

PRIVACY & CONFIDENTIALITY POLICY

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1 Purpose

This document is intended to establish guidelines to ensure that workers of Concern Australia have a clear understanding of the legal and moral requirements of the confidentiality around information held by Concern Australia and the privacy rights of all clients and workers.

As a funded partner organisation with the Department of Health and Human Services, Concern Australia has legal obligations with relation to collection of identifying information, quality of identifying information, storage of identifying information and dissemination of identifying information.

In addition to our legal obligations as a funded agency we accept the same obligations with all dealings of Concern Australia and will treat all identifying information consistently within the framework of this policy.

2 Scope

This policy and its related procedures are applicable to all workers, organisational representatives and clients.

3 External related standards / legislation

- Privacy Act 1988
- Australian Privacy Principles (APPs), which are contained in schedule 1 of the Privacy Act 1988
- National Privacy Principles <http://www.privacy.gov.au/law/act/npp>
- Privacy Regulation 2013
- The Privacy Amendment (Enhancing Privacy Protection) Act 2012
- Privacy and Data Protection Act (Vic) 2014
- Freedom of Information Act 1982.
- Information Privacy Act 2014
- Public Records Act 1973
- The Charter of Human Rights and Responsibilities Act 2006 (Vic)
- The Health Records Act (Vic) 2001
- Health Legislation Amendment (eHealth) Regulation 2015
- My Health Records Regulation 2012
- Personally Controlled Electronic Health Records Act 2012

- National Vocational Education and Training Regulator Act 2011
- Data Provision Requirements 2012
- Department of Education and Training
- ASQA (Australian Skills Quality Authority)
- AQTF (Australian Quality Training Framework)
- DHHS (Department of Health and Human Services) Standards
- Archives Act 1983
- Evidence Act 1995
- Electronic Transactions Act 1999
- Crimes Act 1914

4 Related Policies and Procedures

- Code of Conduct
- Grievance Policy
- CALA Learner Handbook
- Inside Out - Young Person Handbook

5 Definitions

Personal Information Means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Sensitive Information Means:

- (a) Information or an opinion about an individual's:
 - (i) racial or ethnic origin; or
 - (ii) political opinions; or
 - (iii) membership of a political association; or
 - (iv) religious beliefs; or
 - (v) philosophical beliefs; or
 - (vi) membership of a professional or trade association; or
 - (vii) membership of a trade union practices; or
 - (viii) sexual preferences or practices; or
 - (ix) criminal recordsThat is also personal information; or
- (b) health information about an individual; or
- (c) genetic information about an individual that is not otherwise health information.

6 Policy Statement

This policy has been developed on a premise that we as an organisation are committed to fair and responsible collection and handling of personal information. That information is obtained primarily for the purpose of the provision of a high quality service to our service users. Further that only non-identifying information shall be utilised for the purpose of planning, evaluating and developing our services.

This policy has been developed with regard to privacy principles as contained in the National Privacy Principles. Such principles will form the minimum standards with relation to the handling of all personal information.

- Concern Australia will only collect information required for a specific primary purpose;
- Concern Australia shall ensure that individuals know why we collect information and how we handle it;
- Concern Australia will use and disclose information only for the purpose or related purpose for which it was collected;
- Information collected by Concern Australia may be used for purposes other than that already stated but only with the written and informed consent of individuals concerned;
- Information collected by Concern Australia will be securely stored and protected from unauthorised access;
- Information collected by Concern Australia will be retained for periods authorised by the *Public Records Act 1973* as a minimum requirement;
- Concern Australia will provide individuals with access to retained information with regard to themselves, and the right to seek correction to any such information. This is a right through the *Freedom of Information Act 1982*.

7 Responsibilities

Concern Australia's **Business Operations Manager is the responsible officer** for the control and issue of this policy.

All managers and staff ensure compliance with the policy.

8 Guidelines

8.1 Collection of information

Personal information will only be collected to the extent necessary by lawful and fair means and not in an unreasonably intrusive way for one or more of Concern Australia's functions or activities.

At the time of collection (or as soon as practicable afterwards) Concern Australia will take reasonable steps to ensure that the individual is told:

- how he or she may contact Concern Australia
- that they can access the information
- why the information is collected
- the disclosure practices of Concern Australia
- any law that requires the particular information to be collected and the consequences (if any) for the individual if the information is not provided; and
- the main consequences (if any) for the individual if all or part of the information is not provided.

8.2 Use of information

Concern Australia will use or disclose personal information for the primary purpose for which it was collected.

Concern Australia will use personal information for another purpose (secondary purpose) if:

- the individual has consented; or
- the secondary purpose is related to the primary purpose and the individual would reasonably expect Concern Australia to use or disclose the information for the secondary purpose. If the personal information is sensitive information, the secondary purpose must be directly related to the primary purpose of collection; or
- if the information is not sensitive information, Concern Australia will use the information for the secondary purpose of direct marketing if:
 - it is impracticable to seek the individual's consent before the particular use; and
 - there is no charge for implementing an individual's request to Concern Australia not to receive direct marketing; and
 - the individual has not made a request to Concern Australia not to receive direct marketing; and
 - in each direct marketing communication with the individual, Concern Australia notifies the individual that they may elect not to receive any further direct marketing communications; and
 - each written direct marketing communication with the individual by Concern Australia sets out Concern Australia's business address, telephone number and email address at which Concern Australia can be contacted directly; or

- Concern Australia reasonably believes that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health or safety or a serious threat to public health or public safety; or
- Concern Australia has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant authorities or persons; or
- The use or disclosure is required or authorised by or under law; or
- Concern Australia reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or
 - the enforcement of laws relating to the confiscation of the proceeds of crime; or
 - the protection of the public revenue; or
 - the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
 - the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.
- Any personal information used or disclosed for any of the above reasons, must be recorded in writing.

Photographic Images

Programs will maintain photographic images in accordance with this policy. Publishing of these and/or any other photographic images will only be with the express approval of the parent or guardian, or of the individual if they are over the age of 18, in accordance with separate work instructions.

8.3 Data quality

Concern Australia will take reasonable steps to ensure that personal information it collects, uses or discloses is accurate, complete and up to date.

8.4 Data security

Concern Australia will take reasonable steps to protect personal information it holds from misuse and loss and from unauthorised access, modification or disclosure. Concern Australia will also take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under *clause 8.2*.

8.5 Openness

On request from an individual, Concern Australia will take all reasonable steps to let the individual know, generally, what sort of personal information it holds, for what purposes, and how it collects, uses, and discloses that information.

8.6 Access and correction

Concern Australia recognises an individual's right to view their personal information.

All service users have the right to seek access to information held about them by Concern Australia. This right is identified in *Freedom of Information Act 1982*. All individuals have the right to request that any incorrect information corrected be if necessary.

Where Concern Australia holds personal information about an individual, it will provide the individual with access to the information on request, except to the extent that:

- in the case of personal information other than health information - providing access would pose a serious and imminent threat to the life or health of any individual
- in the case of health information – providing access would pose a serious threat to the life or health of any individual
- providing access would have an unreasonable impact upon the privacy of other individuals
- the request for access is frivolous or vexatious
- the information relates to existing or anticipated legal proceedings between Concern Australia and the individual, and the information would not be accessible by the process of discovery in those proceedings
- providing access would reveal the intentions of Concern Australia in relation to negotiations with the individual in such a way as to prejudice those negotiations
- providing access would be unlawful
- denying access is required or authorised by law
- providing access would be likely to prejudice an investigation of possible unlawful activity
- providing access would be likely to prejudice:
 - o the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law
 - o the enforcement of laws relating to the confiscation of the proceeds of crime
 - o the protection of the public revenue
 - o the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct
 - o preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders; by or on behalf of an enforcement agency.

- an enforcement body performing a lawful security function asks Concern Australia not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

Where providing access would reveal evaluative information generated within Concern Australia in connection with a commercially sensitive decision-making process, Concern Australia may give the individual an explanation for the decision, rather than direct access to the information.

Where Concern Australia is not required to provide the individual with access to the information for any reason, Concern Australia will, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

Where If Concern Australia holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, Concern Australia will take reasonable steps to correct the information so that it is accurate, complete and up-to-date.

If the individual and Concern Australia disagree about whether the information is accurate, complete and up-to-date, and the individual asks Concern Australia to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, Concern Australia will take reasonable steps to do so.

Concern Australia will provide reasons for denial of access or a refusal to correct personal information.

8.7 Identifiers

Concern Australia will not adopt as its own identifier an identifier that has been assigned by a government agency (or by the government's agent or contractor). Examples are an individual's Medicare or tax file number. Concern Australia will not use or disclose an identifier assigned to an individual by a government agency except where it is necessary for Concern Australia to fulfil its obligations to the agency. An individual's name or ABN is not an identifier.

8.8 Anonymity

Whenever it is lawful and practicable, individuals will have the option of not identifying themselves when entering transactions with Concern Australia.

8.9 Transborder data flows

Concern Australia will not transfer personal data outside Australia unless:

- Concern Australia reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair information handling that are substantially similar to the National Privacy Principles
- the individual concerned consents to the transfer

- the transfer is necessary for the performance of a contract between the individual concerned and Concern Australia, or for the implementation of pre-contractual measures taken in response to the individual's request
- the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual concerned between Concern Australia and a third party
- the transfer is for the benefit of the individual concerned; and
 - o it is not practicable to obtain the consent of the individual to that transfer; and
 - o if it were practicable to obtain such consent, the individual would be likely to give it; or
- Concern Australia has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with these rules.

8.10 Sensitive Information

In referring to 'sensitive information', Concern Australia means: information relating to a person's racial or ethnic origin, political opinions, religion, trade union or other professional or trade association membership, sexual preferences or criminal record, that is also personal information; and health information about an individual.

Sensitive information will be used and disclosed only for the purpose for which it was provided or a directly related secondary purpose, unless an individual agrees otherwise, or the use or disclosure of the sensitive information is allowed by law.

Concern Australia will not collect sensitive information about an individual unless:

- the individual has consented
- the collection is required by law
- the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - o is physically or legally incapable of giving consent
 - o physically cannot communicate consent to the collection
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

EXEMPTION

There is an exemption in the Privacy Act regarding information relating to a current or former worker. The Privacy Act does not apply to an act done or practice engaged in by Concern Australia in relation to:

- A current or former employment relationship between Concern Australia and the individual; And
- A worker record held by Concern Australia relating to the individual (includes personal information relating to the employment relationship and may include information, such as recruitment/termination information, terms and conditions of employment, health and banking details).

This exemption does not apply to applicants who are unsuccessful in securing a role at Concern Australia. In those cases, Concern Australia will take all the necessary steps to ensure proper collection, use, storage, disclosure of and access to information in accordance with the Privacy Act and other applicable laws.

8.11 Prevention of unauthorised use, modification or disclosure

Concern Australia workers are required to respect the confidentiality of clients' personal information and the privacy of individuals. Concern Australia has in place steps to protect the personal information Concern Australia holds from misuse, loss, unauthorised access, modification or disclosure by using various methods including locked storage of paper records and passworded access rights to computerised records.

Only workers directly involved with individuals have authority to access files.

8.12 Archiving of Client Records

Files are archived when they are completed or no longer required due to client exit or death.

Information is stored and archived for a period subject to *Public Records Act 1973*. Concern Australia recognises that individuals who have lived in care may wish to access their personal information at some time in the future. As such, such personal files will be archived for their convenience.

Archived information is stored securely separate to active files. Only workers authorised to access archives have access to these. Authorisation is through the Chief Executive Officer, Business Operations Manager or General Manager Service Delivery.

8.13 Complaints

Concern Australia makes a commitment that should a complaint or dispute arise, such dispute will be treated with the utmost urgency and that all efforts will be made to resolve such dispute as quickly as possible and to the satisfaction of all parties.

Should an individual have a complaint about their treatment when attempting to obtain information, or a complaint about the information they receive, the individual should complain in writing to the Business Operations Manager. If they fail to be satisfied with the response the individual should complain to the CEO. If the individual is still not satisfied with the response they may complain to the Privacy Commissioner. Further information on how to make a complaint is available from:

Privacy Enquiries Line on 1300 363 992

<http://www.privacy.gov.au/complaints>

9 Procedure - Access to a participants' file and/or information from that file

A copy of confidential and personal information held by us, can be requested. Concern Australia will need to comply with the regulations by law in relation to sharing/release the information.

All requests for information are to be in writing to Business Operations Manager Concern Australia. All requests for information will be responded to within 14 days of receipt of written request. There will be no charge to individuals requesting personal information.

10 Document Information

Issue date	Version	Modify by	Approved by	Summary of Changes
21/05/2012	1.0	N Jermy		First Draft
6/07/2012	1.1	J Cummings		Review
23/05/2013	1.2	P Romano		Page numbering, footer and formatting
07/08/2013	1.3	N Jermy		Review
05/03/2014	1.4	P Romano		Added 4.2 and Final Review
02/04/2014	1.5	P Romano		Included name of responsible officer
11/13/2015	1.6	N Jermy	Bruce Tucker, Chief Executive Officer	Added 4.9 – research purposes
25/05/2016	2	Beyanid Caicedo	Georgette Wardan	Updated <ul style="list-style-type: none"> • External related standards / legislation • Related Policies and Procedures • Definitions • Policy Statement • Responsibilities • Collection of information • Use of information • Data quality • Data Security • Openness • Access and correction • Anonymity • Identifiers • Transborder data flows • Sensitive Information • Prevention of unauthorised use, modification or disclosure • Archiving of Client Records • Complaints



11 Signed Acceptance by incoming worker members

Please sign and date the following Acceptance to confirm that you have received a copy of the Privacy and confidentiality Policy and agree to abide by the conditions contained within.

Acceptance

I, have read and understood the Concern Australia Privacy and Confidentiality Policy and agree to abide by its provisions.

I understand that any breach of its provisions will render me liable to appropriate disciplinary action which may result in dismissal, and improper use and disclosure of such information obtained directly or indirectly by virtue of my employment/engagement by or association with Concern Australia may also lead to prosecution.

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Signature of the Worker

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Full Name of the Worker

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Position

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Date