

Strong Bonds Fact Sheet:

Professional Issues : Confidentiality and Duty of Care Issues

As a youth worker, you will be aware of your legal duty to keep information confidential, unless you have consent to disclose it, or there is a risk of harm to a young person or others. You are likely to have organisational practice standards, which require you to talk to a young person about confidentiality and the limits to this at the beginning of your therapeutic relationship.

Young people need secure 'family' relationships or a safety and support network around them, in order to develop into mature adults¹. They need a network which is available to them beyond the limits of a youth worker's role and period of involvement. Assisting young people to build connections with family or others, within the limits of your role, is therefore an important priority.

Family-aware practice, however, raises several challenges and dilemmas for youth workers for whom the primary client and focus is the young person. There is a common concern among youth workers that having contact with family may jeopardise the trust and rapport of clients, or go against their developmental need to individuate and develop independence. There is also a common concern that having contact with family will jeopardise confidentiality requirements.

In reality, if young people are asked if they are willing for the worker to have contact with family members, the young person will usually see this as reasonable, particularly if they can see the worker has goodwill and their interests at heart. Usually workers are more concerned about asking to speak to family than young people are about being asked.

This sheet aims to provide practical tips for workers with young people to maintain confidentiality requirements while assisting a young person to build connections with family or other significant support people.

Communication builds understanding and connections between people.

Laws

Professional Codes of Ethics back up laws and provide guidance to practitioners regarding practice issues and dilemmas. There is no Code of Ethics as such for youth workers in Victoria at this time, although this has been on the agenda for some years².

The Youth Action and Policy Association (YAPA) is the peak community group working in the interests of young people and youth services in NSW. This body has developed model policies for youth workers in non-residential settings, which are available on website: www.yapa.org.au.

These policies are used as the basis for the ideas in this sheet, in the absence of equivalent policies for Victoria. Therefore, we encourage you to utilise legal services prior to adopting any controversial ideas within programs or services.

Consent to Disclose Personal Information³

Privacy laws in relation to casework require that client information needs to be kept confidential, unless consent is given to disclose information to another person. Laws also require professionals to be specific with clients about any limits to confidentiality, for example in cases of Duty of Care, whereby you may have to disclose personal information to ensure the young person's safety (see below).

Consent is:

- given freely, not coerced
- informed – the person has sufficient information to know what they are consenting to
- specific – about whom you can disclose to and for what purpose
- given by someone with legal capacity to give consent, for example, they have the mental capacity to understand what they are consenting to.

Capacity can be assumed unless otherwise alerted to. Capacity may also be achieved with support, such as using simple language in the case of people with an intellectual disability and a support person, or using an interpreter in the case of people with English as a second language.

People can make bad decisions while still having mental capacity. In a case of a young person being intoxicated, there are no clear guidelines about whether they are able to give consent, and therefore as in all cases, use your own professional judgement and organisational policies.

Consent may be verbal or written. Written may minimise confusion. If verbal, make a note in the file. Consent may be implied, for example:

1. Rayner, M. and Montague, M. (2000) Resilient Children and Young People. Deakin University: Policy and Practice Research Unit.

2. <http://www.yacvic.org.au/pages/policy/policypapers.htm> > That Old Chestnut!

3. Manning N. (2004) Model Policies on Working with Young People for Non-Residential Youth Services in NSW, Part 5, Privacy and Confidentiality (p.19-21). Published by Youth Action & Policy Association (NSW). <http://www.yapa.org.au/youthwork/modelpolicies>

- if you ask the young person if you can tell someone something in particular and the young person says “I don’t care”
- if they ask you to tell someone something

Duty of Care⁴

There is a legal duty to take reasonable care so that your client and others aren’t harmed. This means to take reasonable care to predict any harm that may be caused by your actions or inactions. It also means if there is imminent serious risk to the life or health of a young person or another person, and you can do something to reduce it, you should do it.

In order to reduce this risk, you may need to disclose personal information to someone else. Always consult with management staff in your organisation first, when making decisions about disclosing personal information without consent. Refer to organisational policies and discuss with supervisors your own professional judgement.

In situations where you need to disclose personal information about the young person to another person in the interests of their safety, it is good practice to be transparent about this with the young person if possible, and involve and inform them about the process. This maintains trust and reduces fears. There are situations, however, when safety issues, such as a young person being psychotic, require a different response.

Gaining consent to speak to family members

Family-aware practice ideally involves family or significant others in assessment and at other times during your involvement with a young person, for example, to receive or share important information. Given this, it is important to talk to young people from the outset about the benefits and importance of involving family or significant others, while reassuring them about confidentiality in relation to any contact you may have with family members or significant others.

It is also important to explore with them what information you may seek from family members, or you would like to share with family members, in the interests of the young person. It is important to establish an agreement with them from the outset, about what they are comfortable for you to share, and with whom. This will change at times, however, and it will be important to revisit this as needed.

If your client, the young person, wishes for you to not to speak to any family members, this is their clear right and this should be respected. Your relationship and work with the young person is a priority. You may still find opportunities to utilise family-aware practice, by working with the young person on family background issues or family dynamics, as well as by modelling and helping them gain relationship skills. This may in time lead to a willingness to more openly communicate with family.

Confidentiality Agreement

It is important to put your confidentiality agreement with a young person in writing. Include any restrictions the young person has about contacting them and restrictions on information you are allowed to disclose to family members, emergency contacts, other professionals etc. Include who the young person doesn’t want you to share any information with, as well as whom they are happy for you to share information with and what information. Provide a written statement about any limitations on confidentiality from your perspective – the circumstances upon which you are obliged to disclose information even without their consent (eg: if abuse has occurred or is suspected). Both young person and worker can sign and date the agreement.

For an example of an agreement, go to: [www.yapa.org.au/youthwork/model >Policies >‘Privacy and Confidentiality’ \(p12-14\)](http://www.yapa.org.au/youthwork/model%20Policies%20Privacy%20and%20Confidentiality).

Receiving information from family members

If you have contact with family members, it will be important to explain to them the legal requirements of confidentiality, as well its importance in the interests of your work with the young person.

When gathering information from family members about the young person as part of the assessment process, it may be appropriate to let the family members know that the young person has a right to access their file. The family members should be asked to let you know if there is anything they have told you that the young person is not aware of or that may affect them adversely if they knew.

If a parent/family member wants to tell you something about the young person, use your discretion about what action you will take. You could say:

“So as to keep the trust in my relationship with the young person,

- I would like to be able to talk to them about what you tell me. How do you feel about that?
- Would you be able to tell them what you have told me?”

There will be cases when you receive information and do not think it is in the young person’s interests at this time, to tell them what has been said.

To help avoid dilemmas, it may be useful to ask the young person how you should handle contact from members of their family. For example:

- Are you happy for me to hear what your family may say?
- What are you happy/not happy for me to speak to them about your problems?
- Are you happy for me to provide them with general information and refer them to other services which may help them?
- Are you happy for me to mention things to them which I think may be helpful for them to know, for example...?

4. Manning N. (2004) Model Policies on Working with Young People for Non-Residential Youth Services in NSW, Part 5, Privacy and Confidentiality (p. 22-25) & Part 7, Safety. Published by Youth Action & Policy Association (NSW). <http://www.yapa.org.au/youthwork/modelpolicies>

- Would you prefer me to not speak to them at all but refer them to another worker/service?
- Would you prefer to be present if I was to speak to them?

Other benefits for young people

Apart from the benefits of helping young people in their relationships with family, working with young people around confidentiality and consent issues may produce other benefits for young people. Working with the young person to decide what issues they would like to be discussed with family members can assist the young person to practice setting appropriate personal boundaries, develop negotiation and conflict resolution skills. As a worker you play an important role in empowering the young person to set these personal boundaries and make informed choices. Too often young people with complex needs are inclined to disclose personal information about themselves to anyone who asks! They are so used to professionals and others intervening in their lives. Teaching them to communicate carefully and appropriately is important.

Approach with families

Families express a lot of frustration and helplessness when agencies exclude them from a service and do not recognise the knowledge and resources they bring to a young person's situation. Service providers can unwittingly reinforce a sense of self-blame and guilt, which is unlikely to assist entrenched dynamics or increase a sense of hope for anyone.

Even where consent is not received from the young person for you to share or to receive specific personal information from family, families should be treated with the utmost respect and care. They should, at the very least, be given general information and assisted to find suitable support for themselves. Would you prefer me to not speak to them at all but refer them to another worker/service?



Ideas from this Help Sheet

- Ask young people for consent to involve parents/family or other significant supports in the assessment process and at other times as needed.
- Ask young people for consent to receive information from parents/family if they contact the service.
- Take the time to develop a Confidentiality Agreement with a young person, including: who they are happy for you to talk to, what they are happy for you to discuss with others and who they do not want you to talk to.
- Provide timely, respectful, non-judgmental and supportive responses to parents/families that make contact with the service – if you do not have your client's consent to talk to their family, it is usually acceptable to provide general information or to refer the family to another worker or service. (Check agency Policies & Procedures).



Other Useful Links

- <http://www.yapa.org.au/youthwork/modelpolicies>



Suggested Reading

- Manning N. (2004) Model Policies on Working with Young People for Non-Residential Youth Services in NSW, Part 5, Privacy and Confidentiality. Published by Youth Action & Policy Association (NSW).
- Manning N. (2004) Model Policies on Working with Young People for Non-Residential Youth Services in NSW, Part 7, Safety. Published by Youth Action & Policy Association (NSW).



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→ **Strong Bonds is a project of Jesuit Social Services.**

Jesuit Social Services work cooperatively with others to engage disadvantaged individuals, families and communities and the wider society to promote health and wellbeing and to address social exclusion.

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