



**Counselling  
Documentation and  
Confidentiality**  
Counsellor Toolkit 2024

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# Introduction

This fact sheet outlines the best practices for counsellors in Australia regarding note-taking, including how to write notes, and understanding the legal obligations associated with them. By following best practices and understanding legal obligations, counsellors can maintain accurate and confidential records that support effective treatment planning and ensure the well-being of their clients.

## Best Practices for Client Note-taking and Documentation in Counselling

Note-taking is an essential aspect of counselling practice, serving multiple purposes such as documenting sessions, tracking progress, and ensuring continuity of care. Effective note-taking not only aids in treatment planning but also fulfills legal and ethical obligations.

### Note-taking

In the professional landscape of counselling, the practice of note-taking holds significant importance, serving as a cornerstone for documenting client interactions and therapeutic progress.

## Key Considerations for Counsellors

**Confidentiality:** Counsellors typically inform clients about their note-taking practices and how they safeguard client information. Reassure clients that client notes only contain essential information related to their treatment. Emphasise the secure storage of counselling notes and inform clients about their rights regarding accessing their counselling notes.

**Accuracy and Objectivity:** Write factual, objective observations about the client's behaviours, emotions, and progress in counselling sessions. Avoid making assumptions, opinions or interpretations that aren't supported by evidence.

**Relevance:** Focus on recording information that is relevant to the client's treatment goals, progress, and any significant developments during sessions.

**Professional Language:** Use professional language and appropriate terminology relevant to the counselling field. Avoid jargon that may be unclear or unfamiliar to others.

**Timeliness:** Record notes promptly after each counselling session while the information is fresh in your mind. Delayed documentation can lead to inaccuracies or omissions.

**Informed Consent:** In a counselling setting, informed consent involves providing the clients with written information about the counselling process, the goals and methods used, and the limitations of confidentiality. The client should have a clear understanding of what to expect during counselling.

**Cultural Sensitivity:** Be mindful of cultural differences and sensitivities when documenting client interactions and experiences. Respect cultural values and norms.

## Further Resources on Note-taking in Counselling

For detailed information on note-taking in counselling, including legal considerations and best practices, refer to the ACA Legal Series: Volume 2 on documentation in counselling records.

[More Information](#)

## Who Owns the Notes

If you're employed by the organisation, the organisation maintains ownership of client notes. This arrangement ensures consistency, continuity of care, and compliance with legal and regulatory obligations.

## Employee Assistance Program (EAP)

In both contracted and paid employee scenarios with an Employee Assistance Program (EAP) provider, client notes typically remain owned by the

organisation or entity employing the counsellor. This ensures consistency, continuity of care, and compliance with legal requirements. Counsellors should review their agreements for any specific provisions regarding client confidentiality and privacy. According to the standards set out by the Employee Assistance Professional Association of Australasia (EAPAA), "Affiliates shall be informed in writing that all records maintained in a format stipulated by the provider are the property of the provider" (EAPAA, 2023, p. 6)

[More Information](#)

## Health Fund

If you are providing services for a health fund that pays you as a private provider, the ownership of client notes may differ from the typical arrangement with an EAP provider. The ownership of client notes may be retained by the counsellor or the private practice they operate, rather than by the health fund. However, the specific ownership arrangement for client notes can vary depending on the terms of your contract or agreement with the health fund. It is essential to review and understand the terms of your agreement with the health fund regarding client confidentiality, record-keeping, and ownership of client information.

## Ownership of Client Notes while Collaboration in a Multidisciplinary Team

In the context of being a private provider, your notes are typically considered your property. Any sharing of information will require permission from the client. Consequently, the client will have two sets of notes: one maintained by the organisation's care team, capturing collaborative care discussions, and another set specific to your counselling. Ensuring adherence to patient confidentiality laws is paramount, as is maintaining transparent communication with the client regarding the nature, usage, and access permissions of these notes, particularly within a multidisciplinary team.

## Event of Death of a Counsellor

When a counsellor passes away, their responsibility regarding client notes and confidentiality doesn't cease. Instead, it becomes the responsibility of their estate or a designated individual to ensure compliance with client note legislation and maintain confidentiality. Counsellors may specify in their will or through legal counsel how they want client notes handled upon their death, ensuring compliance with

data retention regulations and ethical obligations that still apply.

## Compliance with Privacy Regulations in Australia

The Privacy Act 1988 (Cth) in Australia along with the Australian Privacy Principles (APPs) contained within it, outlines principles for handling personal information, including client notes in healthcare. Under these regulations Organisations will maintain a single client record to ensure consistency, accuracy, and operational efficiency. This practice helps in better managing client relationships, enhancing operational processes, and ensuring data security and integrity.

[Privacy Act](#)

[Privacy Principles](#)

## Privacy and Ethical Guidelines: Safeguarding Client Confidentiality and Compliance with Legal Obligations

The Australian Counselling Association (ACA) adheres to the Australian Privacy Principles (APPs) outlined in the Privacy Act 1988 to manage Personal Information responsibly.

## Collection of Personal Information

Personal Information includes identifiable details such as names, addresses, and contact information. It is collected through various means such as interviews, and correspondence, both directly from individuals and from third parties.

## Purpose of Collection

Personal Information is collected for the primary purpose of providing services, communicating with clients, and marketing.

## Sensitive Information

Sensitive information, like racial or health-related details, is handled with additional care and only used for its intended purpose or with consent, unless required by law.

## Third Parties

Personal information is typically obtained directly from individuals, though it may also be provided by third parties such as general practitioners, allied health professionals, schools, maternal child health services, and mental health services, depending on the individual's age and circumstances.

## Disclosure

Disclosure of personal information may occur with the individual's explicit consent or when mandated by law. It's imperative that the terms and conditions governing disclosure are clearly outlined on client consent forms. This ensures individuals understand the circumstances under which their information may be shared and enables them to make informed decisions regarding their privacy.

## Security

In Australia, the handling of personal information, including the security measures to protect it, is governed primarily by the Privacy Act 1988 (Cth) and the Australian Privacy Principles (APPs). Regardless of whether you're employed by an organisation or operating in private practice, as a counsellor, you have a responsibility to protect personal information from misuse, loss, or unauthorised access. In a large organisation, there may be additional policies, procedures, and technical safeguards in place to support data security and compliance with privacy laws. However, ultimately, everyone, including counsellors, plays a vital role in upholding privacy and security standards and must take proactive measures to fulfill their obligations under the law.

## Access and Correction

Individuals have the right to access and correct their Personal Information upon request, per the Australian Privacy Principles (APPs). APP 12 allows individuals to request access to their personal information, with organisations obliged to provide access unless legally restricted.

[More Information](#)

Similarly, APP 13 permits correction requests for inaccurate or incomplete information, mandating organisations to rectify and notify third parties of corrections. The Privacy Act 1988 (Cth) applies universally, including to sole practitioners.

[More Information](#)

As such, sole practitioners bear direct responsibility for managing access and correction requests, unlike larger organisations where such tasks may be delegated. This necessitates personal attention to requests, ensuring compliance with the APPs and Privacy Act.

Additionally, the Freedom of Information Act 1982, enacted by the Australian Government, ensures transparency and accountability by granting individuals the right to access government documents.

[More Information](#)

## Legislation Governing Health Records in Australia

When composing client notes for counsellors in Australia, it is crucial to consider multiple factors to ensure accuracy, confidentiality, and compliance with ethical and legal standards.

The Office of the Australian Information Commissioner (OAIC) website provides a succinct overview of the Australian Privacy Principles (APPs) from the Privacy Act 1988 (Cth). This resource offers essential guidance on maintaining privacy standards in accordance with Australian regulations.

- You can find more details on the [Australian Privacy Principles Quick Reference](#) page.
- For further information, please refer to the ACA Privacy Policy.
- Additionally, for more reference, please visit the [Australian Government Attorney General's Department Privacy](#) page.

## Securing Client Data: Understanding Cybersecurity Risks for Counsellors

In today's digital age, ensuring the security of client information is paramount for counsellors. Cybersecurity risks pose significant threats to the confidentiality and integrity of client notes and personal data. Therefore, it is essential for counsellors to be aware of these risks and implement appropriate measures to mitigate them. Counsellors should also ensure they have discussed cyber security with their insurance broker to ensure they have appropriate coverage for their needs and to understand what to do in the event their files are compromised.

Ensuring the security of your email messaging platform is crucial for protecting sensitive information and maintaining client confidentiality. Here are some

factors to consider when assessing the security of your email messaging platform.

**Encryption:** Look for email platforms that offer end-to-end encryption. This means that messages are encrypted from the sender's device and can only be decrypted by the intended recipient. Encryption helps prevent unauthorised access to email content.

**Authentication:** Choose email platforms that support robust authentication methods, such as multi-factor authentication (MFA). MFA adds an extra layer of security by requiring users to provide additional verification, such as a code sent to their phone, in addition to a password.

**Privacy Policies:** Review the privacy policies of email platforms to understand how they handle and protect your data. Look for platforms that are transparent about their data practices and prioritise user privacy.

**Security Features:** Evaluate the security features offered by email platforms, such as spam filtering, malware detection, and email encryption options. These features help protect against common email threats, such as phishing attacks and malware infections.

**Compliance:** Ensure that your email platform complies with relevant privacy and security regulations.

## Risks

### Unsecured Communication Channels:

Using unencrypted email or messaging platforms to communicate with clients can expose sensitive information to interception by malicious actors. Counsellors should prioritise secure communication methods to protect client confidentiality.

**Weak Passwords:** Weak or easily guessable passwords present a significant security risk, as they can be exploited by attackers to gain unauthorised access to client records. Counsellors should enforce strong password policies and consider implementing additional authentication measures like two-factor authentication.

**Device Security:** Counsellors must secure their devices, including computers, smartphones, and tablets, against unauthorised access. This includes enabling device encryption, implementing screen locks, and installing security software to detect and prevent malware infections. Counsellors should discuss device security measures with their IT support person or organisation.

**Cloud Storage Risks:** While cloud storage offers convenience and accessibility, it also introduces security risks. Counsellors should carefully evaluate cloud service providers' security measures and encryption protocols to ensure the protection of client data stored in the cloud.

- **Security Measures:** Ask the cloud company what they do to keep your files safe. Do they have special locks and codes to protect them from hackers?
- **Data Encryption:** When your files are sent and stored in the cloud, are they turned into secret codes so nobody can read them except you?
- **Access Controls:** Can you decide who gets to see and change your files? It's like having a secret vault that only certain people have keys to.
- **Compliance Certifications:** Has the cloud company passed any tests to show they're following the rules to keep your files safe?
- **Data Backup and Recovery:** If something goes wrong and your files get lost, can the cloud company bring them back? It's like having a backup plan for when things go wrong.

The New South Wales Information and Privacy Commission has published a guide titled 'Guide to Transition to the Cloud: Managing Your Agency's Privacy Risks' in May 2021. It provides further information on managing privacy risks associated with transitioning to cloud services.

[More Information](#)

**Physical Security:** Physical security of devices containing client information is equally important. Counsellors should secure their office spaces and ensure that computers and storage devices are locked away when not in use to prevent unauthorised access.

**Legal and Ethical Compliance:** Counsellors have legal and ethical obligations to protect client confidentiality and privacy. Failure to implement adequate security measures could result in breaches of confidentiality and potential legal repercussions.

**Data Breaches:** Counsellors must recognise the potential for data breaches, where unauthorised individuals gain access to confidential client information. This could occur through hacking attempts, malware infections, or even physical theft of devices storing client data. In Australia, data breach notification laws are outlined in the Notifiable Data Breaches (NDB) scheme, which is part of the Privacy Act 1988. This scheme requires organisations,

including counsellors to notify affected individuals and the Office of Australian Information Commissioner (OAIC).

In the event of a data breach, counsellors should contact their insurance company immediately for assistance and instructions on what to do next.

By proactively addressing cybersecurity risks and implementing robust security measures, counsellors can safeguard client information, maintain trust and confidentiality, and uphold their professional obligations.

## Legislation Governing Health Records in Australia

In Australia, the retention period for client records in the healthcare sector, including counselling, is generally governed by state or territory legislation. Each state and territory have its own laws and regulations that specify requirements for record-keeping and retention. However, a common guideline across many jurisdictions is to retain client records for a minimum period, typically ranging from five to seven years after the last contact with the client. For example:

In New South Wales, health service providers must retain health records for at least seven years from the date of the last entry or until the individual turns 25 years old if they were a child at the time of the last entry.

In various Australian states and territories, including Victoria, Queensland, Western Australia, the Northern Territory, Australian Capital Territory (ACT), and South Australia, health service providers must retain health records for a minimum of seven years. This retention period typically starts from either the last occasion on which health services were provided to the individual or from the date of the last entry in the record.

Counsellors practicing in these jurisdictions should familiarise themselves with the specific legislative requirements and regulations pertaining to the retention of client records in their respective states or territories.

For further information on the specific legislation governing health records in each Australian state and territory, please refer to the summaries provided below.

- [\*\*NSW: Health Records and Information Privacy Act\*\*](#) - Governs health information privacy, access, and correction rights.

- [\*\*VIC: Health Records Act\*\*](#) - Regulates health information handling and individual access rights.
- [\*\*QLD: Health Act\*\*](#) - Includes provisions for health information confidentiality and access.
- [\*\*WA: Health Services Act\*\*](#) - Addresses health services administration and information security.
- [\*\*SA: Health Care Act & Health Records Act\*\*](#) - Ensure privacy, access, and security of health information.
- [\*\*TAS: Personal Information Protection Act\*\*](#) - Covers health information privacy and access.
- [\*\*ACT: Health Records \(Privacy and Access\) Act\*\*](#) - Sets standards for health record handling and access.
- [\*\*NT: Health Records and Information Privacy Act\*\*](#) - Regulates health information collection, access, and privacy.

## Confidentiality of Client Notes

For further insights on the confidentiality of client notes, particularly within the context of family law proceedings, readers are encouraged to explore the informative article "Are my notes confidential?" featured in the *Counselling Australia Journal*, Volume 24, Number 2. The article, with acknowledgments to Michael Lynch Lawyers, delves into the complexities faced by professionals, including counsellors, when their notes are subpoenaed. It sheds light on the paramount consideration of prioritising the best interests of the child in parenting matters and discusses avenues for objecting to subpoenas. The article also offers valuable insights from a pertinent case example, elucidating the delicate balance between privacy concerns and the necessity for pertinent evidence.

[Article Access](#)

## Effective Strategies for Client Assessment in Counselling

The initial assessment process serves as an exemplary demonstration of the delicate balance between gathering crucial information and respecting client privacy. In this phase, counsellors navigate the intricacies of gathering comprehensive data while ensuring that clients feel heard, respected, and safe. Key components such as gathering demographic details, exploring presenting concerns, discussing personal history, identifying goals, and assessing

strengths all contribute to this balanced approach. By carefully considering each aspect of the initial assessment, counsellors uphold the principles of confidentiality and client autonomy while laying the groundwork for a collaborative and effective counselling journey.

## Progress Notes

Regarding styles of progress notes, there are different formats commonly used in counselling settings:

**SOAP Notes** (Subjective, Objective, Assessment, Plan): This structured format organises notes into sections for subjective observations (client's experiences and perceptions), objective observations (observable behaviours), assessment (professional interpretation of client progress), and plan (proposed interventions or next steps).

**DAP Notes** (Data, Assessment, Plan): Like SOAP notes but without the subjective component, DAP notes focus on recording objective data, professional assessments, and plans for future sessions.

**Narrative Notes:** These notes are written in paragraph form and provide a narrative account of the session, including key themes, client responses, and interventions used.

**Problem-Oriented Notes:** These notes focus on specific client problems or issues, documenting progress and changes related to each problem area. Select a note-writing style that adheres to the specific requirements of your organisation or private practice. Ensure that the chosen style effectively captures the necessary information for client care and documentation purposes, maintaining a balance between thoroughness and confidentiality. Under the Australian Privacy Act, individuals have the right to request corrections to their personal information. It is advisable to consult the specific provisions of the Privacy Act and seek legal advice for clarification in your situation.

## Ensuring Continuity of Care in Private Practice: Contingency Planning for Client Notes and Treatment Coverage

In a private practice setting where you are the sole provider, the scenario of handing over client notes during leave or illness may not be applicable as there are no other clinical staff members to take over treatment. However, it is still crucial to have contingency plans in place to ensure continuity of care for your clients in such situations. Implementing a

backup plan involves careful consideration of various factors. Firstly, maintaining thorough and up-to-date client notes is essential to provide clarity and guidance for any temporary or emergency replacement. Additionally, establishing a network of trusted colleagues or professionals who can step in to provide support or cover appointments during your absence can be beneficial. Communicating with your clients about contingency arrangements and ensuring they have access to emergency contacts or alternative support resources can also contribute to their peace of mind and ongoing well-being. While the dynamics of a private practice may differ from larger organisations, having a backup plan in place demonstrates a commitment to professionalism and client-centred care, even in unforeseen circumstances.

## Importance of Supervision in Maintaining Effective Client Notes

In the context of maintaining accurate and effective client notes, it is essential for counsellors to recognise the value of working alongside supervisors. Supervisors play a crucial role in providing guidance, support, and oversight to counsellors as they document client sessions and maintain client records. Through regular supervision sessions, counsellors can receive feedback on their note-taking practices, ensure adherence to ethical and legal standards, and enhance their skills in recording client information accurately and comprehensively. Moreover, supervision offers counsellors an opportunity to reflect on challenging cases, seek advice on documentation dilemmas, and continuously improve their practice. By fostering a collaborative relationship with supervisors, counsellors can not only enhance the quality of their client notes but also contribute to the overall effectiveness and integrity of their counselling practice.

## Guidance on Documentation Styles

For further guidance on documentation styles used in different healthcare settings, readers may find the AH&A documentation guide from Queensland Health (n.d.) and the Australian Physiotherapy Association's (2018) guidelines on writing clinical notes helpful. Additionally, Queensland Health (n.d.) provides specific documentation requirements for AH&A services, and the National Disability Insurance Scheme (n.d.) offers resources on plan reassessment reports. For insights into writing progress notes, the California Association of Marriage, and Family Therapists (n.d.) provides valuable information.



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The document was written with the assistance of ChatGPT, an AI language model developed by OpenAI (OpenAI, n.d.).

"Disclaimer: While the information provided in this fact sheet is current as of the date written, it is essential for counsellors to stay updated with the latest regulations, resources, and practices specific to their state within Australia. It is the responsibility of the counsellor to ensure compliance and effectiveness in their work. Seeking guidance from a supervisor is advised to navigate regional requirements. This disclaimer underscores the counsellor's responsibility to stay informed and adhere to relevant standards and guidelines."



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