

Confidentiality Requirements for Workers

This handout covers profession-specific ethical requirements regarding confidentiality and outlines any exceptions, such as situations where there is a serious risk of imminent harm to a client or others.

Disclaimer: *The information provided in this document is accurate as of May 23rd, 2024. Please note that legal and ethical guidance information is subject to change, and new laws, regulations or interpretations can be enacted or issued after this date.*

Profession	Confidentiality requirements	Source	Exceptions
Employees	Generally, your contract of employment with your employer will have a requirement of confidentiality. If you are qualified or registered as a professional, you may also have to follow the requirements for your profession.	Contract of Employment	N/A
Lawyers	<p>9.1 A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement to any person who is not:</p> <p>9.1.1 a solicitor who is a partner, principal, director, or employee of the solicitor's law practice; or</p> <p>9.1.2 a barrister or an employee of, or person otherwise engaged by, the solicitor's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client,</p> <p>EXCEPT as permitted in rule 9.2</p>	Australian Solicitors' Conduct Rules rule 9.1	<p>9.2 A solicitor may disclose confidential information if:</p> <p>9.2.1 the client expressly or impliedly authorises disclosure;</p> <p>9.2.2 the solicitor is permitted or is compelled by law to disclose;</p> <p>9.2.3 the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor's legal or ethical obligations;</p> <p>9.2.4 the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;</p> <p>9.2.5 the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or</p> <p>9.2.6 the information is disclosed to the insurer of the solicitor, law practice or associated entity. (Australian Solicitors' Conduct Rules rule 9.2)</p>

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Social workers	<p>5.4.1 Social workers will respect the rights of service users to a relationship of trust, to privacy and confidentiality of their information and to responsible use of information obtained in the course of professional service.</p>	<p>Australian Association of Social Workers, Code of Ethics rule 5.4.1</p> <p>Australian Association of Social Workers, Practice Standards</p>	<p>5.4.5 Social workers will only reveal confidential information in the circumstances outlined above or in any one or more of the following situations, provided it is permitted by law:</p> <ul style="list-style-type: none"> • If seeking advice from or conferring with other professionals or colleagues, or if in a supervisory or training capacity, then in all cases the social worker will maintain the service user's confidentiality and privacy or obtain prior written informed consent from the service user to release the information; in which case all third parties will agree to protect the service user's confidentiality and privacy • If by revealing information to relevant third parties an actual, identifiable risk of harm to a specific person or persons can be prevented • Where disclosure is required by law (e.g. court subpoena or statutory requirement). <p>Australian Association of Social Workers, Code of Ethics rule 5.4.5.</p>
Liaison officers, youth workers and other advocates	<p>The law does not provide specific requirements for liaison officers, youth workers and other advocates.</p> <p>If liaison officers, youth workers and other advocates are qualified or registered with a professional body (e.g., social worker, counsellor), these staff also have to follow the requirements for their professional body.</p> <p>Liaison officers, youth workers and other advocates may have access to legally privileged client information. Staff must abide by the rules and conditions of legally privileged client information, including confidential communications.</p>	N/A	N/A

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Counsellors	<p>4.4 Confidentiality</p> <p>(a) Confidentiality is a means of providing the client with safety and privacy and thus protects client autonomy. For this reason, any limitation on the degree of confidentiality is likely to diminish the effectiveness of counselling.</p> <p>(b) The counselling contract will include any agreement about the level and limits of the confidentiality offered. This agreement can be reviewed and changed by negotiation between the counsellor and the client. Agreements about confidentiality continue after the client's death unless there are overriding legal or ethical considerations. In cases where the client's safety is in jeopardy any confidentially agreements that may interfere with this safety are to be considered void (see 4.6 'Exceptional Circumstances').</p> <p>(c) Confidentiality extends to client records which must be kept securely – be they maintained as hard copy or by digital processes.</p>	<p>Australian Counselling Association, Code of Ethics and Practice rule 4.4</p>	<p>4.6 Exceptional Circumstances</p> <p>(a) Exceptional circumstances may arise which give the counsellor good grounds for believing that serious harm may occur to the client or to other people. In such circumstance the client's consent to change in the agreement about confidentiality should be sought whenever possible unless there are also good grounds for believing the client is no longer willing or able to take responsibility for their actions. Normally, the decision to break confidentiality should be discussed with the client and should be made only after consultation with the counselling supervisor or if they are not available, an experienced counsellor.</p> <p>(b) Any disclosure of confidential information should be restricted to relevant information, conveyed only to appropriate people and for appropriate reasons likely to alleviate the exceptional circumstances. The ethical considerations include achieving a balance between acting in the best interests of the client and the counsellor's responsibilities under the law and to the wider community.</p> <p>(c) While counsellors hold different views about grounds for breaking confidentiality, such as potential self-harm, suicide, and harm to others they must also consider those put forward in this Code, as they too should imbue their practice. These views should be communicated to both clients and significant others e.g. supervisor, agency, etc.</p> <p>Australian Counselling Association, Code of Ethics and Practice rule 4.6</p>

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Financial Counsellors	<p>2.4 Confidentiality</p> <p>2.4.1 Confidentiality agreements Clients are entitled to have their affairs treated in confidence, except as mandated by law. Clients should be informed of the confidential nature of the financial counselling relationship, as well as any potential exceptions to the confidentiality agreement, before agreeing to financial counselling.</p>	Financial Counselling Australia, Code of Ethical Practice rule 2.4	<p>2.4.7 Exceptions to confidentiality Maintaining client confidentiality is a fundamental obligation of the financial counselling relationship.</p> <p>However, there are circumstances where the law or ethical obligations impose exceptions to confidentiality. Examples of this are when a court or tribunal has ordered during the process of legal proceedings that information be divulged or a document be produced from the client's files. Another example is if the client has communicated a serious risk of imminent harm to themselves, to other persons known to the client, or to the general public. In deciding whether or not to break client confidentiality, the financial counsellor should consider whether it is appropriate to notify the client of the disclosure.</p> <p>In deciding the extent to which client information may need to be disclosed to third parties without client consent, financial counsellors should consider:</p> <ul style="list-style-type: none"> I.The requirements of any legal or ethical obligation II.The potential benefits of disclosure of the information, the potential harm to the client or others that may result from the disclosure, and III.The potential harm if information is not disclosed