection of Information

Unless identification is required to provide the service, a client has the option to use LC services anonymously.

In most situations, the personal information that LC collects are:

- contact details of children, families, staff, foster carers, students, volunteers and management
- children, families, staff, foster carers, students, volunteers, emergency contacts contact details
- case notes, case management plans
- children's health status, immunisation and developmental records and plans, external agency information, custodial arrangements, incident records, and medication records
- staff/foster carer's documentation relating to recruitment and selection, performance reviews, performance management, qualifications, work history, criminal history checks, health status, immunisation records and workers' compensation claims
- student and volunteer work history, criminal history checks
- income and expenditure details
- information relating to families' Pensions, Benefits and any other additional income or funding arrangements.

Personal and sensitive information may only be collected with informed consent. Those who use LC services must give consent in writing, or by a telephone consent pro-forma. These forms must contain the LC business name, the purpose of collection, advice that the person can access their information, and what happens if the person does not give their information.

All LC Outer Southern Homelessness Service staff who use the Homeless2Home (H2H) Case Management and Data Collections Systems and are expected to adhere to all requirements pertaining to the gathering, recording and disclosure of any client information.

H2H is **NOT** to be used outside of working hours under any circumstances (except in an emergency situation with express permission from the Manager). For LC this means that the H2H system may only be used between 8am and 6pm Monday to Friday.

The worker will obtain informed consent of clients before activities are electronically recorded (e.g. video or audio taping) or observed by a third party. Such records will not be used for any purpose without informed consent. Information collected on clients and recorded on an ICT device (computer, tablet, phone) will be assumed to be the electronic equivalent of hard copy recording and appropriate action will be taken to protect the privacy of information.

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5.2 Case Notes

Case notes are recorded as part of the case management of every client. This includes information about tenancy, personal details about the client and any other relevant case management information to maximise the service we provide.

This information is only available to the relevant case managers of LC.

5.3 Case Management

Case management meetings are usually held weekly to discuss the case management of each family being worked with within the management and case management group. No other people are privileged to that information. The meetings are held in private and all discussions that take place are kept within that group.

Where it is necessary to pass on information to other agencies or to receive information from other agencies this will be done through a *Client Authority to Disclose Information* form which is signed by the client. (This form then gives permission to give or receive information which is needed for the case management of the family.) None of this information can be passed on to other parties except under the conditions mentioned below.

5.4 Information Sharing Guidelines

The Information Sharing Guidelines (ISG) are overarching information sharing principles and practices for all relevant government agencies and non-government organisations. The ISG and the LC ISG Appendix apply to all ISG delegated LC staff and volunteers who work or come into contact with children, young people, and their families through LC activities in South Australia or the Northern Territory.

The ISG also applies to all staff and volunteers working with adults who are in contact with children who may be at risk.

Under the ISG an approved delegated ISG worker may share information while maintaining the balance between people's right to safety and wellbeing and their right to privacy.

Gaining a client's consent before sharing information is the ideal and recommended practice, except where to do so would place a person at increased risk of harm. [More information.](#)

When the information sharing relates to a child or young person their consent should be sought in addition to the consent of a parent or caregiver except when compelling moral, ethical or legal reasons exist.

Workers will inform clients fully of the limits of confidentiality in any given situation, the purposes for which information is obtained and how it may be used. The obligation of confidentiality binds all equally where information is shared with other workers or agencies.

The following wording is used to discuss the limits of professional confidentiality and introduce the *Client Consent to Information Sharing Form*:

'LC (LC) follows the South Australian Government Information Sharing Guidelines for Promoting Safety and Wellbeing. This means that information may be shared when it is believed a person is at risk of harm (from others or as a result of their own actions) and adverse outcomes can be expected unless appropriate services are provided. In these situations LC will work closely with other agencies to coordinate the best support for you (and your family).

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Under the ISG your informed consent for sharing information will be sought and respected in all situations unless it is unsafe or impossible to gain consent or consent has been refused; and without information being shared, it is anticipated that are threats to safety and wellbeing.'

The ISG and the LC Appendix do not alter a mandatory notifier's legal obligation to report suspicion of abuse or neglect on reasonable grounds to the Child Abuse Report Line (CARL).

At any stage of information sharing and service coordination, if a worker's concern about a child or young person may change to a belief, on reasonable grounds, that a child or young person has been or is being abused or neglected they must report it.

5.5 Mandatory Reporting

All LC employees, volunteers and students on placement are mandated notifiers, under the *Children And Young People (Safety) Act 2017* and the Northern Territory, *Care and Protection of children Act 2007* (as in force at 14 November 2018).

A mandated notifier (employees and volunteers and foster carers) is required by law to notify the Department for Child Protection if they suspect on reasonable grounds that a child or young person is, or may be, at risk of harm.

All mandated notifiers understand from their training they have a legal obligation to report suspicion of abuse or neglect on reasonable grounds to the Child Abuse Report Line (CARL), phone number 13 14 78 as soon as practicable. This obligation arises when a mandated notifier forms this suspicion in the course of their employment (whether paid or voluntary).

A mandated notifier must make the notification as soon as is reasonably practicable after forming the suspicion.

Whilst the obligation to report suspicion of abuse and/or neglect rests with mandated notifiers, staff and volunteers should seek advice and support from their Team Leader or Manager in relation to suspicions of child abuse or neglect. This practice ensures staff and volunteers are appropriately supported, records are kept confidentially and securely, and any organisational responsibilities in addition to the mandatory reporting obligations are pursued where relevant.

In situations where a staff member or volunteer decides that they need to make a report to the Child Abuse Report Line the planned information sharing or existing coordination of services should continue unless advised by CARL staff to stop the process.

The report to CARL should include the support LC and other service providers are planning or have in place for the individual concerned.

Workers must record any advice received.

The notifier will remain confidential and is immune from civil liability for reporting a suspicion.

5.6 Keeping the confidentiality of clients

In all situations other than for legal requirements, information about a client's whereabouts is not to be given, and in most instances, we **do not** confirm or deny that we know the client or that the client is in our service.

Where it is known that the client is living at one of our properties then the address or telephone number or personal details are not given out. In those instances the client is contacted and

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asked to contact the person who is wishing to contact them. The client has the option to make contact or not to make contact with the person making the enquiry.

Any information given at all is on a need to know basis, no additional information is to be given.

5.7 Debriefing

Often the nature of the work at LC requires regular and constant debriefing and on occasion critical incident debriefing. (Refer to the Critical Incidents Management Policy and Procedure) This helps to eliminate the risk of breaching confidentiality through discussing cases and/or clients with family members or friends. Information may be shared with a supervisor for the purpose of professional supervision but this process should be made known generally to clients as a professional process that occurs routinely within the agency or program or profession.

Similarly, managers and team leaders may share information about a worker with a more senior person (e.g. Manager or Director) if it is reasonable for this information to be known by that person for the appropriate management (including safety and welfare) of LC.

5.8 Notes and Memos

5.8.1 Paper

All correspondence with any information about a client no matter how insignificant must be shredded or torn into small pieces prior to placement in a bin.

5.8.2 Office Files

The filing cabinets holding current client files and those held in archives must be locked at the end of the day. If staff are out of their office then either the cabinet or the office is to be locked.

5.8.3 Client Messages

If confidential, ensure they are handed to the client and not placed in a public place. Use a confidential envelope if necessary and only write the unit or house number on the outside or similar and not the name of the client.

5.8.4 IT Systems

All information that is of a confidential nature is stored in designated restricted areas on file servers and access to confidential information is restricted only to those who need access to the information in order to perform their work. Staff ensure that all ICT devices are protected from unauthorised access (*Refer to Information and Communication Technology Policy and Procedure Section 8. Authentication*).

5.9 Disclosure of Information

Consent must always be obtained when disclosing personal or sensitive information concerning a person who works at, or uses LC services. The client may give permission in writing for LC to release summary details of their information to a third party for their benefit (e.g. financial records for future financial counselling work). In this case a consent form authorising disclosure of the client's details should be signed and dated by the client.

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Other agencies will not be given access to details in writing or verbally unless that agency has been a party to discussions with the client and there is general agreement that the other agency is working in partnership with the LC client on contracted tasks for the client's benefit.

Information released publicly as in newsletters and testimonials and other stories should have the explicit consent of those persons affected by such stories even if a "positive effect" was intended.

Staff will only have access to confidential information from their own program. Should staff need to access information from another program, approval must be sought from the manager of that program. Files are not to be released to external bodies unless a subpoena has been received by LC.

5.10 Clients Accessing their Records

People who use LC services are entitled to:

- access and examine their personal information through the relevant manager provided there are no safety issues by using the Request for Access to Personal Records.
- correct any inaccurate, incomplete or out of date information through the relevant manager.

LC will afford clients reasonable access to official records concerning themselves at their request at a reasonable time of convenience for the agency so that the files may be examined to ensure that any reference to a third party is deleted before being given to the requesting client.

Information will be given to the person who is the client only, and other people including family members are not entitled to this information. Refer to the Records Management Policy.

5.11 Digitally Stored Data

Digitally stored data will be stored in line with the relevant Australian legislative requirements and internal policies including the Records Management Policy, ICT Policy and Contracted Government Service Provider Record Keeping Policy.

Wherever practical, there will be one copy only of any stored information. Copies of the same information or similar data will not be stored in different databases, spreadsheets or documents.

Information will be made accessible to only those workers who have a need and a right to access it subject to the limitations highlighted above. People and job functions will have individual authentication to access the data they need and must not share this authentication.

5.12 Photographs and Video Footage

Photographs and/or video footage of clients, staff and volunteers cannot be taken without their consent. For clients, their photograph or video footage must not be used in any LC promotional activities with express permission from the client in writing (refer to the Photographs and Video Footage Policy and the Photographs and Video Consent Form).

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At the start of every LC related event an announcement must be made informing staff, volunteers and/ or clients of the intention to take photographs; requesting that those who do not want their photograph taken to immediately advise the photographer or any LC staff.

Prior to a client signing the Photographs and Video Consent Form the promotional activity must be explained to the client. If the client needs assistance in understanding English, an interpreter should be used to explain the content of the form.

5.13 Social Media

All LC staff and volunteers must observe the following when using personal or group social media sites:

- people in a position of trust (e.g. staff working with minors as a case worker, counsellor or advisor) are **NOT** to be 'private friends' with participants or clients or people under their care
- LC people, staff, volunteers and clients in photos must not be identified as LC workers and tagged accordingly
- images of children without the consent of a parent or guardian must not be posted and photos are not to be captioned with full names of children (even if there is consent) and people are not to be tagged in photos
- information is not to be posted that would indicate a person's contact details, status or location i.e. photos, phone numbers, addresses, birthdates, licence plates and other information.

Refer to the Social Media Policy for further information.

5.14 Recruitment Records

Records of unsuccessful applicants must be destroyed once the position has been filled unless specific permission has been obtained to retain them.

5.15 Records Management

5.15.1 Storage of Information

Generally, general files and other paper work should be destroyed when they no longer hold any purpose for current or future use. Information about clients should be destroyed after two years including those held by volunteers except where a program has compelling reasons to keep information beyond this time.

Information of a financial nature (but excluding Emergency Relief information) may be kept for seven years or as determined by usual Australian Tax Office requirements. This will apply to the financial records and time books of workers. Donors to the Agency will be treated as information of a financial nature and be maintained for seven years.

Legal requirements or contractual arrangements may dictate other standards as in Alternate Care responsibilities for children and families and this information may be kept indefinitely.

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5.15.2 Retention of records

The principle that guides LC in the retention of records is that information should be kept only where personal, family or relationship history might not be available elsewhere and could be of some future value to the client (especially children's files)

Files remain the property of LC unless contracted otherwise (Refer to Contracted Government Service Provider Record Keeping Policy).

LC will not dispose of any records relating to Indigenous individuals, families or communities or to any children. LC endorse the 'Bringing them Home: the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families'.

Recommendation 21 of the Inquiry states:

'That no record relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed'.

Archiving of information must be according to law. For example information of a financial nature must be held for seven years or as determined by the Australian Taxation Office. Information relating to children will be held indefinitely.

5.15.3 Disposal of Information

A disposal schedule must be compiled for all programs. This will be based upon legal requirements. Disposal of information will take into account the need to maintain the confidences of staff, volunteers, clients and other agencies and the use of a formal process of disposal must be adhered to (e.g. placed in a locked "confidential bin" or shredded).

Electronically stored information that needs final erasing should be both deleted and then electronically "wiped or cleaned" with an appropriate software program or commands (as information ordinarily "deleted" can often be retrieved).

Prior to the time of disposal of ICT hardware, any stored data/configuration will be securely erased.

For further information on records management, refer to the Records Management Policy and Records Management and Archiving Procedure.

5.16 Breaches of Confidentiality

Allegations of breaches of these guidelines will be subject to an appropriate enquiry and investigation and possible disciplinary procedures (e.g. a warning, disciplinary action, dismissal, or deregistration as a volunteer). Clients who have concerns or complaints about alleged breaches of this policy are urged to lodge a complaint through the LC Feedback and Complaint Handling process.

6. Responsibilities

It is the responsibility of the Chief Executive Officer, the Executive Management team, all Site Managers and Team Leaders to ensure this policy is implemented.

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7. Legislation and References

State

- *Information Act, 2002 (NT)*
- *Information Privacy Principles (SA)*
- *Code of Fair Information Practice*
- *Care and Protection of Children Act 2007, (NT)*
- *State Records Act 1997, (SA)*
- *Freedom of Information Act 1991(SA)*
- *Information Sharing Guidelines (SA)*

Commonwealth

- *Privacy Act 1988*
- *Freedom of Information Act 1982*

LC Policies and Procedures

- Code of Conduct
- Records Management Policy
- Records Management and Archiving Procedure
- Employee Records Policy
- Record Keeping Policy for Contracted Government Service Provider
- Information Sharing Guidelines (ISG) and the LC ISG Appendix
- Child Safe Policy and Procedure
- Information and Communication Technology Policy and Procedure
- Managing Unsatisfactory Performance and Behaviour Policy
- Misconduct Policy and Procedure
- Photograph and Video Footage Policy
- Social Media Policy
- Case Note Recording Policy
- Whistleblowers Policy and Procedure
- Critical Incidents Management Policy and Procedure

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