



Psychotherapy & Counselling
Federation of Australia

Submission to:

**Inquiry into the Delivery of
National Outcome 4 of the National Plan
to Reduce Violence Against Women
and Their Children**

Submitted by:

Psychotherapy and Counselling
Federation of Australia

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Introduction

About PACFA

PACFA is the leading national peak body representing the self-regulating profession of counselling and psychotherapy. PACFA is a federation of eleven professional associations in the counselling and psychotherapy field covering a range of therapy modalities, and individual PACFA members of which there are approximately 2,500.

PACFA advocates for appropriate, accessible health services to meet the bio-psychosocial needs of consumers. Counselling and psychotherapy focus on the prevention of mental illness and the provision of psychotherapeutic interventions for psychological difficulties, while actively promoting the development, mental health and wellbeing of consumers.

Professional standards

As peak body for the counselling and psychotherapy profession, PACFA sets standards for the profession including standards for the training, ethics and practice of counsellors and psychotherapists.

Of relevance to the current Inquiry are the following standards:

- [PACFA Code of Ethics](#)
- [PACFA Guidelines on Client Records](#)

Issues of concern to PACFA

PACFA has grave concerns that the procurement arrangements used for contracting service providers to deliver the **1800 RESPECT Domestic and Sexual Violence National Counselling Service** impose inappropriate requirements around collecting and sharing records of client counselling sessions which breach PACFA's Code of Ethics and go against accepted good practice standards regarding the confidentiality of client records.

b. The procurement arrangements for the service, including contractual and tender arrangements

PACFA does not have access to the service contract used for procuring the **1800 RESPECT Service**. Our comments on the procurement arrangements are based on confidential reports we have received from PACFA members on the expected requirements in the service contract.

We understand that a service contract with the Department of Social Services is held by a private contractor ("the main contractor"), with service delivery being sub-contracted to domestic violence services that have the required expertise to deliver the services.

PACFA has been informed that sub-contracted service providers would be required to meet two contract requirements that are of particular concern to PACFA as they would impact on client confidentiality:

- Requirements for all existing **1800 RESPECT** client files to be handed over to the main contractor, in relation to services provided between 2010 and 2017; and
- Requirements for future client notes to be recorded on the main contractor's system which also voice records all interactions. These records may be subjected to subpoena without the involvement of the practitioner or sub-contracted agency.

PACFA does not have access to information as to whether these requirements have been required by the Department of Social Services or by the main contractor that has been awarded the contract for the **1800 RESPECT Service**.

Whichever party has imposed these requirements has overlooked accepted professional standards around client confidentiality and could also potentially be in breach of privacy laws.

Terms of Reference

a. The adequacy and quality of counselling provided, including:

iii. The protection of privacy and confidentiality for those who use the service

PACFA understands that service providers under the new contract arrangements, effective from 29 October 2017, are required to undertake voice recording of client sessions and also to provide copies of past client records dating back to 2010.

A mandatory requirement to record counselling sessions breaches the PACFA Code of Ethics, which clearly states the purposes for which client records are kept, i.e. in order to provide services to the client.

PACFA assumes that when seeking to record a counselling sessions, clients would be given the option to "opt out" of recording . This would be essential otherwise it takes away the clients' right to informed consent for any services they receive.

However, even if there is an "opt out", given that women contacting the **1800 RESPECT Service** for counselling are very likely to be vulnerable and traumatised, and may be concerned for their immediate safety or the safety of their children when they are advised that their counselling session will be recorded. This poses a significant barrier to these clients accessing the services they need. It will potentially reduce take-up of the counselling services, and have a detrimental impact of the quality of service received if clients do not feel safe and do not have confidence that the service is completely confidential.

Disclosure of past client records would also breach the PACFA Code of Ethics as the clients have not consented to such disclosure. Unauthorised disclosure would also mean that the past services have not been provided on the basis of informed consent.

Client records should only be kept for appropriate purposes i.e. for the benefit of the client. Contact monitoring and quality assurance are not purposes for which clients records should be kept or disclosed. In particular, the recording of counselling sessions for the purpose of contract monitoring does not relate to client needs and does not respect client confidentiality. Contract monitoring could be achieved in other ways.

The ethical standards in the PACFA Code of Ethics that are relevant to client confidentiality and informed consent are reproduced below:

4.1.2 Keeping trust

B. Clients are adequately informed about the nature of the counselling and psychotherapy services being offered and the limits to confidentiality.

C. Practitioners obtain adequately informed consent from their clients and respect clients' rights to choose whether to continue in therapy or withdraw. Practitioners ideally ensure that counselling and psychotherapy services are delivered on the basis of the client's explicit consent. Reliance on implicit consent is more vulnerable to misunderstandings and therefore is best avoided unless there are sound reasons for doing so. Overriding a client's known wishes or consent is a serious matter that requires commensurate justification. Practitioners are accountable to their clients, colleagues, PACFA and any other PACFA Member Association to which they belong if they override a client's known wishes.

D. Respecting client confidentiality is a fundamental requirement for keeping trust. The professional management of confidentiality concerns the protection of personally identifiable and sensitive information from unauthorised disclosure. Disclosure may be authorised by client consent, risks to safety, or the law. Any disclosures should be undertaken in ways that best protect the client's trust. Practitioners are accountable to their clients and to their profession for their management of confidentiality in general and particularly for disclosures made without their client's consent.

E. Practitioners take into account their responsibilities and their clients' rights under privacy legislation and any other legal requirements.

In addition, PACFA's Guidelines on Client Records provide best practice guidance in relation to client record-keeping. The Guidelines state the purposes for which client records are kept and the limited circumstances in which client records may be disclosed by practitioners:

Purpose of client records

Client records are maintained for a variety of reasons, the most important of which is for the benefit of the client. Conscious recording of current client needs, support and interventions is part of the practitioner's duty of care to the client. Records can provide a history and current status in the event that a client seeks services from another health professional. Maintenance of appropriate records may also be relevant for a variety of other institutional, financial, and legal purposes. The nature and extent of the records will vary depending upon the type and purpose of the services.

- Practitioners keep client records to enable practitioners to document and review the counselling and psychotherapy services provided.
- Practitioners keep well documented records to help protect themselves from professional liability in the event they become the subject of legal or ethical proceedings.
- Practitioners can only use client information for the purpose for which it was recorded, that is, the provision of counselling or psychotherapy services.

- Client information can be used for related purposes only where it is reasonable to expect that it would be used for these purposes, for example to provide other services to the client in a multi-disciplinary setting.

Confidentiality of client records

Rigorous respect for issues of confidentiality is fundamental to the ethical practice of counselling and psychotherapy.

- Practitioners store client records securely at all times to ensure confidentiality.
- Practitioners clarify and explain to clients the nature and extent of confidentiality from the start of the contract. As client records can be disclosed to other parties in certain circumstances, practitioners explain to clients that confidentiality is limited and identify the circumstances in which confidentiality may need to be breached.
- It may be necessary for practitioners to disclose part of their client records to a supervisor to ensure effective oversight of their services. It is a requirement of PACFA registration that practitioners are supervised in the delivery of all services. Any records disclosed to a supervisor should be de-identified to protect the client's confidentiality.
- It may be necessary for practitioners to disclose client records, or information about a client, to third parties where there is a direct and imminent threat to the safety or health of the client or of another person. For example, a practitioner may be required to provide information to protect the client from suicide or self-harm, to assist in the care or treatment of the client, or to prevent harm to another person.

Terms of Reference

c. The engagement of staff and contractors, including:

- ii. The professional standards and ethical obligations applicable to those providing the service;**
- iii. The oversight and quality assurance undertaken in relation to those providing the service**

It is a requirement of professional registration with PACFA that counsellors and psychotherapists follow the PACFA Code of Ethics and related Guidelines on Client Records. In particular, individual practitioners are responsible for maintaining their clients' confidentiality in accordance with the PACFA Code of Ethics.

Individual practitioners are being put in the untenable position of being required to breach their Code of Ethics and professional guidelines if their employer sub-contacts to deliver the **1800 RESPECT Service**. This is because the service contract would require them to follow requirements that will result in breaching the confidentiality of past, present and future clients.

Contract monitoring and quality assurance could be achieved in other ways that do not involve jeopardising client access to essential counselling services and the quality of those services, or breaching the confidentiality of clients.

Practitioners normally determine the level of detail they include in their client notes, bearing in mind the fact that notes may potentially be subject to subpoena in legal proceedings. Practitioners apply professional skill in determining the content of their client notes and receive specific training on how to prepare client notes.

Some guidance is provided in the PACFA's Guidelines on Client Records on the way in which practitioners prepare their client notes:

Content of client records

Client records include any information (including information stored electronically) used to document the nature, delivery, progress, or results of counselling and psychotherapy services.

- Practitioners keep client records that include:
 - Identifying data for the client
 - Referral information (if applicable)
 - Dates and types of services and fees
 - Details of services provided for example: intake or assessment information; details of the counselling or psychotherapy contract; intervention plans; consultation notes; reports; psychometric testing results.
- Practitioners maintain accurate, current, and pertinent records of services, as may be required by their jurisdiction and circumstances.
- Practitioners maintain records in sufficient detail to permit planning for continuity in the event that another practitioner has to take over delivery of services, including during periods of leave, or in the event of the practitioner's death, disability or retirement.

All of the purposes for which client notes are kept are already achieved through the client notes. The addition of recording of counselling sessions does not add any value for clients but is likely to be detrimental to clients. It appears to be aimed at contract monitoring by the main contractor and to make it easier for them to access records when making disclosures in legal proceedings.

The PACFA Guidelines for Client Records set out the arrangements for accessing client records:

Access to client records

Access to client records should be in keeping with the principles of privacy and confidentiality.

- The practitioner who created the client records is responsible for ensuring the client's privacy and confidentiality are maintained.
- In keeping with the principles of privacy and confidentiality, access to client records is generally restricted to the practitioner who created them, even if the practitioner does not legally own them. In some work settings, practitioners may need to advocate for implementation of the principles in these Guidelines to ensure that client privacy and confidentiality rights are upheld.

Mandatory recording of counselling sessions would result in records of counselling sessions in their entirety becoming available for possible subpoena in legal proceedings. This would seriously

jeopardise the uptake of counselling services by at-risk clients, and the quality of the service they receive as open discussion during counselling sessions would be restricted by fear of possible disclosure or subpoena of the recordings.

In addition, if client records and recordings of counselling sessions are no longer controlled by the agency delivering the counselling services but are in the hands of the main contractor, respect for the right to challenge the subpoena cannot be assured. In addition, Sexual Assault Counselling Privilege legislation in the jurisdiction concerned may apply, and would be likely to override other obligations to disclose in cases where client records are being subjected to subpoena.

Practitioners or the agency that employs them have the right to challenge a subpoena where concerns about client safety would override obligations to disclose. They may also seek to rely on the Sexual Assault Counselling Privilege legislation. Once client records or recordings of counselling sessions are taken out of the control of the responsible practitioners and the agency that employs them, inappropriate disclosures could occur during legal proceedings, posing serious risks to the safety of clients and their children.

Recommendations

PACFA makes the following recommendations to the Inquiry into the Delivery of National Outcome 4 of the National Plan to Reduce Violence Against Women and Their Children:

1. Prioritise clients' welfare:

- Ensure the **1800 RESPECT Service** remains a completely confidential service that, above all, meets the needs of clients.
- Do not have mandatory requirements in service contracts for the **1800 Respect service** to record counselling sessions. This poses a barrier to clients who wish to access the services.
- Ensure that service providers and the practitioners they employ are not prevented under the service contract for the **1800 Respect service** from respecting the confidentiality of their clients in accordance with their Code of Ethics and other professional guidelines.

2. Ensure service contracts to provide the **1800 RESPECT service** respect the confidentiality of past, present and future clients. In particular, ensure service contracts:

- Do not impose mandatory requirements to record confidential counselling sessions.
- Do not require sub-contracted agencies to hand over past client records as they do not have client consent to do so.

3. Ensure legal rights to challenge the subpoena of client records, and rights under Sexual Assault Counselling Privilege legislation, are respected:

- Ensure practitioners and the agencies that employ them have the right to challenge a subpoena where there are overriding concerns for the safety of the client or her children.
- Ensure that client records remain under the control of the practitioners that create them and the agencies that employ them, and that they are not controlled by main contractors. This is the only way to ensure the records remain confidential and that any subpoena can be challenged if required in the interest of client safety.