

Department of Health and Human Services Care Leaver Records Access Policy

The Department of Health and Human Services acknowledges that numerous terms are used to refer to Care Leavers, including former wards of state, Care Leavers, Forgotten Australians and Stolen Generations persons. This report uses the term 'Care Leavers' in keeping with existing Government practices.

Purpose

This policy seeks to enhance the service provided by the Department of Health and Human Services to people who are seeking records about their own or a family member's time in out-of-home care. It seeks to ensure that service provision is tailored to meet individual needs.

Given the unique needs of Care Leavers, the department has committed to uphold and apply a number of principles when assisting them to access their records. These principles are set out in this policy and staff must follow these principles when assisting Care Leavers.

Who must apply this policy

This policy must be applied by staff of the Department of Health and Human Services when assisting Care Leavers in accessing their records.

Who are Care Leavers

Care Leavers were placed for some or all of their childhood or youth in institutional or out-of-home care. This includes time in youth justice institutions, residential care, kinship care or foster care. Some Care Leavers describe themselves as "Forgotten Australians", a term first used by the Community Affairs Reference Committee in the 2004 Report *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*.

Why records are important for Care Leavers

Care Leavers may not have had the benefit of having an individual adult carer who kept personal records of their time as a child or young person.

Accessing records can help fill gaps about childhood or youth, and may help understand identity and cultural affiliations, the whereabouts of family members and provide information about genetic health issues. For many Care Leavers, their records can assist them to seek redress or compensation for sexual or physical abuse.

Important things to note when assisting Care Leavers

In the past, Care Leavers have experienced various difficulties in accessing records. This has included the need to approach numerous agencies for records, if they were moved to different institutions or out-of-home care settings. Care Leavers have also experienced delays in receiving files after making a request, receiving very few records and/or heavily redacted documents, being advised that their files have been destroyed, or receiving little or no support throughout the process of obtaining their records.

Being in institutional or out-of-home care was a painful experience for many Care Leavers who continue to live with the pain caused by those experiences. It is important to acknowledge that many Care Leavers are survivors of abuse experienced as a child or young person in an institution or out-of-home care setting.

Historically, recordkeeping was designed to serve the needs of the institution, not of the young people themselves who were not expected to seek their records as adults. As such, some Care Leavers may be disappointed that their records do not provide much insight into their background or the events of their childhood. They may find that their records present a very different view of reality from the one they experienced. A person may also receive records containing language that would now be regarded as offensive and hurtful. In more recent times, the department has been endeavouring to ensure that records are kept which will be more meaningful to Care Leavers in the future, by being non-judgmental, accurate and detailed.

This policy seeks to ensure that staff who provide services to Care Leavers in relation to records do so with a trauma informed approach. This includes:

- ensuring the safety of Care Leavers and departmental staff
- promoting collaboration and choice
- minimising the risk of re-traumatisation.

Freedom of information

The relevant legislation for accessing records in Victoria is the *Freedom of Information Act 1982 (Vic)*. The objective of that Act is to extend as far as possible and at the lowest cost the right of the community to access documents in the possession of ministers and agencies. A government department falls within the definition of 'agency'. As the records of Care Leavers are in the possession of the Department of Health and Human Services, the department uses the Freedom of Information legislation to provide access.

The Freedom of Information Act (the Act) provides a right to access information. The Act provides a framework with a number of protections afforded to Care Leavers, including the right to timely provision of records and a right to have a decision to refuse any part of the records reviewed. Non-government service providers are not 'agencies' under the Act, they do not have obligations to release information within statutory timeframes or a statutory right of review. Those organisations do have to comply with privacy legislation.

The Act must not be applied as a legal barrier preventing a Care Leaver to access their records. This policy and the principles underlying it must be applied consistently with statutory obligations. However, this policy requires that staff do not apply a restrictive interpretation of the Act and seeks to encourage a pro-release approach in a way that is consistent with the Act. Staff must assess each request on its own merits, striking a balance between the need to comply with privacy provisions and the Care Leaver's right to maximum access to their records.

Principles of providing access to Care Leavers

Principle 1: The department commits to understanding the experience and needs of Care Leavers

In order to respect the rights of Care Leavers to records and support, staff involved in providing services to Care Leavers must have an understanding of the experiences of Care Leavers in institutions or out-of-home care and be able to discuss those experiences with Care Leavers. This includes having an understanding of the trauma and abuse suffered by children in out-of-home care and the policies and practices which may have contributed to this trauma or abuse.

Principle 2: Pro-release approach

Care Leavers have a right to access records held by the department about their wardship or child protection history, their time in out-of-home care and to be provided with information that may assist them to access support.

This policy encourages staff to apply a non-restrictive approach to provide Care Leavers with as much of their records as possible. The aim is to provide maximum access to as broad and complete records of their time in institutional or out-of-home care as possible.

No fees or charges will be applied to a request for personal records from a Care Leaver.

Principle 3: Support in submitting applications

Staff will support Care Leavers to ensure all relevant records are accessed.

Staff will provide Care Leavers with a range of options for ways in which to access their records, including online application, a tailored application form, confirmation of time in care at the request from stakeholder agencies and referral to non-government agencies who may also hold records.

At the application stage, staff will alert Care Leavers about the potential distress that may result from accessing their records and discuss the option of supported release.

Principle 4: Maximum access

Right to receive all personal identifying information about themselves

Care Leavers have the right to receive all personal identifying information about themselves, the circumstances surrounding their placement in care, the protective concerns that led to the department's involvement and details of their time in care. Personal information about themselves may include certain identifying information about family members, such as the name of their birth parents and siblings.

An important way to ensure Care Leavers receive all personal identifying information is to limit redactions. Freedom of Information legislation requires staff to consider exemptions relating to the private affairs of other people prior to releasing records. The starting position should be the release of the entire record, but this has to be within the constraints of the Act.

There will be circumstances in which certain sensitive information about others will require the redaction of information. Where it is practical to do so, consultation with third parties in relation to the release of their information will be undertaken.

Where information is redacted, an explanation will be given about the reasons for redacting.

Care Leavers will be given original copies of personal letters or photos

Documents such as original photos of the Care Leaver or personal letters will be provided and a colour copy of the originals will be kept on file.

Ensure multiple sources for information are considered

Records may be destroyed or incomplete. Where a wardship record cannot be found or is incomplete, a search for other family member records may be undertaken to identify documents that can be released.

Principle 5: Right to timely access

There are obligations under the Act for documents to be released according to the statutory timelines. Staff must meet those timelines.

Requests will be expedited where there are special circumstances, for example, if a Care Leaver has a serious medical condition or an impending court matter.

Principle 6: Right to supported release

Release of records

Some Care Leavers prefer to read the records by themselves and do not want to have any contact with the department, in particular, where the department may have in the past contributed to the abuse or trauma that they may have suffered.

Records release will be tailored around the preferences of Care Leavers, including the option of supported release.

Presentation of the records

Records will be presented in a respectful and sensitive way, this will include releasing the documents in a bound folder, indexed and clearly labelled. A tailored explanation of any redactions will be provided.

Access to support or counselling

Counselling support or a referral will be offered as part of the process of releasing records to help the Care Leaver to understand the records or deal with the impact of the release.

Support will include:

- helping Care Leavers understand their records - the historical context, the language used, and how decisions were made at the time
- discussing any potentially distressing content
- helping to understand why some information may have been redacted
- submitting further applications, especially if records provide new information about the location of other records
- assistance to make an annotation to address any inaccuracies or misrepresentations
- helping to access additional counselling.

Support with family reunification

Many Care Leavers experience separation from siblings and family. While some children stayed with family and other siblings were born, others were placed in care, and some may have been adopted.

Knowing immediate family members is a core element to an individual's identity. Services will be available to assist Care Leavers identify other family members and to provide an option of support to search and make contact with separated family members.

Principle 7: Right to annotate records

Under the Act, a person has a right to request a correction or amendment to any personal information if they believe the information is inaccurate.

Staff will support Care Leavers to annotate their records and ensure that additional information is placed on the record.

Staff will support Care Leavers who wish to limit access to their records. Requests for limited access will be placed on the record and will be taken into account if the records are requested under the Act.

Principle 8: Right of review

Staff will inform Care Leavers about their right to an independent review where information has been redacted. Care Leavers also have the right to make a complaint to an independent body if they have concerns about the way in which their request has been processed.

Principle 9: Collaboration with other agencies

If a Care Leaver was placed in more than one institution, their records may be now kept by different agencies. The department is building relationships with community service agencies to ensure Care Leavers are supported to obtain maximum information from a number of sources.

Document history

This policy has been developed in the context of hearings and findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, which has identified a number of areas for improving the provision of records to Care Leavers.

This policy is based on the "Access to Records by Forgotten Australians and Former Child Migrants" document published by the Australian Government Department of Social Services (June 2015), which was prepared in response to the National Apology to Forgotten Australians and Former Child Migrants.