

ACCESS BY FORMER CLIENTS TO ANGLICARE VICTORIA OUT-OF-HOME CARE CLIENT RECORDS

1. POLICY PURPOSE AND RATIONALE - What you need to know

To outline philosophies and processes underpinning and guiding the response of Anglicare Victoria to requests for information for release of information from out-of-home care records.

1.1 Preamble

Former clients of Anglicare Victoria and its predecessor agencies may apply for records from their time in care for a range of reasons. The client may be experiencing a life crisis or developmental phase in which it becomes apparent to them (or those close to them) that they are still grappling with issues from their childhood. This may take various forms, including issues relating to identity, uncertainty about events and communications between institutions, government, and family members, a need for confirmation or validation of experiences in care. Children, grandchildren, spouses, and other relatives of such clients may also seek such information.

The issues which prompt people to apply for records from Anglicare Victoria, therefore, will generally have powerful personal significance for the applicant and members of their family. It is important that the policies and processes followed by the organisation reflect this, and are not merely seen as administrative responses to administrative requests.

Some requests for records may also coincide with a complaint, allegation, or some other experience that has inclined a former resident or client to contact Anglicare Victoria; the actual request for records may take place later as the client perceives them to be of potential therapeutic value, or they or their legal counsel believe them to be relevant to potential legal proceedings.

1.2 Current Context

Anglicare Victoria and its Board endorses the spirit of the Recommendations of the Senate Community Affairs Committee report into the experiences of "Forgotten Australians", which was released in August 2004. Two recommendations are of particular relevance to the practice of Anglicare Victoria with regard to release of information to former out-of-home clients:

Recommendation 16 (9.117) is -

"That all government and non-government agencies agree on access guidelines for the records of all care leavers and that the guidelines incorporate the following: [...]

the commitment to the flexible and compassionate interpretation of Privacy Legislation to allow a care leaver to identify their family and their background."

Recommendation 18 (9.119) is -

"That the Commonwealth request the Council of Australian Governments to review all Federal and State and Territory Freedom of Information regimes to ensure that they do not hinder access by care leavers to information about their childhoods".

The content and context of the Senate Inquiry Recommendations have strong implications for Anglicare Victoria in its development of policies for release of information to current and former clients. They suggest that a spirit of openness and compassion, rather than restriction, buttress its adherence to Privacy legislation. They also suggest caution about developing policies of access that are more restrictive than those hitherto practised under existing Adoption and Freedom of Information legislation (*Adoption Act Victoria 1984, Freedom of Information Act Victoria 1982*).

The capacity of an application for records to assist healing is influenced by a range of factors, of which the content of the records is but one. The client's own experience in care, life circumstances, and orientation towards "healing", will clearly affect their experience of receiving their records, but the importance of their experience of Anglicare Victoria in the process of application for records also cannot be over-stated. Factors include clients' inter-personal experience with Anglicare Victoria staff and the transparency and "user-friendliness" of the system for requesting records.

It is essential that Anglicare Victoria conveys to individual applicants, clients, former clients, and their families, and to care leaver support groups such as Vanish and CLAN, that the organisation is genuinely orientated to engagement with this client group and to individual clients and to being accountable for long past (and more recent) out-of-home care practices. Information policies must respect and protect different parties' rights, but maximise opportunities to fill "gaps" in knowledge and understanding of people, events and experiences of the client's childhood in care.

Wherever possible and wherever acceptable, Anglicare Victoria will endeavour to take a former client through the content of their file during a face to face interview. During the course of this interview a copy of the file will also be provided to the former client.

1.3 Statements of Principle

Reflecting the above, the following statements of principle apply to Anglicare Victoria's approach to release of out-of-home care records.

- Out-of-home care records shall be kept in perpetuity.

Former clients and members of their families decide to access information about periods of time in care at many different times of their lives and sometimes for reasons that cross generational boundaries.
- Former clients and their family members have the right, and need, to access information that represents as accurate an account as possible of their experience in care with Anglicare Victoria, which reflects interactions and relationships between the agency and their family during this time, and which contributes to an applicant's understanding of the ostensible reasons and circumstances for the period in care.
- Anglicare Victoria also acknowledges the sensitivity of communications between the agency and other parties connected to the former client's circumstances in out-of-home care. Examples of the latter include records of conversations between out-of-home caregivers and agency workers and some conversations between agency workers and

professionals from other agencies, relating to both the client and other members of the family.

Care is taken to ensure that the necessary editing of records and specific references therein does not diminish the overall “meaning” of the records as an account of the client’s experience in care. For example, the editing of records pertaining to the circumstances of a breakdown in an out-of-home care placement may require the removal of certain conversations between caregivers and agency workers, but would also endeavour to ensure that the applicant received meaningful information about the circumstances.

- Information collected in the compilation of Looking After Children (LAC) documentation would generally be made available for release.
- Anglicare Victoria respects the rights of all parties under the *Information Privacy Act Victoria 2000*, the *Commonwealth National Privacy Principles*, and the *Health Records Act Victoria 2001*. In its access policies it also acknowledges the spirit and practices of past and current practices under the *Freedom of Information Act Victoria 1982* and the *Adoption Act Victoria 1984*.

1.4 Limitations on Information Released

Within the overarching principles espoused above in relation to a non-restrictive orientation to information release, there are certain types of information which Anglicare Victoria would not release from out-of-home care client files:

- Information known or suspected to have been conveyed in confidence; sources of notifications to Child Protection are an obvious example. Other information such as health reports from another health service provider will generally be released if there is no risk of harm to the client or any other person.
- Some reports or notes of conversations between caregivers and out-of-home care case workers about the progress of a placement, especially conversations about the effect of a placement or a child’s behaviour on a caregiver or caregiver family. Anglicare Victoria believes that caregivers need to be able to express personal concerns and vulnerabilities to agency workers without feeling that children or young people in their care will be privy to those expressions in the near or distant future.

It should be noted, however, that Anglicare Victoria has received recent legal advice to the effect that supervision notes are deemed not to be exempt from release under the Privacy Principles.

- Names of other residents of children’s homes, residential settings or family group homes are to be deleted from information released unless specific permission has been obtained from these people.
- Specific references to personal or sensitive information about siblings or parents of the applicant are to be deleted. Information relating to joint activities or episodes involving the applicant in the same setting is generally able to be released.

- Where records pertain to out-of-home care family placements (e.g. case notes from Foster or Permanent Care placements), records must be edited to protect the privacy of the substitute care family (see also second dot point on the previous page). References to children of the caregiver family, therefore, would generally be deleted, but there is scope for common sense to prevail in the context of records from certain placements; a family placement in which a child had spent the bulk of their childhood would not require the expunging of every reference to children of the substitute family unless the person would reasonably expect that the information is of such a personal nature that it should be deleted.
- Anglicare Victoria acknowledges a duty of care towards persons named in records. If, in the course of application for information, staff of Anglicare Victoria become concerned that a person named in the records may be at risk of harm from the release of such information (even where such information would normally be released), the information may not be released or may be amended to address the safety concerns.

An example relating to the above would be an applicant voicing or otherwise conveying an intention or inclination to harm a former staff member. Depending on the circumstances, Anglicare Victoria may decide to withhold all or part of the information, including the name of the former employee. There may, of course, be other actions required to address the safety concerns, such as contacting the Police or the person for whom the concerns are held.

- It follows that except where there are concerns for the safety of the person(s) concerned, that Anglicare Victoria will generally retain in records released the names of staff members or other professionals named in records. Although such persons are "third parties" as defined in the Information Privacy Act 2000 (s.3), Anglicare Victoria believes that, generally speaking, such information is part of the fabric of the client's experience in care. In other words, those staff members and professionals were part of the former client's experience. Generally, but not always, these people's names and roles will be known to the client. Where the information of staff members or other professionals is not otherwise or sensitive to the extent that the third party may reasonably expect the information to be deleted, Anglicare Victoria will ensure that the information on file is released.

Unreasonable Impact under the Information Privacy Act

The Information Privacy Act 6.1(b) requires Anglicare Victoria not to provide access if the information would have an unreasonable impact on the privacy of other individuals.

Factors that need to be considered informing a compassionate interpretation of this legislation and fulfilling the spirit of the recommendations outlined in the 'Forgotten Australians Senate Enquiry' and the 'Bringing Them Home Report' suggest that an Agency is obliged to adopt a liberal interpretation in this regard. The aim should be to provide as much information as possible and in order for the recipient to understand as much about their life in care and the reasons why they were placed in care. In determining what should not reasonably be released, it may be helpful to explore the following questions: What is the applicant's motive (interest and purpose) in seeking access to information; how old is the information; what were the circumstances for

collecting the information and what was its intended use; are there issues of confidentiality to be considered.

If in doubt, consult a third party to establish their view on whether information should be released.

1.5 Reports of Other Agencies and Professionals

Anglicare Victoria will release reports of other agencies and professionals that are held on the former client files of Anglicare Victoria except in two clear cases :

1. Where doing so would pose a serious threat to the life or health of the former client or anyone else;
2. Where the information was given to Anglicare Victoria by a third party (E.g. a family member); not another professional or agency, with a request that the information not be communicated to the person it relates to;

Access must not be given in these cases as the Health Records Act does not allow for discretion here.

Further to this, Part 5, Division 3 of the Health Records Act requires that where access is denied on the grounds of a serious threat to the life or health of any person, the person making the request must be advised in writing that the request is being denied. That person then has a legal right to nominate another health service provider to review that decision.

Anglicare Victoria may at its own discretion, discuss with the author of any report whether issuing a copy of the report to the former client would pose a serious threat to the life or health of the former client or anyone else.

1.6 Psychological and Psychiatric Reports

The above reports are deemed to be "health records", and therefore come under the province of the *Health Records Act 2001*. They are also frequently given in confidence between a professional and agency and, therefore, are not able to be released without the permission of the author or the service auspicing the report (if applicable).

Anglicare Victoria acknowledges, however, that such reports are often significant for clients who are trying to understand themselves, their behaviour, or others' perceptions of these, at a particular period of their lives. Wherever possible, therefore, Anglicare Victoria will try to contact the author(s) of such reports to ascertain their willingness for release in the context of the request for information. If contact with the report's author or relevant agency is impossible or impractical, Anglicare Victoria may release the record, though editing to meet Privacy requirements would still be necessary; psychiatric records, for example, may include information obtained in confidence from the applicant or from a third party. A report, or part thereof, may be seen as appropriate for release to a former client, but not to a relative.

Anglicare Victoria will however exercise some discretion in relation to requests of this nature. Psychological or psychiatric reports will be released if the author of the document, or the agency for whom the report was originally written, gives approval. Duty of care considerations, however, will be taken into account in exercising such discretion.

1.7 Exceptions

Access to records pertaining to adoptions arranged under the *Victorian Adoption Act 1984* is determined under that legislation and is not discussed in this policy. Former, current, or prospective out-of-home care or adoptive caregiver/parent applicants who wish to access information from their application process or "caregiver file" may also request such information. Relevant policy details are listed under 4. *Related Documents*.

2. DEFINITIONS

Access: In this Policy the word incorporates the notions of both:

- 1) eligibility to apply for records; and
- 2) the process of such application.

Out-of-Home Care: Includes Foster Care, Permanent Care, Kinship Care, Residential Care, Family Group Home (also known as "cottage") Care, and Lead Tenant Models. It also includes the congregate care residential institutions (Children's Homes) run by Anglicare Victoria's predecessor agencies.

Client: Children and young people who are currently in out-of-home care placements (see *out-of-home care* above) with Anglicare Victoria, or one or more of its predecessor agencies. A parent or guardian of a child currently in care with Anglicare Victoria is also regarded as a client.

Former Client: Children, young people, and adults previously placed in out-of-home Care (see *out-of-home care* above) with Anglicare Victoria or with one or more of its predecessor agencies, but no longer in care with the organisation.

Applicant: A person who applies in writing for information from the records of Anglicare Victoria. The applicant may, or may not, be a current or former client and may, or may not, be related to the client or former client. Some people may enquire about obtaining information, but not proceed with an application.

3. PROCEDURES - What you need to do

3.1 Process of Application

3.1.1 Requests for information are to be made in writing. Enquirers can choose to either fill out purpose-specific forms sent out by Anglicare Victoria or can submit their request in some other written form. Verification of the inquirer's identity (and therefore eligibility) is required.

3.1.2 Eligible applicants may nominate another person or organisation, their solicitor for example, to pursue the application process on their behalf and receive records released. Signed documentation indicating the client's wishes and verifying their identity will remain a requirement of such process.

3.1.3 Applications for information are acknowledged and an archive search is commenced. The file or files are retrieved, read, and edited in accordance with the principles outlined above. When records are available for release the former resident/client is recontacted by Anglicare Victoria and offered various options about the manner of release of the records. These options will often already have been discussed during the initial or interim contacts with the client, but Anglicare Victoria's general practice would be to check again at the time of release. Applicants are offered opportunities to discuss the records and other aspects of the client's experience in care, either in person or over the telephone. Some may wish to re-contact Anglicare Victoria after receiving

their records, while others may elect to receive their records at a meeting with a representative from the organisation.

3.2 Unsuccessful Searches

Anglicare Victoria recognises that any request for information – about oneself or a relative – emanates from an innate and healthy desire or need to consolidate and extend one's existing sense and understanding of identity. Anglicare Victoria recognises identity issues to be inter-generational, and that absence of information or lack of contextual appreciation, for whatever reasons, can profoundly impact families across generations. For this reason, Anglicare Victoria acknowledges that the effect of a record not being located can be disappointing or even devastating. Depending upon a client's past or current orientation to the agency, or on other life circumstances, a client may be suspicious of the agency's search processes or general inclination to provide records. Unsuccessful searches should, therefore, be followed up as seriously as those in which records have been found. Clients' feelings about an unsuccessful search should be acknowledged and they should be asked for any further information they may have that could inform further searching or which may allow their inquiry to be re-directed.

3.3 Inquiries from Relatives/Descendents of Former Clients

3.3.1 Requests for information should be made in writing.

3.3.2 Inquirers must be able to provide documentary evidence of their relationship to the former client. This verification will be most commonly provided by copies of Birth, Death and Marriage Certificates.

3.3.3 If the former client is alive, his/her written permission must be obtained before information is released to the applicant. The Anglicare Victoria application forms include one that authorises former clients to give permission to others to receive their records, but at times it may be necessary to validate the origin of this form.

3.3.4 Normally, the hierarchy of eligibility for a former client's information would start with the former clients legal representative (as per Probate), followed by their next of kin such as the spouse and blood relatives e.g. adult children, followed by grandchildren. Alternatively, Anglicare Victoria may use its discretion to issue deceased client records under 2.4 of the Health Privacy Principles (HPP) which allows for access to an immediate family member where the individual is incapable of giving consent; however as mentioned, this remains discretionary and there is no statutory right of access for family members under 2.4 of the HPP.

3.3.5 Requests made by family members sometimes involve complex and sensitive issues within the family. While it is not within the role or scope of Anglicare Victoria to try to resolve such issues, it is important that the latter are understood and acknowledged in the context of the application. The Service may, at times, be able to offer guidance about how a request may be managed within a particular family setting.

3.4 Inquiries from Other Organisations

Anglicare Victoria is occasionally contacted by organisations in the context of other inquiries underway with those organisations. In these circumstances, Anglicare Victoria may assist with the inquiries and provide information to the agency if it is satisfied that

the client has given permission for the enquiry to be pursued, and that eligibility verification procedures have been pursued. Anglicare Victoria will only give former client information to other organizations if the former client has consented to doing so or where there is an imminent threat to the health and life of the former client or any other person; the information is required by the police for a criminal investigative process; or where we have other statutory obligation to provide that information.

3.5 Research and Out of Home Care Files

3.5.1 Requests from individuals undertaking research must be in writing to the Anglicare Victoria Research Ethics Committee, providing details of the project, ethical framework and privacy protection guidelines. The approval process will be the same as for any research undertaken within Anglicare Victoria and will require the approval of the Anglicare Victoria Research Ethics Committee. Refer relevant policy guidelines.

3.5.2 Where research focuses on a population of former clients with whom it is impossible to be make contact, Anglicare Victoria may seek advice from appropriate authorities about matters of ethics and privacy before permitting access to records.

3.6 Grievance Procedure

Any applicant who believes that they have not received information to which they are entitled from out-of-home care records held by Anglicare Victoria, may request a review of the release of records or lodge a grievance in accordance with the Anglicare Victoria Complaints Policy.

4. RELATED DOCUMENTS

The Senate Community Affairs Reference Committee, *Forgotten Australians: A Report on Australians who experienced Institutional or Out-of-Home Care as Children*, 30 August 2004, Commonwealth of Australia.

The Senate Community Affairs Reference Committee, *Protecting Vulnerable Children: A National challenge, Second report on the Inquiry into Children in Institutional or Out-of-Home Care*, March 2005, Commonwealth of Australia.

Information Privacy Act 2000 (Victoria)

Health Records Act 2001 (Victoria)

Privacy Amendment (Private Sector) Act 2000 (Commonwealth)

Freedom of Information Act 1982 (Victoria)

Adoption Act 1984 (Victoria)

Anglicare Victoria Information Privacy Policies, July 2005

Anglicare Victoria's Adoption Information Service – What Information can Anglicare Victoria provide to parties to an Adoption Process? May 2007

Anglicare Victoria's Research Project Guidelines and Approval Processes

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Queries about this policy should be directed to: Deputy CEO, Community Services