Submission on the review of: the Right to Information Act 2009 and Information Privacy Act 2009

Lotus place

MICAH PROJECTS INC
Breaking Social Isolation
Building Community

Queensland Government

Micah Projects (incorporating Lotus Place)
Submission on the review of the Right to Information Act 2009
and Information Privacy Act 2009

Submission Title:

Micah Projects (incorporating Lotus Place) Submission on the review of the Right to Information Act 2009 and Information Privacy Act 2009

To: RTI and Privacy Review, Department of Justice and Attorney-General

February 2017

Lotus Place
46 Cleveland Street, Stones Corner Q 4120
PO Box 3449 South Brisbane Q 4101
Ph 07 3347 8500 or Find & Connect 1800 16 11 09
lotus@micahprojects.org.au | www.lotusplace.org.au
www.micahprojects.org.au

Our hope is to create justice and respond to injustice at the personal, social and structural levels in society.

We work collaboratively with people who experienced abuse and neglect in institutions, foster care and detention centres. We acknowledge their courage as they move from adversity to hope in seeking public recognition, justice and redress.

Funded by
Queensland Government

About Micah Projects

Micah Projects is a Queensland based not-for-profit organisation with a vision to create justice and respond to injustice at the personal, social, and structural levels in church, government, business and society. We provide a range of support and advocacy services to individuals and families.

Services delivered by Micah Projects are underpinned by the principles contained in the United Nations Universal Declaration of Human Rights.

1. Since its inception Micah Projects has worked in partnership with Forgotten Australians to seek justice for the abuse that many experienced as children. Micah Projects' Lotus Place is a dedicated support service and resource centre for Forgotten Australians and Former Child Migrants.
2. Our submission is informed by the observations that we have made when supporting adult care leavers through the processes involved with accessing records associated with their and in some cases their parents time in out of home care.

Lotus Place is a service that is run by Micah Projects. Lotus Place is a dedicated support service and resource centre for Forgotten Australians and Former Child Migrants.

It was due to the hard work of the Historical Abuse Network and a commitment by State and Federal Governments to those who were harmed in church, state, foster care, detention centres and adult mental health institutions - that Lotus Place was established. It was the first of its kind in Australia.

Lotus Place provides:

- a safe place for Forgotten Australians and Former Child Migrants
- a space where reliable connections to others, where their shared experiences of childhood, and the consequences of this, are respected
- a gateway to government and community services.

Our staff have a range of different backgrounds, qualifications and skills. We work as a team across all our services to provide high quality and integrated support to Forgotten Australians and Former Child Migrants.

Lotus Place focuses on helping each person to fulfil their potential, and to access justice and healing from the effects of childhood abuse.

Across the last two decades there have been a number of inquiries that have looked into the history if the out-of-home care system in Australia in the 20th Century. For further information about the experiences of young people in care, those who have grown up to be the adults who are supported by Micah Projects, the following landmark reports are available:

- Bringing Them Home, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997)
- Commission of Inquiry into Abuse of Children in Queensland Institutions (1999)
- Lost Innocents: Righting the Record – Report on child migration (2001)
- Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children (2004)

The Royal Commission into Institutional Responses to Child Sexual Abuse has been operating since 2013 will conclude in December of 2017. It has issued a number of reports and one of its consultation papers is referenced in this submission.

We propose that the object of the RTI and IP acts are not being met. We propose that the object of the acts could be improved in relation to those who experienced institutional or other forms of out-of-home care, to redress harms identified by previous inquiries.

This submission outlines the challenges faced by those we support in their attempts to access information in the hope better understanding their personal history and to redress some of the impacts of the child welfare system that failed them. System based issues, barriers and inconsistencies are identified. We propose that it is the responsibility of the Queensland Government to find solutions to these problems.

Micah projects became aware that a review of some type was underway. Attempts to find out about this review via email and telephone were unsuccessful. The specifics of this review only recently came to our attention. We appreciate being given the opportunity to contribute to this review. Due to the limited time available to respond we have not been able to address each question individually.

Key Recommendations

- That the Right to Information Act 2009, the Information Privacy Act 2009, and Child Protection Act 1999 allow the provision of information in accordance to the principles of access and best practice guidelines contained in the *Access to Records by Forgotten Australians and Former Child Migrants: Principles for Records Holders and Best Practice Guidelines in providing access to records (2015)* document.
- That a dedicated unit to administer record requests by care leavers be established
- That a specific administrative request process be created for the request of records relating to a person's time in out-of-home care
- That the access to information for care leavers reflect the values and principles of Department of Communities Child Safety and Disability Services *Framework for Practice*
- That the findings of past and present inquiries which have identified the consequences of the a lack of personal, family and cultural knowledge for adults who experience institutional or other forms of out-of-home care be considered in decision making. To recognise the importance of information contained in records that have survived and that the recommendations of these inquiries continue to be implemented.
- Recognition that knowledge of a person's history, their family of origin and their ethnic heritage is a human right
- That impediments to realising the aims of the pro-disclosure principle that aspects of existing legislation and the reading of existing legislation create are identified and resolved
- It is important that decision makers for records applications have the ability to use discretion and have some flexibility as they fulfil their duties
- To eliminate the inconsistency between departments of the application of the IP and RTI acts for record requests
- That if putative father information exists, as generated in the application of the Infant Life Protection act 1905 and Children's Services Act 1965, this accessible to those who experienced institutional or other forms of out of home care
- That correspondence between RTI/IP Units and applicants be improved to improve clarity and to better suit the needs of the applicant

Department of Communities Framework for Practice

The Department of Communities have a framework for practice which outlines some of their key values, principles and approaches around working with young people. This framework is attached to this submission for reference. The individuals who are supported through Lotus Place were involved with child welfare departments which did not have such a positive and supportive framework.

The situation that care leavers currently experience when dealing with the Department around records access is contrary to the rights and philosophies of this framework. We recognise that there is good will and a desire by staff of the Department of Communities RTI/IP teams working towards pro-disclosure. However they face a multitude of barriers that hinder their ability to provide information in a pro-disclosure, 'push model' outcomes. This includes but is not limited to the Child Protection Act, the Right to Information Act, the Information Privacy Act, and most significantly the interpretation of the Hughes vs DOCS Office of the Information Commissioner decision of 2012.

The Forde Inquiry described an inadequate child protection system in Queensland and some of the consequences and failings of that system. The following list demonstrates ways that the barriers to access information from the Department of Communities in contrary to the approach ascribed in the Framework for Practice document.

Those who wish to access information who were care leavers in Queensland are faced with a situation that:

- does not strengthen their families
- does not assist in valuing family and connection
- provides a barrier to cultural integrity and knowledge despite recognising that it is central to children's safety, belonging and wellbeing
- does not assist with understanding the impact of the past
- is not able to operate with a focus on individual, family and community based knowledge due to the limitations placed on third party or 'shared information'
- limits former care leavers who were badly harmed by past child welfare systems to feel cared for or be able to reach their full potential

Principles of access: what is personal information?

The consultation paper for this review mentioned other reviews that have taken place around the country including one in 2016 in Victoria. Victoria is comparatively progressive around access to personal information and information about a person's family. At Micah Projects we support care leavers from all states and territories to access records associated with their time in care. There is variation between each state however Queensland stands out in terms of redaction and limits to the types of information that is available. Despite the principle of pro-disclosure being adopted in Queensland this principle is not evident when compared to former ward records provided by other states.

With consent of the care leaver concerned we can provide examples of former ward files from New South Wales and Victoria on the request of this review. These examples demonstrate minimal redaction approaches of equivalent departments in these states.

The present approach to privacy/confidentiality and the redaction of means that the people who we support to access records relating to their time in out-of-home care miss out on important information about themselves and their family. For people whose families were separated, and where that separation involved Governmental involvement in that separation, this information is vital in reconstructing a timeline of a person's childhood. Adult care leavers are denied information that is critical in understanding the most formative years of their lives, and the opportunities to reunite their families and identities are often severely compromised. In many cases the only holder of this information is the Department of Communities Child Safety and Disability Services.

Access to Records by Forgotten Australians and Former Child Migrants

The *Access to Records by Forgotten Australians and Former Child Migrants: Principles for Records Holders and Best Practice Guidelines in providing access to records (2015)* document was produced by the (Federal) Department of Social Services in consultation with a Records Access Working Group and the Find & Connect Advisory Group. The Records Access Working Group was made up of support services, representative organisations and state and territory governments. The Department of Communities Child Safety and Disability Services was invited to this group but did not participate.

The Principles and Guidelines were established from aspects of some of the recommendations of the 2004 Senate Inquiry *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*. These recommendations were:

- Supporting government and non-government agencies to agree on how care leavers, upon proof of identity only, can view all information relating to themselves and receive a full copy of such documents
- That records being provided free of charge, and
- Compassionate interpretation of legislation to allow information to be released to enable care leavers to identify their family and background.

Recommendation 18 of the report stated:

> *That the Commonwealth request the Council of Australian Governments to review all Federal and State and Territory Freedom of Information regimes to ensure that they do not hinder access by care leavers to information about their childhoods and families*

The principles are intended to create a framework for which access to records for care leavers.

The *Access to Records by Forgotten Australians and Former Child Migrants: Principles for Records Holders and Best Practice Guidelines in providing access to records (2015)* document is provided as an attachment to this submission. We request that these principles and best practice be considered in the review of the Information Privacy and Right to Information acts.

Past and Present Inquiries: identifying the need for proper record management and access

The 1998-1999 Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Inquiry), was a milestone for those who suffered in institutional care in Queensland in the 20th Century. Findings and recommendations of the report remain relevant in understanding the responsibility that government record holders have in addressing the needs of this group of people, redressing the harms done in the past and in not perpetuating these harms.

Recommendation 3 of the Forde Report (Chapter 5 p. 106) states:

> *That the Department notify all non-government organisations that have been involved in the care of children in Queensland that it is willing to accept any surviving records relating to State wards and that it will retain those records and provide the individuals and families concerned with access to them.*

This chapter found that many non-governmental institutions often failed to retain substantial collections of records. It stated that "It is acknowledged that there has been no legal requirement obliging non-governmental organisations to retain non-current records; however, it must now be recognised that there is a moral obligation to preserve and make available information that may assist former wards to reconstruct their personal histories." There is a moral obligation to preserve and make available information that may assist former wards to reconstruct their personal histories lies with government and non-government bodies.

Recommendation 40 suggested that a 'one stop shop' for victims of abuse in institutions be funded and assist with "advice regarding access to individual records, documents and archival papers". The support service (Lotus Place) is funded to assist survivors to access these records, yet the same department (and other departments including Department of Justice and Attorney-General), withhold information critical to a person attempting to reconstruct their personal history. Often one department may be the only repository of this information.

Redress is to remedy a past wrong and redress and restitution can take many forms. Access to information that may assist former wards to reconstruct their personal histories is a core component for redress for those adults who suffered in out-of-home care. The Forde Report recognised the power imbalance between victims and institutions. This imbalance is evident in the Right to Information and Information Privacy Acts, and the processed involved in each.

Extracted from the Forde Report (1999), Chapter 5 page 105:

> *5.10 Information Management: "In recent years there has been a greater awareness of the importance of providing former State wards with information about their time in care (Bringing Them Home 1997). Such information can help people to understand why they were placed in care, to deal with current personal issues that may have been the result of their time*

as wards, to re-establish contact with family members, to strengthen their sense of identity and to recover aspects of their family history. Much information can be made available for young people currently in the system or recently released from care, but for those who were wards prior to the 1980s the situation is less promising. For many in this latter group, the search for information about their past can be a painful and often fruitless experience. Indeed, the paucity of surviving records and the problems associated with locating such material have made the work of the Inquiry all the more difficult."

Record access did improved following the Forde Inquiry however much of this progress has been reversed. It is not clear what impact the separation into the IP and RTI Acts in 2009 has had on this. We have seen that the Hughes vs DOCS Office of the Information Commissioner (OIC) decision and the interpretation of said decision has been a large contributing influence in the retreat of pro-bias disclosure principle. Where other States are being more open, supportive and forthcoming with information for former wards, we have seen Queensland moving in the opposite direction.

The Royal Commission's *Records and recordkeeping practices* consultation paper is attached to this submission for your consideration.

Royal Commission into Institutional Responses to Child Sexual Abuse *Records and recordkeeping practices* consultation paper September 2016 identified the "trauma that poor records and record keeping can cause them" (survivors of childhood sexual abuse in an institutional setting). The Commission had heard from victims of the "profoundly damaging effect poor records and record keeping practices can have for individuals".

In keeping with previous inquiries, the Royal Commission identified the profoundly damaging effects of poor quality records included

- Disconnection from family and community
- Lack of knowledge about personal and family medical histories
- Loss of ethnicity, language and culture
- Loss of childhood experiences and memories
- Diminished self-esteem and send of identity

This review of the IP and RTI acts and their administration is an opportunity to recognise these impacts and to improve the experience of care leavers.

The Commission stated that it considers:

"…that good records and recordkeeping practices are integral to the realisation of many of the rights of children enshrined in the United Nations Convention on the Rights of the Child (UNCROC), to which Australia is a State Party."

The human rights of adults who spent time in institutional and other forms of out-of-home care

Australia is a party to the Convention on the Right of the Child (UNCROC). The UNCROC sets out civil, political, economic, social, health and cultural rights of children. The Forde Report, as well as a number of other reports and inquiries identified that the rights of the children in care, who are now adults, were systematically not maintained or respected. In many cases where these rights were not upheld during a person's childhood, barriers exist that maintain that loss into adulthood.

We believe that the rights outlines in the UNCRC should apply to adults who had their rights compromised as a consequence of the out-of-home care system. It could be suggested that the word 'children' in the UNCROC could be replaced by 'adult survivors of the out-of-home care system'.

Following are short summaries of some of the articles of the UNCROC which are relevant to information provision and the values and principles that the provision of information can uphold.

Article 7 of the UNCROC says that children have a right to know their parents.

Article 8 says that Governments should respect a child's right to a name, a nationality and family ties.

Article 13 says that children have the right to get and share information as long as the information is not damaging to them or to others.

Article 39 says that children who have been neglected or abused should receive special help to restore their self-respect.

Access to information relating to an adults time in institutional or out-of-home care is important to upholding human rights of that individual. The present state of information provision is contrary to the rights of adults who had these rights abused during their childhood in Queensland Institutions.

The importance of access to records to redress previous harm done by the child welfare systems of the time

Many of those who experienced out of home care were harmed as a result of the inadequacy and implementation of the child protection legislation of the time. The barriers to accessing information in the present is greatly impacted by the present Child Protection Act, the Information Privacy Act, and the interpretation of the Hughes vs Department of Communities Child Safety and Disability Services decision of the Office of the Information Commissioner.

Lotus Place assists people to make Information Privacy applications. We make applications to Department of Communities Child Safety and Disability Services, less frequently to Department of Justice and Attorney-General (in relation to those who were subject to Care and Control orders who may have been at institutions such as Westbrook, Wilson Youth Hospital, Riverview Training Farm and Kalimna), and occasionally to divisions of Queensland Health (Wolston Park). Following the Hughes Office of the Information Commissioner decision, the application of the 'solely' concept, we have no longer been able to make successful RTI applications as access to information that isn't 'solely' that of the applicant is denied. In practice Right to Information applications are not able to be made to meet the needs of those we support.

RTI applications are what is often necessary to find out about the origins of a deceased parents care history in order to find out an original birth name which can lead to the discovery of a person's family history and cultural identity. For example, attempts to establish indigenous heritage in some cases have hit dead ends. The sole repository of the information required is the Department of Communities Child Safety and Disability Services. They are unable to provide 'shared information' and/or information about a third party. This seems to be largely due to the interpretation of the Hughes vs DOCS decision.

Resolving issues around access to information does not fall on one organisation or department. This is a shared responsibility. There are numerous acts, regulations and processes that cumulatively form barriers to the access of information. The importance of accessing information around a person's time in care, the reasons that they entered care, the ability to identify their personal history, their family history and their cultural history has been identified in previous inquiries.

The decision letters that are received through IP applications name the pro-disclosure bias stating that under Section 64 of the IP Act the intention is that an agency should give access unless providing this information would be contrary to the public interest. We understand that public interest does not relate to the 'public' as much as it relates to named family members. Staff at Lotus Place are in the position of having to explain these decisions and it is very difficult to explain to a person that the reason that they went into care is redacted because this information is not in the 'public interest'. This type of information is innately personal to the applicant. All of the information held about a person's care history or contact with a department is of

a very personal nature to the person concerned. This is recognised by the equivalent Departments in NSW and Victoria, and in the case of those states we see very little redaction.

Hughes Vs Department of Communities Child Safety & Disability Services

Due to the late discovery of this consultation we do not have the opportunity to thoroughly unpack the Office of the Information Commissioner's Hughes vs Department of Communities Child Safety and Disability Services appeal decision of 2012 and the consequences that it has had for care leavers.

In short, we believe that the scenario involved with this case has very little correlation to the experience of the group of people that the Forde Inquiry reported on. We do not necessarily disagree with the decision in this case but have concerns on the impact that it has had for the people who we support.

The outcome has meant that 'shared information' has become unavailable. This includes information such as an address that more than one person lived or a person's parents name when knowledge of the parent has been established.

We have encountered situations where a letter that an applicant wrote when they were a child is redacted, despite the applicant themselves being the author of this letter. Access to deceased parents care records, particularly for the purposes of solving family history mysteries was something that was available before the interpretation of this Office of the Information Commissioner's decision was made.

The concept of 'solely' that we have faced following this appeal decision and its application has had the unintended consequence of shutting down the access to information that people need to be able to begin to address their care experience.

Often the only place that key information exists is within the control of the Department of Communities Child Safety and Disability Services. Examples of this include reasons a child or children entered the out of home care system, where intergenerational care experience existed there can be information in a deceased parents care files that are key to identifying the identity of grandparents identity. The Hughes decision has stopped access to this information.

It may be necessary to amend legislation to have a specific reference to care leavers.

The Child Protection Act

It has been well established that adults who spent time in care as children in the 20th Century were let down by church and government institutions who were responsible for their care. One consequence of this is that trust of governments and institutions can be non-existent. This is understandable when you learn of their experiences and the systematic failures that many have faced. Heavy redaction reinforces the distrust of government institutions. We have heard that people believe that the cover-up of their care history is ongoing, that their lives and knowledge of their own history continues to be controlled by other forces. There is a feeling that they are entitled to know about their own life and this is being held from them. Due to inappropriate language in correspondence the reasons given for redaction of information are often not very well understood. Unsurprisingly this does nothing to improve the trust that care leavers have in Government institutions.

A support worker at Lotus Place has wondered if it is possible to consider that the common question of 'why was I placed into care' be answered in general terms where redaction has removed the ability answer this question. We advocate strongly for pro-disclosure principles however in some rare cases a summary of redacted information that describes the reasons why someone when into care may be provided.

Process challenges: Identification

Identification demands can be a challenge for some adults who spent their childhoods disconnected from family due to the nature of the past child welfare system.

It is important to incorporate a degree of flexibility around identity documents in the cases where this has been problematic. We have supported people who changed their name by deed pol in an era before these changes are registered at Births Deaths & Marriages (Department of Justice and Attorney-General). We have supported individuals who have gone by a number of unofficial names such as foster parent's surnames and in one recent case a foster parent asked the five-year-old girl what she wanted her name to be, had her baptised and that became her first name for a period of time (this was in the 1970s). We have supported people who have had a number of name changes including marriages (formal and informal) since leaving care and accessing required identity documents has been costly, difficult or in cases when changes have been informal providing linking identification can me impossible.

We believe that discretion should be an option for decision makers for every type of decision in each process to be able to account for circumstances such as those listed above.

Language in Correspondence

We find that correspondence from RTI/IP Units to be confusing for Micah Projects staff. The people who we assist to access records often had compromised educational outcomes as a direct consequence of their time in care. The attachments that come with the records and the decision letter which contains tables of which section of the act applied to redactions on particular pages has been reported to us that it is unfriendly, confusing and a waste of paper. The explanations of the applicable sections of the acts involved are likely required by law but they are rarely understood and therefore do not achieve their purpose.

We would hope that it would be possible in Queensland for more appropriate and effective communication from the decision makers to the applicants. Correspondence is complex and full of legalese. Plain language is important and has been achievable by equivalent Departments in Southern States.

Language such as 'refuse access on the basis that the files cannot be found or does not exist' is upsetting. 'Unable to provide or locate' is the truth in this type of circumstance and would be a way to state this outcome without negatively reinforcing the power dynamic of the department and the applicant. 'Refusal' is a powerful term which does nothing to improve public relations between the Department and the applicant, in this case care leavers. It can be upsetting for the applicant and we know that it had resulted in the IP/RTI units receiving abusive phone calls. This is an example where the impact of correspondence can be improved for both the applicant and Departmental staff simply and easily by more suitable and meaningful language.

An applicant has received letters that say that an application is not compliant which has been accompanied by four pages which consisted of a letter stating the terms of the application and that it is not compliant, explanations of what a compliant application is. It was accompanied by an additional one page fact sheet 'Making a compliant application Information Privacy Act 2009'. This also arrived with a nine-page Information Pack. In this case fourteen pages were sent to the applicant, none of which identified what it was that made the application non-compliant. This could have been achieved in two sentences.

A clearer, more efficient and more understanding approach to communication in correspondence is required. The tendency to default to a discourse full or legalese can make some of these letters and supporting documentation read more like terms and conditions document that does not achieve its purpose rather than being a simple and effective request for more information.

Explanation of the ‘types’ records

A suggestion that has been made is that a document be provided that gives and explanation of how record keeping was done during the relevant period. The decision makers understand these types of records more than anyone else does. The meanings of the file names (F - Family files as an example), or why it may be that there are three copies of the one document. This would be an explanation of the kinds of records that are held and the meaning and purpose of these records. This isn’t an explanation of the personal content provided in each application.

This would more effectively meet the needs of the applicants that we assist with.

Inconsistency and multiple applications

There are inconsistencies between rights to accesses information between different acts and depending on who the applicant is.

We have supported adults who were in care and not adopted, but who have had siblings adopted. It has been the case that the siblings can get identifying information about an adoptee but the adoptee cannot get identifying information about the siblings. We recognise that accessing information through Adoption Services Queensland is an administrative process.

A past care experience should be considered holistically and currently in a Right to Information application, adoption and child protection are considered as distinct periods of time. The letter of authority that is provided by Adoption Services Qld gives the individual the ability to access identifying information in documents associated with the Adoption Act, but not the Child Protection Act. Due restrictions within the Child Protection act which have been compounded by the Hughes decision, important information about a parent and 'shared' information is unavailable from documents that are associated with the period of time associated with the Child Protection act. The letter of authority provides access to a limited selection of the documents relevant to the early history of this individual and in some cases more information exists but is not available. This is a further example where the Child Protection act which is designed to protect the child, has restricted consequences for past care leavers.

A Right to Information application involves a cost. One of the recommendations of the 2004 Senate Inquiry *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* was that records be available at no cost to the care leaver.

When the goal, as identified by a number of inquiries and sanctioned by the State Government as part of service agreements, is to reunite family members fractured but the previous care system and this information is held but not made available due to the Information Privacy act, the Right to Information act, the Child Protection act and principles of accessed informed by the interpretation of Office of Information Commissioner decisions the barriers to access of information about such critical periods of a child's life are inflexible and often quite impenetrable. The impervious nature of these barriers have been contributing factors as to why there have not been more appeals made against RTI/IP decisions.

We understand that each Department in Queensland should be working to the same or similar guidelines around approaches to redaction. We support people who were involved in both Care and Control and Care and Protection orders. We have therefore made Information Privacy applications to Department of Justice and Attorney General (Care and Control) and Department of Communities Child Safety and Disability Services (Care and Protection). We have evidence of the exact same documents being provided to an individual which contain vastly different approaches to redaction. Examples of this difference can be provided on request. This incongruence highlights how poorly the Hughes Office of Information Commissioner decision has been applied to records held by the Department of Communities.

The *Document Access to Records by Forgotten Australians and Former Child Migrants* which was published by the Federal Department of Social Services outlines a number of issues associated with record applications for care leavers. It also contains suggested best practice guidelines for access to records and a list of principles for access to records. There is variance between different States and Territories in how successfully their systems match these principles however in our experience Queensland stands out from the others. One method of measuring the application of a pro-disclosure bias principle or 'push model' of information release could be by comparing its application in Queensland and other states. Through our work we have seen a great difference between Queensland and other states.

Another document attached to this submission *is Records and Rights of the Child: Report of Focus Discussions*. This is part of a project of the eScholarship Research Centre located at the University of Melbourne. This is a report on contributions of focus groups in a number of states and in the ACT and participants included representatives from government agencies, service providers and adults with a lived experience of a time in care. The comments and conclusions within this document address a number of the questions of this IP and RTI act review. They also illustrate the variance if access of information from state to state.

A designated Care Leaver Records Unit in Queensland

We propose that a specific unit or team was established within the Department of Communities Child Safety and Disability Services to handle care leavers record requests. Should that not be possible, a customised application form and language friendly templates for correspondence would be desired. An administrative request process may be a solution to the applications that are made having to be filtered through a number of acts. This would also support the principle that formal application be a last resort. This would be very beneficial for care leavers themselves, but would also provide better outcomes for Department staff who amongst other things will likely have to deal with fewer upset applicants and miscommunications due to clearer processes and the use of more common language.

The New South Wales team is called the Care Leaver Records Access Unit.

The Victorian unit is known as the Care Leaver Records Service, previously part of Family Information Networks and Discovery.

Information Collected through the Infant Life Protection Act

A document that the Department of Communities Child Safety and Disability Services has sole responsibility of are the documents associated with the birth of an unmarried mother under the Infant Life Protection Act. In some cases this survey is called 'History For Investigation'. These are questionnaires that were completed when a child was born to an unmarried mother and these children were classed as 'illegitimate'.

Many of the adults who we support were born in this situation as welfare supports were limited and society deemed single parents as unable to care for their children. It was the case for a long time that even if both parents wanted the father to be named on a birth certificate this was not possible if they were not married. There were other reasons why a father may not have been able or willing to be recorded on a birth certificate. The putative father's name and other details are often found on these Infant Life Protection Act documents. This usually the only place that this information is located. It could be argued that a husband who is named on a birth certificate, despite a marriage could also be considered as a putative as marriage in itself is not concrete evidence of paternity.

Understanding the consequences of the attitudes and systems of the time through the decades when this putative fathers name was collected but unable to be recorded on the 'official record' contributed to those who were impacted by past forced adoption practices being able to access identifying information about a putative father. An amendment in 2009 has made this access possible. It is arguable that records of putative fathers could be more reliable than the information in the official record.

Some of those who we support were involved in adoption orders. In these few cases they have the right of access to this information if it is recorded. For most of these people they do not. Their ability to identify their genetic and cultural identity is withheld. This group of people, as with those affected by past forced adoption practices, had their knowledge of their family history and cultural heritage compromised by Government intervention and societies attitudes of the time (particularly around the concept of illegitimacy). Many of those who entered the out-f-home care system also lost knowledge of their family connections, family history and cultural identities. The Queensland Government is the sole repository of this information and unless an individual was subject to an adoption order then there is no avenue for this information to be accessed. There is also no certainty that this information will be kept in perpetuity when it is over 100 years old and considered 'historical'.

This information exists and there is no mechanism for it to be accessed at this time.

This is another example where the State Government who had provided funding to a service such as ours, as a consequence of inquiries such as the Forde Inquiry, to assist people to discover the reasons that they went into care, to better understand their care history, to begin to come to terms with their experiences, to reconnect families

and to help care leavers to be able to reconnect with their family history and cultural heritage. We are funded to do these things by the State Government and yet the State Government withholds information that is vital to achieving those goals. This compounds the trauma already experienced by those who have been greatly impacted by the out-of-home care system.

Attachments

The following documents have been attached to this submission:

- Department of Communities Child Safety and Disability Services Framework for Practice
- Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Records and record keeping practices (September 2016)*
- Australian Government Department of Social Services, *Access to records by Forgotten Australians and Former Child Migrants (November 2015)*
- eScholarship Research Centre, Setting the Record Straight for the Rights of the Child, *Records and Rights of the Child: Report of Focus Discussions (2017)*

Lotus Place
46 Cleveland Street, Stones Corner Q 4120
PO Box 3449 South Brisbane Q 4101
Ph 07 3347 8500 or Find & Connect 1800 16 11 09
lotus@micahprojects.org.au | www.lotusplace.org.au
www.micahprojects.org.au

Our hope is to create justice and respond to injustice at the personal, social and structural levels in society.

We work collaboratively with people who experienced abuse and neglect in institutions, foster care and detention centres. We acknowledge their courage as they move from adversity to hope in seeking public recognition, justice and redress.

Funded by
Queensland Government

Strengthening families | Protecting children

Framework for practice

Best hopes Safety Belonging Wellbeing

Our vision

Queensland children and young people are cared for, protected, safe and able to reach their full potential.

Values

- Family and community connection
- Participation
- Partnership
- Cultural integrity
- Strengths and solutions
- Fairness
- Curiosity and learning

Principles

- We always focus on safety, belonging and wellbeing
- We recognise that cultural knowledge and understanding is central to children's safety, belonging and wellbeing
- We build collaborative working relationships and use our authority respectfully and thoughtfully
- We listen to children's, families' and communities' views and involve them in planning and decision making
- We build and strengthen networks to increase safety and support for children, young people and families
- We seek to understand the impact of the past, but stay focused on the present and the future
- We are rigorous and hopeful in our search for strengths and solutions
- We critically reflect on our work and continue to grow and develop our practice

Knowledge

- Individual and family based
- Community and cultural based
- Research based
- Practitioner based
- Systems based

Skills

- Engagement — the development of effective working relationships
- Assessment — critical reflection and robust decision making at key decision points
- Planning — collaborative process for building rigorous change plans
- Process — focus on processes that support and reinforce the practice

Royal Commission
into Institutional Responses
to Child Sexual Abuse

CONSULTATION PAPER

Records and recordkeeping practices

SEPTEMBER 2016

ISBN 978-1-925289-79-4

Contact us

Enquiries regarding the licence and any use of this document are welcome at:

Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney, NSW, 2001

Email: mediacommunication@childabuseroyalcommission.gov.au

Consultation Paper

Records and recordkeeping practices

September 2016

Contents

Executive summary

Since the Royal Commission began work in 2013, many victims and survivors of child sexual abuse in various institutional contexts have told us of the distress, frustration and trauma that poor institutional records and recordkeeping practices have caused them. We have heard examples where records were either never created, or contained only limited, inaccurate or insensitive content. There have also been instances of records being lost or destroyed, and of where it has proven difficult to access records that do exist. The impact on victims and survivors in each of these circumstances can be profound, including:

- eroding victims' and survivors' sense of self, their capacity to establish that they had been abused and their confidence in disclosing abuse
- preventing identification of risks and incidents of child sexual abuse
- delaying or obstructing responses to risks, allegations and instances of child sexual abuse
- obscuring the extent of institutional knowledge of abuse
- hindering disciplinary action, redress efforts, and civil and criminal proceedings.

The problematic records and recordkeeping practices of many older institutions that cared for or provided services to children have been examined and exposed in several earlier inquiries, including the *Bringing Them Home*, *Lost Innocents* and *Forgotten Australians* reports. Each of those reports made recommendations for improvement to recordkeeping practices and processes for access to records. Nevertheless, our inquiries, and the accounts that victims and survivors have shared with us, have made plain that problems with institutional records and recordkeeping practices are not confined to the past, and that the practices and processes of contemporary institutions require improvement to better meet the needs of victims and survivors.

In this consultation paper, we examine the records and recordkeeping practices of both older and contemporary institutions to identify primary areas of concern. Drawing on our analysis and discussion, we then propose five high-level principles to help improve institutional practices and the experiences of victims and survivors. We also consider the utility of a sixth principle directed at enforcement of good recordkeeping practices, and examine whether a records advocacy service would be useful for victims and survivors.

Records and recordkeeping practices in relation to child sexual abuse

The creation of accurate records and the exercise of good recordkeeping practices by institutions that care for or provide services to children play a critical role in addressing, identifying, preventing and responding to child sexual abuse. They are also significant in alleviating the impact of child sexual abuse for victims and survivors. Despite this, problems with the records and recordkeeping of institutions have arisen directly or indirectly in almost all of the Royal Commission's case studies.

We have seen numerous examples of poor records and recordkeeping practices in both historical and contemporary records, and in a wide range of sectors. Some examples of the poor practices we have encountered include:

- no records being created
- records being incomplete or inaccurate or containing insensitive content
- records being improperly maintained, including by way of inappropriate indexing and storage
- records being lost or misplaced
- records being destroyed.[1]

In addition, access to institutional records has been a recurring theme for victims and survivors of child sexual abuse in a range of institutions and over several decades. Lack of support and guidance, excessive delays, prohibitive costs, inconsistencies in law and practice, refusal to release and redaction of records have all been raised with us as issues affecting victims' and survivors' personal wellbeing and ability to hold institutions to account.

The fact that we have found poor records and recordkeeping practices dating from as early as 1919 to as recently as the past five years, and in sectors ranging from out-of-home care to local recreational organisations and sports clubs, indicates to us that the creation and management of accurate records are systemic and enduring problems. Likewise, the fact that victims and survivors have told us they are still experiencing considerable difficulty and distress in accessing records from a range of institutions also indicates that problems in access have not been overcome by reforms in response to recommendations of earlier inquiries.

The way forward

We consider that the creation and management of accurate records by institutions that care for or provide services to children is critical to child protection and institutional accountability. It is also in the best interests of the children who engage with such institutions.

To assist institutions to embrace and integrate the idea of records as core business and in the best interests of the child, we have developed five high-level principles directed at key aspects of records creation and management. Our five proposed principles are:

1. **Creating and keeping accurate records is in the best interest of children.**
2. **Accurate records must be created about all decisions and incidents affecting child protection.**
3. **Records relevant to child sexual abuse must be appropriately maintained.**
4. **Records relevant to child sexual abuse must only be disposed of subject to law or policy.**
5. **Individuals' rights to access and amend records about them can only be restricted in accordance with law.**

The principles are discussed in further detail in Chapters 4 and 5. We welcome the views of all interested parties on each of these five principles, and the specific questions posed in relation to each principle in the body of the consultation paper.

In addition to the five principles, we are considering whether a sixth principle directed towards the enforcement of the five principles is needed. This is discussed in Chapter 6, along with the utility of

establishing a records advocacy service to provide advice and support to victims and survivors seeking access to institutional records.

We understand that issues related to records, recordkeeping and access to records are of significant concern to many individuals, institutions and other stakeholders, and can be complex and sensitive. All submissions are welcome, and can be made anonymously.

We invite all interested parties to make written submissions in response to the issues raised and questions posed in this consultation paper. Written submissions should be made by Monday, 3 October 2016:

- electronically to records@childabuseroyalcommission.gov.au
- by mail, addressed to GPO Box 5283, Sydney NSW.

1. Introduction

The Royal Commission has been examining the records and recordkeeping practices of institutions that care for or provide services to children, and the particular importance of institutional records and recordkeeping for victims and survivors of child sexual abuse.

The creation of detailed and accurate records and the exercise of good recordkeeping practices are both important elements of any institution's good governance. They also promote consistency of practice, retention of organisational memory, and accountability and transparency in institutional operations and decision making.[2] In the context of institutions that care for or provide services to children, and of child sexual abuse in institutional settings, good records and recordkeeping practices can have additional significance. They can play a central role in helping to create environments in which:

- there are clear expectations about what sorts of records need to be created (including records about risks, allegations and instances of child sexual abuse and how they are responded to), what detail they must include, how they must be kept and for how long
- consistent practice in recordkeeping is established
- records (including complaints) relating to seemingly minor or isolated incidents are available to be viewed holistically and provide a cumulative picture of potential risks to children
- accurate records are created and retained for use in complaints handling, redress, civil litigation and criminal proceedings to promote just outcomes.[3]

Our public hearings, case studies, private sessions and stakeholder consultations have shown that a number of institutions within our Terms of Reference have not created accurate records or exercised good recordkeeping practices. They have also indicated that the creation and management of good records remains an area of concern for institutions operating today. We have heard compelling accounts of the consequences that can arise from poor records and recordkeeping practices, including that such practices:

- inhibit good governance
- contribute to inconsistent practices and loss of organisational memory
- hinder identification of perpetrators, as well as victims and survivors
- delay or obstruct responses to risks, allegations and instances of child sexual abuse
- prevent or frustrate disciplinary action, redress efforts, civil litigation and criminal proceedings. [4]

We have also heard of the significant difficulties that victims and survivors of child sexual abuse have faced in seeking access to records made about themselves and their childhood experiences, and the trauma that poor records and recordkeeping can cause them.

This consultation paper has been developed to:

- provide examples and discuss the consequences of poor records and recordkeeping practices in the context of institutional child sexual abuse, in relation to both historical and contemporary records (respectively, records created before and after approximately 1980)

- outline the concerns that victims, survivors and others have raised with us about current recordkeeping obligations, policies and practices
- outline the difficulties and obstructions that victims and survivors can face in seeking to access records made about them by institutions they were involved with as children.

We propose five high-level principles about records for institutions within our Terms of Reference to adopt. These principles should facilitate the creation and management of records relevant to child sexual abuse in a way that will promote child safety, institutional accountability and better outcomes for victims and survivors of child sexual abuse.

We conclude by exploring the possibility of a sixth principle directed at the enforcement of the first five principles, and the establishment of a records advocacy service to assist victims and survivors to navigate complex records access laws and policies.

We have opted to develop principles rather than recommend large-scale legislative or policy reform, noting the considerable variation in the regulation, size, function, resources and responsibilities of institutions within our Terms of Reference. The principles are intended to:

- complement existing law and practice
- promote and guide institutional best practice
- inform future policy development and law reform.

2. Setting the scene

2.1 Defining records and recordkeeping

What constitutes a 'record' can vary depending on the context in which it is created, and who may have an interest in it. In the context of child sexual abuse, what victims, survivors, law enforcement officials and others consider a record may be very different from those in other contexts.

The *Australian Standard on Records Management, AS ISO 15489.1-2002* (published in March 2002) defines a record as:

> information created, received, and maintained as evidence and/or as an asset by an organisation or person, in pursuance of legal obligations or in the transaction of business or for its purposes, regardless of medium, form or format.[5]

In the context of child sexual abuse and records about children, this definition is useful in that it encompasses both physical records,[6] and digital records,[7] as well as other items or articles such as audio and visual recordings, photographs and art works. It also has limitations as it fails to capture the personal and emotional significance that records relating to childhood and child sexual abuse can have for victims and survivors.

Although the terms 'recordkeeping' and 'records management' are sometimes used interchangeably, we consider that there is a distinction between the two. Recordkeeping comprises various functions to do with the creation, use and administration of records, of which 'management' is one component. Recordkeeping can be defined as:

> the making and maintaining of complete, accurate and reliable evidence of business transactions[8] in the form of recorded information. Recordkeeping includes the creation of records in the course of business activity, the means to ensure the creation of adequate records, the design, establishment and operation of recordkeeping systems and the management of records used in business (traditionally regarded as the domain of records management) and as archives (traditionally regarded as the domain of archives administration).[9]

Records management is defined within the International Standards' *Information and Documentation – Management systems for records* (*ISO 30300:2011*) as:

> the field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition [disposal] of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records.[10]

Good recordkeeping typically involves several interrelated processes. For our purposes, we have discussed the processes in terms of three 'stages' that occur over the life of a record: creation, maintenance and disposal.

Stage 1: Creation	Records may be created as a part of routine business processes (for example, a letter or email), or after an event occurs or a decision is taken (such as in a report, minute or case file note). In creating a record, the author should be mindful that a good record needs to: • describe what happened, when and who was involved • be complete, accurate and reliable • reflect the purpose for which it was created • be detailed enough to suit the context and circumstances, and to be understood by others • be created close to the event to ensure they are accurate and reliable.[11]
Stage 2: Maintenance	The use, upkeep, filing, indexing, organising and preservation of records is undertaken in a way that ensures they: • can be proven to be genuine and accurate • are complete and unaltered • are secure from unauthorised access, alteration and deletion • can be retrieved and accessed • can be linked with other, associated records.[12]
Stage 3: Disposal	The authorised destruction of a record, or its transition to an archive for permanent retention. Records may also be disposed of by way of unauthorised or unintended destruction.

In our inquiries we have found that problems can occur at any or all of these three stages of the records lifecycle. We have also found that the associated issue of access to records by parties other than the record creator or holder (typically at Stage 2 or 3 of a record's life) is an enduring concern.

2.2 Why we have looked at records and recordkeeping

We have examined issues related to the creation and management of records for two reasons. First, the experiences of numerous victims and survivors of child sexual abuse in institutional contexts have made it plain to us the profoundly damaging effect poor records and recordkeeping practices can have for individuals. Secondly, from the work we have done, it is evident to us that poor records and recordkeeping practices pose serious risks to prevention and identification of, and appropriate responses to, child sexual abuse. In this respect, records and recordkeeping practices fall within our Terms of Reference (annexed to this consultation paper).[13]

Impact of poor records and recordkeeping for victims and survivors

Many victims and survivors of child sexual abuse in various institutional contexts have told us of the distress and trauma they have experienced due to poor institutional records and recordkeeping practices. The absence of records, paucity of detail, inaccurate or insensitive content, and the loss or destruction of records, as well as significant difficulties experienced when seeking access to records have all been raised with us as significant concerns. While each of these issues can individually cause distress, their cumulative effect can be devastating.

Many victims and survivors have told us that the absence of records, or lack of detail in records, created about them and their sexual abuse as children has made seeking redress difficult or impossible, and compounded their sense of disempowerment and being disbelieved. Others, particularly those who have spent time in children's homes, orphanages, residential care facilities and other forms of out-of-home care (OOHC), have told us that the absence or poor quality of records created about them has had profoundly damaging effects including:

- disconnection from family and community
- lack of knowledge about personal and family medical histories
- loss of ethnicity, language and culture
- loss of childhood experiences and memories
- diminished self-esteem and sense of identity.[14]

For those who grew up away from their families, the absence of the records of childhood that many people take for granted, including birth certificates, photographs, artworks, school reports and medical histories, can have catastrophic effects. Many victims and survivors have told us that, without typical childhood records and mementos, they feel lost, isolated, incomplete, and that their childhoods were meaningless or insignificant.

Significance of records and recordkeeping in institutional conduct and accountability

The creation and management of accurate institutional records play an intrinsic role in preventing and identifying risks and instances of child sexual abuse, as well as in responding to those risks and incidents. The lack of institutional records, or the existence of records containing inaccuracies or only scant detail, have been raised in many case studies the Commission has undertaken to date. We have seen clear examples of absent or inaccurate records:

- hindering identification and prevention of child sexual abuse
- delaying or obstructing identification and removal of perpetrators
- misconstruing or misrepresenting grooming and other abusive behaviours
- minimising or obscuring the extent of institutional knowledge of child sexual abuse.

We have also heard from many victims and survivors, as well as institutions themselves, that accurate records and good recordkeeping practices can play a central role in:

- providing accurate and complete pictures of individuals' and institutions' conduct
- enabling risks and incidents of child sexual abuse to be identified and appropriately responded to
- providing material to assist in complaint handling, disciplinary action, redress, and civil and criminal proceedings
- alleviating the impact of abuse on victims and survivors by providing historical acknowledgement of their experiences.

Furthermore, we consider that good records and recordkeeping practices are integral to the realisation of many of the rights of children enshrined in the United Nations Convention on the Rights of the Child (UNCROC), to which Australia is a State Party. In particular, the creation and management of accurate and detailed records are inherent to children's rights to identity, nationality, name and family relations.[15] As our discussion below demonstrates, they can be also

central to the rights of children to be protected from all forms of physical, mental and sexual abuse, as well as the identification, reporting, investigation and treatment of, and response to such abuse.[16]

3. Historical records

Recognition of the significance that institutional records relating to children and child sexual abuse can have has developed gradually. Before the 1980s, most of the institutions within our Terms of Reference were not under any statutory legal obligation to create or maintain particular records about their care of, or provision of services to, children. While some older institutions had their own recordkeeping policies and practices[17], our case studies have shown that records created before the 1980s (historical records) were often of low quality in comparison to what is expected today, and that the recordkeeping practices of this era were often ad hoc and unsophisticated.

We have found that historical records and recordkeeping practices often varied considerably between public and private organisations, in the types of institution and even in institutions within the same sector (for example, schools or residential care). This chapter explores the sorts of issues we have identified with the creation, maintenance and disposal of historical records.

3.1 Creation of records

We have found that creation practices for records were poor at many institutions in the past. Without any obligation or expectation to the contrary, many of these institutions created few records, or only created records about, or useful in relation to, their own operations. Institutions sometimes did not create records about the children in their care, or only created records with minimal and sometimes inaccurate or insensitive content.

Total absence of historical records

The total absence of historical institutional records about children or that relate to child sexual abuse in institutional contexts have been lifelong concerns for many of the victims and survivors who have shared their stories with us, particularly those who spent time in residential care facilities.

This absence of any records has caused serious and enduring trauma for many victims and survivors, considerably diminishing their sense of self and causing loss of identity and history. The absence of records particular to child sexual abuse has had additional adverse consequences, frustrating victims' and survivors' efforts to:

- prove their abuse occurred
- identify those responsible
- seek redress or pursue civil litigation
- hold institutions and individuals accountable.

The lack of any institutional records about the lives and experiences of children under their care was raised with us by a large number of victims and survivors in private sessions, and has also arisen in several case studies. We have heard examples of institutions denying that particular individuals were ever in their care due to the absence of records[18], as well as one case of an institution claiming an alleged perpetrator never worked for it because the institution had kept no employment records.[19] Several care leavers (persons who have spent time in OOHC as children) have told us that their whole childhoods spent in care were undocumented, with some victims never even issued a birth

certificate.[20] For these individuals, the absence of any records about their early lives has had profoundly detrimental effects, including:

- loss of identity and childhood memories
- disconnection from family, ethnicity, language and heritage
- loss of knowledge about family/hereditary medical histories
- preventing or delaying applications for passports.[21]

Absence of records relevant to child sexual abuse

The absence of institutional records relating to child sexual abuse has been a recurrent concern. Victims and survivors of child sexual abuse in various institution types have told us of their surprise and dismay that records about their abuse were never created, even where they disclosed the abuse to institutional staff or when the institution in question had policies requiring records be kept. [22] Several of our case studies provided examples of institutions failing to document:

- children's disclosures
- suspicions and allegations raised by staff, volunteers and others
- admissions of child sexual abuse by perpetrators.[23]

Some examples are discussed below, in each of which there seemed to be, if not a deliberate unwillingness, at least some apathy about the creation of records that appropriately acknowledged and responded to child sexual abuse.

Case Study 5

In *Case Study 5: Response of The Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland* (Case Study 5), we examined how The Salvation Army (Eastern Territory) responded to the sexual (as well as physical and psychological)[24] abuse of boys in four children's residential facilities (the Homes) it operated between the 1950s and the early 1970s. Detailed records of the homes or of individual boys were either not kept or were not available to us.[25] Records about the sexual abuse of the boys in the facilities were also very limited.[26] In relation to multiple allegations of child sexual abuse made against two particular officers, we found that:

> Virtually no personnel records exist which record complaints or reviews of the officers' performance [and] … [t]here were no written records of complaints against [two staff members] who were the subject of a considerable number of allegations of physical and sexual abuse.[27]

Without records of all complaints received, the institution was unable to accurately determine how prolific the abuse was, and the extent of abuse perpetrated by particular individuals.[28]

Case Study 11

Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School (Case Study 11) is also illustrative. Before the public hearing, the Christian Brothers produced a significant number of records in response to summons, some of which documented child sexual abuse in the four institutions examined (all in Western Australia), dating from 1919. By the 1960s, although allegations of child sexual abuse remained frequent, very

few records were being made to document those allegations. A summary prepared by lawyers for the Christian Brothers noted that in hundreds of pages of Provincial Council minutes dating from 1959 there was 'no mention of any report of abuse of children or immorality involving children'.[29] The lawyers themselves concluded that this 'suggest[ed] that … there may well have been some decision made in the late 1950's [sic] not to record these matters.'[30]

Case Study 13

In *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton* (Case Study 13), we examined allegations of sexual abuse of students in several Marist Brothers schools in the Australian Capital Territory, New South Wales and Queensland. We found that, 'Before 1983, there was no evidence that the [Marist Brothers] Provincials had a practice of keeping written records of allegations against Brothers or admissions by them of child sexual abuse'.[31] We also found, specifically, that the Sydney 'Provincial had a practice of not keeping records of complaints of sexual abuse against Brothers'.[32]

In relation to Brother Chute, a prolific abuser of children over three decades, we found that:

> The Marist Brothers kept no written record of these accumulated allegations of Brother Chute's repeated offending conduct.[33]

Content of historical records

Not all older institutions neglected to create records about children under their care or the sexual abuse of those children. In some cases, older records contained many details about the individuals they discussed. For example, the 'Native Welfare Client Files' created by the then Western Australia Department of Native Welfare and its predecessors from 1921 until 1969 about Aboriginal and Torres Strait Islander children in its 'care and protection' often contained comprehensive details about individual children and their families.

These records typically included discussion of births, deaths and marriages; medical and other health care; and the employment and finances of children and their parents. Such records can be vitally significant to people who were removed from their families, as well as to the children and other family members of those individuals seeking to trace family histories.[34]

Although some older records did contain useful details, many contained minimal discussion or information or, alternatively, contained insensitive, inaccurate or judgemental language and unqualified assertions. A number of victims and survivors, particularly members of the Aboriginal and Torres Strait Islander communities and care leavers, have told us that they felt diminished by the lack of detail in institutional records created about them. For many, the absence of discussion about heritage and ethnicity, personal development, friendships and experiences has been deeply hurtful and disappointing.

We have heard several examples of files purportedly representing a decade or more in care amounting to only a few pages, leaving the individuals in question feeling that their childhoods were meaningless and insignificant.[35] We have also heard examples of care records lacking any detail about medical and dental care, including immunisations and hereditary conditions. This has affected the health and wellbeing of care leavers, as well as their children and grandchildren, throughout their lives.[36]

Several care leavers described how they found reading the descriptions of themselves in institutional records to be extremely upsetting and sometimes traumatising[37], while others have said they never want to read records written about them to avoid reading any disparaging or distressing content. Some examples we have seen or been told of include:

- describing as 'insolent' a young person who was reluctant to talk due to post-traumatic stress disorder[38]
- describing a 14-month-old child as 'manipulative'[39]
- labelling as 'naughty' an adolescent girl who absconded to escape sexual abuse[40]
- describing a teenager as 'mentally retarded and emotionally deprived'[41]
- calling a child with learning disabilities 'dumb' and 'backwards'.[42]

We have also encountered some examples of older records minimising the conduct of perpetrators, or concealing the extent of institutional knowledge about risks and incidents of child sexual abuse.[43] In Case Study 13, for example, we heard that the Marist Brothers had a practice of using euphemisms, rather than clear and objective descriptors, to record referrals to treatment facilities of Brothers who had admitted to child sexual abuse. For example, we heard that:

> The Provincial made these types of referrals on a confidential basis and they were usually recorded in the Brother's personnel file as 'ongoing formation'.[44]

3.2 Maintenance

The maintenance stage (Stage 2) and the disposal stage (Stage 3) of a record's lifecycle are often connected. Unless a record has been properly maintained and preserved, the question of its disposal may never arise.

Until the later decades of the 20th century, many institutions did not have detailed policies or established practices for the maintenance and preservation of their records. We have heard numerous examples of records being improperly maintained, disappearing or being destroyed due to storage in inappropriate facilities or locations. Some institutions have vast archives of records (noting that archiving falls under Stage 3), but due to poor maintenance such as lack of indexing, the content of those archives remains a mystery.

Issues with the maintenance and preservation of historical records have arisen in a number of case studies. Victims and survivors in private sessions, record holders and other stakeholders in consultations and submissions have also frequently pinpointed these issues. Problems raised with us on records maintenance include:

- loss of physical records
- potential loss of records during transitions between physical and digital systems
- lack of or inconsistent indexing
- concurrent use of multiple indexing systems, causing fragmentation of related records
- storage in insecure or inappropriate locations, including employees' homes.

Each of these represents an instance of poor maintenance or preservation that has potentially compromised the completeness and accessibility of institutions' record files.

In *Case Study 30*, we inquired into the experiences of former child residents at Turana Youth Training Centre, Winalton Youth Training Centre and Baltara Reception Centre between the 1960s and early 1990s. In the context of providing former residents and wards of the state with access to records created about their time in the relevant facilities (a topic explored further in Chapter 5), Mr Stephen Hodgkinson, Chief Information Officer of the Victorian Department of Health and Human Services, told us of the state of the Department's archives. He said that the Department holds some 80 linear kilometres of historical records, around 30 linear kilometres of which relate to former residents of state-run facilities.[45]

In that case study we also heard from Mr Varghese Pradeep Philip, then Secretary of the Department, who told us that Victoria has:

> documents that go back decades, and it isn't the case that they were all filed correctly, administratively, in categories and by order, and that is most unfortunate. It was not a deliberate act … we in fact discovered just recently a file we've been looking for since 1999 that sat inside of another file, completely unrelated to it, in a case that does not in any way relate to what that file was about. That is just the reality of what we are trying to deal with.[46]

In his March 2012 report, *Investigation into the storage and management of ward records by the Department of Human Services*, Mr George Brouwer, the then Victorian Ombudsman, also discussed the state of the Department's records. He noted that:

- the Department's 80 linear kilometres of historical records were held in multiple locations
- a considerable proportion of the Department's historical records had not been inspected or indexed
- the Department had only indexed and catalogued records for around 26 of its 150 years' worth of ward files.[47]

Case Studies 13, 19 and 26

Several case studies have featured discussion of records being 'lost' or 'unavailable', with the implication that the institutions concerned did not have up-to-date knowledge about the state or location of their older records or whether these had even survived.[48]

In Case Study 13, we heard that a police file relating to complaints by two victims that they had been sexually abused by a Marist Brother had 'been lost or was not available'.[49] Similarly, in *Case Study 19: The response of the State of New South Wales to child sexual abuse at the Bethcar Children's Home in Brewarrina, New South Wales* (Case Study 19), we heard that 'not all' records relevant to complaints of child sexual abuse at the Bethcar Children's Home 'are available'.[50]

In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol* (Case Study 26), we heard that the institutions concerned had established practices for the creation of records about the treatment of children but not for their maintenance and preservation:

> From 1966, every complaint received about a child and any punishment inflicted were required to be recorded in a punishment book, which the Mother Superior could produce to the Director or an officer of the Children's Services Department on demand.

> The Queensland Government could neither locate nor produce to the Royal Commission copies of the punishment books from the orphanage … [and] the state could not locate any records which referred to or discussed any policies and/or procedures for the reporting of physical or sexual abuse of children up and until the closure of the orphanage in 1978.[51]

3.3 Disposal – archiving and destruction

The historical records of many of the institutions we have examined were not subject to any clear or consistent disposal policies or processes. Anglicare observed of its older children's residential facilities and OOHC institutions in its 2003 publication, *For the Record: Background Information on the Work of the Anglican Church with Aboriginal Children and Directory of Anglican Agencies providing residential care to children from 1830 to 1980*, that:

> … even where records were maintained, there has been no requirement or expectation that they be kept indefinitely.[52]

Some older institutions kept vast archives (whether or not with suitable indexing; see above), while others have archives that are best described as 'incomplete'.[53] Although limited archives and archives without logical indexing have been raised with us as problems affecting some historical records, in our experience, the destruction of historical records has been far more prevalent and a cause of considerably more distress for victims and survivors.

We have encountered numerous examples of records being destroyed, sometimes inadvertently, but more often in line with institutional policy[54] or records disposal schedules. Records retention and disposal schedules, also called retention and disposal authorities in some jurisdictions, are authorisations issued by public records authorities that provide for the retention and disposal of certain records (see discussion in section 4.5 in relation to the disposal of records). Regardless of the circumstances in which the disposal occurred, it appears to us that many historical records were destroyed with little consideration of their potential future relevance or use, or their significance to the individuals discussed in them.

Case Studies 17 and 26

Case Studies 17 and 26 concerned the operations of two residential care facilities from the 1940s to the 1980s. Both case studies featured the inadvertent destruction of records due to improper maintenance and preservation (by insecure storage), providing an example of the overlap between stages 2 and 3 of the records lifecycle.

In *Case Study 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home* (Case Study 17), we were told that many of the files concerning children housed in the Retta Dixon Home in the Northern Territory were destroyed by Cyclone Tracy in 1974.[55]

Similarly, in *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol* (Case Study 26), we were told that:

> a substantial number of archived records of [the Queensland child protection] Department were destroyed when the basement of the Brisbane headquarters of the Department, where they were stored, was flooded in the 1974 floods.[56]

As Ms Majella Ryan, Executive Director of Child Safety Queensland, told us in Case Study 26, due to these losses and other decisions about the disposal of various records, 'the [Queensland child protection] department's archived records are incomplete …'.[57]

Case Studies 20 and 30

Case Study 20: The response of the Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school (Case Study 20), featured destruction of records in accordance with disposal schedules or authorities. We were told that the Tasmania Police were unable to confirm whether any investigations had been undertaken into several teachers at the Hutchins School who were accused of child sexual abuse in the 1960s and 1970s because:

> all documents relating to any investigations [into those teachers] during the 1960s and 1970s had been destroyed, after disposal authorisations, in keeping with the *Archives Act 1983 (Tas)*.[58]

In Case Study 30, we were told about the effect the introduction of public records legislation and disposals authorities (discussed further in Chapter 4) had in Victoria, and how the perceived role of records influenced destructions before that legislation was introduced. Mr Hodgkinson told us:

> prior to the Public Records Act in 1973, there was no legislation governing the destruction of records, and different institutions had different practices … Since the Public Records Act, then there has been an increasing series of disciplines imposed around the destruction of records, and these manifest themselves as what's called an RDA, a Record Disposal Authority … There were records that were destroyed relating to Turana [Youth Training Centre] in 2001 and 2004 and relating to Winlaton [Youth Training Centre] in 1993. Under the relevant RDA at the time, records such as Trainee Information Files could be deleted legally 30 years after the date of birth of the client, and some files were destroyed on that basis … This happened historically, it was done under legislation in compliance with the relevant record disposal authorities, and that reflects, I suppose, perceptions at the time of the role of these records.[59]

4. Contemporary records

Since the 1980s (or slightly earlier in some jurisdictions), a large number of statutes have been enacted across Australia to govern the recordkeeping practices of various institutions. In relation to institutions that care for or provide services to children, some of these developments have come about in response to recommendations of other major national inquiries, such as the *Bringing Them Home*, *Lost Innocents* and *Forgotten Australians* reports[60], while others have developed in line with general reform to the child protection and children's services industries.

Over the past three decades, every Australian jurisdiction has enacted laws relating to the creation, management and retention of records created by or for government agencies and public institutions (referred to collectively as 'public records').[61] Public records legislation imposes recordkeeping obligations on a wide range of public institutions[62] to create 'full and accurate' records of their business and activities[63], with potential penalties applying for non-compliance.[64] For the purposes of this consultation paper, the categories of public institutions whose activities are regulated under public records legislation include:

- departments responsible for child protection, families, health, education and community services
- public hospitals
- public schools
- OOHC service providers and administrators.

Most non-government institutions (private institutions) that provide services to and engage with children also now have more stringent recordkeeping practices now than in the past. With limited exceptions, private institutions are not subject to public records legislation (discussed below). However, they may still have some recordkeeping obligations under legislation specific to the sectors in which they operate.

For example, legislation about the operation of schools generally requires both public (government) and private (non-government) schools in a given jurisdiction to create and manage records about student enrolments, attendance and achievement, and about critical incidents that occur on school grounds.[65]

In recent decades, many private institutions have also adopted or adapted existing recordkeeping standards (such as the *Australian Standard on Records Management*, referred to in Chapter 2 above), or established their own recordkeeping policies.[66] In some instances, associated private institutions may adopt and implement the same policy (for example, all Catholic schools in a diocese), promoting consistency and predictability in practice.

4.1 Contemporary examples

To provide some context to current institutional recordkeeping practices, two institution types are illustrative for our purposes. These two institution types – OOHC institutions and schools – have been selected because, together, they have featured in around 70 per cent of the reports of child sexual abuse we have heard in private sessions. In addition, many of the recordkeeping obligations

that apply to public OOHC providers and public schools apply equally to their private counterparts, allowing for more generalised discussion.

Out of Home Care

In the OOHC sector, recordkeeping obligations can vary between jurisdictions and care types (principally residential, foster, kinship or voluntary care).[67] For example, in voluntary OOHC,[68] recordkeeping obligations may be less stringent than in other forms of OOHC, although some jurisdictions do have strict requirements for recordkeeping in voluntary OOHC as well.[69]

Most states and territories now have legislation and policies outlining specific recordkeeping obligations for public and private OOHC providers. The records of private OOHC providers engaged by government to deliver OOHC will usually constitute public records, and have to be transferred to an appropriate public institution (such as the child protection department or public records authority) for retention at the end of the contract or when the child in question has left OOHC.[70] While some differences exist between jurisdictions, the following records must generally be kept about all children in contemporary statutory OOHC:

- initial assessment of the child's need for care and protection
- statutory order under which the child enters OOHC
- unique file/s for each child, with dates of file creation and closure and, as required, sequentially numbered parts or volumes
- date of entry into and exit from care
- individualised plan detailing each child's health, education and other needs, as well as goals and objectives for their time in OOHC
- full personal details of the child and his or her family (including the full names and dates of birth, sex, gender, religion, ethnicity, spoken languages and any special needs)
- details of the service provider and/or carer/s and members of the carer household (such as a carer's partner, other children in home and frequent visitors).[71]

Some jurisdictions also require that OOHC providers have complaints handling procedures in place and have processes for keeping records and information relevant to complaints and critical incidents.

Records relevant to OOHC care and OOHC providers may also be created about the operations and monitoring or auditing of individual OOHC providers (whether by the OOHC provider, child protection agencies, oversight bodies or others). These may include policies and procedures; the qualifications, Working With Children Check clearances, dates of engagement and training modules completed by carers and employees; suitability assessments of carer households; details of other people living in or frequently visiting carer households; complaints; and investigations into complaints and critical incidents.

Some OOHC providers may be entrusted with other records relevant to or about a child when he or she enters into care, such as birth certificates. Some victims and survivors have told us that they believe such records should be conceptualised as being held by the OOHC provider 'on trust' for the child, to be returned to him or her (or his or her parent or other carer) when a placement ends.

The adoption of the *National Standards for Out-of-Home Care*[72] has also provided a benchmark for recordkeeping in the sector. Although non-binding, the *National Standards*, agreed by all Australian governments, focus on improving OOHC for all Australian children and provide some useful guidance on good recordkeeping in the sector. This includes that:

- each child should have a detailed and individualised care plan directed at promoting his or her wellbeing while in OOHC and outlining his or her specific health, education and other needs
- children in OOHC should be supported to maintain and develop their own identities and to maintain contact with their families, culture, spirituality and community
- children should have their 'life histories' recorded as they grow up, to ensure their childhood memories and experiences are captured and recorded.[73]

Life histories (referred to in some jurisdictions and by some private OOHC providers as 'life story books') are records that are made for and with the participation of the child, who is the ultimate owner.[74] They contain tangible representations of childhood, such as art works, mementos and photographs, as well as accounts of children's friendships, outings, academic or other achievements and birthday celebrations.

Standards for the maintenance and disposal of OOHC records, as well as access to those records by children and others, vary across jurisdictions. In Queensland for instance, OOHC records must be:

- accurate and 'contain the full history of activities'
- placed on file as soon as possible after creation
- filed in chronological order[75]
- stored in secure, regularly maintained locations (free from pests, water, damp and mould)
- accessible only by authorised staff.[76]

The *NSW Standards Child Safe Standards for Permanent Care* require that records about children and their families be securely stored for as long as required under legislation and be treated with confidentiality.[77] They also specify that:

- children in care and care leavers be given access to, and support to access, information about them and their families
- care leavers be given original identity documents, life story materials and copies of other relevant documents when leaving care.[78]

In every jurisdiction, in accordance with public records legislation and records disposal schedules, OOHC records produced by public institutions (or private institutions engaged by government) must be kept for lengthy periods after a child has left care, or in perpetuity. For example:

- in New South Wales, section 14 of the *Children and Young People (Care and Protection) Act 1998* requires that all departmental records relating to Aboriginal and Torres Strait Islander children in statutory or supported OOHC be kept permanently[79]
- in South Australia, disposal schedules require that files about most children in OOHC be retained for 105 years, with the files about Aboriginal and Torres Strait Islander children retained in perpetuity.[80]

Some jurisdictions also require or recommend that the OOHC providers' records about employees or carers be retained for lengthy periods. For example, in South Australia it is recommended that OOHC providers' employee records be retained until an employee reaches 85 years of age.[81]

Schools

In schools, recordkeeping obligations can vary between jurisdictions and school types (whether government or non-government). Government schools' records constitute public records and must be created, maintained and disposed of in accordance with relevant public records legislation and records disposal schedules. While non-government schools may be required under statute or their registration conditions to create certain records, they are not subject to the same obligations for retention and disposal. One New South Wales archivist recently observed that non-government schools' records are:

> not clearly nor comprehensively subject to comprehensive recordkeeping regulations or requirements, even at the state level.[82]

Both government and non-government schools (or, in some jurisdictions, the relevant authorities responsible for the regulation of schools and their staff) must generally keep records of the following:

- the full name of each student enrolled in the school
- the attendance or non-attendance of each student for each school day
- student results and attainments
- policy documents concerning matters such as financial management, complaint handling, health and safety of staff and students, and student welfare
- staff qualifications, completion of relevant training modules, current Working With Children Check clearances and similar matters.[83]

Schools, school and/or teacher registration authorities and education departments may also need to keep records of or about:

- student transfers between schools
- school council or board meetings (minutes)
- schools registered to operate in the relevant jurisdiction
- teachers registered to work or intending to work in the relevant jurisdiction (often including any changes of names or details of registered teachers, and any suspensions or cancellations of registration).[84]

Education departments in each jurisdiction have developed policies for government schools to follow when documenting critical incidents such as the injury, physical or sexual abuse or death of a child while in the care of a school.[85] These policies may also state who must authorise the record as an accurate and full account (for example, the relevant school's principal),[86] and discuss how that record relates to the reporting obligations of the school or its staff.

Most individual or associated non-government schools have developed their own policies about documenting critical incidents.[87] In general, there is more variance between the practice of non-government schools than of government schools in each jurisdiction.[88] Further, as the records of non-government schools are private, they are not subject to disposal schedules.

4.2 Contemporary understandings of records and recordkeeping

Despite the developments in recordkeeping laws and policies in the past few decades, it is evident that there are still problems with the records and recordkeeping practices of contemporary institutions. Legislation prescribing recordkeeping obligations is not uniform across Australia's jurisdictions, and institutions' obligations can vary markedly between sectors and depending on whether they are public or private.[89] As the Monash University Centre for Organisational and Social Informatics stated in its submission to our *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*:

> In short, there is no single unified approach to recordkeeping and archiving embracing government and non-government sectors.[90]

Even where the law and policy applicable to a particular jurisdiction, sector or type of institution (whether public or private) are clear and well-established, problems remain in practice. For example, we have seen:

- institutional leaders, staff and volunteers lacking understanding of the importance and significance of records and how to exercise good recordkeeping practices
- institutions failing to update and maintain their administrative and personnel records to reflect staff qualifications, completion of training or Working With Children Check clearances
- records only being created or maintained due to the foresight or fastidiousness of individual staff members.[91]

Principle 1: Creating and keeping accurate records is in the best interests of the child

The problems that can arise at each individual stage of a contemporary record's life are discussed below. The appropriate creation, maintenance and disposal of records depends on institutions and their staff having a clear understanding of the purpose and value of good recordkeeping, supported by adequate training and resources.

Institutions that care for or provide services to children should conduct themselves in a way that recognises and promotes the best interests of the child, including in the creation and management of records. Creating and keeping accurate records about children, and the care and services provided to them, promotes the best interests of the child by fostering accountability and transparency, and recognising individual character and experience. Creating and managing accurate records should be an aspect of such institutions' core business. It is therefore imperative that institutions ensure their staff and volunteers have the knowledge, training and resources necessary to create and manage records about children appropriately.

To address these general concerns, we propose that the following principle be adopted:

> **Creating and keeping accurate records is in the best interests of children.**
>
> Institutions that care for or provide services to children should keep the best interests of the child front of mind in all aspects of their conduct, including their recordkeeping. It is in the best interests of children that institutions foster a culture in which the creation

and management of accurate records is an integral part of the institution's operations and governance.

We welcome your views on:

1. how institutions can build and foster cultures that promote and recognise good records and recordkeeping practices as being in the best interests of the child
2. what training staff and volunteers in institutions need to help them understand the importance and significance of good records and recordkeeping practices
3. what role governments may play in promoting good institutional records and recordkeeping
4. what role children, parents and others may play in helping institutions develop, share and monitor their recordkeeping practices.

4.3 Creation of records

Most institutions that care for or provide services to children are now aware that they have a responsibility, if not a legal obligation, to create records about their business operations and decision making, their child protection policies and practices, and critical incidents affecting children under their care. Many institutions have prescribed duties under legislation to document and report risks, allegations and instances of child sexual abuse, and how they are responded to, or have policies outlining what needs to be recorded when such situations arise. Nevertheless, our inquiries have demonstrated that the creation of detailed and accurate records is still a problem for at least some contemporary institutions.

Absence of contemporary records

The creation of records is now widely accepted as integral to helping an institution conduct its business in an efficient and accountable manner. We have, however, seen examples of contemporary institutions creating records that lack detail, are incomplete or are missing critical information relevant to the children involved. For example, in *Case Study 24: Out-of-Home Care* (Case Study 24), we heard from several recent care leavers who told us that the question about their time in OOHC that they most wanted answered was why they had been placed into care in the first instance. Their discussion indicated that they were still searching for answers to this question, despite having had access to the records about their care placements. The implication was that this critical basic information is still not being recorded.[92] We have also heard some examples of contemporary institutions choosing not to record information relevant to child sexual abuse to avoid documenting the extent of institutional knowledge and potential liability.

Case Study 14

In *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese* (Case Study 14), 'rumours' and complaints about Mr Nestor's conduct with children were raised in the early 1990s. In about 1993, the Bishop of the Diocese of Wollongong, Bishop William Murray, asked a member of the Catholic Church's Special Issues Resources Group, Father Brian Lucas, to interview Mr Nestor about those rumours and complaints. We observed in our case study report that:

> It is commonly accepted that making file notes at significant meetings is good administrative practice so that there is a contemporaneous record of what happened if an issue arises about what happened or who said what later on.[93]

In his evidence in the public hearing, Father Lucas told us that, in accordance with his usual practice[94], he did not record the interview or take any notes. Father Lucas accepted that an outcome of his usual practice was that no written record of any admission of criminal conduct was made, which had the effect of protecting the priest or religious concerned as well as the Church.[95] In relation to this failure to document the interview, we made the following findings:

> **Finding 1**
>
> When Father Brian Lucas interviewed a cleric or religious about allegations of child sexual abuse before a formal Church process had commenced against that person, Father Lucas should have made a contemporaneous record of the details of what was said in the interview.
>
> **Finding 2**
>
> Failing to make and keep such a record had the consequence that:
>
> 1. the interviewer and the cleric or religious may be unable to recall what was said in the interview and what conclusions were arrived at if they were subsequently called upon to do so
> 2. written records that might otherwise have been available for use in a subsequent investigation, prosecution or other penal process are not available.
>
> **Finding 3**
>
> An outcome of Father Lucas' practice of not taking notes of interviews, such as his interview with Nestor, was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priest or religious concerned and the Church, which for the priest may have included criminal proceedings.[96]

Misunderstood law and policy

Our case studies have revealed a number of contemporary examples of institutions failing to create records due to an apparent ignorance of legal obligations or unfamiliarity with institutional policy. We have also seen examples of records that have been created in accordance with institutional policy or practice, but nevertheless containing inaccurate detail, or failing to properly communicate critical content.

Case Study 6

In *Case Study 6: The response of a primary school and the Toowoomba Catholic Education office to the conduct of Gerard Byrnes* (Case Study 6), we examined the response of a principal and several other staff members within a Catholic primary school, as well as officers of the Diocese of Toowoomba Catholic Education Office (TCEO), to allegations of child sexual abuse made against one of the school's teachers, Mr Byrnes. The school in question was one of 32 schools under the administration of the TCEO. The TCEO had developed and implemented policies and procedures concerning child protection and the mandatory reporting of child sexual abuse for use in its member

schools. A number of relevant policies and procedures were set out in the *Student Protection and Risk Management Kit* (student protection kit), which applied in the primary school during the relevant period (commencing in September 2007).

At September 2007, part 1 of section 2 of the student protection kit included the obligation that, upon becoming aware of an allegation or suspicion of harm to a student, a staff member 'should document the allegation as soon as possible'.[97] Part 1 of section 2 further required that:

> In making a record the member of staff should observe the following:
>
> - Record factual information as soon as possible … [and]
> - Write exactly what was observed or heard ….
>
> When making the record the staff member should take care to make sure they do not:
>
> - Express an opinion about what was observed or heard.
> - Interpret what was observed or heard.
> - Use emotive terms.
>
> When … the staff member … reasonably suspects the abuse [he or she] must report the matter in writing on the appropriate form immediately to the Principal …[98]

Three different staff members – the principal, deputy principal and one of the school's two 'student protection contacts' (the second of whom was Mr Byrnes) – who received allegations of child sexual abuse did not make written records using the form required under the student protection kit.[99] The principal confirmed that 'prior to September 2007, [he] had never sat down and read the student protection kit "word for word"'[100], and that his understanding of its contents 'came from his attendance at child protection training'.[101] Similarly, although the deputy principal had been told in 'one or more' training sessions to read the student protection kit, she had 'never read it from cover to cover'.[102] In both cases, this affected their knowledge of their obligations and their capacity to comply with the policy.

Critical information was also not recorded about one of the first disclosures from one of the child victims. After the child's father advised the principal that his daughter had reported being inappropriately touched by Mr Byrnes, the principal called a meeting with the father, the child and the second student protection contact. The principal did not consult the student protection kit before that meeting.[103] During the meeting, either the principal or the student protection contact requested that the child 'demonstrate' how Mr Byrnes had inappropriately touched her. The child complied, but neither staff member recorded what she demonstrated.[104]

Case Study 1

A lack of understanding about the purpose of records, what should be recorded and the potential consequences of inaccurate records were evident in *Case Study 1: The response of institutions to the conduct of Steven Larkins* (Case Study 1). Case Study 1, which examined the responses of Scouts Australia NSW, New South Wales Police and the Hunter Aboriginal Children's Service to child sexual abuse on the part of Mr Steven Larkins, also discussed the significance of implementing and applying clear protocols.

During the 1990s and 2000s, Scouts Australia NSW did not properly record several critical pieces of information about Mr Larkins. In 1997, for example, Scouts Australia NSW issued Mr Larkins with an 'official warning' about grooming, but this 'was not effectively recorded or communicated to those who were responsible for appointing and supervising leaders within Scouts Australia NSW'.[105] This meant that various supervising leaders were not equipped with information that might have assisted them to protect other children.

Three years later, in 2000, when a young scout disclosed that Mr Larkins had sexually abused him in the 1990s, Mr Larkins was suspended from Scouts Australia NSW. However, Mr Larkins' 'suspension was not permanently recorded on his member record'[106], with the effect that critical information was not available to other senior Scouts leaders.[107]

We also heard evidence about incomplete and inaccurate records made by the New South Wales Police as part of its investigation of Mr Larkins. In the late 1990s, a case report about the police investigation was created on the police computer system, COPS, which was accessible to all officers involved with the case. That report did not include statements of three significant witnesses, including Mr Larkins, a victim's mother and the Scouts Regional Commander.[108] The police officer responsible for the case report told us that, although the system had been introduced some years earlier, police were still developing protocols about its use in early 1998.[109] This demonstrates that, while an institution might have a recordkeeping system in place, unless staff members are properly trained in its purpose and use, it can be of limited value.

In July 1998, an additional comment was added to the COPS case report, stating, 'Advice from DPP [Director of Public Prosecutions] that no prosecution will proceed'.[110] That update was incorrect, as the DPP had in fact advised in that month that Mr Larkins should be charged.[111] Members of the Police communicated the incorrect advice on the COPS record to the victim and his family in July 1998.[112] Although the error was apparently rectified later, by September 1998, the victim told the New South Wales DPP Witness Liaison Officer that he 'did not wish … to proceed due to delay and initial misinformation'.[113]

Case Study 24

As discussed in Chapter 4.1, detailed legislative provisions and policy have been adopted in each state and territory about the creation of records about children in OOHC. However, we heard in Case Study 24 that considerable discrepancies remain in the quality of records created by different OOHC providers, and even those of staff within the same institution. Ms Bev Orr, President of the Australian Foster Carers Association, told us:

> It really depends on the worker … who ever may be documenting what is happening, it depends on them. Some of them are very good at writing file notes and documenting things. Others, you will find a lot of information is subjective as opposed to absolutely critical evidence. Invariably, it's negative. It's very rare to see positive things. But I think there are a couple of other issues. One of them is there is not a mindset about understanding what this may do to a child or young person when they find the information out later and how destructive that is to them, because there is not one positive thing on their file.[114]

We also heard that some OOHC providers and their staff perceive creating detailed records as time-consuming, frustrating and a distraction from their 'real' work of providing or administering care placements.[115] Ms Caroline Carroll, a care leaver, the current Chairperson of the Alliance of Forgotten Australians and the team leader of Records, Find and Connect and Community Education at Open Place Victoria, told us:

> I still think that people who write records [about children in OOHC] don't really understand what these records are about … [W]e did some training at an organisation a few years ago and we talked about the negative impact of records where it blamed the child, it blamed the parents of the child, it blamed everyone except the welfare department itself. I said how negative this was and how difficult people found reading their records. A woman came up to me afterwards and she said, "I've never written anything positive on a child's record. I didn't think I had to. I was so busy writing all the negative things. But I will from now on."[116]

In Case Study 24, we explored the issue of records created by and for children in care, such as life story books. Although there was a consensus that these portfolios are an important development, we heard that the quality of life story books varies depending on the jurisdiction or agency involved.[117] We also heard that constructing and maintaining life story books can be time consuming and difficult, particularly where a child experiences multiple placements over his or her childhood. Ms Orr told us:

> The child has a right to have images stored, and good stories told about significant events in their life – their first day of school, their first tooth that fell out and whether the tooth fairy came or not. Even little things like that are very important and we need to keep those. If a child is moving through placements, that's the sort of stuff that is lost.[118]

Finally, we heard that many life story books can be incomplete or lack content of significance to individual children because materials meant to be placed within them are extracted or withheld by carers or others.[119] As Ms Jacqui Reed, Chief Executive Officer of CREATE Foundation, told us:

> Often what happens is those types of records may be with one carer and the child moves placements and sometimes the carers want to keep them as part of their own history and whatever, which is understandable, or they may lose contact with the kids, or they may have left in acrimonious terms and it's the last thing a busy caseworker thinks of is picking up the photos that belong to little Freddy and taking them over to the next placement. So that type of stuff, whilst incredibly important, especially for older people who have left care, it is part of who you are, become less important in the system, because they are not given that level of importance they need to.[120]

Principle 2: Accurate records must be created about all decisions and incidents affecting child protection

Institutions must make records of all risks, suspicions, allegations and incidents of child sexual abuse, as well as how they are identified and responded to. On the issue of accuracy of records, we have received a number of submissions directed at requiring record keepers to ensure that the views of the child in question should be sought and reflected in the records wherever possible. Further, we

received submissions that institutions that have supervision or care for children should enable each individual children to view records made about them as those records are being developed, and in certain situations or sectors, encourage and assist children to personally participate in records creation (for example, in constructing OOHC life story books).

To ensure that accurate records are created in relation to all risks, suspicions, allegations and incidents of child sexual abuse, we propose that the following principle be adopted:

> **Accurate records must be created about all decisions and incidents affecting child protection.**
>
> Institutions should ensure that records are created to document any identified instances of grooming, inappropriate behaviour (including breaches of institutional codes of conduct) or child sexual abuse and all responses thereto.
>
> Records created by institutions should be clear, objective and thorough. They should be created at, or as close as possible to, the time that the incidents they document occur, and clearly indicate the author (whether individual or institutional) and the date of creation.

We welcome your views on:

5. what records relating to child sexual abuse should be created by institutions that care for or provide services to children, and what type of language and detail should be used
6. what training or assistance institutions and their staff or volunteers might need to enable them to create accurate records relevant to child sexual abuse
7. how children's views and experiences can be accurately reflected in records about their childhoods and decisions affecting them
8. how institutional records can be monitored to ensure they are accurate
9. whether there may be any unintended consequences arising from requiring institutions to create accurate and detailed records relating to child sexual abuse (for example, creating records that may be discoverable by other parties in legal proceedings, potentially to the detriment or distress of individuals discussed in those records).[121]

4.4 Records maintenance

Since the adoption of public records legislation, and with growing understanding of the significance of records to the individuals discussed within them, most contemporary institutions have better practices for the maintenance and retention of records. Some have legislative obligations relating to indexing and management of their files, while others have developed their own policies. Nevertheless, contemporary records continue to be affected by poor maintenance and retention practices.

Case Study 12

In *Case Study 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009* (Case Study 12), we examined the responses of a non-

government independent school to reports and instances of child sexual abuse by a member of its teaching staff. The school had two campuses, a preparatory campus and a secondary campus.

An expert witness, Professor Stephen Smallbone, concluded that:

> there was a serious failure by the school to connect various pieces of information concerning the offending teacher's behaviour and to respond properly to concerns about his behaviour.[122]

We found that:

> from 1999 until 2009 the school's system to record complaints or concerns about inappropriate behaviour by staff members was deficient to the extent that:
>
> - there was no centralised database to (i) record concerns or complaints; or (ii) facilitate a comprehensive review of the file when a complaint is made
> - there were two personnel files – one in the preparatory school and one in the senior school – neither of which required reference to the other.[123]

Case Study 24

In the context of OOHC, we heard in Case Study 24 that service providers continue to have trouble compiling an accurate understanding of individual children's histories and care needs due to the poor indexing and maintenance of departmental records. For example, Ms Jacqui Reed told us:

> Each State government keeps data. For CREATE, we think part of the reason we have trouble accessing children and young people's records is because often the departments, literally, their own systems are so poor that when we get the data we can have anything up to 30 per cent of the data being incorrect, the child may have moved, the names may be different, they may have been returned home. There are a thousand reasons, but the data is a real issue across every State and Territory.[124]

Ms Reed suggested that, although each jurisdiction now has 'good' legislation and policy applicable to records and recordkeeping in OOHC, issues with compliance remain. She said:

> what the problem seems to be is in the actual practice of what we do. And the practice is a bit wobbly and I think part of that is due to the fact that there are no formal mechanisms for monitoring … I think you've got rules in place and if no-one is checking if you're following them, I think that is where the wobble is between practice and policy …[125]

The increased reliance on digital technology to maintain records has also created new risks and challenges. Over the past two decades, many (if not most) of the institutions we have examined have begun using digital technology to create and maintain their records. Several stakeholders have raised concerns with us about the security and longevity of digital records, which may be vulnerable to file corruption and tampering, and potentially become irretrievable over time as the technology with which they were made or stored becomes obsolete.[126]

Principle 3: Records relevant to child sexual abuse must be appropriately maintained

It is clear to us that the maintenance of records is as important as their creation in the first instance. We have seen in a number of our cases that, without good maintenance practices, critical information can be fragmented or overlooked, and there can be a serious risk of loss or inadvertent destruction of records. This has potentially serious consequences for institutions and the individuals with whom they have interacted.

We consider that institutions must ensure their records are:

- up to date
- indexed in a logical manner that facilitates easy location, retrieval and association of related information
- preserved in a suitable physical or digital environment that ensures records are not subject to degradation, loss, alteration or corruption.

To promote appropriate records maintenance, we have proposed the following principle:

> **Records relevant to child sexual abuse must be appropriately maintained.**
>
> Records relevant to child sexual abuse should be maintained in an indexed, logical and secure manner. Associated records should be collocated or cross-referenced to ensure persons using those records are aware of all relevant information.

We welcome your views on:

10. what the resourcing implications of requiring institutions that hold large volumes of un-indexed historical records to index their files are
11. whether and how indexing of historical records should be prioritised (for example, prioritising records of elderly care leavers, or de-prioritising files of over 100 years of age)
12. how records relevant to child sexual abuse should be indexed to allow them to be easily located, retrieved and associated
13. what should happen to the records of institutions that close, or change ownership or function before the expiry of any record retention period.

4.5 Disposal – archiving and destruction

Over the past few decades, there has been a growing recognition in both public and private institutions of the importance of establishing and following clear processes for the disposal of records about individuals. The number of statutes and policies directed at the archiving of records with historical and personal value has increased significantly, and the practice of destroying records only in accordance with law or policy is increasingly common. Recognition of the importance of archiving records about children and their engagement with institutions, particularly where they have been under the care and protection of a government, is much greater now than in the past. These sorts of records are now acknowledged as holding not only historical value, but also value as evidence of the experiences of the individuals documented within them. In the context of those who have suffered child sexual abuse, they may:

- help identify perpetrators, or those who failed to act to prevent child sexual abuse

- identify witnesses and other victims and survivors
- provide supporting material to corroborate victims' and survivors' accounts.[127]

Conditions for disposal

The disposal of public records is usually governed by the relevant jurisdiction's public records legislation. Public records legislation generally stipulates that public records cannot be disposed of (whether archived or destroyed) until they are no longer needed to satisfy business and legal requirements. Records about 'normal administrative practices'[128] usually have short retention periods, and can be destroyed once they have no further administrative purpose.[129] Other records, such as those relating to critical business decisions or significant interactions between governments and individuals usually have longer retention periods, and may need to be archived for perpetual retention (for example, with the Public Records Office), or until their destruction is permitted under an applicable disposal schedule.

Records disposal schedules outline how long a public record must be kept before it can be destroyed, or whether it must be archived permanently. They are issued or approved by public records authorities. Penalties can apply if disposal schedules are not complied with[130], and where an institution destroys public records in the awareness that they may be relevant to legal action.[131]

The retention periods for public records set out in disposal schedules can vary markedly between jurisdictions and sectors and, in some cases, in relation to the personal characteristics of individual children. For example, in part as a response to the recommendations of previous inquires[132], all jurisdictions now require that OOHC records be kept for many decades before they are destroyed, or that they are kept in perpetuity (see Chapter 4.1).[133] Records relating to schools, however, including incident reports, may only need to be retained for a few years after their creation, or until the relevant student reaches the age of 21 or 25, for example.[134]

Most private institutions do not have statutory obligations relating to the disposal of their records. However, other obligations may apply – for example, contractual obligations. Some non-government organisations and peak bodies told us that private institutions would appreciate further guidance on their duties and best practice in records retention in the absence of a legal obligation.[135]

Retention of records and delayed disclosure

The issue of retention of both public and private records is critical when noting the issue of delayed disclosure of child sexual abuse. A number of studies have demonstrated that delayed disclosure of child sexual abuse is common.[136] As we outlined in our 2014 *Interim Report*, the victims and survivors who had spoken to us by that time took an average of 22 years to disclose their sexual abuse as children.[137] In light of the frequency of delayed disclosure, we recommended in our 2015 *Redress and Civil Litigation Report* that limitation periods for civil actions concerning child sexual abuse be abolished.[138] NSW and Victoria have abolished these limitations[139], and some other jurisdictions have announced their intentions to do so.[140] However, in order to give effect to the recommendation, victims and survivors will need to have access to records that can support their claims.

The lack of obligatory retention periods for many private institutions and the limited retention periods for public schools in some jurisdictions[141] mean that some contemporary institutions are able to destroy records that may be highly relevant to successful claims well within 22 years of their

creation. It therefore seems appropriate to us that records that are or may be relevant to child sexual abuse be subject to minimum retention periods that allow for delayed disclosures.

We recognise that retaining large volumes of records for extended periods may be difficult for some institutions (for example, those with limited resources, small staff numbers or limited physical storage space), and acknowledge that our view in this respect is not shared by all victims and survivors. A small number of victims and survivors, particularly care leavers, have told us they object to records about them being retained for lengthy periods or in perpetuity, and are frustrated at their lack of agency in this respect.[142] As Ms Caroline Carroll told us in Case Study 24:

> I want my records destroyed when I die. I don't want anyone to read them, particularly my children and grandchildren, because they are so negative about me. But the department – and that's the New South Wales government – say that they are their records, they are not my records.[143]

We recognise that issues of retention and archiving, like the many other aspects of records and recordkeeping practices in the context of child sexual abuse, are vexed issues, and can divide opinion. We would welcome the thoughts of all interested stakeholders on these points.

Principle 4: Records relevant to child sexual abuse must only be disposed of subject to law or policy

At present, there is a lack of consistency in the disposal of records about children and child sexual abuse in institutional contexts. We recognise that not all records are, or should be, archived and retained in perpetuity, and that it is appropriate that certain records be destroyed. However, the destruction of institutional records relevant to children and child sexual abuse (including complaints, investigation reports, employee records, and accounts of disciplinary action) can have serious consequences. Greater transparency and consistency can help eliminate some of the confusion and complexity for victims and survivors, and can arguably assist institutions and their staff to better understand their practices and obligations.

It would seem appropriate that every institution should have publicly available policies in place that outline:

- how long it retains different kinds of records
- what kinds of records it archives, where and how
- what kinds of records it destroys and under what circumstances.

For public institutions and public record holders, such policies should align with relevant disposal schedules. For private institutions and private record holders, the retention periods and disposal practices of comparable public institutions can be taken as a model when developing disposal policies and practices. In this context, the question arises whether, and, if so, to what extent, institutions should provide individuals who are discussed within their records an opportunity to comment on the disposal of those records.

To promote accountable and transparent disposal practices in all institutions that create and hold records relevant to child sexual abuse, we propose the following principle:

> **Records relevant to child sexual abuse must only be disposed of subject to law or policy.**

Records relating or relevant to child sexual abuse should only be destroyed in accordance with records disposal schedules or published institutional policies.

We welcome your views on:

14. whether and how the views of individuals discussed within institutional records could be canvassed and represented in decisions concerning disposal
15. how long records relevant to child sexual assault should be retained, and under what (if any) circumstances should they be destroyed
16. what implications abolition of statutory limitation periods for civil claims by victims and survivors of child sexual abuse may have for record retention practices
17. whether the records of all institutions that care for or provide services to children should be subject to mandatory retention periods, what impact this may have, and how those impacts can be mitigated
18. whether institutions should maintain registers of what records they destroy, when and upon what authority.

5. Access to records

Victims and survivors of all ages and from all types of institution have told us it is very important that they can access institutional records about their childhoods, including their sexual abuse, and how the relevant institutions responded to that abuse.[144]

Under existing legal frameworks, institutions have legal ownership of the records they create and hold. This can cause tension when those records contain intimate and personal details about individuals. Individuals whose lives are documented in such records often have keen and understandable interest in seeing what is said about them, and amending any errors. In the case of care leavers, accessing records created by children's homes, orphanages, residential care facilities and other OOHC institutions can be very important as these may contain the only surviving link to family and personal history or memorabilia of their childhoods.[145]

Legislation and policy have been adopted in each Australian jurisdiction over recent decades to facilitate greater and easier access processes. However, several previous national inquiries, such as the *Bringing Them Home*, *Lost Innocents* and *Forgotten Australians* reports, have highlighted the complexity of these laws and policies, and the difficulty individuals have in navigating those systems. Each of these inquiries made recommendations to simplify access processes and make them less distressing and frustrating for individuals. However, we have heard numerous accounts of those processes' enduring complexity and inconsistency, and the frustration this causes for victims and survivors. In addition to the access obstacles that necessarily stem from records being lost, fragmented, incomplete or destroyed, victims and survivors have also told us of the following concerns around access:

- reluctance to re-engage with institutions in which they were abused
- lack of information about and support to make access requests and interpret records once received
- complexity and inconsistency of applicable law and policy
- costs of access (for example, application fees and processing charges)
- rigid thresholds for verifying an applicant's identity
- delayed responses from institutions
- institutions refusing requests, providing incomplete records or heavily redacting records.[146]

5.1 Current access and amendment processes

As with the stages of the records lifecycle, processes for accessing records can differ between jurisdictions, between sectors and between public and private institutions.

Public records

Since the 1980s, every Australian jurisdiction has enacted freedom of information legislation that, together with public records legislation, establishes a legally enforceable right of individuals of any age (including children) to access public records. This includes both public records about governmental business generally, and public records containing an individual's own personal information.[147] Most Australian jurisdictions have also enacted legislation to protect individuals'

privacy, including by regulating the use and disclosure of records that contain their personal information (privacy legislation).[148] Privacy legislation also provides individuals with a right to access public records that contain their personal information (we note that the Commonwealth *Privacy Act 1988* also provides for access to some private institutions' records, which is discussed below). State and territory freedom of information and privacy legislation (or the 2013 *Information Privacy Principles Instruction* in the case of South Australia) also allows individuals to request that public records containing their personal information be amended where it is inaccurate, misleading or out-of-date.[149]

To access public records, the state and territory freedom of information and/or privacy legislation usually provides that an individual must make a written application to the public institution that holds the relevant public records.[150] For recent records, this may be the child welfare department, or, in the case of historical records (such as files concerning care leavers or wards of the state, or 'Native Welfare Client Files', as discussed above in Chapter 3.1 'Content of historical records'), the jurisdiction's public records authority.[151] Valid access applications must usually be quite specific about what particular records are sought, rather than seek access to a general class of documents, and include enough information to allow the public institution to identify the particular records requested.[152] If records are held in more than one place, multiple applications have to be made. To amend personal information in a public record, an application must also be made in writing to the public institution that holds the relevant record, and must typically:

- identify the record concerned, and what information the applicant seeks to amend
- outline the reasons and factual basis upon which the application is made
- include sufficient evidence to satisfy the record holder that the applicant is the individual discussed in the record.[153]

In most jurisdictions, there is a fee of up to $44.85 per application (at the time of writing) to access general public records. [154] Applications to access the applicant's personal information are free of charge in some states and territories but in other states there is a fee of up to $37.00 (at the time of writing).[155] Where a fee is levied, an applicant can usually apply for fee waiver or reduction in certain circumstances (such as where the applicant is a student, holds a certain concession card, or the fee would cause financial hardship).[156] Most public institutions can impose charges for time spent processing access applications (whether or not a fee was charged for the application), and for the physical provision of access (for example, $30.00 per hour for processing, and photocopies of records charged at $0.20 per A4 sheet).[157] As with application fees, applicants can usually apply for processing charges to be waived or reduced.[158] In some cases, there is an automatic waiver of some or all processing charges for applications for records containing the applicant's personal information only.[159]

In general, applications to access public records must be determined within a set period (for example, within 20, 30 or 45 days of receipt)[160], although the period is usually open to extension.[161] In several jurisdictions legislation specifically provides that, if an applicant is not notified of a decision in writing within the legislated decision period, the application should be taken as refused.[162]

Access applications can be decided in several ways, namely by: granting access; refusing access; granting access subject to conditions; or granting access in part (either with some records withheld or some content redacted).[163] Like access applications, applications to amend personal information

in records can also be: granted; granted in part; or refused (in which case the applicant usually has a right to have the record annotated to represent his or her view).[164]

For access applications, refusal, partial release and redactions can occur for a number of reasons, including:

- processing the application would unreasonably divert resources from the public institution's core functions
- providing access would be contrary to public interest, or affect relations with other jurisdictions, security or law enforcement proceedings
- the requested records are protected by legal professional privilege
- a materially identical application has previously been made
- release of the records would be a breach of the privacy of another person or persons.[165]

Exemptions to release on third party privacy grounds usually apply whether or not the records requested are almost wholly concerned with the applicant only. In addition, exemptions may apply where the third party is discussed in a professional capacity only (for example, a doctor who treated a child while in residential care, or a supervisor or social worker in a juvenile justice facility). In general, where a third party's privacy may be at issue, freedom of information and/or privacy legislation requires that the public institution take reasonable steps to contact and seek the third party's views on whether the record should be exempt from release[166] and take those views into account when reaching a decision.[167] If the public institution is minded to give access despite a third party's opposition, it must advise the third party of that intended decision and its right of review.[168] Access cannot be granted until the period in which the third party can lodge a formal objection or request for review has expired, and any review is finalised.[169]

Where an application to access or amend a record is refused or refused in part, the applicant usually has a right of review and/or appeal against the decision. The process and body to which a review or appeal must be made, and whether a fee is imposed, varies between jurisdictions (and may vary within the same jurisdiction depending on whether the original application was made under freedom of information or privacy legislation).[170] By way of example, in the Australian Capital Territory, if an applicant wants a decision on an application to access a record containing his or her personal information made under the *Information Privacy Act 2014* (ACT) reviewed, he or she must first make a complaint to the Information Privacy Commissioner.[171] The Information Privacy Commissioner may investigate, and, if reasonably satisfied that the applicant's privacy has been interfered with, may notify the parties of the determination and advise the applicant that he or she can seek a court order.[172] Within six months, the applicant may then apply to a court for an order to the effect that: his or her privacy has been interfered with; the public institution must remedy any loss or damage suffered; and compensation must be paid.[173] If the application is made under the *Freedom of Information Act 1989* (ACT), however, the applicant must first seek internal review by the public institution in question[174], following which he or she can apply for to the ACT Civil and Administrative Tribunal (ACAT) for review.[175]

Private records

Except in some limited circumstances[176], private institutions are not subject to public records or freedom of information legislation, nor to state and territory privacy legislation, and are accordingly not obliged under those statutes to provide individuals with access to their records. Some private

institutions have developed and implemented their own policies for access to records. For example, Canon 487(2) of the Catholic Code of Canon Law provides:

> Interested parties have the right to obtain personally or through a proxy an authentic written copy or photocopy of documents which by their nature are public and which pertain to their personal status.[177]

Individuals can seek access to private institutions' records under the Commonwealth *Privacy Act 1988*. The Australian Privacy Principles (APPs) set out in Schedule 1 to the *Privacy Act 1988* (Cth) apply to all 'APP entities' in Australia. APP entities include:

- most federal level public institutions
- all private health service providers
- all private sector small businesses and not-for-profit organisations (including non-government organisations) with an annual turnover of more than $3,000,000.[178]

The APPs do not apply to private sector small businesses and not-for-profit organisations with annual turnovers of $3,000,000 or less unless they voluntarily 'opt-in' to the APP scheme.[179]

Under the APPs, subject to limited exceptions[180], where requested, an APP entity (or opt-in APP entity) must give an individual access to any personal information that the APP entity holds about him or her.[181] An individual can also request that APP entities amend records they hold that contain the individual's personal information where that information is inaccurate, out-of-date, incomplete, irrelevant or misleading.[182] Access and amendment requests are to be free of charge, however APP entities can impose a charge for processing access requests that is 'not excessive'.[183]

Unlike state and territory freedom of information and privacy legislation, the *Privacy Act 1988* (Cth) does not outline a process for individuals to follow when requesting access to or amendment of APP entities' records. It also does not state a time period for processing applications, instead requiring simply that requests be responded to within a 'reasonable' time.[184] In practice, we understand that many private APP entities require requests to be made in writing, and for the identity of the applicant to be verified with photographic identification.[185] Some APP entities have also imposed their own target response timeframes, for example, Anglicare Central Queensland, which aims to respond to access requests within 14 days where possible, and within 30 days at a maximum.[186]

Access requests to APP entities can be: granted; granted in part (with only partial release, or with content redacted); or refused. [187] Records can be withheld, redacted or exempt from release in a number of circumstances, including where:

- the request is frivolous or vexatious
- the information relates to existing or anticipated legal proceedings between the entity and the individual, and would not be accessible by the process of discovery in those proceedings
- giving access will reveal the intentions of the entity in relation to negotiations with the individual in a way that would prejudice those negotiations
- giving access will have an 'unreasonable impact' on the privacy of other individuals.[188]

Amendment to applications can also be granted, granted in part or refused. Refusals must be made in writing, include reasons and advise the applicant of any complaint mechanisms available.[189] If the applicant then requests that the APP entity associate (annotate) a statement of his or her position

with the contested record, the APP entity must take reasonable steps to associate the statement with the record.[190]

5.2 Issues with current access and amendment processes

Freedom of information and privacy legislation is meant to provide a clear, transparent, and consistent process for individuals to seek access to and amendment of records about themselves. However, many victims and survivors, their advocates, and record holders have told us that many people still find navigating the current systems complex, costly, adversarial and traumatising.

Lack of guidance

Many victims and survivors remain unconfident or unsure about how to assert their rights, and feel ill-equipped to begin the process of requesting access to or amendment of records about themselves, especially where the institution that made the record no longer exists.[191] Many are also unsure about where and from whom to seek assistance. Knowing where to begin a search for records, or which institution or body to ask for advice or access, can be daunting and mystifying when the institution that created the records no longer exists, or its name and function have changed in the intervening years.[192]

We have also heard that many victims and survivors are unaware of their rights to apply for or request amendment of records, and that record holders themselves are unsure about how to manage and respond to such requests.[193]

Several support services exist to assist members of the Stolen Generation, Former Child Migrants and Forgotten Australians to locate, access and interpret records created about their time in institutions during childhood. One example is the Find and Connect web resource, and the eleven organisations funded under the Find and Connect program to provide support services to Former Child Migrants and Forgotten Australians.[194] We have been told that many Former Child Migrants and Forgotten Australians have found these initiatives to be beneficial. We have been told that Former Child Migrants and Forgotten Australians who live in rural and remote areas can have difficulty accessing these services, and that there appears to be a lack of knowledge among these care leavers about how the services operate, and what assistance they are able to provide.[195] Similar services are not so readily available for more recent care leavers[196], nor for the victims and survivors of abuse in types of institution, who face many of the same obstacles as Former Child Migrants and Forgotten Australians. Victims and survivors of child sexual abuse in a range of institution types have commented to us in private sessions that they should be able to access some assistance or support in the access process.

Power disparities

We have heard that victims and survivors can be very reluctant to re-engage with institutions in which they were abused. They feel disempowered by a system that they perceive effectively requires them to rely on the good graces of the institutions responsible for their abuse. Individuals are required to request access to records from the institution (the record's owner), which can exacerbate and extend the power disparities between victims and survivors (passive subjects) on the one hand, and institutions (active agents) on the other.[197]

Some advocates have suggested that institutions do not always advise individuals of their right to seek amendment or annotation to records containing their personal information.[198] We have also been told that some institutions can be reluctant to accept that the content of their records is 'incorrect' and requires any amendment.[199] Some jurisdictions' legislation explicitly allow public record holders to refuse to amend records that are 'historical only'.[200]

Inconsistent law and practice

Although the different jurisdictions' legislation and processes are similar and use the same broad principles[201], victims, survivors and their advocates have told us that inconsistencies between jurisdictions – especially between public and private institutions – create confusion and frustration.[202] The variation in the processes private institutions have adopted with respect to access requests can be demonstrated by Anglicare Australia's *Provenance Project*, which describes the application processes applicable to 15 individual Anglican institutions or organisations. The processes adopted by the 15 different organisations all vary slightly, so no two organisations have uniform practices. Some of the variations in the organisations' processes include:

- how applications are to be made
- to whom in the organisation applications should be addressed
- whether third parties can make access requests
- how long processing can be expected to take
- whether a processing fee can or will be imposed
- what forms and identifying documents are required before a request is accepted.[203]

A further point of concern is that private sector small businesses and not-for-profit organisations with annual turnovers of less than $3,000,000 that have not 'opted-in' to the *Privacy Act 1988* (Cth) are not subject to any legislative obligations regarding access to, or amendment of, their records. A potentially significant number of institutions within our Terms of Reference may fall outside current legislative schemes (for example, small dance schools or sporting clubs, or associations run predominantly by volunteers and as not-for-profit organisations). This means that any individual seeking access to or amendment of the records of such institutions may have no recourse. We note that in its 2008 report, *For Your Information – Australian Privacy Law and Practice*, the Australian Law Reform Commission (ALRC) recommended that the *Privacy Act 1988* (Cth) be amended to remove the small business/not-for-profit exemption.[204] To date, the Australian Government has not formally responded to that recommendation.

We have been told that there is still a disconnect between principle and practice in institutions that are subject to state, territory or federal freedom of information and/or privacy legislation. Most freedom of information and privacy legislation includes a clear statement of its objects and purpose, and that the legislation should be interpreted and applied with the attainment of those objectives in mind. Generally, those objectives are, effectively, 'to give the Australian community access to information held by the Government', 'increasing scrutiny, discussion, comment and review of the Government's activities'[205] and 'promote the protection of the privacy of individuals'.[206] Victims and survivors have told us that some institutions do not appear to act in a manner conducive to achieving these objectives when responding to access requests.[207] As Ms Caroline Carroll told us in *Case Study 25: Redress and Civil Litigation* (Case Study 25):

> Accessibility and transparency of records access remains, at best, patchy across Australia. Some States do it better than others, but we are still struggling to get a consistent and transparent response from all the jurisdictions. To roadblock record access perpetuates system abuse.[208]

We have been told of both public and private institutions responding to access requests with suspicion and defensiveness. In Case Study 24, for instance, Tash, a recent care leaver, stated that she was advised she had to give reasons for wanting to access the departmental case file created about her time in OOHC. This is despite the fact that section 10 of the *Freedom of Information Act 1992* (WA) states that an individual's right to access documents is not affected by any reasons he or she may have for wanting access, or the public institution's belief as to any such reason. This principle is also reflected in other jurisdictions' legislation.[209] Tash said:

> I had to give certain reasons for which part of my life I actually wanted. That I just wanted my whole case file wasn't a good enough reason.[210]

Tash also told us that she and her siblings were instructed by the Western Australian child protection department to apply only for records pertaining to specific time periods or events. She said:

> We had to give specific parts of our lives that we wanted … just going from this year to that year wasn't enough. We had to go we want this specific date to this, and like this time in care to this time in care … for me it's going to be a long process if I keep going that way … you can keep on applying until you eventually get your whole file … I realise that it's going to take me a long time to get it.[211]

Fees and charges

A number of victims and survivors have cited application fees and processing charges as obstacles to records access. Many victims and survivors feel strongly that they should never have to pay to access records made about them (particularly in the case of OOHC, where their engagement with the relevant institution was beyond their control).[212] Although applications to access records with personal information may not be subject to fees, or can be subject to waivers or reductions, we have been told that many victims and survivors are unaware of their rights to seek fee waivers or reductions, and how to exercise them. The different processes and fee structures between and within jurisdictions can also be confusing and discouraging, and fees and charges do not appear to be imposed consistently. As Tash told us in Case Study 24:

> I didn't [have to pay to access OOHC records] … but I only got a certain amount of [my file] … Another few young people I know, they've been told different. Some people have to pay 20 cents a page, some people have to pay 70 cents, some people have to get a lawyer to get it. We're getting told all different kinds of things. It kind of made me feel like it was so that we in the end gave up and didn't keep pursuing to get our case files.[213]

Fee waivers and reductions generally apply only to records that contain an individual applicant's personal information, however, victims and survivors often want more general records about the institutions they engaged with. Fee waivers and reductions may not apply to:

- applications for more general records about an institution (such as policies, annual reports or photographs) that may help contextualise a victim's or survivor's experience

- applications for records containing family members' personal information
- applications made by third parties on an individual's behalf (for example, by a care leaver's son or daughter, or by an advocacy group).[214]

Delays

Delays in processing and responding to access and amendment requests have been raised as a significant concern for many victims and survivors. While public institutions are usually obliged to respond to access requests within a set period (for example, within 30 days of receipt), the lack of specific processing times for private institutions has caused frustration. Some advocates have told us that the requirement that requests be responded to within a 'reasonable' period is too imprecise and is open to misuse.[215]

For public institutions, even where legislation dictates the application decision periods, delays are not uncommon. In her evidence in Case Study 24, for instance, CLAN Executive Officer Ms Leonie Sheedy told us that, in December 2013, CLAN had helped one care leaver request access to records about him held by a government department in New South Wales, but that he did not receive those records until May 2015.[216]

Provisions in some jurisdictions' legislation direct that applicants who do not receive a response to their applications within set decision times should take their applications as having been refused.[217] This creates the possibility that an applicant may never receive a formal notification of whether public records about him or her actually exist.

Decisions – grants, redactions and refusals

There are circumstances where access requests are justifiably refused in whole or part, but refusals and redactions, particularly in the absence of clear explanations, have been a source of considerable frustration and disappointment for many victims and survivors.[218]

In some jurisdictions, applications for access to records can be refused where an applicant does not identify the requested record or records with sufficient specificity, or where the request is for a large volume of documents.[219] We have heard that, where an applicant is seeking records that may have been made many years or even decades ago, providing a sufficient level of specificity can be difficult. We have also heard that institutions' own poor indexing and lack of knowledge about what records they hold can make even the most precise application unsuccessful. We have heard several accounts of institutions giving victims and survivors 'complete' sets of records, only for additional records to be discovered years later.[220] In some cases, it appears that the Royal Commission has received more complete records about individuals in response to our summonses than the individual received in response to their own access requests.[221]

Some survivors told us that the redactions in the documents they received were inconsistent, as information that was disclosed in some documents was redacted in others.[222] In Case Study 24, Tash told us that when she and her sister applied together to receive access to files created about their time in OOHC, information that was identical in both files was redacted in the file about Tash's time in OOHC, but not in the file relevant to her sister. No explanation was offered for this inconsistency.[223]

In 2015, the Commonwealth Department of Social Services (DSS) released the publication, *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing access to records* (Principles and Guidelines). These Principles and Guidelines, available on the DSS website, were developed by Recordkeeping Innovation Pty Ltd on behalf of DSS and in consultation with a Records Access Working Group and the Find and Connect Advisory Group. They aim to maximise the information available to care leavers and former child migrants and to promote greater consistency in the ways that public and private institutions that hold records about care leavers and former child migrants respond to access requests. In particular, they seek to address three recommendations of the *Lost Innocents* and *Forgotten Australians* reports, namely that:

- government and non-government agencies agree on how care leavers, upon proof of identity only, can view all information relating to themselves and receive a full copy of such documents
- records be provided to care leavers free of charge
- compassionate interpretation of legislation be practised to facilitate widest possible release of information to care leavers.[224]

We welcome your views on:

19. how the *Access Principles for Records Holders and Best Practice Guidelines in providing access to records* have been applied in practice
20. whether they have resulted in simplified and more open access processes
21. whether and how they might be adapted to apply to access to the records of all the institutions within our Terms of Reference.

Third-party privacy

Finally, a number of victims and survivors have cited the protection of third-party privacy as an obstacle to gaining access to both public and private institutions' records.[225] Private APP entities can refuse access applications where providing access would have 'an unreasonable impact' on the privacy of a third party[226]; we have heard that some private organisations interpret this widely to justify refusals.[227] In the case of public institutions, care leavers have told us that they have been incorrectly advised that it is their own responsibility to seek the consent of third parties (including immediate family members, deceased persons and professionals) mentioned in records before those records can be released.[228] The concept that even immediate family members are 'third parties' is baffling for many victims and survivors; some have expressed their disbelief that records about them may be withheld simply because they contain discussion of objective information about an immediate family member (for example, his or her name or date of birth). In Case Study 24, two recent care leavers, Kate and Tash, told us:

> KATE: I've been told that I need to have permission from anyone who could possibly be mentioned in there who is over the age of 18. I've got a couple of dead relatives who are mentioned in there and I can't get their permission … The same problem with having to get permission from people who are in the file. You lose information because they wipe out information. It's in your file, but it might pertain to your brothers and sisters. I don't get that, because they are my family. If they are in my file and it's something to do with

> me I don't get that … I have to go through my entire family tree and get people to sign a list...[229]
>
> TASH: To get our whole thing we have to get permission from everybody that will be in the file, to get the whole thing, without them whited out and stuff. For me and my sister it's going to be even longer because two of our brothers have passed away so we can't get their information because they want to protect them and stuff … It is not just about family as well. It's certain caseworkers that you had and anybody you came in contact with, doctors, anybody who made any sort of complaint, anything, you need to get their permission, too, which – you probably don't even know them.[230]

Principle 5: Individuals' right to access and amend records about them can only be restricted in accordance with law

As outlined above, victims and survivors have raised concerns with us that existing laws and policies:

- are complex and confusing for individuals and record holders
- are not nationally consistent
- do not apply equally to public and private institutions' records
- do not apply to certain private institutions.

Many victims and survivors find current processes slow, disempowering and prohibitively expensive. They have also expressed the view that decisions around refusal and redaction continue to be poorly explained and justified. To address concerns about existing access and amendment processes, we propose the following principle:

> **Individuals' rights to access and amend records about them can only be restricted in accordance with law.**
>
> Individuals whose childhoods are documented in institutional records have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.
>
> Individuals should be made aware of, and assisted to assert, their rights to request that records containing their personal information that are inaccurate, misleading or out of date be amended or annotated, and to seek review or appeal of decisions refusing access or amendment.

We welcome your views:

22. in relation to inconsistent laws and practice, whether the *Privacy Act 1988* (Cth) should be amended so the Australian Privacy Principles relevant to access and amendment apply to all private institutions that care for or provide services to children; or, alternatively, how small private institutions that care for or provide services to children can be encouraged to 'opt-in' to the Australian Privacy Principles scheme

23. in relation to fees and charges, whether requests to access records created by institutions about children with whom they have engaged should be free of fees and charges, and, if so, what resourcing implications this may raise for record holders
24. in relation to access grants, what steps institutions should take to ensure that individuals have appropriate support when reading and interpreting records with potentially distressing content
25. in relation to redactions, whether nationally consistent standards for redaction should be established; and what those standards should be
26. in relation to refusal of access and amendment, whether existing exceptions are appropriate in the context of records relevant to child sexual abuse
27. in relation to third party privacy, how public and private institutions can be better educated about the proper application of third party privacy exceptions.

6. Additional matters

Good institutional records and recordkeeping practices can be critical to building and maintaining child safe organisations, promoting institutional accountability and alleviating the impact of child sexual abuse for victims and survivors. However, it is clear to us that, despite considerable developments in law and policy over the past three decades, the records and recordkeeping practices of many of the institutions within our Terms of Reference require improvement.

The five high-level principles we have developed and set out in this consultation paper are designed to assist all institutions within our Terms of Reference to appropriately create and manage accurate records relevant to child sexual abuse. In proposing these principles, we have scrutinised existing law and policy, and have drawn on the experience and advice of victims and survivors, institutions that create and hold records, and various other stakeholders. We have also kept the rights of children at the forefront of our minds.

We recognise that the practices of some institutions (for example, in complying with existing legal obligations, or in line with their own policies) may already satisfy the spirit of these principles. We also recognise that the types of institutions within our Terms of Reference vary considerably, as do the levels of risk they need to manage. Reflecting that, we understand that what might be possible and appropriate for one type of institution may not be for another. For instance, it is not appropriate to expect a small local sports club run predominantly by volunteers to create records with the same level of detail, and maintain them with the same degree of sophistication and for the same period of time as a government OOHC provider.

A sixth principle

Noting that the different institution types within our Terms of Reference vary significantly, we have not suggested a principle to address enforcement of good recordkeeping practices at this stage. We are interested to hear stakeholders' views on whether an additional principle on enforcement is necessary. We note that some institutions types (for example, OOHC service providers and schools) already have enforceable recordkeeping obligations, which do not wish to duplicate. Conversely, enforceable recordkeeping obligations for smaller institutions whose recordkeeping practices may be largely or wholly unregulated may involve a level of regulatory intervention that is unsuitable or have unintended consequences.

We welcome your views on:

28. whether a sixth principle directed at enforcing the initial five principles is required
29. whether it would be necessary or appropriate to adopt a two-tiered approach to the enforcement of recordkeeping practices, whereby certain institutions (such as OOHC service providers and schools) are held to a higher standard than others (such as local sports clubs).

Suggested support - Records advocacy services

In addition to the principles outlined above, there may be value in jurisdictions and/or individual sectors establishing records advocacy services to assist victims and survivors of child sexual abuse in institutional contexts to seek access to institutional records. As discussed above, Find and Connect and the service providers funded under it in each jurisdiction provide a records advocacy service to care leavers. A similar service is arguably useful for the victims and survivors of child sexual abuse in other institution types (as well as younger care leavers). The functions of a records advocacy service may include:

- providing independent, confidential advice to individuals about how to seek access to records about them (or their immediate family members)
- assisting individuals make applications for access, amendment or annotation of records about them, or acting as the individual's agent in such applications
- providing guidance on applicable law, reasons for redactions and reasons for refusals to release, amend or annotate records
- referring individuals to other support services, such as counsellors or others offering more specialised care.

We welcome your views on:

30. whether a records advocacy service would be useful for victims and survivors of child sexual abuse in institutional contexts
31. what powers, functions and responsibilities a records advocacy service should have
32. whether there are existing bodies or agencies that may be suited to delivering records advocacy services.

We extend our sincere thanks to everyone who has spoken with us on these issues to date, and to those who will make submissions in response to this consultation paper.

7. Glossary

Care leaver

Any person who has spent time in OOHC as a child. The type of care may include residential care, foster care, kinship care or another arrangement whereby a child is given care outside the immediate family.

Case studies

Public hearings in which the Royal Commission has examined institutional responses to allegations and instances of child sexual abuse. Between September 2013 and July 2016, we have held 42 case studies involving abuse that took place between 1919 and 2014 in a wide range of institutions. These include OOHC institutions, schools, out-of-school-hours care service providers, faith-based organisations and institutions, sporting bodies, dance schools and organisations providing recreational activities.

Child

Any person under the age of 18. This accords with Article 1 of the Convention on the Rights of the Child of 20 November 1989, which defines a 'child' as 'every human being below the age of eighteen years'.[231] Some Australian jurisdictions also use the term 'young person' to describe teenagers under the age of 18. In this consultation paper, 'child' includes all young people under the age of 18.

Child sexual abuse

Any act that exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes grooming.

Institution

Any institution covered by our Terms of Reference.

Private sessions

A meeting in which a victim or survivor speaks directly with a Commissioner about his or her experience of child sexual abuse in an institutional context, and how relevant institutions have responded to their complaints. To date, over 5,500 private sessions have taken place.

Records disposal schedules

Authorisations issued by public records authorities outlining how long a public record must be kept before it can be destroyed or, alternatively, whether it must be archived permanently. These are also referred to as retention and disposal authorities. Penalties can apply if records disposal schedules are not complied with,[232] and where an institution destroys public records with the awareness that they may be relevant to legal action.[233]

8. Endnotes

[1] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, October, 2014, p 11. See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 17: The response of the Australian Indigenous Ministries, the Australian and Norther Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home* July, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkoll*, March, 2016.

[2] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, November, 2015, p 17.

[3] See, for example, Case Study 9, in which historical school records and records of bus routes were used to identify students who may have been sexually abused by the school's bus driver, Mr Brian Perkins (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*, May, 2015, p 49); Case Study 11, where a deficient system for recording complaints and concerns about inappropriate behaviour by staff members had the effect that there was no centralised database to record concerns or complaints, or facilitate a comprehensive review of the file when a complaint was made (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, December, 2014, p 12); Case Study 20, in which it was noted that 'every piece of information reported or gathered is important and the whole record, if accurately kept, may help others to assess whether complaints have credibility' (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 20: The responses of the Hutchins Schools and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*, November, 2015, p 73). See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, December, 2014, p 4; Find and Connect, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No. 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 1; Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, 2015, pp 156-7; Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016.

[4] In Case Study 11, we heard that the processing of several applications for redress for abuse by the Christian Brothers made under the Redress WA program was delayed 'due in part to the time it took for assessors to confirm details because of the age of the records' (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, December, 2014, p 66). See also Case Study 25, Transcript of T Allen, T13614:39-T13615:2 (Day 131).

[5] Committee IT-021, Records Management, (2002), *AS IOS 15489.1 – 2002 Australian Standards Records Management Part 1: General*, Standards Australia, p 3.

[6] A 'physical record' is a record in hard-copy form, such as a folio, paper file or bound volume; see National Archives of Australia, *Records management – Glossary*, at http://www.naa.gov.au/records-management/publications/glossary.aspx#r, accessed 20 January 2016.

[7] A 'digital record' is a record on digital storage media, produced, communicated, maintained and/or accessed by means of digital equipment; see International Organization for Standardization, *ISO 16175-1 – Information*

and documentation – Principles and functional requirements for records in electronic office environments, International Organization for Standardization, December 2010.

[8] 'Transactions' should be read here as including and referring to 'interactions' or 'activities' rather than financial activity only.

[9] National Archives of Australia, *Records management – Glossary*, Australian Government, 2016, at http://www.naa.gov.au/records-management/publications/glossary.aspx#r, accessed 20 January 2016.

[10] International Organization for Standardization, *ISO 30300 – Information and documentation – Management systems for records – Fundamentals and vocabulary*, International Organization for Standardization, November 2011. See also National Archives of Australia, *Records management – Glossary*, Australian Government, 2016, at http://www.naa.gov.au/records-management/publications/glossary.aspx#r, accessed 20 January 2016. See also *Territory Records Act 2002* (ACT), s 10.

[11] National Archives of Australia, *Creating records*, Australian Government, 2016, at http://www.naa.gov.au/records-management/agency/create-capture-describe/creating/index.aspx, accessed 5 July 2016.

[12] National Archives of Australia, *Create, capture, describe*, Australian Government, 2016, at http://www.naa.gov.au/records-management/agency/create-capture-describe/index.aspx, accessed 5 July 2016.

[13] Points (a) to (d) of our Terms of Reference are particularly relevant, which require us to inquire into: (a) what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future; (b) what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to, reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts; (c) what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse; (d) what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

[14] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June 2015. See also Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016. We note that s16(4) of the *Privacy Act 1988* (Cth) allows the use or disclosure of genetic information about an individual by an organisation if (a) the organisation has obtained the information in the course of providing a health service to that individual; (b) the organisation reasonably believes the use or disclose is necessary to lessen or prevent a serious threat to the life, health or safety of a second individual who is a genetic relative of the first individual; (c) the use or disclosure is in accordance with any guidelines issues by the Commissioner for Privacy under s 95AA; and (d) the recipient of any disclosure is a genetic relative of the first individual.

[15] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 7(1); 8(1).

[16] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 19.

[17] Some private and faith-based organisations did develop and apply detailed policies around records creation and recordkeeping. By way of example, the Catholic Code of Canon Law contains a number of detailed canons relevant to the creation, maintenance, storage, preservation, archives, access and destruction of diocesan records. For examples, see Canons, 486, 487, 489, 490, 490, 491 and 1339.

[18] Private sessions, July 2014; October 2014; April 2015.

[19] See, for example, Private session, July 2015.

[20] See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015. See also Frank Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 6.

[21] Private sessions, March 2013, August 2014, December 2015. See also Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June 2015. See also Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to

Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016.

[22] See, for example, Case Study 17, in which we noted that 'In the earliest mission manual [for the Retta Dixon Home] there is a requirement for records to be kept', and we were told by the General Director of the Australian Indigenous Ministries (AIM, formerly the Australian Inland Mission, which ran the Retta Dixon Home) that 'he would expect to see a written record of allegations of child sexual abuse' but that he was 'not aware of any document containing allegations of sexual abuse by AIM workers' (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 17: The response of the Australian Indigenous Ministries, the Australian and Norther Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home*, July, 2015, p 48). See also Private sessions, February 2014; October 2014; May 2015; August 2015; December 2015.

[23] See, for example, Case Study 3, in which two Anglican dioceses did not take appropriate disciplinary action against two members of the clergy involved in alleged abuse and did not record their conduct on the National Register of the Anglican Church, implemented to record information on sexual abuse and the misconduct of clergy and laity (Royal Commission into Institutional Responses to Child Sexual Abuse*, Report of Case Study No. 3: Anglican Diocese of Grafton's response to child sexual abuse at the North Coast Children's Home*, October, 2014, pp 4, 51); and Case Study 14, in which we were told that, 'in keeping with his usual practice', Father Brian Lucas made no record of his 1992 interview with priest, John Gerard Nestor, about allegations that Mr Nestor had sexually abused children (see p 4). Father Lucas accepted this was 'to ensure that [there] was no record of any admission of criminal conduct in order to protect the priest or religious concerned and the Church' (see p 11). We found that 'Father Lucas should have made a contemporary record of what was said in the interview' and that 'that written record that might otherwise have been available for use in a subsequence investigation, prosecution or other penal process are not available' (see Findings 1 and 2 at p 4) (Royal Commission into Institutional Responses to Child Sexual Abuse*, Report of Case Study No. 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a Priest of the Diocese*, December, 2014, pp 4, 11). See also Case Study 18, in which the Principal of the Northside Christian College at which a teacher was alleged to have sexual abused children 'did not record these allegations in a document he prepared, titled 'Chronological summary of allegations concerning Ken Sandilands', dated 13 December 1993, and he did not investigate the allegations' (Royal Commission into Institutional Responses to Child Sexual Abuse*, Report of Case Study No. 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, October, 2015, p 8).

[24] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 5: Response of The Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland*, January, 2015, pp 7-8.

[25] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 5: Response of The Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland*, January, 2015, p 69.

[26] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 5: Response of The Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland*, January, 2015, p 69.

[27] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 5: Response of The Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland*, January, 2015, p 43.

[28] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 5: Response of The Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland*, January, 2015, pp 69, 71.

[29] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, December, 2014, p 36.

[30] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, December, 2014, p 36.

[31] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13:*

The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton, November, 2015, pp 5, 9.
[32] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, November, 2015, p 17.
[33] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13 : The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, November, 2015, pp 9, 44, 58.
[34] State Records Office of Western Australia, *Aboriginal Records*, 2016, at http://www.sro.wa.gov.au/archive-collection/collection/aboriginal-records, accessed 12 July 2016.
[35] Private sessions, June 2014; September 2014; February 2015.
[36] Private session, June 2014.
[37] Private session, June 2015.
[38] Private session, December 2015.
[39] See, for example, Case Study 24, in which a care leaver told us that, when she was 14 months old, she had been described in her ward file as 'manipulative' (Case Study 24, Transcript of C Carroll, T14771:12-19 (Day 143)).
[40] Private session, February 2015.
[41] Private session, November 2014.
[42] Private session, February 2015.
[43] See, for example, the treatment of a Marist Brother for abusive behaviours being referred to as 'ongoing formation', despite the relevant Brother's admission that he had sexually abused children (see Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, November, 2015, p 19). See also Case Study 11, in which a 'scrutiny book' extract recorded that a Christian Brother was transferred between stations 'to live down gross accusations by evil boys' (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, December, 2014, p 31). See also Private sessions, January 2015, May 2015, June 2015 and July 2015.
[44] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, November, 2015, p 19. See also Exhibit 13-0003, CTJH.053.24002.0363_R at 0379.
[45] Case Study 30, Transcript of S Hodgkinson, TC9774:26-37 (Day C094).
[46] Case Study 30, Transcript of V P Philip, TC9949:6-24 (Day C095).
[47] Victorian Ombudsman, *Investigation into the storage and management of ward records by the Department of Human Services*, Victorian Government, March, 2012, pp 3, 12.
[48] See also Case Study 27, in which we heard that, 'The North Sydney Local Health District (NSLHD) was not able to locate any records of the notification by [a victim of CSA's] father to the CJ Cummins Unit of the Ryde CHC [that he had been sexually abused]. If any record was kept of the notification, it no longer exists and may have been destroyed.' In that case, we also heard that, 'While no record of destruction of employment records [from 1967 and 1968] was found, [a witness] said they were presumed to have been destroyed given their age' (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, March, 2016, pp 9, 61). See also Case Study 30, in which we heard evidence that certain records that were meant to have been retained, such as consent forms to use the contraceptive, Depo Provera, could not be located, with the implication that they had been lost or destroyed (Transcript of M Minister, Case Study 30, 24 August 2015, C9400:6-35).
[49] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, November, 2015, p 95.
[50] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 19: The response of the State of New South Wales to child sexual abuse at the Bethcar Children's Home in Brewarrina, New South Wales*, November, 2015, p 16.
[51] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, March, 2016, pp 6, 7.

[52] Boyce, James, (2003), *For the Record: Background Information on the Work of the Anglican Church with Aboriginal Children and Directory of Anglican Agencies providing residential care to children from 1830 to 1980*, Anglicare, Melbourne, p 18.
[53] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, March, 2016, p 39.
[54] See, for example, Case Study 30, in which one former resident of Turana told us that 'she was notified by letter in 2001 that all client files for residents of Turana born before 1967 had been destroyed when the resident reached 21 years of age' and a former employee recalled that 'while he was employed at Turana he witnessed a staff member tearing up files because they related to boys who had turned 21' (Exhibit 30-0003, 'Statement of BDB', Case Study 30, STAT.0609.001.0001_R at [90]; Exhibit 30-0012, 'Statement of A Cadd', Case Study 30, STAT.0637.001.0001_R at [63]; Case Study 30, Transcript of A Cadd, TC9044:14-37 (Day C088).
[55] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 17: The response of the Australian Indigenous Ministries, the Australian and Norther Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home*, July, 2015, p 34.
[56] Royal Commission into Institutional Responses to Child Sexual Abuse*, Report of Case Study No. 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, March, 2016, p 39.
[57] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, March, 2016, p 39.
[58] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 20: The response of The Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*, November, 2015, p 24.
[59] Case Study 30, Transcript of S Hodgkinson, TC9786:37-TC9787:29 (Day C094).
[60] National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families (1997), *Bringing Them Home*, Commonwealth of Australia; Senate Community Affairs References Committee (August, 2001), *Lost Innocents: righting the record – report on child migration*, Commonwealth of Australia; Senate Community Affairs References Committee (August, 2004), *Forgotten Australians*, Commonwealth of Australia.
[61] *Archives Act 1983* (Cth); *Territory Records Act 2002* (ACT); *State Records Act 1998* (NSW); *Information Act* (NT); *Public Records Act 2002* (Qld); *State Records Act 1997* (SA); *Archives Act 1983* (Tas); *Public Records Act 1973* (Vic); *State Records Act 2000* (WA).
[62] See, for example: *Territory Records Act 2002* (ACT), ss 3, 7; *State Records Act 1998* (NSW), s 3; *Information Act* (NT), s 5; *Public Records Act 2002* (Qld), ss 3, 6; *State Records Act 1997* (SA), s 3; *Archives Act 1983* (Tas), s 3; *State Records Act 1973* (Vic), ss 2, 13; *State Records Act 2000* (WA), s7.
[63] See, for example, *Territory Records Act 2002* (ACT), s 14; *State Records Act 1998* (NSW), ss 10-12; *Information Act* (NT), ss131-131B, 133-34; *Public Records Act 2002* (Qld), s 7; *State Records Act 1997* (SA), s 13; *Archives Act 1983* (Tas), s 10.
[64] See, for example, *Territory Records Act 2002* (ACT), s 24; *State Records Act 1998* (NSW), s 21; *Information Act* (NT), ss 145-147; *Public Records Act 2002* (Qld), ss 12-13; *State Records Act 1997* (SA), s 17; *Archives Act 1983* (Tas), s 20; *State Records Act 2000* (WA), s 78.
[65] The records created by some private institutions in certain circumstances may also constitute 'public records', however, and may be subject to public records legislation. For example, where a public institution outsources certain functions to a private institution, or contracts a private institution to undertake a particular piece of work on its behalf, the records the private institution creates will generally constitute public records and be subject to the relevant jurisdiction's public records legislation. In other cases, records created by private institutions in a private capacity may become public records where they are acquired by, transferred to or given to a public institution or public records offices. For example, many records of private institutions that provided OOHC in the mid to late decades of the twentieth century were passed to public records offices or child protection departments upon their closure.
[66] See, for example, the Catholic Code of Canon Law which contains a number of canons spanning all aspects of recordkeeping, including records creation, maintenance, retention, archiving, destruction and access.
[67] See, for example, Case Study 24, Transcript of B Orr, T14777:20-T14778:43 (Day 143).
[68] Voluntary OOHC is care for child that is voluntarily arranged between a parent(s)/carer(s) and an organisation, but where there is no court order for a child to live in OOHC. This type of care includes overnight, centre-based, respite and host family care, as well as some residential placements.

[69] NSW has some clear requirements for records relating to children in voluntary OOHC. For example, a relevant agency and the Children's Guardian must keep a case plan for each child in voluntary OOHC provided or supervised by that agency or the Guardian, as well as any reviews of the case plan, until the child reaches 18 years of age. The Children's Guardian also maintains a list of all designated agencies that provide or arrange of voluntary OOHC, as well as a register with details of each child who engages in voluntary OOHC with a relevant agency. For those children, the following information must be kept on the register: the name of the relevant agency; full name of the child and any other names he or she has or had; the child's gender, date and place of birth; the dates of the child's placement in voluntary OOHC; whether the child is in a target group for the purposes of the *Disability Services Act 1993* (NSW), and any other information the Children's Guardian and Privacy Commissioner agree is appropriate (see *Children and Young Persons (Care and Protection) Regulations 2012* (NSW), rr 75, 78, 79, 80, 82).
[70] See, for example, *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 170.
[71] See, for example, *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 160; New South Wales Department of Families, Housing, Community Services and Indigenous Affairs and National Framework Implementation Working Group, (July 2011), *An outline of National Standards for Out-of-home care*, Standard 4. See also New South Wales Department of Families and Community Services, *Out of Home Care Case Management Policy*, 4 December, 2013, p 3; Queensland Department of Communities, Child Safety and Disability Services, *Non-Government Service Provider Basic Recordkeeping Guide*, 2013, p 4, at https://www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/ngo-recordkeeping-guide.pdf, accessed 2 March 2016.
[72] Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, *An outline of National Standards for out-of-home care*, July, 2011, Australian Government.
[73] Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, *An outline of National Standards for out-of-home care*, July, 2011, Australian Government, Standard 3, p 9; Standard 10, p 12.
[74] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.
[75] Queensland Department of Communities, Child Safety and Disability Services, *Non-Government Service Provider Basic Recordkeeping Guide*, 2013, p 5, at https://www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/ngo-recordkeeping-guide.pdf, accessed 2 March 2016.
[76] Queensland Department of Communities, Child Safety and Disability Services, *Non-Government Service Provider Basic Recordkeeping Guide*, 2013, p 5, at https://www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/ngo-recordkeeping-guide.pdf, accessed 2 March 2016.
[77] Office of the Children's Guardian NSW, *NSW Child Safe Standards for Permanent Care – November 2015*, November, 2015, pp 12, 25.
[78] Office of the Children's Guardian NSW, *NSW Child Safe Standards for Permanent Care – November 2015*, November, 2015, p 25.
[79] *Children and Young People (Care and Protection) Act 1998* (NSW), s 14.
[80] Children in State Care Commission of Inquiry, *Children in State Care Commission of Inquiry – Allegations of Sexual Abuse and Deaths from Criminal* Conduct, State of South Australian, 2008, Chapter 6 'Keeping Adequate Records', p 542, at https://www.sa.gov.au/__data/assets/pdf_file/0019/17470/CISC-6-Keeping-adequate-records.pdf, accessed 7 June 2016.
[81] Children in State Care Commission of Inquiry, *Children in State Care Commission of Inquiry – Allegations of Sexual Abuse and Deaths from Criminal* Conduct, State of South Australian, 2008, Chapter 5 'Keeping Adequate Records', p 542, at https://www.sa.gov.au/__data/assets/pdf_file/0019/17470/CISC-6-Keeping-adequate-records.pdf, accessed 7 June 2016.
[82] Howse, Janet, *Managing Non-government and Private Records in a National Framework*, Australian Society of Archivists 2013 Conference, 2013, p 2.
[83] See, for example, *Education Act 2004* (ACT), ss 32, 33, 99, 100; *Education Act 1990* (NSW), ss 20A, 24, 45, 47, 92, 94, 95, 98; *Board of Studies, Teaching and Educational Standards Act 2013* (NSW), s 6; *Education Act 2015* (NT), ss 34, 45, 130, 142-143; *Education Regulations 2015* (NT), r 11; *Education (General Provisions) Act 2006* (Qld), ss 370-371; *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld), ss 16, 48; *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r 10 ; *Education and Training Reform Act 2006* (Vic), ss 4.4.7, s 5.3A.7; *Education and Training Reform Regulations 2007* (Vic), r 36; Sch 2, cl 3, 7–11; cl 7; Sch 8, cl 3; *School Education Act 1999* (WA), ss 19, 28; *School Education Regulations 2000* (WA), r 6;

[84] *ACT Teacher Quality Institute Act 2010* (ACT), ss 11, 42, 43, 45; *Education Act 2004* (ACT), ss 88, 146A; *Education Act 1990* (NSW), s 20A, 38-39, 47; *Teacher Accreditation Act 2004* (NSW), ss 16, 17, 18; *Education Act 2015* (NT), ss 123-125; *Teacher Registration (Norther Territory) Act* (NT), ss 26, 26A, 27, 47, 69; *Education (General Provisions) Act 2006* (Qld), ss 113, 378, 384, 386, 388; *Education (Accreditation of Non-State Schools) Act 2001* (Qld), ss 106, 164; *Education (Queensland College of Teachers) Act 2005* (Qld), ss 160-161, 166, 170, 230, 288; *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA), ss 41, 42, 56; *Teachers Registration and Standards Act 2004* (SA), ss 20, 28; *Education Act 1994* (Tas), ss 51, 54; *Teachers Registration Act 2000* (Tas), ss 6A, 34; *Education and Training Reform Act 2006* (Vic), ss 2.6.9, 2.6.24, 2.6.25, 2.6.54C, 4.3.8; *School Education Act 1999* (WA), s 161.

[85] See, for example, Australian Capital Territory Education and Training Directorate, *Student Accidents/Incidents*, Australian Capital Territory Government, 2008, at http://www.det.act.gov.au/__data/assets/pdf_file/0006/35709/Student_Accidents_Incidents_updated.pdf accessed 7 June 2016; Victorian Department of Education and Training, *Participation and Engagement – Response and Recovery*, Victorian Government, 2016, at http://www.education.vic.gov.au/school/principals/participation/Pages/responserecovery.aspx accessed 7 June 2016; Western Australian Department of Education, *Recording of Child Abuse*, Western Australia Government, 2016, at http://det.wa.edu.au/childprotection/detcms/navigation/recording-of-child-abuse/ accessed 7 June 2016.

[86] See, for example, Australian Capital Territory Education and Training Directorate, *Student Accidents/Incidents*, Australian Capital Territory Government, 2008, at http://www.det.act.gov.au/__data/assets/pdf_file/0006/35709/Student_Accidents_Incidents_updated.pdf accessed 7 June 2016; Victorian Department of Education and Training, *Participation and Engagement – Response and Recovery*, Victorian Government, 2016, at http://www.education.vic.gov.au/school/principals/participation/Pages/responserecovery.aspx accessed 7 June 2016; Western Australian Department of Education, *Recording of Child Abuse*, Western Australia Government, 2016, at http://det.wa.edu.au/childprotection/detcms/navigation/recording-of-child-abuse/ accessed 7 June 2016.

[87] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.

[88] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, Schools Roundtable, November 2015.

[89] Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 3.

[90] Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 3.

[91] See, for example, Case Study 2, in which the YMCA NSW failed to comply with its own policy requiring a written record to be made of oral references received during recruitment exercises (p 5), and did not record staff attendance at mandatory training or one staff member's attainment of a Working With Children Check clearance (p 24) (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 2: YMCA NSW's response to the conduct of Jonathan Lord*, June, 2014, pp 5, 24). See also Case Study 24, Transcript of C Carroll, T14769:42-T14770:8 (Day 143); Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June 2015.

[92] Case Study 24, Transcripts of Jono and Tash, T14647:41-T14648:32 (Day 142).

[93] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese,* December, 2014, p 11.

[94] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese,* December, 2014, p 11 (see also, Exhibit 14-0005, Case Study 14, CTJH.500.35001.0001_M_R at 0003_M_R).

[95] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese,* December, 2014, p 11 (see also, Case Study 14, Transcript of B Lucas, T7831:40 – T7832:7 (Day 74)).

[96] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese,* December, 2014, p 12.
[97] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 11.
[98] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 12.
[99] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, pp 13, 14, 18, 19, 28, 30. We note, however, that one of the three members of staff did take a written note that included the substance of what was required of the form (see p 6).
[100] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 19.
[101] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 19.
[102] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 28.
[103] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 17.
[104] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 6: The response of a primary school and the Toowoomba Catholic Education Office to the Conduct of Gerard Byrnes*, January, 2015, p 16.
[105] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 16.
[106] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, pp 5, 20.
[107] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 20. Similarly, in Case Study 18, we heard from Pastor Brian Houston that, after suspending Mr Frank Houston from preaching with the Church due to allegations of serious child sexual abuse and Mr F Houston's admission to a 'lesser incident', that Pastor Huston 'failed' to record or formalise that suspension in a written notice (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, October, 2015, p 28).
[108] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 22. A similar omission occurred in Case Study 27 in which we found that 'the [New South Wales Health Care Complaint Commission] Investigation Report concerning [a victim's] complaint recommended the investigation be terminated for lack of corroborative evidence. The Investigation Report did not record the existence of the two other complaints. The [Health Care Commission] incorrectly failed to consider the improved likelihood of proving [the first victim's] compliant based on the evidence of other similar reports against [the alleged perpetrator]' (Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, March, 2016, pp 8, 52).
[109] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 22.
[110] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 22.
[111] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 22.

[112] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, p 22.
[113] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 1: The response of institutions to the conduct of Steven Larkins*, March, 2014, pp 22-23.
[114] Case Study 24, Transcript of B Orr, T14776:38-T14777:7 (Day 143).
[115] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.
[116] Case Study 24, Transcript of C Carroll, T14769:42-T14770:8 (Day 143).
[117] Case Study 24, Transcript of J Reed, T14721:14-33 (Day 142). On the differences in quality of practices between agencies, see also, Transcript of B Orr, T14778:15-20 (Day 143).
[118] Case Study 24, Transcript of B Orr, T14778:2-9 (Day 143).
[119] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.
[120] Case Study 24, Transcript of J Reed, T14721:14-33 (Day 142). On the differences in quality of practices between agencies, see also, Case Study 24, Transcript of B Orr, T14778:15-20 (Day 143).
[121] We note that most Australian jurisdictions have taken steps to protect the confidence of information expressed by and to victims and survivors of sexual abuse in counselling contexts. For example, Part 5, Division 2 'Sexual assault communications privilege', of the *Criminal Procedure Act 1986* (NSW), which operates to protect the confidentiality of counselling communications made by, to, or in relation to victims and alleged victims of certain sexual assault offences. It also provides that a person cannot seek to compel (whether by subpoena or any other procedure) any other person to produce a document recording a protected confidence in, or in connection with, any preliminary criminal proceedings or criminal proceedings. See also *Evidence (Miscellaneous Provisions) Act 1991* (ACT), Part 4, Division 4.2.5; *Evidence Act 1995* (NSW), Part 3.10, Division 1A; *Evidence Act* (NT), Part 7; *Evidence Act 1929* (SA), Part 7, Division 9; *Evidence Act 2001* (Tas), s 127B; *Evidence (Miscellaneous Provisions) Act 1958* (Vic), Part II, Division 2A; *Evidence Act 1906* (WA), s 19A.
[122] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, June, 2015, p 40.
[123] Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, June, 2015, p 40.
[124] Case Study 24, Transcript of J Reed, T14720:14-36 (Day 142).
[125] Case Study 24, Transcript of J Reed, T14720:38-46 (Day 142).
[126] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.
[127] See, for example, Case Study 9, where historical school records and records of bus routes were examined to identify other students who may have suffered sexual abuse by the relevant perpetrator, Mr Brian Perkins (see Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 9 – The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*, May, 2015, p 49).
[128] A definition of 'normal administrative practice' is offered on the National Archives of Australia's website as follows: 'facilitative, transitory or short-term items including appointment diaries, calendars, "with compliments" slips, personal emails, listserv messages and emails in personal or shared drives, emails that have been captured into a corporate records management system; rough working papers and/or calculations; drafts not intended for further use or reference – whether in paper or electronic form – including reports, correspondence, addresses, speeches and planning documents that have minor edits for grammar and spelling and do not contain significant or substantial changes or annotations; copies of material retained for reference purposes only; published material not included as part of an agency's records.' See: National Archives of Australia, *Normal Administrative Practice,* Australian Government, 2016, at http://www.naa.gov.au/records-management/agency/keep-destroy-transfer/nap/index.aspx, accessed 11 March 2016.
[129] See, for example, *Archives Act 1983* (Cth), s 24; *Territory Records Act 2002* (ACT), ss 16, 24; *State Records Act 1998* (NSW), ss 22, 23; *State Records Regulations 2015* (NSW), Sch 2.
[130] See, for example, *Territory Records Act 2002* (ACT), s 24; *State Records Act 1998* (NSW), s 21; *Information Act* (NT), s 145-147; *Public Records Act 2002* (Qld), ss 12-13; *State Records Act 1997* (SA), s 17; *Archives Act 1983* (Tas), s 20; *State Records Act 2000* (WA), s 78.
[131] See, for example, *Crimes Act 1914* (Cth), s 39; *Crimes Act 1900* (NSW), s 317; *Crimes Act 1958* (Vic), s 254.

[132] See, for example, Senate Community Affairs References Committee, (August 2004), *Forgotten Australians*, Commonwealth of Australia, recommendation 13: 'That all government and non-government agencies immediately cease the practice of destroying records relating to those who have been in care.' See also National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families (1997), *Bringing Them Home*, Commonwealth of Australia; recommendation 21: 'That no records relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed.' See also *Children and Young People (Care and Protection) Act 1998* (NSW), s 14.
[133] See, for example, *Children and Young People (Care and Protection) Act 1998* (NSW), s 14; Queensland Department of Communities, Child Safety and Disability Services, *Non-Government Service Provider Basic Recordkeeping Guide,* Queensland Government, October, 2013, p 6, at (https://www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/ngo-recordkeeping-guide.pdf, accessed 10 March 2016; Children in State Care Commission of Inquiry, *Children in State Care Commission of Inquiry – Allegations of Sexual Abuse and Deaths from Criminal* Conduct, State of South Australian, 2008, Chapter 5 'Keeping Adequate Records', p 542, at https://www.sa.gov.au/__data/assets/pdf_file/0019/17470/CISC-6-Keeping-adequate-records.pdf, accessed 10 March 2016.
[134] See, for example, Northern Territory Department of Education, *General Disposal Schedule for School Records and Storage Procedural Guidelines,* Northern Territory Government, October, 1997, p 18, cl 7.2.2, 7.3, at https://artsandmuseums.nt.gov.au/__data/assets/pdf_file/0009/267804/School_Records_Disposal_Schedule.pdf, accessed 10 March 2016; Public Record Office Victoria, *Public Record Office Standard PROS 01/01 Authority – General Retention & Disposal Authority for School Records, Version 2013*, Victorian Government, 2013, at http://prov.vic.gov.au/wp-content/uploads/2014/02/PROS01-01SchoolRecordsGRDAvar5-WebsiteVersion20140226.pdf, accessed 7 July 2016.
[135] The Royal Australian and New Zealand College of Psychiatrists, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 13.
[136] See, for example, Catherine Esposito, Department of Family and Community Services, *Child Sexual Abuse and Disclosure*, NSW Government, pp 1, 5, 14, at http://www.facs.nsw.gov.au/__data/assets/file/0003/306426/Literature_Review_How_Children_Disclose_Sexual_Abuse.pdf, accessed 7 July 2016.
[137] Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report Volume 1*, June, 2014, p 6.
[138] Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, 2015, Recommendations 85, 86 and 88, p 53.
[139] *Limitation Act 1969* (NSW), s 6A; *Limitation of Actions Act 1958* (Vic), s 27P.
[140] The ACT Attorney-General has introduced the Justice and Community Safety Legislation Amendment Bill 2016 (No 2). A Private Members Bill has been introduced in Western Australia, see Limitation Amendment (Child Sexual Abuse Actions) Bill 2015. Queensland has also announced an intention to abolish limitation periods for civil actions for child sexual abuse in institutions. See *Time limits on legal claims by child sex abuse victims to be removed*, media release, Premier and Minister for the Arts and Attorney-General and Minister for Justice and Minister for Training Skills, Queensland, 2 August 2016.
[141] See, for example, Northern Territory Department of Education, *General Disposal Schedule for School Records and Storage Procedural Guidelines,* Northern Territory Government, October, 1997, p 18, cl 7.2.2, 7.3, at https://artsandmuseums.nt.gov.au/__data/assets/pdf_file/0009/267804/School_Records_Disposal_Schedule.pdf, accessed 10 March 2016; Public Record Office Victoria, *Public Record Office Standard PROS 01/01 Authority – General Retention & Disposal Authority for School Records, Version 2013*, Victorian Government, 2013, at http://prov.vic.gov.au/wp-content/uploads/2014/02/PROS01-01SchoolRecordsGRDAvar5-WebsiteVersion20140226.pdf, accessed 7 July 2016.
[142] See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015. See also Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, pp 3-4.
[143] Case Study 24, Transcript of C Carroll, T14770:23-29, T14771:24-29 (Day 143).

[144] See, for example, evidence in Case Study 30: Exhibit 30-0036, 'Statement of BDA', Case Study 30, STAT.0617.002.0001_M_R at [99]; Case Study 30, Transcript of BDB, TC8924:30-5 (Day C087).
[145] Case Study 24, Transcripts of Jono and Tash, T14648:16-20 (Day 142); Transcript of L Sheedy, T14702:37-42 (Day 142).
[146] See, for example, Case Study 30 - Exhibit 30-0016, 'Statement of K Hodkinson', Case Study 30, STAT.0614.001.0001_R at [60-61]; Exhibit 30-0017, 'Statement of Katherine X', Case Study 30, STAT.0615.001.0001_R_M at [132-134]; Exhibit 30-0036, 'Statement of BDA', Case Study 30, STAT.0617.002.0001_M_R at [102-104], [107]; Exhibit 30-0004, 'Statement of R Cummings', Case Study 30, STAT.0608.001.0001_R_M at [139]; Exhibit 30-0002, 'Statement of J Marijancevic', Case Study 30, STAT.0610.001.0001 at [105]; Exhibit 30-0014, 'Statement of BDC', Case Study 30, STAT.0607.001.0001_M_R at [93]; Exhibit 30-0015, 'Statement of BHE', Case Study 30, STAT.0613.001.0001_M_R at [64]; Exhibit 30-0022, 'Statement of BDF', Case Study 30, STAT.0616.001.0001_M_R at [86]; Exhibit 30-0023, 'Statement of G Short', Case Study 30, STAT.0647.001.0001_M_R at [84-86]; Exhibit 30-0003, 'Statement of BDB', Case Study 30, STAT.0609.001.0001_R at [92]; Exhibit 30-0044, 'Statement of BHU', Case Study 30, STAT.0653.001.0001_M_R at [60-63]. See also Case Study 24, Transcript of M Howson, T13118:35-42 (Day 125), Transcript of Tash, T14648:32-34, T14649:1-11 (Day 142); Transcript of L Sheedy, T14697:47-14698:6, T14704:28-31, T14710:10-18 (Day 142), Transcript of C Carroll, T14770:15 (Day 143); Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.
[147] *Freedom of Information Act 1982* (Cth); *Freedom of Information Act 1989* (ACT), s 10; *Information Privacy Act 2014* (ACT); *Government Information (Public Access) Act 2009* (NSW); *Government Information (Public Access) Regulations 2009* (NSW); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act* (NT); *Information Regulations* (NT); *Information Privacy Act 2009* (Qld); *Information Privacy Regulation 2009* (Qld); *Right to Information Act 2009* (Qld); *Right to Information Regulation 2009* (Qld); Information Privacy Principles Instruction (IPPI), Premier and Cabinet Circular No. 12 (SA); *Freedom of Information Act 1991* (SA); *Freedom of Information (Fees and Charges) Regulations 2003* (SA); *Right to Information Act 2009* (Tas); *Freedom of Information Act 1982* (Vic), s 1; *Right to Information Regulations 2010* (Tas); *Freedom of Information Act 1992* (WA), s 10.
[148] *Privacy Act 1988* (Cth); *Information Privacy Act 2014* (ACT).
[149] See, for example, *Freedom of Information Act 1982* (Cth), s 50; *Freedom of Information Act 1989* (ACT), s 48.
[150] See, for example, *Freedom of Information Act 1989* (ACT), s 14; *Government Information (Public Access) Act 2009* (NSW), s 41; *Information Act* (NT), ss 15, 16, 18; *Information Privacy Act 2009* (Qld)*, s 43; Right to Information Act 2009* (Qld), s 24; *Freedom of Information Act 1991* (SA), ss 12, 13; *Right to Information Act 2009* (Tas), ss 7, 8; *State Records Act 2000* (WA), s 50; *Freedom of Information Act 1992* (WA), ss 11, 12.
[151] Native Welfare Client Files are now held by the State Records Office of Western Australia. Some Native Welfare Client Files are considered 'general files' and can be accessed like other public records. Others are classified as 'access restricted records', and must be accessed using a more stringent process. For information on how to seek access to access restricted documents in Western Australia, see: http://www.sro.wa.gov.au/archive-collection/accessing-restricted-records.
[152] See, for example, *Freedom of Information Act 1989* (ACT), s 23.
[153] See, for example, *Freedom of Information Act 1989* (ACT), s 14; *Information Act* (NT), s 31; *Information Privacy Act 2009* (Qld), s 44, IPP 7; *Information Privacy Regulation 2009* (Qld), r 3; *Right to Information Regulation 2009* (Qld), r 3; *Freedom of Information Act 1991* (SA), ss 30, 31; *Freedom of Information Act 1982* (Vic), s 40; *Freedom of Information Act 1992* (WA), s 46.
[154] Application fees for access to public records in each jurisdiction are as follows: ACT, no charge; NSW, $30.00; NT, $30.00; Qld, $44.85; SA, $33.00; TAS, $38.25 ; Vic, $27.50; WA, $30.00 (see: *Government Information (Public Access) Act 2009* (NSW), s41; Information Regulations (NT), r 5; *Information Privacy Act 2009* (Qld), s43; *Right to Information Regulation 2009* (Qld), r 6; *Freedom of Information Act 1991* (SA), s 13; *Freedom of Information (Fees and Charges) Regulations 2003* (SA), Sch 1; *Right to Information Act 2009* (Tas), s 16; *Freedom of Information (Access Charges) Regulations 2014* (Vic); *Freedom of Information Act 1993* (WA), s 12; *Freedom of Information Regulations 1993* (WA), Sch 1.
[155] Application fees for access to public records which contain personal information only are as follows: ACT, $0.00; NSW, $30.00; NT, $0.00; Qld, $0.00; SA, $33.00; Tas, $37.00; Vic, $27.20 (can be waived or reduced); WA, $0.00 (see: *Government Information (Public Access) Act 2009* (NSW), s 41; Information Regulations (NT), r 5; *Right to Information Regulation 2009* (Qld), r 6; *Freedom of Information (Fees and Charges) Regulations 2003* (SA), Sch 1; *Right to Information Act 2009* (Tas), s 16; *Freedom of Information (Access Charges)*

Regulations 2014 (Vic); *Freedom of Information Act 1993* (WA), s 12; Freedom of Information Regulations 1993 (WA), Sch 1).

[156] See, for example, *Freedom of Information Act 1989* (ACT), ss 29, 30; *Government Information (Public Access) Act 2009* (NSW), ss 42, 65; *Right to Information Act 2009* (Qld), s 66; *Freedom of Information (Fees and Charges) Regulations 2003* (SA), r 5; *Freedom of Information Act 1982* (Vic), s 17.

[157] See, for example, *Territory Records Act 2002* (ACT), s 55; *Government Information (Public Access) Act 2009* (NSW), s 64; *Information Act* (NT), ss 18, 21, 156; *Information Regulations* (NT), r 6; *Public Records Act 2002* (Qld), s 17; *State Records Act 1997* (SA), s 26; *Archives Act 1983* (Tas), s 18; *Archives Regulations 2014* (Tas), r 5; *Public Records Act 1973* (Vic), s 23; *Freedom of Information Act 1993* (WA), s 12; *Freedom of Information Regulations 1993* (WA), Sch 1.

[158] *Territory Records Act 2002* (ACT), s 55; *Government Information (Public Access) Act 2009*, s 127; *Government Information (Public Access) Regulations 2009* (NSW), r 9; *Information Act* (NT), ss 18, 21; *Information Act* (NT), r 7; *Public Records Act 2002* (Qld), s 17; *State Records Act 1997* (SA), s 26; *State Records Regulations 1997* (SA), r 7; *Archives Act 1983* (Tas), s 18; *Archives Regulations 2014* (Tas), r 5; *Right to Information Act 2009* (Tas), s 16; *Public Records Act 1973* (Vic), s 23; *Freedom of Information Act 1993* (WA), s 12; *Freedom of Information Act 1992* (WA), s 16; *Freedom of Information Regulations 1993* (WA), Sch 1.

[159] See, for example, *Information Privacy Act 2014* (ACT), see Sch 1 (no fee for processing requests for personal information); *Government Information (Public Access) Act 2009* (NSW), s 67 (no fee for the first 20 hours of processing requests for personal information; processing charged at $30.00 per hour thereafter); *Information Regulations* (NT), Sch – Costs (black and white photocopies of any records provided at $0.20 per A4 page); *State Records Regulations 2013* (SA), Schedule 1, Fees (black and white photocopies of any records provided at $0.70 per A4 page).

[160] See, for example, *Information Privacy Act 2014* (ACT), Sch 1, TPP 12.4(a); *Government Information (Public Access) Act 2009* (NSW), s 57; *Freedom of Information Act 1982* (Vic), s 21.

[161] *Freedom of Information Act 1982* (Cth), ss 15, 15AA; *Information Privacy Act 2014* (ACT), Sch 1, TPP 12; *Freedom of Information Act 1989* (ACT), s 18; *Government Information (Public Access) Act 2009* (NSW), s 57; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW), r 14; *Information Act* (NT), s 19; *Information Privacy Act 2009* (Qld), s 22; *Right to Information Act 2009 (*Qld), s18; Freedom of Information Act 1991 (SA), s 14; Right to Information Act 2009 (Tas), s 15; *Privacy and Data Protection Act 2014* (Vic), Sch 1, IPP 6; *Freedom of Information Act 1982* (Vic), s 21; *Freedom of Information Act 1992* (WA), s 13.

[162] See, for example, *Government Information (Public Access) Act 2009* (NSW), ss 51, 63; *Information Act* (NT), ss 19, 32; *Information Privacy Act 2009* (Qld), s 66.

[163] See, for example, *Territory Records Act 2002* (ACT), s 29; *State Records Act 1998* (NSW), s 60; *Information Act* (NT), s 21; *Public Records Act 2002* (Qld), s 20; *Archives Act 1983* (Tas), s 18; *Freedom of Information Act 1982* (Vic), s 23.

[164] See, for example, *Freedom of Information Act 1982* (Cth), ss 48, 50-51; *Privacy Act 1988* (Cth), Sch 1, APP 13.4; *Freedom of Information Act 1989* (ACT), s 51; *Freedom of Information Act 1991* (SA), s 37; *Freedom of Information Act 1982* (Vic), ss 41-42; *Freedom of Information Act 1992* (WA), ss 45-46, 50-51.

[165] See, for example, *Archives Act 1983* (Cth), ss 29, 33; *Freedom of Information Act 1982* (Cth), ss 33, 35, 42; *Freedom of Information Act 1989* (ACT), ss 27A, 37, 37A, 42; *Territory Records Act 2002* (ACT), s 28; *Government Information (Public Access) Act 2009* (NSW), ss 53, 60; *Information Act* (NT), ss 3, 25, 30, 45-46, 49-49AA, 56, Sch 1 IPP 6; *Information Privacy Act 2009* (Qld), ss 3, 56, 60; *Public Records Act 2002* (Qld), s 18; *Right to Information Act 2009* (Qld), ss 3, 37, 41-42, 48, 75; *Freedom of Information Act 1991* (SA), ss 25-26, 81; *Right to Information Act 2009* (Tas), ss 10, 19, 20, 33, 36; *Freedom of Information Act 1982* (Vic), ss 24A, 25A, 29, 31, 33; *Freedom of Information Act 1992* (WA), ss 20-21, 32.

[166] *Freedom of Information Act 1982* (Cth), s 27A; *Freedom of Information Act 1989* (ACT), 27A; *Government Information (Public Access) Act 2009* (NSW), s 54; *Information Act* (NT), s 30; *Information Privacy Act 2009* (Qld), s 56; *Right to Information Act 2009* (Qld), s 37; *Freedom of Information Act 1991* (SA), s 26; *Right to Information Act 2009* (Tas), s 36; *Freedom of Information Act 1992* (WA), s 32.

[167] See, for example, *Freedom of Information Act 1989* (ACT), s 27A; *Information Act* (NT), s 30; *Information Privacy Act 2009* (Qld), s 56; *Right to Information Act 2009* (Qld), s 37; *Freedom of Information Act 1991* (SA), ss 25, 26; *Right to Information Act 2009* (Tas), s 36.

[168] See, for example, *Freedom of Information Act 1982* (Cth), s 27A *; Freedom of Information Act 1989* (ACT), s 27A; *Government Information (Public Access) Act 2009* (NSW), s 54; *Information Act* (NT), s 30; *Information Privacy Act 2009* (Qld), s 56; *Right to Information Act 2009* (Qld), s 37*; Freedom of Information Act 1991* (SA), s 26; *Right to Information Act 2009* (Tas), s 36; *Freedom of Information Act 1992* (WA), s 32.

[169] *Freedom of Information Act 1982* (Cth), s 27A; *Freedom of Information Act 1989* (ACT), s 27A; *Government Information (Public Access) Act 2009* (NSW), s 54*; Information Act* (NT), s 30; *Information Privacy Act 2009* (Qld), s 56; *Right to Information Act 2009* (Qld), s 37; *Freedom of Information Act 1991* (SA), s 26; *Right to Information Act 2009* (Tas), s 36; *Freedom of Information Act 1992* (WA), s 32.
[170] With respect to the review processes in the various jurisdictions, see for example, *Freedom of Information Act 1982* (Cth), ss 54, 54B, 54F, s54L, 55, 55K, 56, 56A, 57, 57A, 58, 58AA; *Privacy Act 1988* (Cth), ss36, 52, 55, 62; *Freedom of Information Act 1989* (ACT), ss 59-60; *Information Privacy Act* (ACT), ss 33-34, 45-47; *Government Information (Public Access) Act 2009* (NSW), ss 17, 80, 82, 89, 92, 99-100; *Privacy and Personal Information Protection Act 1998* (NSW), ss 45, 53, 55; *Information Act* (NT), ss 38, 39A, 87, 103-104, 112A, 113A, 129; *Information Privacy Act 2009* (Qld), ss 93-94, 98-99, 164, 176, 178; *Right to Information Act 2009,* (Qld), ss 80-81, 84-85, 118-119; *Freedom of Information Act 1991* (SA), ss 29, 38-40; *Right to Information Act 2009* (Tas), ss 43-45; *Freedom of Information Act 1982* (Vic), ss 6C, 49A, 49L-49M, 50, 61A, 61K; *Privacy and Data Protection Act 2014* (Vic), ss 57, 59, 65, 72-73, 77, 83; *Freedom of Information Act 1992* (WA), ss 39, 43, 54, 63-64, 78, 85.
[171] *Information Privacy Act 2014* (ACT), ss 33-34.
[172] *Information Privacy Act 2014* (ACT), s 45
[173] *Information Privacy Act 2014* (ACT), ss 46-47.
[174] *Freedom of Information Act 1989* (ACT), s 59.
[175] *Freedom of Information Act 1989* (ACT), s 60.
[176] Excluding situations in which records created or held by a private institution constitute 'public records', and where a private organisation is engaged by government to delivery services on behalf of government. As discussed elsewhere in this consultation paper, the records of private institutions engaged to deliver governmental functions generally belong to the government agency responsible for engaging the private institution, and those records become public records.
[177] *Catholic Code of Canon Law* (1983 revision), Canon 487(2).
[178] For the purposes of the *Privacy Act 1988* (Cth), an 'organisation' is an individual, a body corporate, a partnership, any other unincorporated association, or a trust, but not a small business operator (being the individual, body corporate, partnership, unincorporated association of trust that carries on a small business which has an annual turnover of less than $3,000,000); *Privacy Act 1988* (Cth), ss 6, 6C, 6D.
[179] *Privacy Act 1988* (Cth), s 6EA.
[180] *Privacy Act 1988* (Cth), Sch 1, APP 12.1.
[181] *Privacy Act 1988* (Cth), Sch 1, APP 12.
[182] *Privacy Act 1988* (Cth), Sch 1, APP 13.1.
[183] *Privacy Act 1988* (Cth), Sch 1, APP 12.8, 13.5.
[184] *Privacy Act 1988* (Cth), Sch 1, APP 12.4(a)(ii), 13.5.
[185] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015. See also Anglicare Australia, *Provenance Project,* Anglicare Australia, 2014, p 3.
[186] Anglicare Australia, *Provenance Project,* Anglicare Australia, 2014, p 3.
[187] *Privacy Act 1988* (Cth), Sch 1, APP 12.
[188] *Privacy Act 1988* (Cth), Sch 1, APP 12.3.
[189] *Privacy Act 1988* (Cth), Sch 1, APP 13.3.
[190] *Privacy Act 1988* (Cth), Sch 1, APP 13.4.
[191] Case Study 24, Transcript of L Sheedy, T14710:10-18 (Day 142); Case Study 24, Transcript of Tash, T14651:6-12 (Day 142); Transcript of C Carroll, T14770:13-18 (Day 143). See also Anglicare Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 8.
[192] Anglicare Australia, *Provenance Project,* Anglicare Australia, 2014, p II.
[193] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015. See also Frank Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 5. The *Freedom of Information Act 1982* (Cth), s 50 and *Freedom of Information Act 1992* (WA), s 48, require that any amendment or annotation be made in a way that preserves the original record so comparison can be made.
[194] Relationships Australia Wattle Place (NSW and ACT); Relationships Australia Northern Territory Brolga Place; Micah Projects Inc. Lotus Place (Qld); Relationships Australia Elm Place (SA); Relationships Australia Tasmania Inc.; Berry Street Open Place (Vic); Relationships Australia Lanterns House (WA); The University of

Melbourne (National); Care Leavers Australasia Network (CLAN) (National); The Alliance of Forgotten Australians (AFA) (National); The International Association of Former Child Migrants and their Families (National).

[195] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.

[196] We note that, in several jurisdictions, younger and more recent care leavers have access to support services in the lead up to, and after, transition from OOHC, including in relation to accessing and interpreting records as part of their transitions out of care.

[197] See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June 2015. See also Frank Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 5.

[198] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015. See also Frank Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016, p 5. As above, the *Freedom of Information Act 1982* (Cth), s 50 and *Freedom of Information Act 1992* (WA), s 48, require that any amendment or annotation be made in a way that preserves the original record so comparison can be made.

[199] Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.

[200] See, for example, *Information Act* (NT), ss 34, 35.

[201] *Privacy Act 1988* (Cth), s 2A.

[202] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.

[203] Anglicare Australia, *Provenance Project,* Anglicare Australia, 2014, pp 2-18.

[204] Australian Law Reform Commission, *For Your Information – Australian Privacy Law and Practice Report*, Australian Government, 2008, Recommendation 39, p 53.

[205] *Freedom of Information Act 1982* (Cth), s 3.

[206] See, for example, *Privacy Act 1988* (Cth), s 2A. See also *Freedom of Information Act 1982* (Cth), s 3;

[207] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.

[208] Case Study 25, Transcript of C Carroll, T13757:2-7 (Day 131).

[209] See, for example, *Freedom of Information Act 1982* (Cth), s11; *Information Act* (NT), s 17.

[210] Case Study 24, Transcript of Tash, T14649:3-5 (Day 142).

[211] Case Study 24, Transcript of Tash, T14649:17-43 (Day 142).

[212] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.

[213] Case Study 24, Transcript of Tash, T14649:1-11 (Day 142).

[214] See, for example, Find and Connect, *What to Expect when Accessing Records about You*, Find and Connect, 2011, at http://www.findandconnect.gov.au/resources/what-to-expect-when-accessing-records/, accessed 26 February 2016. See also Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.

[215] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.

[216] Case Study 24, Transcript of L Sheedy, T14704:28-32 (Day 142). We note that the New South Wales Department of Family and Community Services has committed additional resources to help process a backlog of applications for access to ward files in response to the findings of the Royal Commission to date. See, New South Wales Department of Justice, *NSW Government interim response to institutional child sexual abuse – Frequently Asked Questions*, 2015, New South Wales Government, pp 1, 3, at http://www.justice.nsw.gov.au/legal-services-coordination/Documents/FAQ_NSW%20gov%20interim%20response%20on%20child%20sexual%20assault.pdf accessed 1 April 2016.

[217] See, for example, *Government Information (Public Access) Act 2009* (NSW), ss 51, 63; *Information Act* (NT), ss 19, 32; *Information Privacy Act 2009* (Qld), s 66.

[218] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.

[219] See, for example, *Freedom of Information Act 1989* (ACT), s 23.

[220] See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Private Sessions (see in particular, Private Session of March 2015, concerning records of a Catholic primary school).

[221] See, for example, Case Study 30, Transcript of Katherine X, TC9156:28-38 (Day C089).

[222] Exhibit 30-0002, 'Statement of J Marijancevic', Case Study 30, STAT.0610.001.0001 at [105]-[106]; Exhibit 30-0014, 'Statement of BDC', Case Study 30, STAT.0607.001.0001_M_R at [93]; Exhibit 30-0017, 'Statement of Katherine X', Case Study 30, STAT.0615.001.0001_R_M at [133].
[223] Case Study 24, Transcript of Tash, T14649:47-T14650:3 (Day 142).
[224] Commonwealth Department of Social Services, *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing access to records*, 2015, Australian Government, at https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access, accessed 3 March 2016.
[225] See, for example, Case Study 24, Transcript of Tash, T14649:47-T14650:8, T14651:40-44 (Day 142); Transcript of Kate, T14650:24-45 (Day 142); Transcript of L Sheedy, T14703:46-T14704:23 (Day 142). See also Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015.
[226] *Privacy Act 1988* (Cth), Sch 1, APP 12.3(b).
[227] Royal Commission into Institutional Responses to Child Sexual Abuse, Records Roundtable, June, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December, 2015.
[228] See, for example, Case Study 24, Transcript of Kate, T14650:24-T14651:4 (Day 142); Transcript of Tash, T14651:40-44, T14649:47-T14670:8 (Day 142); Transcript of L Sheedy, T14703:46-T14704:23 (Day 142).
[229] Case Study 24, Transcript of Kate, T14650:24-T14651:4 (Day 142).
[230] Case Study 24, Transcript of Tash, T14650:3-T14651:44 (Day 142).
[231] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 1.
[232] See, for example, *Territory Records Act 2002* (ACT), s 24; *State Records Act 1998* (NSW), s 21; *Information Act* (NT), s 145-147; *Public Records Act 2002* (Qld), ss 12-13; *State Records Act 1997* (SA), s 17; *Archives Act 1983* (Tas), s 20; *State Records Act 2000* (WA), s 78.
[233] See, for example, *Crimes Act 1914* (Cth), s 39; *Crimes Act 1900* (NSW), s 317; *Crimes Act 1958* (Vic), s 254.

Royal Commission
into Institutional Responses
to Child Sexual Abuse

Commonwealth of Australia

Royal Commission into Institutional
Responses to Child Sexual Abuse

Australian Government
Department of Social Services

Access to Records by Forgotten Australians and Former Child Migrants

DSS1687.11.15

Access Principles for Records Holders & Best Practice Guidelines in providing access to records

June 2015

Copyright notice

Notice:

1. If you create a derivative of this document, the Department of Social Services requests the following notice be placed on your derivative: Based on Commonwealth of Australia (Department of Social Services) data.
2. Inquiries regarding this licence or any other use of this document are welcome. Please contact: Branch Manager, Communication and Media Branch, Department of Social Services. Phone: 1300 653 227. Email: communications@dss.gov.au

Notice identifying other material or rights in this publication:

1. Australian Commonwealth Coat of Arms — not Licensed under Creative Commons, see https://www.itsanhonour.gov.au/coat-arms/index.cfm
2. Certain images and photographs (as marked) — not licensed under Creative Commons

Table of Contents

Introduction

These Access to Records Principles and accompanying Best Practice Guidelines are a component of the response to National Apology to Forgotten Australians and Former Child Migrants, many of whom suffered abuse and neglect while in out-of-home care during the last century. The National Apology was issued by the Federal Government in 2009.

In particular these documents represent action on Recommendations 16 -18 of the Community Affairs References Committee report, 'Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children', August 2004 (Senate Inquiry)[1] That is:

Recommendation 16

That all government and non-government agencies agree on access guidelines for the records of all care leavers and that the guidelines incorporate the following:

- the right of every care leaver, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same;
- the right of every care leaver to undertake records searches, to be provided with records and the copying of records free of charge;
- the commitment to a maximum time period, agreed by the agencies, for the processing of applications for viewing records; and
- the commitment to the flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background.

Recommendation 17

That all agencies, both government and non-government, which provide access to records for care leavers, ensure adequate support and counselling services are provided at the time of viewing records, and if required, subsequent to the viewing of records; and that funding for independent counselling services be provided for those care leavers who do not wish to access services provided by a former care agency.

Recommendation 18

That the Commonwealth request the Council of Australian Governments to review all Federal and State and Territory Freedom of Information regimes to ensure that they do not hinder access by care leavers to information about their childhoods and families

[1] Commonwealth of Australia, Community Affairs Reference Committee, **Forgotten Australians: A report on Australians who experienced institutional or out of home care as children.** August 2004

PRINCIPLES FOR ACCESS TO RECORDS BY FORGOTTEN AUSTRALIANS AND FORMER CHILD MIGRANTS

JUNE 2015

Preamble

These Principles create a framework for access to records for Forgotten Australians and Former Child Migrants.[2] The Principles are further elaborated into Best Practice Guidelines which accompany the Principles. The Principles aim to maximise the amount of information available to Forgotten Australians and Former Child Migrants and to create greater consistency in conditions under which the information is made available.

The Principles are applicable to organisations that are Records Holders and those that provide services supporting access to records. They create an enabling framework for access to records of Forgotten Australians and Former Child Migrants.

Subject to agreement from the relevant authorities of the States and Territories, these Principles and accompanying Best Practice Guidelines are intended to enable Records Holders to use the discretion available to them in the legislative environment, to implement the intent of the Australian Government's Forgotten Australians recommendations to enable access to this group of Australians who, through no fault of their own, experienced institutional or out-of-home care in the twentieth century.

The Principles and accompanying Best Practice Guidelines are aspirational. They do not always reflect current practice, but they act as clear statements of intent.

The Principles aim to establish a common understanding of what is permitted and intended for access to records by Forgotten Australians and Former Child Migrants. Establishing these Principles will enable more consistent policies and practices for access to personal records of Forgotten Australians and Former Child Migrants, across Australia.

It is acknowledged that it may not be practical or appropriate to implement the Principles in all cases. However, it is desirable, wherever possible, for publicly funded and non-profit organisations to aspire to providing as broad and complete access as possible to the records they hold or are responsible for.

The Principles are challenging for Records Holders, and will require endorsement or adoption by each State and Territory jurisdiction, and private Records Holders, where applicable, before they become community practice.

[2] Further definitions of the Forgotten Australian and Former Child Migrant communities are included in the Best Practice Guidelines. The phrase 'Care Leaver' is used in these Principles and Guidelines to refer to both Forgotten Australians and Former Child Migrants, in the understanding that this terminology is disputed.

Access Principles

These principles apply regardless of the location of the records. That is, the responsibility for ensuring the same access rules applies to records relating to Forgotten Australians and Former Child Migrants regardless of the physical location or custodianship of these records.

Principle 1: Maximum provision of access to records

Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves, their family, identity and connection; circumstances surrounding placement in care; and details of time in care.

Principle 2: All information about themselves, and core identifying information about close family

Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.

Principle 3: Copies of records

Every person, upon proof of identity, has a right to receive a copy of all records found relating to themselves.

Principle 4: No Fees or charges for access to records containing personal information

No application or copying fees or any other charge are to be imposed.

Principle 5: Time limits to respond to requests for records

Every Record Holder will establish timeframes, consistent with their jurisdictional practice for release of information, within which applicants, once any access conditions are met, will receive all relevant records.

Principle 6: Ability to seek review or appeal a decision

Records Holders will establish a review or appeal mechanism which can have another party, not part of the initial assessment, review decisions on what information is made available or withheld, and address any other grievance raised by an applicant, free of charge.

Principle 7: Records will be provided in context and applicants alerted to possible causes of distress

Every applicant will be advised of the nature and context of the information provided and the possibility of distress that may result from accessing records about them.

Principle 8: Right to know about support and assistance services

Every applicant has a right to receive information, both orally and in writing, at the time of application about appropriate support and assistance services available to them and be encouraged to use supported access services.

Principle 9: Care Leavers may annotate records to tell their story and express their wishes to limit access to records

Forgotten Australians and Former Child Migrants may annotate or add to their records to correct, amend and tell their story in relation to the events documented in their records. In addition, they may alert Records Holders that they do not wish records about their time in care to be accessed by family members, while they are still alive. The mechanisms for recording the wishes shall be stored in such a way as to be obvious whenever the records are accessed, and persistently linked to the record/s. The Records Holders will respect such wishes, but may, in exceptional circumstances and subject to demonstrated need (assessed using formally agreed criteria), determine that access is permitted by family members.

Principle 10: Applicants entitled to use the Find and Connect Services and their other support services to assist

Forgotten Australians and Former Child Migrants are entitled to have their Find and Connect Service or other support service, e.g. service provider, counsellor or case manager, involved in the process of locating and releasing records.

Principle 11: Records Holders will work collaboratively to enhance access

Records Holders will work collaboratively to identify and address policy and procedural barriers that adversely impact upon a person's access to records as identified in Principle 1.

Principle 12: Government state or territory records holders are the repository of last resort

Where there is no ongoing legal organisation inheriting responsibilities, assets and/or staff of an organisation that undertook some form of out-of-home care, the state or territory department responsible for children's services will become the repository of last resort for records relating to children in care.

BEST PRACTICE GUIDELINES FOR ACCESS TO RECORDS BY FORGOTTEN AUSTRALIANS AND FORMER CHILD MIGRANTS

JUNE 2015

Introduction

These **Best Practice Guidelines for Access to Records of Forgotten Australians and Former Child Migrants** (subsequently **Guidelines**), are intended for use by those who are responsible for, all or any of the following:

- Managing records relating to Forgotten Australians and Former Child Migrants,
- Finding and locating records when requested,
- Processing records for access, and/or
- Presenting records to an individual through supported access or other means.

The **Guidelines** have been developed in conjunction with Records Holders and representatives of the Forgotten Australian and Former Child Migrant communities.

There is no assumption that all Records Holders will be able to comply with the provisions outlined. Some have well developed practices, and these **Guidelines** will represent little challenge to such Records Holders. Others struggle with resourcing, backlogs and inherited practices relating to records that may make compliance with these **Guidelines** a challenge. These **Guidelines** are a statement of 'best practice' at this time, and are voluntary and aspirational. Tailored versions of the **Guidelines,** reflecting what is achievable within a particular Record Holder's environment, may be made mandatory by the jurisdiction/organisation.

The **Guidelines** support a proactive approach to releasing records to enable maximum access to those who are the 'subject' of the records. This approach recommends a liberal approach to access, not relying solely on the provisions of the various legislative instruments that govern access (particularly to government records) in each jurisdiction. This approach echoes the findings of multiple enquiries across Australian jurisdictions, identifying Forgotten Australians and Former Child Migrants, who, through no fault of their own, became part of a system of institutionalisation. Records held by the various organisations may fill gaps in knowledge, verify memory, support identity and connection to family. As such, these groups require particular attention by Records Holders and a sympathetic approach to enabling access.

The **Guidelines** have been developed to promote consistency in providing access to records across the practices of all Records Holders and those who provide access to records. Respecting that each jurisdiction will have its own general rules for access to records, these **Guidelines** aim to promote a shared base line from which each Record Holder and service provider of access, can assess their own practice. From there, any changes needed to reflect best practices can be introduced to change individual practice as is practical and achievable.

These **Guidelines** are grounded in the reality that social practices, priorities and shared understandings change over time. The Forgotten Australian and Former Child Migrant communities have ‘fallen through the gap’ in relation to access to records, and are not eligible under the more liberal rules relating to access that apply through the current generation of child welfare legislation applicable in most jurisdictions. The practices of the past and the results of the past actions are unchangeable, but it is how we respond to social challenges such as treatment of children in the past, that we can address in a small way through access to records of the past.

SECTION 1: IDENTIFYING THE CARE LEAVER COMMUNITY, NEEDS AND EXPECTATIONS

1.1 Who are Forgotten Australians and Former Child Migrants?

Forgotten Australians are the estimated 500,000 children who experienced care in institutions or outside a home setting in Australia during the 20th century. They are survivors of the institutional care system, which was the standard form of out-of-home care in Australia for most of the 20th Century.[3]

The term Forgotten Australians was first used by the Community Affairs References Committee report, 'Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children' in 2004, relates mainly to those children who were in out-of-home care in the twentieth century. Out-of-home care varies in its form depending on the time period. It includes large institutional settings, such as orphanages, smaller residential homes run by a variety of organisations on behalf of the state, foster care or other out-of-home arrangements.

Former Child Migrants is an umbrella term to embrace those affected by child migration schemes to Australia, largely involving children from the United Kingdom, but also including some from Malta. These schemes involved agreements between governments where the Australian Government was the legislated guardian of the children but responsibility for the care of the children was delegated to State Governments and then often further delegated to receiving agencies. Some of these schemes continued into the 1970s.[4]

Collectively, both Forgotten Australians and Former Child Migrants are referred to as Care Leavers in these **Guidelines**.

In summary, the following definitions are applied:

Former Child Migrant: An unaccompanied child under the age of 16 who was brought out to Australia from the UK and/or Malta under various schemes and who had no family ties or contacts in Australia.

Forgotten Australian: Following the Senate report with that title, a term widely applied to and by Australian-born Care Leavers.

Care Leaver: Any person who was in institutional care or other form of out-of-home 'care', including foster 'care', as a child or youth, or both, at some time during the 20th century.

[3] Alliance for Forgotten Australians: **Forgotten Australians: Supporting survivors of childhood institutional care in Australia** Alliance for Forgotten Australians 2008. Fourth edition, July 2014

[4] Commonwealth of Australia, Senate Standing Committee on Community Affairs, **Lost Innocents: Righting the Record – Report on child migration**, 2001

1.2 What makes access to records so important to Care Leavers?

The past three decades have seen a variety of reports into the care and treatment of children in out-of-home care. These have ranged across all States and Territories. Many of these reports have identified access to records as being of primary importance to Care Leavers. [5]

The experience of individual Care Leavers varies considerably, but there are a significant number of Care Leavers who suffered considerably in their time in care. At minimum those placed in care are likely to have lost contact with family and their place of origin. This loss has a major impact on a person's identity and sense of self. In addition, many suffered humiliation and sometimes much more serious abuse. Often people were denied access to educational opportunity and stigmatised. These experiences result in people who are likely to suffer long term traumatisation brought about by these events.

Care Leavers are often seeking answers to questions including:

- Who placed me in care and why?
- Who were my parents?
- Do I have any brothers and sisters?
- Did anyone visit me?
- Who arranged for my foster parents to care for me?
- Was the child welfare department involved?
- How were decisions made to keep me in care?
- Why didn't other members of my family (uncles, aunts, grandparents) look out for me?[6]

Information is also sought about the health of their parents as worries about possibly inherited health problems arise.[7]

Individuals may want to validate or verify their memories of a specific event.

Where redress is an option, people may seek records to support applications.

As public discussion and awareness of the suffering of children in care become more available, more people are seeking access to records about themselves.

---

[5] See Royal Commission into Institutional Reponses to Child Sexual Abuse: *Inquiries and Reports Relevant to the Royal Commission into Institutional responses to child Sexual Abuse* , 2013

and more recently, Swain, S. 2014. *History of inquiries reviewing institutions providing care for children. Royal Commission into Institutional Responses to Child Sexual Abuse*. Sydney.

[6] *Forgotten Australians*, Chapter 9, Identity and Records, section 9.6,p 254

[7] *Forgotten Australians*, Chapter 9, Identity and Records, section 9.8, p255

The availability of support services to facilitate access to records, and networks of people creating communities of support can empower individuals to seek their records. Such support services include the Find and Connect Services, or support organisations such as the Alliance for Forgotten Australians or CLAN.

See further:

1.3 Care Leavers Expectations of Records

1.4 Impact of records on Care Leavers

Section 3 The mechanics of processing applications for access

1.3 Care Leavers expectations of records

Many Care Leavers have high expectations of what the records will reveal. In many cases they will be disappointed.

The expectation that there is something that is 'my file' is often not the reality of how records were maintained by homes or governments. The reality of what can be produced is often constructed for the purposes of presenting the records that still exist.

Expectations can be raised that answers to particular questions will be available, only to find mundane, sometimes erroneous statements, possibly judgemental and potentially damaging content.

Case: Vlad Selakovic[8]

I needed to ask questions about myself. I needed answers! I needed answers like, who am I? What am I? Where am I going in life? What is happening to me? Why am I in the situation in life, right now, that I am? Those pages didn't contain those things. All they did was tell me: where I was, what had happened to me in certain periods of time, what I'd done.

For Record Holders, the reality is that Care Leavers will often expect more than is there. Sometimes records have been lost, or cannot be found, or have been destroyed by accident or according to an approved destruction authority current at the time. Care Leavers sometimes find these explanations unconvincing.

Case: Mimi[9]

Mimi has applied for access to her records a number of times. On each occasion the Department has replied that the records relating to her time in care were amongst those documented as being destroyed in the 1970s. Mimi does not accept that, and insists that the records are still in existence: 'They wouldn't have destroyed the file - that documents my life'.

[8] Vlad Selakovic Transcript of Presentation given at 'Archiving: moving forward as a community' workshop, 15 April 2010

[9] Please note: with the exception of Vlad Selakovic's case where published sources are cited, all case studies citing individuals are fictional and resemblance to circumstances experienced by a real individual is co-incidental and unintentional.

Mimi, therefore, sees the refusal of the Department is a cover-up continuing the state based patterns of victimisation.

Both the Records Holder and Mimi must accept that they are at a stand-off in these circumstances. Mimi will continue to ask for her records. The Department must continue to seek records, and respond to each and every request courteously to accepted standards.

See further:

Section 4: Providing Information to Care Leavers

1.4 Impact of records on Care Leavers

These records can change lives. For many, the records are so tightly bound up with questions of identity and self, that gaining knowledge of the circumstances and events can provoke a range of complex emotions, including reopening of old wounds, and re-traumatisation. Life-long questions can be answered and ghosts laid to rest in the best possible outcomes. Not all outcomes of access to records can be assumed to be positive.

Records change lives

Joe was a twin. He and his twin brother were placed into care at the time of the death of his mother. Subsequently Joe's brother was reunited with his father and taken out of care to live with his father. For the whole of his life, Joe has been haunted by questions such as: Why him, not me? Why was I left in care?

Records relating to Joe's time in care revealed that his father never stopped asking for Joe to be released to his care along with his twin brother. Joe's father wrote regular letters over the whole of Joe's childhood; he sought recommendations from community figures including a member of parliament to support his application.

The decision-making revealed in the records showed the Department believed a single father could only cope with one child. Joe had been noted as 'acting up' in the file, thus his twin was considered easier for a single parent to cope with.

These revelations changed the way Joe thought about his father. The evidence that his father never stopped caring for him and trying to reunite the family, was life altering for Joe.

Records cause distress

A woman requested a copy of her ward file. According to the file, the woman was removed from her parents as a baby and placed in one foster home in the country where she remained until she was 18. She was still living in the same country town. There had been regular checks on how she was going from the child welfare department and all the reports said it was a successful placement and the child was happy and well cared for. When the client read the file, she was very distressed and said the file was totally inaccurate. She said that she had

experienced continued physical and emotional abuse from the foster mother the entire time.

Vlad Selakovic's experience[10]

… Then Leonie rang up and said, 'I've got your file'. *That* created certain issues in my life that I wasn't quite sure of, I was so indecisive and … scared. And I mean scared. Because, there it is, there's my childhood. In pages. You know what it's like to read a book, your favourite book and you're so engrossed in this book that you can't put it down? This is the complete opposite. It was so shocking and so demoralizing and so dehumanizing to me and to each and every one of us that must go through this. And it really was dehumanizing. Because it's just nothing. It doesn't tell about *me*. It just tells you about the person, who was a number, and one of many, in a group. And they don't individualise you at all … there are certain things in there, saying, about myself, how I'm hungry, or you know, cunning, conniving, spirited, all these sorts of things – I'm an 8 year old, 10 year old boy. I mean, someone please tell me how I got to that point? I don't know. Well, I do – we had to survive.

Records Holders must be exceptionally sensitive to the potential impact of the records on the person seeking access. Supported release, a process whereby a professional (usually a social worker) trained in trauma and client interaction, is available to assist a person during the reading of their file and using such services should be strongly encouraged.

It is important to appreciate that the Care Leaver's use of a file may not be the same as the expectation of Records Holders. Because the experience can be such a traumatic one, Care Leavers have noted different responses.

Case: different experiences

Vlad Selakovic tells of carrying his file around for months before feeling sufficiently strong to read it.

Belinda conducted a ceremony to burn her copies of the files as a symbolic gesture.

See further:

1.3 Care Leaver expectations of records

Section 5: Providing access services to Care Leavers

[10] Vlad Selakovic, See footnote 8

1.5 Documenting the Care Leaver's story

The records that document time in care may represent a very different view of reality to that perceived and experienced by the Care Leaver themselves. Recordkeeping of the past was a bureaucratic process, designed to serve the needs of the organisation or institution, not the people documented in the records.

The Care Leaver should be encouraged to annotate or add to the record, by creating their own account of their time in care, to include with the organisational record. This enables Care Leavers to present their view of the events documented in the organisational file. The annotation/addition will be located with the organisational record/s and always be presented with the organisational record when future access is allowed.

Such annotation of /addition to personal records is allowed under the legislative Privacy and Freedom of Information/Right to Information regimes in many states and territories.

See further:

2.5 Annotating records

4.9 What rights do Care Leavers have over the records?

SECTION 2: WHAT INFORMATION CAN I GIVE TO CARE LEAVERS?

2.1 Maximum access

The Principles for Access to Records by Forgotten Australians and Former Child Migrants establishes two basic principles which should guide all Records Holders in determining what records Care Leavers should have access to.

These are:

Principle 1: Maximum provision of access to records

Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves, their family, identity and connection; circumstances surrounding placement in care; and details of time in care.

Principle 2: All information about themselves, and core identifying information about close family

Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.

For these communities, who through no fault of their own, were removed from family, a liberal interpretation of the current rules is proposed. This is allowed under protocols such as 'administrative release' or 'informal release' in various legislative environments. There are precedents for a more liberal access regime outside the legislative rules according to agreement. The *Forgotten Australians* Senate Report in particular recommended legislative revision to empower Care Leavers to get greater than normal access. In particular this form of liberalised access has been applied to members of the Stolen Generation in the past. In some jurisdictions these liberal rules are still available to members of the Stolen Generation, creating an iniquitous situation for Forgotten Australians and Former Child Migrants who suffered similar dislocation from family and community.

These principles are intended to guide Records Holders best practice for these communities, regardless of the specific legislative provisions in place in each state and territory jurisdiction. All legislative environments have an element of discretion. Much freer access to records of their time in care operates within this discretionary area.

Each jurisdiction should determine what mechanisms should be adopted within their jurisdiction to give effect to these principles.

2.2 Third party privacy

The intention of these Guidelines is to provide as much factual information about family to Forgotten Australians and Former Child Migrants as possible. Having been deprived of family connections through no fault of their own, and by practices of the past which are no longer applied to current children in care, the details in records may offer the only information available to them about identity and family of origin.

The findings of multiple inquiries into problems that Care Leavers have in accessing records identify the application of the third party privacy rule as the major frustration to Care Leavers. The irony is that the more an individual already knows, through piecing information from birth certificates, newspapers or other publicly available sources, enabling them to name family members, the greater the information they are deemed able to see without violation of the third party rules.

The major reason to exercise reasonable care in providing access to records is to protect the privacy of third parties. The Freedom of Information/Right to Information and Privacy legislation of various states and territories establish quite clearly that third party privacy should be respected. The mechanisms in place provide for consultation of a third party as to whether the information should be released. Consultation is difficult, costly and time consuming to apply.

These Guidelines propose a different view of what constitutes a third party. Here, it is proposed, that personal information may belong to more than one person simultaneously: for example, your mother's name and family identification is your mother's personal information, but it is equally your personal information. Using that logic, a great deal of information about family can quite legitimately be released to a Care Leaver.

For the purposes of these Guidelines, family is taken to mean close family: parents, grandparents, siblings and half siblings, aunts, uncles and first cousins. A person growing up within a family, will generally know the factual details of their close family. These details form part of the personal information of an individual.

Factual information about relatives should be left in records released to Care Leavers. This includes information concerning a deceased individual.

Not all information may be released by this interpretation. Information which may potentially cause distress may be withheld.

This section has identified 'sensitive' information which may potentially cause distress to the third party and recommends that this information should be managed with care. This term is not intended to replace or interfere with the legislative interpretation of the word 'sensitive' which has specific meaning in a number of jurisdictions. Distress means that the third party is reasonably likely to suffer hurt, damage or loss.

Information which may potentially cause distress to the third party may be:

- psychiatric evaluations of family members
- beliefs in relation to religion
- political affiliations
- personal habits
- information about other family members divulged by one person.

Determining what information may potentially cause distress is always subject to interpretation. Where individual cases raise issues that are not clear to the person making the assessment of what information to withhold, Records Holders should institute a mechanism of peer review and discussion to assist an individual make decisions, while always being guided by the principle that maximum information should be released. In assessing whether information may potentially cause distress, and therefore should be withheld, Records Holders should constantly remind themselves that one of the Care Leavers primary questions in seeking information is to understand why they were placed in care.

The phrasing of the request for access can determine whether the application is dealt with as a request for personal information, or whether seeking more general information (see further section 4.1), and therefore under which set of legislative rules the request is processed. Wherever possible, the most generous interpretation of the request should be assumed. Information about time in care is deeply personal even though it may not be deemed immediately obvious personal information. As much information as possible, consistent with the jurisdictional rules, should be released to the Care Leaver. Where a request has been phrased to limit the information provided to personal information, guidance and assistance should be provided to assist in either rephrasing the request to enable more information to be released, or to assist an applicant in making a subsequent request for information that may not be specifically categorised as personal information.

The following set of rules should guide practice[11]:

Information on File Concerning:	Comment (Leave/Delete)
Parents and Grandparents	
Names and addresses	**LEAVE:** In general a person would know who their grandparents are. Additionally, this information is necessary for family reunification and to establish or confirm identity and belonging.
Information concerning the parents/grandparents name, that is – a) not on a birth certificate or in any other record other than the applicant's file; or b) inconsistent with the Care Leaver's knowledge	**LEAVE:** It is possible the only information confirming the parents or grandparents name and date of birth.
Letters written by the department, home, service or other organisations to the parents or grandparents or vice versa	**LEAVE.**
Personal particulars relating to parents or grandparents e.g. education, domestic circumstances, activities that they are engaged in	**LEAVE:** Unless the information is assessed as reasonably likely to cause distress, that is - the parent or grandparent is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the

[11] This table is slightly modified from that prepared by Mimi Morizzi, 'Guide to the Access and Issue of "Forgotten Australians" Client Records (records pre 1989) Lentara UnitingCare, UnitingCare Victoria and Tasmania, 2013

Information on File Concerning:	Comment (Leave/Delete)
etc.	information being issued.
Information about a parent or grandparent's personal, social or sexual habits or actions and disclosures about such matters made by the individual etc.	**DELETE:** If it is assessed as reasonably likely to cause distress, that is - a parent or grandparent is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued.
Information concerning visits to the child or the child visiting the parent or grandparent	**LEAVE:** The purpose of a visit is assumed to be maintaining contact with the child.
All information concerning a deceased parent or grandparent	**LEAVE.**
Siblings, half siblings	
Names and dates of birth of siblings	**LEAVE:** In general a person would know the names of all their siblings. This information is necessary for family reunification and to establish or confirm identity and belonging.
Address and contact details	**LEAVE:** In general, a person would know the address and contact details of their siblings. This information is necessary for family reunification and to establish or confirm identity and belonging. **DELETE:** If there has been previous contact with the sibling and the sibling has asked that this information

Information on File Concerning:	Comment (Leave/Delete)
	remains private. If appropriate, check again to establish if the sibling still wants their details kept private.
Personal particulars relating to siblings e.g. education, domestic circumstances, activities that they are engaged in etc.	**LEAVE:** In general, a person would know personal particulars of their siblings.
Information about a sibling's personal, social or sexual habits or actions and disclosures about such matters made by the individual etc.	**DELETE:** If it is assessed as reasonably likely to cause distress, that is - a sibling is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued.
References to siblings and the applicant in the same context eg John and Betty (siblings) went to camp	**LEAVE:** Unless it is assessed that release of information is reasonably likely to cause distress, that is – that the sibling is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being released.
Information concerning visits to the child or the child visiting the sibling	**LEAVE:** This information may be relevant for family reunification and to establish or confirm identity and belonging.
All information concerning a deceased sibling	**LEAVE.**

Relatives, including aunts, uncles, first cousins	
Names of relatives	**LEAVE:** In general a person would know the names of all their relatives.
Address and contact details	**LEAVE:** In general, a person would know the address and contact details of their relatives.
Letters written by the department, home, service or other organisations to the relatives or vice versa	**LEAVE:** Unless it is assessed that release of information is reasonably likely to cause distress, that is – that the relative is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being released.
Personal particulars relating to relatives eg education, domestic circumstances, activities that they are engaged in etc.	**DELETE:** Most family members will not necessarily know these types of details about relatives and release of such information is reasonably likely to cause distress.
Information about a relative's personal, social or sexual habits or actions and disclosures about such matters made by the individual etc.	**DELETE:** Most family members will not necessarily know these types of details about relatives and release of such information is reasonably likely to cause distress.
Information concerning visits to the child or the child visiting the relative	**LEAVE:** Most people visiting the child would have done so for the primary purpose of maintaining contact with the child. This information is necessary for family reunification and to establish or confirm identity and belonging.

External Carers (e.g. Holiday Hosts)	
Names of carers	**LEAVE:** In general a person would know the names of all their carer.
Address and contact details of carer	**DELETE:** But offer to facilitate a process of contacting the carer on the client's behalf should the client seek contact with the carer.
Letters written by the department, home, service or other organisations to the carer or vice versa	**LEAVE :** Unless it is reasonably likely that any of the following apply: a) That the release of information is reasonably likely to cause the carer distress, that is, that the carer is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued. b) The information does not directly relate to the Care Leaver. **DELETE:** Address and contact details of carers.
Internal Carers	
Names of carers and staff	**LEAVE:** In general a person would know the names of all their carer (or staff).
Address and contact details of carers and staff	**DELETE**: But offer to facilitate a process of contacting the carer or staff on the client's behalf should the client seek contact with the carer or staff.

Letters written by the department, home, service or other organisations to the carer/staff or vice versa	**LEAVE:** Unless it is reasonably likely that any of the following apply: a) That the release of information is reasonably likely to cause the carer distress, that is, that the carer is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued. b) The information does not directly relate to the Care Leaver. **DELETE:** Address and contact details of carers/staff.
Other non-related children in the home	
Names of other children in the home/care situation	**LEAVE:** In general, a person would know the names of other children they grew up with. Additionally, names, places and dates assist a client to remember facts about their time in care. **Note:** delete family names of other children – some Care Leavers have expressed concern that their family name is disclosed due to the potential of information later appearing in electronic social media. Consider that not all Care Leavers have disclosed that they were in care. Deleting family names is not a foolproof method of protecting privacy as, in certain circumstances (e.g. an unusual name, a small community) it may be quite easy to re-identify an individual.

Contact details of other children in the home/care situation	**DELETE:** But offer to facilitate a process of contacting the other Care Leaver on the clients behalf should the client seek contact with the other Care Leaver.
References to other children and the applicant in the same context e.g. David (other child) and Mark (the applicant) played on the swings	**LEAVE:** Unless the information is reasonably likely to cause the other Care Leaver distress, that is – that the other Care Leaver is reasonably likely to suffer a detriment (e.g. hurt, damage, loss) as a result of the information being issued.
Any other personal particulars of other children with the exception of photos	**DELETE:** This information is not specific to the Care Leaver and is not required to prove identity or validate memory. Normal third party privacy rules should be applied to this information.
Photo(s) that include other children, staff, other people	**LEAVE**: If one of the children in the photo(s) is the person making the request. If the photo is subject to copyright indicate that the photo is copyright of the department/home/service or photographer and subject to the Copyright Act 1968. Photos of people are not to be provided if the client is not in the photo unless those photos have been previously published, or the photos are of group events e.g. special functions, celebrations etc., or where the photos are already in the public domain available for public use.

2.3 Redaction

Redaction is the process of removing information from view, usually by blocking out the information on a copy and recopying that changed document.

Redaction is undertaken to protect information deemed not relevant to the query being processed in the application for access. Often it is undertaken to protect third party privacy.

Under practices used to administer Freedom of Information/Right to Information requests, Records Holders are often required to inform those receiving the records why the information was redacted (or blocked out from view). Usually this is done by referencing the specific section of the legislation that was used. This information is usually provided in a covering letter to the Care Leaver which is provided with the records themselves, either to them directly or through a support service.

Many report that these statements of reasons for redaction, which usually cite the section of the relevant legislation, are daunting and expressed in language that is difficult, and tell them nothing.

Best practice would be to annotate the record giving as much information on what is redacted without releasing the information:

- For example: if a sentence is redacted which says Bill (the applicant's brother) was sent to work for a dairy farmer for two years and is angry that his full wages have never been paid. This information relates to a person not a Care Leaver, but to a close relative. Using the proposed third party rules, release of this information would be appropriate. It is hardly sensitive information. But if it were redacted, the explanation could read: information relating to your brothers employment removed under s (xxx – the relevant legislative provision).

Some Records Holders have adopted practices of removing a second name, leaving a first name, in the belief that this will de-identify a person. This is an acceptable practice, as often the Care Leaver will remember individuals from their past, but Records Holders should understand that this is not really adequate protection of a third person's privacy if the matter is truly needing protection. In many instances it doesn't take much 'detective' work to determine a person's identity. In most cases this will not be a big problem, but Records Holders should be aware of the likelihood of identifying individuals from their name and the circumstances in the records.

Example of informing a Care Leaver about what is redacted[12]

Under the FOI Act some information was not released to you. This is for the following reasons:

Personal Privacy - Section 33(1)

This section of the Act prevents the unreasonable disclosure of information relating to the personal affairs of another person.

- The seven pages part released to you included:
- Two pages listed the surname of your alleged co-offender.
- Four pages listed the surname of other trainee's at the home.
- One page listed the name of another ward not related to you.

2.4 Providing copies

Copies of all personal information records (subject to redactions where applied) should be made available at no cost to the Care Leaver.

Where the records contain items that should belong to the individual Care Leaver, the original of these documents should be provided, and a copy retained by the Record Holders. This type of record includes:

- Original or extracts of birth certificates;
- Certificates of achievement;
- School reports;
- Correspondence addressed to the Care Leaver from relatives during their time in care;
- Photographs.

Copies of these original records should be made. The originals should be returned to the Care Leaver. The copies should be placed on the relevant Record Holder's record. The copy placed in the records should be annotated with the fact that the originals were returned to the Care Leaver and the date.

2.4.1 How to provide copies

Copies should be provided in paper format. On request, a Care Leaver may obtain the copies in electronic form, either on a compact disc or USB device.

Because these are highly personal records, if they are sent electronically, care should be taken to use encryption and to make sure that the Care Leaver knows how to access the files.

Copies should be placed in chronological order with the earliest at the top. Where records have come from different sources, such as from each of a Ward file, an

[12] Example from Department of Human Services, Victoria

admissions register or a punishment book, a separator should be inserted with the identification of the source clearly indicated.

A summary of the contents should be prepared to guide the Care Leaver on how to read the records. This should be packaged independently from the copies of the records themselves. Do not attempt to make a story of the copies – Care Leavers generally do not wish to have an interpretation provided, but the records themselves. Explanation of the people in the records and their roles may be of assistance.

Supported access is recommended to assist Care Leavers understand the context and the contents of the records released. However this is not a mandatory requirement. Where the Care Leaver requests, the files can be sent by mail. Records Holders should take care not to send these files when the Care Leaver may be particularly vulnerable to the time of year: for example Mother's Day, Father's Day, Christmas Day, and birthdays etc.

Packaging of records should also be considered.

Vlad's experience[13]

It's not very inviting is it? Your life, put in a post bag ... they could have got, direct mail or something... 'there's your childhood, wrapped up in a little envelope'!

'Vlad expressed that he felt hurt to receive his records in a standard issue Postpak, as well as by the physical presentation of the documents themselves – in a grey plastic folder, containing pages of copies of documents secured by a bull-dog clip'

2.4.2 Alerts to potentially distressing information

Where material of potentially distressing content is included, an alert to the support service or to the Care Leaver where the records are released directly, should be included:

Case Study: Alert to potentially distressing information in a record

A man requested his file. He believes his mother passed away but knows no real details of her and knows nothing about his father. He was placed in care at 6 weeks of age. When you receive the file, it contains information that his mother was working as a prostitute and his father was a visiting sailor. The file describes the baby as 'mentally retarded', 'an ugly baby', and unsuitable for adoption as he was 'deformed looking'.

[13] Vlad Selakovic, see footnote 8and O'Neill, C, Selakovic, V, Tropea, R 'Access to records for people who were in out-of-home care: moving beyond 'third dimension' archival practice' *Archives and Manuscripts* Vol 40, No 1, March 2012, p32

See further:

Section 5: Providing access services

5.1 Providing access services to Care Leavers

2.5 Annotating records

Records held by organisations were made for the purposes of the organisation. The interpretation of events held in an organisation's records may be quite different to those of a Care Leaver who experienced the out-of-home care. In these circumstances, the Care Leaver should be offered the opportunity to incorporate their own story into the records held by the Record Holder. The Care Leaver's account should become part of the records of the organisation and always be made available with the original organisational records.

Annotating or adding to the organisation's records with their own account may not appeal to individual Care Leavers, and annotation is simply one option available to tell individual stories to counter-balance the organisation's view.

Where a Care Leaver chooses to include an annotation or addition into the organisation's records, the words and expression of the annotation or addition provided by the Care Leaver should be incorporated as provided, with no organisational editing, or changes, made by the Records Holder. The Records Holder may offer assistance to a Care Leaver in preparing such an annotation or addition, if this is requested by the Care Leaver.

The wishes of the Care Leaver should be respected at all times.

Where a dispute or disagreement arises, the review process, detailed in Section 4.5 should be made available and the Care Leaver informed of the availability of the review process.

Further rights are available to indicate the Care Leaver's wishes in relation to limitations on availability of the records (see section 4.9).

The Privacy/Freedom of Information or Right to Information legislation of most states and territories outlines a process of annotation for personal information. Guidelines for Records Holders may be available from the respective responsible agency administering such legislation, however the process outlined in these Guidelines is not restricted to the rules of specific legislation, but rather operates in the discretionary area, and should be interpreted to provide greatest comfort and assistance to the individual Care Leaver.

See further:

4.5 Mechanisms for review, complaint and compliments

4.9 What rights do Care Leavers have over the records?

2.6 Providing supporting material

A range of fact sheets should be made available to Care Leavers. These should include:

- Summary of the organisation and the records (see 4.7 Explaining the context to Care Leavers)
- List of abbreviations commonly used in the records (see 4.6.2 Understand the records)
- Rights available to them for review of decisions (see 4.5 Mechanisms for review, complaint and compliments)
- Explanatory records of any redaction (see 2.3 Redaction)
- Rights to annotate or add to records and to express wishes about access restrictions for their records (see 4.9 What rights do Care Leavers have over the records)

Access to records is best provided through a supported access process but this cannot be made mandatory. Some Care Leavers find the imposition of limitations on their ability to look at records privately inappropriate. They may see the support service as desiring to interpret their lives, representing a further instance of institutional interference in their lives. Explanations outlining the reasons for supported access should be given and the use of the services strongly encouraged wherever it is available.

Regardless of the form of access (whether supported access, or provision of the records by post), access to records should be followed by contact with the Care Leaver to discuss the records further and explain things that are not clear. Again, this is best done in person with a trained access provider, but can be done by phone. This should be scheduled for a month after providing access to the records and should be undertaken regardless of the location of the Care Leaver, including interstate or overseas.

See further:

Section 5 Providing access services to Care Leavers

2.7 Informing Care Leavers that further records may be available in time

Projects to index records of the past may be underway or planned. Records known to be unsorted and undocumented may be known to exist. If projects to make such records available are planned, Records Holders should tell Care Leavers of these projects and advise that more records may be available after further records processing work.

Best practice involves contacting those Care Leavers who have already submitted applications for records about any new material found as a result of processing work.

See further:

4.6.3 Dealing with legacies

SECTION 3: THE MECHANICS OF PROCESSING APPLICATIONS FOR ACCESS

3.1 Preliminary

Care Leavers are a potentially vulnerable group of people. Everyone is different, and many have been traumatised through their childhood experiences which may have a long term impact on self- esteem, behaviour and interpersonal style of interaction.

Those who provide services to Care Leavers must be sensitive to these issues and be proactive about supporting Care Leavers.

In particular, the following general basic approaches should be incorporated into providing records services:

- Plain English to be used in written and oral communication;
- Simple instructions;
- Treat everyone as a unique individual, not lumped together with others;
- Treat everyone with respect;
- Treat everyone equally;
- Do no harm;
- Do not patronise, or reduce the Care Leaver to the level of a child;
- Inform, be honest and do not make excuses for the past.

Be aware that as a result of their childhood experiences, literacy may be an ongoing problem for some Care Leavers. Expectations that providing something in writing will inform a Care Leaver may be incorrect. The need to talk individuals through processes and the results of enquiries may be higher. Similarly computer literacy skills may not be present, particularly in older Care Leavers. So communication strategies should be in place for access to information about services in multiple formats beyond the World Wide Web. Most Care Leavers are English speakers, so as opposed to other communities, access to information in languages other than English is a low priority.

3.2 How long should processing of requests for records take?

Each jurisdiction places rules on timeframes for responses to requests for records made under Freedom of Information/Right to Information laws. Generally the rule is between 30 and 45 days. A period of extension is usually available although the aim should be to meet the targets unless there are exceptional circumstances.

A liberal view of access should be taken for Care Leavers. This involves acting to process requests according to agreed practices which are empowered by ‘administrative release’, ‘informal release’ or ‘proactive release’. Trade-offs may be made in these circumstances. ‘It may take longer than the formal FOI process, but you will get more’, may be an appropriate response. Most records created prior to 1989 do not have the problems of vast quantities of files which are common for more recent Care Leavers. This of course, is both a blessing and a

curse. However, with the smaller amount of material created and extant, meeting a fixed time period for processing should be possible.

Generally speaking responding to a request for access with records available within a 30-45 day period should be the goal of Records Holders.

At a minimum, within the 30-45 day period:

- requests should be clarified if this is needed,
- an acknowledgement of request letter should be sent, and
- at least some records (if extant) should be made available.

If records are not made available within the best practice timeframe of 30-45 days, the Care Leaver should be able to access the appeal process established under the relevant jurisdiction's Freedom of Information/Right to Information legislation.

Case: Vlad[14]

And honestly, if you were to look at it - somebody put this together, and said, 'uh, look, hang on, that's right, this bloke ordered his file'. I think it was 45 days, a period of 45 days, and once I'd applied for the file, I had to have it within 45 or 60 days. Well, after two months, and it didn't turn up, I thought, you know, it didn't worry me. Into that next week, I thought, 'it might turn up today, it might not'. The anticipation, the anxiety that I went through, knowing it was due to be there at that particular time … The next week, when it hadn't turned up, I'd completely forgotten about it, just pushed it aside and, like, knowing that I was never going to get it. I didn't want it.

3.3 What does processing a request mean?

Processing a request means locating the records. This can be a complex job, requiring extensive searching of multiple finding aids such as indexes. The records then need to be checked to ensure that they relate to the enquirer.

A further process of checking for any redaction (or blocking out of information) needed to protect third person privacy needs to take place.

See further:

2.1 Maximising access

2.2 Third party privacy

2.3 Redaction

[14] Vlad Selakovic, see footnote 8

3.4 Can we prioritise requests for access from Care Leavers?

Generally all requests for access to records should be treated equally. But there may be circumstances in which prioritisation of requests for records become necessary. When such prioritisation is determined to be necessary, requests for records for Care Leavers should use the following assessment criteria[15]:

Medical

- serious or terminal illness e.g. if the Care Leaver has cancer;
- serious illness requiring medical history of Care Leaver or family medical history;
- genetic condition;
- transmissible health condition;
- pregnancy;
- serious psychological/psychiatric illness requiring history of Care Leaver to develop an urgent therapeutic response.

Compassionate

- Care Leaver is 65 years or older;
- Care Leaver is homeless;
- Care Leaver is recently released from prison.

Service provision

- birth certificate or other document is required to enable applicant to access services e.g. to apply for a passport or to gain citizenship in another country.

Legal

- claim for compensation (where there is a time limit on lodging an application) requiring information contained in records about Care Leaver;
- court matter where records will be provided as evidence;
- management of an estate where records may:
    - assist in determining how assets will be distributed, or
    - enable an applicant to make a claim on an estate or trust.

If there are multiple parts to a Care Leaver's file, priority could be given to releasing the earliest parts within the nominated time frame. Care Leavers report that one of their major concerns is understanding the circumstance that led to them being placed in care, so the earliest files may assist in that process the most.

[15] These criteria are based on those from the NSW Department of Human Services fact sheet 'Are you a former ward'

See further:

1.2 What makes access to records so important to Care Leavers?

4.1 Helping Care Leavers make requests

3.5 Proof of identity

All Records Holders and support services involved in accessing records need to identify people who wish to access personal information. Respect for privacy is a guiding principle for access to personal information. These Guidelines recommend a liberal approach to releasing personal information, but care is still needed to ensure that the person seeking the information is entitled to the specific information available and/or provided.

Care Leavers often face greater problems in providing verification of identity than other people. The circumstances and on-going consequences of their childhood can cause ongoing problems to Care Leavers in proving their identity. A degree of flexibility is required. At the same time service providers must be satisfied that the person is who they say they are.

All Records Holders will have practices around verifying identity, but these are often different for different services. Generally it is accepted that enquiring into identity should be only undertaken to the extent necessary to establish the person's identity.[16]

The general principle is that 'agencies should only seek the minimum amount of personal information required to establish the person's identity'.[17] The onus of proof should not be as high as for claiming benefits or addressing legal issues, that is, following the common 100 point system is not necessary.

The preferred form of identity verification is:

- Some form of photo identity with a signature (drivers licence, passport etc.); and
- Where a person's name has changed (for example, through marriage), some form of verification of that (for example, marriage certificate).

Where this is not available, alternatives should be considered:

- An entitlement for service card issued by the Australian Government or by the relevant state/territory: such as a Medicare card, Health Care Card, Seniors Card; and
- Where a person's name has changed (for example, through marriage) some form of verification of that change (for example, marriage certificate).

[16] Office of the Australian Information Commissioner, Guide to the Freedom of Information Act 1982, November 2011

Where no formal documentation has been issued, service providers should accept:

- A signed and dated declaration of identity: A statement verifying identity from a person holding a respected community position such as a Justice of the Peace, doctor, pharmacist, teacher, local councillor or lawyer. Such a person should be able to attest that they have known the person for more than 2 years under the identity being verified.

3.5.1 Verifying multiple times

Care Leavers report distress at being asked to continuously verify their identity, particularly when this involves needing to explain their life history to account for problems providing 'common' identity documents.

Requirements to identify a person are needed, but should be sympathetically handled. Care Leavers should only be required to verify their identity once.

Where a Care Leaver uses a support service to act on their behalf, the provider must verify a Care Leaver's identity. Records Holders, contacted by the support service should accept that the provider has conducted appropriate verification.

Once a Care Leaver has had their identity verified by a support service, the provider should issue a written statement to that effect and give it to the Care Leaver for further similar use.

3.5.2 Authorising a third party to act on an individual Care Leaver's behalf

Where a contracted and known support service, or any other third party, is submitting an application for access to records on behalf of a Care Leaver, the application must be accompanied by a dated and signed authorisation letter / signed form from the Care Leaver.

See further:

3.6 Who can make a request

3.6 Who can make a request?

Anyone can make a request for records under FOI/Right to Information legislation to government agencies. In general, personal information will not be released to third parties for an extended period of time (different times apply for different jurisdictions, but some are 100 years from birth before records relating to personal information of a third person can be released).

These Guidelines, however, apply to Forgotten Australians and Former Child Migrants.

There is growing acknowledgement that the experience of out-of-home care can have intergenerational impact. To address this, the applications of immediate descendants should be processed according to the practices outlined in this Guideline, not dealt with as simply genealogical enquiries.

For this reason, the Guidelines are proposed to enable liberalised access to two generations (that is children, grandchildren) of descendants of Care Leavers. The liberalised access would provide those eligible with the same rights of access provided in these Guidelines to the Care Leavers themselves. Two generations have been identified as covering those that may have personal memories of an individual during their own lifetime.

The following conditions should apply:

- The Care Leaver has applied no expressed wishes for limitation upon access (see section 4.9)
- Where the Care Leaver is alive, authorisation for children/grandchildren to access personal records must be supplied from the Care Leaver
- Such requests may be accorded a lower priority than applications from Care Leavers themselves.

Case study: Intergenerational impact[18]

…I'm sure I'm not the only first generation child enduring the continuing problems of ascertaining information on behalf of deceased parents. Please be mindful that there is a new generation of secondary effected people coming up and need assistance also.

See further:

3.4 Can we prioritise requests from Care Leavers?

4.9 What rights do Care Leavers have over the records

3.7 Costs for access to records by Care Leavers

Access to records of their time in care should be provided to Care Leavers (and descendants of Care Leavers as identified in 3.6 Who can make a request?) without cost. This should apply regardless of the mechanism used to apply for the records – that is, whether the access is sought under Freedom of Information/Right to Information, or legislative provisions in child protection type legislation, or under these Guidelines.

Costs may apply to obtaining records from other agencies, for example, the offices that supply Births, Death or Marriage Certificates, or entries on the Electoral Roll. Such agencies are not covered by these Guidelines, although

[18] Lost Innocents, p167

efforts are being made in States and Territories to advocate for free access by Care Leavers. Some support services may be able to pay fees applicable by Care Leavers. This differs from jurisdiction to jurisdiction.

SECTION 4: PROVIDING INFORMATION TO CARE LEAVERS

4.1 Helping Care Leavers make requests

Records Holders should provide templates for requesting records of care. Such templates should:

- Explain that the request is to be processed under these Guidelines (thus making it clear what set of rules should be applied).
- Be in plain English.
- Explain options, for example a Care Leaver may receive a quicker interim response if they request information on why they went into care, or identification of family in the first instance, reserving their right to seek additional information held about them at a later time.
- Identify any criteria that may make the request eligible for priority treatment.
- Enable a Care Leaver to select whether they would prefer a speedy interim response with potentially partial records within the nominated 30-45 days, or the possibility of more information but potentially take more than the nominated 30-45 days.
- Be available in multiple formats, and when placed on the internet, be easily accessible.

The phrasing of the request for access can determine whether the application is dealt with as a request for personal information, or whether seeking more general information and therefore under which set of legislative rules the request is processed. Wherever possible, the most generous interpretation of the request should be assumed. Information about time in care is deeply personal even though it may not be deemed immediately obvious personal information. Where a request has been phrased to limit the information provided to personal information, guidance and assistance should be provided to assist in either rephrasing the request to enable more information to be released, or to assist an applicant in making a subsequent request for information that may not be specifically categorised as personal information.

See further:

2.1 Maximum access

1.2 What makes access to records so important for Care Leavers?

3.4 Can we prioritise requests for access from Care Leavers?

4.2 Statement of services

All Records Holders and support services assisting in providing access to records should have a clear statement of their services available in a range of forms.

This could include web pages, brochures or other promotional materials. Attention should be given to how easy it is to find information on the internet. If Records Holders are part of large organisations, it is possible that the section relevant to records access may be very difficult to find.

A good example of the information and plain English style for information about services is found in fact sheet, 'Are you a former ward'

4.3 Promoting services for access to records

Maintaining connections with service providers, and support groups representing the Forgotten Australians and Former Child Migrants is highly desirable. These groups assist Care Leavers access their records and are particularly important for Care Leavers who may have poor literacy skills, or problems contacting people in institutions that represent the site of childhood trauma.

Records Holders are encouraged to continue to contribute to the Find and Connect web resource. This website, funded as part of the Find and Connect Service by the Department of Social Services, provides a centralised service documenting organisations that provided out-of-home care in the twentieth century, details of records maintained by organisations and some guidance on what other sources of information may assist in locating further information about family.

Every applicant should be informed of the availability of support services, and encouraged to use the supported access process.

See further:

Section 5 Providing access services to Care Leavers

Section 5.3 Referral to other services or other potential places to find records

4.4 Explain the process

4.4.1 Acknowledging receipt

All requests for access should be acknowledged as soon as practical after their receipt. The material that accompanies an acknowledgement should provide:

- Information about the process.
- Time frames for response.
- What records will be kept about the process.
- What services to support access are available to Care Leavers.
- Background information about the organisation creating the records, and the type of records which potentially contain information of relevance.

See further:

3.2 How long should processing of requests for records take?

4.4.2 Records kept

Section 5 Providing access services to Care Leavers

4.6 Know and explain the background of records creation and records that remain

4.4.2 Records kept

The process of administering access to information in itself creates records. These records may commonly include the various application forms, records of monitoring of progress and often scanned copies of records retrieved relating to the application. If a Care Leaver has used a support service to assist in making applications, there will be records created at both the support service and at the Records Holder organisations.

Many support services and Records Holders keep copies of records provided to Care Leavers for a period of time. Experience shows that a number of Care Leavers make repeated requests for records, and this is a way of making repeat requests easier to process.

These records should be available for a Care Leaver to view should they require it, and Care Leavers should be informed of this.

4.5 Mechanisms for review, complaint and compliments

All Records Holders and support services should have documented procedures in place, and available on request, for Care Leavers to:

- Seek a review of decisions on withholding records from access. In government organisations this mechanism is provided through the FOI/Right to Information and Privacy legislation.
- A mechanism to submit a written or oral complaint about the service received.
- A mechanism to obtain any compliments on services provided by Records Holders or those providing access services.

4.6 Know and explain the background of the records creation and records that remain.

4.6.1 Organisational history

The history of organisations responsible for records of Care Leavers can be complex. Names change over time, and responsibility for management may change within an organisation. The administrative history of an organisation may help to explain where the records may be found and how to look for them. The Find and Connect web resource (www.findandconnect.gov.au) provides basic information on many organisations that created records relating to Care Leavers.

An example of a guide that provides both organisational history and details of the records held is *Missing Pieces: Information to assist former residents of children's institutions to access records.* Department of Families, State of Queensland, 2001

4.6.2 Understand the records

Records of the past can be complex. They are often an interconnected set of records. To be able to find a particular file it may be necessary to investigate indexes, registers and supplementary finding aids that direct searchers to files. Files can change their numbering over time as different people and systems are introduced. This change of numbering can make the older index and register entries invalid.

Often there is no such thing as 'my file'. The records available relating to an individual may be extracts brought together from a range of different types of records – admission registers, punishment books, discharge registers. Only in some organisations were files maintained on individuals.

It may require considerable knowledge of the organisational context of the records to be able to work out where records may have ended up, if the originating organisation is no longer in existence. Sometimes Records Holders have done the archival investigative and descriptive work to know these things. Sometimes this work is still to be done, but known about, and sometimes in the absence of knowledge of the records, there is little to no organisational knowledge of where record relating to Care Leavers may be found.

Records of the Victorian Department of Human Services[19]

Locating adoption or former ward records requires use of very old manual registers and cross checking of indexes to verify and locate a file. An initial search may reveal a single or multiple records however in some instances consultation with the client or evidence within the file may reveal additional records in existence that were unable to be discovered in the first search. This may result in an additional request and more search time to try and locate other possible records.

[19] Victorian Ombudsman, Investigation into the storage and management of ward records by Department of Human Services, March, p 25

4.6.3 Dealing with legacies

Many Records Holders are struggling with the legacy of past inadequate practices relating to records. Some of the problems that are encountered are:

- Incomplete records created.
- Inappropriate or judgemental comments in records.
- Records created covering many people, not just one person.
- Fragmented records.
- Previous destruction of records.
- Records abandoned in a big mess.
- Records unlisted and boxed in large quantities making it impossible to find individual files.
- Unknown location of records.

In addition, recordkeeping of the past was a bureaucratic process, designed to serve the needs of the organisation or institution, not the people documented in the records. Records creators would not have had any appreciation of the fact that the people that they were writing about would be able to look at these records. Records of the past tended to record the exceptions not the normal behaviour, so it is possible that a Care Leaver may be dismayed to find only negative comments not balanced with any positive comments in any records that survive.

Victorian Department of Human Services[20]:

[has a] legacy of 150 years of records, across 100 different institutions, during a time which for the most part, there was virtually no guidance or standards in terms of how records should be maintained. This is particularly relevant in terms of the written content of records and the variation in the amount and type of information recorded across the various institutions. Most people interviewed by my investigators who have viewed examples of these records told of wording (for example, in relation to a child's perceived mental capacity) that would be considered insensitive by today's standards.

See further:

2.6 Informing Care Leavers that further records may be available in time

[20] Victorian Ombudsman 2012, p26

4.7 Explaining the context to Care Leavers

To help Care Leavers understand records better, all Records Holders should produce a summary sheet about what records exist currently and the circumstances in which they were created and kept.

A short summary statement (one page if possible) of the organisational history, the records which may hold information and the state of knowledge about the records should be made available to those seeking records. This statement should be written in plain English. It should be given to Care Leavers to help them understand the records and what they may receive.

In all circumstances it is best to be as honest as possible about the problems that Records Holders are encountering providing access to records. Do not pretend that there are no problems finding records if the reality is different. The intent of such statements should be explanatory, not for making excuses for the practices of the past.

Reference to the Find and Connect resource 'What to Expect when Accessing Records about You' is recommended.

See further:

2.5 Providing supporting material

4.4 Explain the process

4.8 When to give the summary of records context to Care Leavers

Records Holders should consider the best time to provide the context of records to those seeking records.

At the time the records are available for access, a Care Leaver may well be focussed on the content of the records themselves, not explanatory material.

It may be preferable to provide the summary material about the records held and what to expect as a part of the acknowledgement of receipt of the application for access. Inform Care Leavers that the records they may obtain may not be what they hope to find, if this is a likely outcome.

See further:

2.5 Providing supporting material

4.4 Explain the process

4.9 What rights do Care Leavers have over the records?

Care Leavers often assume that the records about them, belong to them. Unfortunately this is not the case.

However, individual Care Leavers can annotate or add to their records, or otherwise alert a Record Holder, of their wish to express their wishes about limiting access to their records, particularly by family members. Such expressions of Care Leaver wishes should be respected by Records Holders as far as possible during the lifetime of the Care Leaver. Records Holders should ensure that such alerts to Care Leaver's wishes are always apparent to all staff retrieving records for access.

Case: Martin

The circumstances of Martin's placement into care involved external judgement arising from his sexual experimentation in his early youth. Martin has accessed his records, and experienced severe distress at the way his experimentation has been documented, and the character attributed to him. He is horrified at the thought that his family members particularly his children, may be able to access this version of his character and this episode in his life. This is causing him significant on-going stress. For these reasons, he expressed his wish that the Record Holder does not allow access by his family to these records during his lifetime.

Access to records where no express wishes have been indicated by the Care Leaver will be normally governed by public access rights under Archival legislation.

Records Holders will put in place procedures that respect any such Care Leaver expressions relating to access. The wishes of the Care Leaver in relation to access will continue to apply regardless of the location of the records. However, this is not a guarantee that access will be restricted, depending on the circumstances of the future enquiry. For example, it may be that a child requests access to determine medical history, which affects their own life, and it is likely that the seriousness of the concern may, at the discretion of the Record Holder, over-ride the wishes of the Care Leaver. Records Holders should develop formal assessment criteria that assist them to make decisions to over-ride express wishes of the Care Leaver. Any such decisions should be very carefully considered and justified in writing by the Record Holder.

Similarly, Care Leavers are able to place an alternative version of events onto their records. (see section 2.5)

These rights should be clearly explained to Care Leavers when they receive their records.

See further:

2.5 Annotating records

2.6 Providing supporting material

3.6 Who can make a request

SECTION 5: PROVIDING SUPPORT SERVICES TO CARE LEAVERS ACCESSING RECORDS

5.1 Providing access services to Care Leavers

Many Care Leavers carry an ongoing legacy from their childhood experiences. In the same way that accessing records may be a positive experience, equally, it may be an experience that causes events from childhood to be relived, thus becoming a re-traumatising experience.

Where records of this potentially harmful kind are held, Records Holders often work with support services specialising in assisting with access to records wherever possible. Such support services act as intermediaries between the Records Holders and the Care Leaver. This type of access is known as 'supported access', where the Care Leaver is assisted in the process of making the application, and not expected to deal directly with Records Holders. In addition, and most importantly, support services can explain the records received as a result of the application. This is particularly important if the support service is notified or aware of any potentially damaging material on the records released. Support services can also explain the context of records creation, the 'norms' of recordkeeping at the time, and why certain information is redacted.

Some support services are currently contracted under the Find and Connect Service for each State and Territory, and by some State Government Departments.

Care Leavers are not required to use third party support services and may approach the Records Holders directly. Where no support service is assisting the Care Leaver, then Records Holders themselves must be aware of the potential for further damage and efforts made to minimise such damage.

Some Care Leavers may choose not to use support services. Alternatives may include having another Care Leaver who has experience with records to support them. Some Care Leavers may choose to be supported by family members. Some caution should be exercised in using family members as support as there are known instances where the family member selected as support themselves appear in the records and the circumstances of their involvement at the time of the events in the records may not be known to the Care Leaver. This has been known to cause significant distress to both parties at the time of accessing the records.

Basic things to avoid are:

- Patronising the Care Leaver, and making a person feel humiliated for skill level or knowledge.
- Arranging visits, appointments or receipt of records at or around significant dates, such as a Care Leaver's birthday, anniversary of time entering or leaving care, Mother's Day, Father's Day, Christmas or other traditionally family oriented celebrations.
- An intimidating environment if the Care Leaver is expected to visit a Record Holder or support service in person.
- Intimidating forms.
- Bureaucratic language or unnecessarily complex language.

See further:

4.6 Know and explain the background of the records creation and records that remain

4.1 Helping Care Leavers make requests

2.4 Providing copies

5.2 Training to provide access to records

5.2.1 Knowing the organisation and the records

Staff working with records build up considerable knowledge of how to navigate complex systems and the relationship of different records. They use this knowledge in locating and retrieving records for requests for access.

Many Records Holders do not have processes in place to formalise this accumulated knowledge and it is passed on from one staff member to another by word of mouth.

Creating a more formal method of continuously documenting the state of knowledge about the organisation's responsibilities at various times in the past, and knowledge of where and how to locate relevant records is desirable. Regular briefing sessions for relevant staff using highly knowledgeable staff may also be a technique to ensure that this deep organisational knowledge is available for all who work to locate and retrieve records for Care Leavers.

Case study: Knowledge of records[21]

"You're kind of gathering information from here, there, everywhere, and sometimes it can just be you know, even on gut instinct, in terms of workers that have worked there for a long time, and kind of realised where some of these records come, and might just remember, 'Oh I actually remember getting one of these records out using this method.' So a lot of it sort of depends on how good the operator is with their system, which is a real pity…."

See further:

4.6 Know and explain the background of the records creation and records that remain

5.2.2 Skills and knowledge for those providing access

Experience has shown that those with training in counselling or in the practices of social work are best placed to assist Care Leavers with support services facilitating access to records.

Care Leavers are not required to use third party support services and may approach the Records Holders directly. Where no support service is assisting the Care Leaver, then Records Holders themselves must be aware of the potential for further damage and efforts made to minimise such damage.

Providing access to Care Leavers should never be given to junior staff, but always to someone specialising in access services, someone with deep expertise, or a long serving staff member who knows the area well. Empathy and listening skills are key competencies.

[21] Victorian Ombudsman 2012, p25

A period of training and/or mentoring is recommended before staff are assigned to providing access to records for Care Leavers.

At a minimum training should include:

- Thorough knowledge of the Records Holder's organisational context.
- Knowledge of the records themselves, including how to read files.
- Knowledge of the processes followed to provide access to records for Care Leavers.
- Understanding of the legislative environment and relevant rights to information and privacy.
- Thorough knowledge of the Reports and Recommendations from past Inquiries into Care Leavers, particularly relating to the State or Territory the Records Holder or support service operates in. A listing of major reports is available from the Resources prepared for the Royal Commission into Institutional Reponses to Child Sexual Abuse: *Inquiries and Reports Relevant to the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2013, and more recently, Swain, S. 2014. *History of inquiries reviewing institutions providing care for children*. Royal Commission into Institutional Responses to Child Sexual Abuse. Sydney.
- Briefing from community groups which provide support services to Forgotten Australians and Former Child Migrants. Such briefings should be attended/conducted regularly for all staff to alert them to issues, or concerns in the community.
- Training in supporting victims of trauma. This may be through professional training, or through attendance of periodic short courses. One example of such training is available from Adults Surviving Child Abuse. This site also has online resources available.

As individuals who are experienced in dealing with the impact records can have on Care Leavers, staff familiar with records have a significant contribution to make to current practices in documenting current case work. Current case workers may need periodic reminding that the records can be made available to the people receiving services. As such continuing attention to appropriate record-keeping, and care to make appropriate case notes is an ongoing issue for all organisations.

5.3 Referral to other services or other potential places to find records

In many cases a person may have experienced many forms of care during their childhood. It is quite likely that they will need to approach a number of organisations to obtain as complete a record about their childhood as they can.

Facilitated services, such as Find and Connect Services or other support services, can coordinate requests across many organisations. However, other individuals can undertake this exercise using other assistance (for example, using support groups such as CLAN) or independently. Wherever possible assistance for Care Leavers in identifying further places to search for records should be provided.

See further:

2.5 Providing supporting material

4.2 Statement of services

4.3 Promoting services for access to records

Setting the Record Straight for the Rights of the Child

2017

Records and Rights of the Child: Report of Focus Discussions

Dr Antonina Lewis
The University of Melbourne
eScholarship Research Centre

Because one of the largest conflicts you have … is your memory.

Because what actually happens, and what is recorded, and what you remember

– is like a little triangle you just keep bouncing around in.

TABLE OF CONTENTS PAGE

INTRODUCTION

A.

Study Background and Purpose

The eScholarship Research Centre (ESRC) is a research centre located at the University of Melbourne dedicated to advancing archival science, digital humanities, and public knowledge for social good.

The ERSC, with the support of the University, has conducted a series of focus discussions on the topic *Records and rights of the child*. Our project builds on existing research activity at the ESRC into the impact of accessing archival material on later life experiences of people who have childhood experience living in out of home 'care'. The project team brings knowledge from the *Who Am I?* and *Find & Connect web resource* projects, and a research method informed by a commitment to working together with communities to help achieve positive change.

The purpose of this study is to obtain the perceptions, opinions, beliefs, and attitudes of several key groups:

- People directly affected by policy and practice relating to records of out of home care or custody in childhood
- Representatives of government and non-government bodies responsible for making, regulating, enforcing, or altering those recordkeeping frameworks
- Creators and custodians of records of relevance to Care Leavers
- Frontline support workers who assist Care Leavers with discovery and access to records.

The ESRC would like to better understand challenges faced by these participant groups in relation to existing recordkeeping practice, and explore what they consider to be opportunities for change. The research will contribute to the forthcoming National Summit *Setting the Record Straight: for the rights of the child*.

Additional information about the National Summit and its framing Initiative can be found online at: http://rights-records.it.monash.edu/.

The research team would like to thank all of the individuals who participated in the focus groups.

B.

Methodology

Three focus groups were conducted in different locations on September 5, 12 and 14, 2016. Respectively, these discussions were held at: Canberra Museum and Gallery (ACT); the Brisbane Powerhouse (QLD); and History House, Sydney (NSW).

The discussions ranged between three to four hours and were conducted in closed rooms, with participants free to come and go at any point during the session. Audio taping equipment was employed (with the consent of participants), and each of the sessions has been transcribed. A copy of the recording Consent Form / Conditions of Use is attached as an Appendix to this report.

The focus groups were guided to explore several key issues including:

- Inclusion on the record
- Privacy and possession
- Making change happen

Representatives from the ESRC were present at each session. Louisa Coppel of The Big Picture consulting moderated the focus groups and was integral to the process.

C.

Statement of Limitations

In consideration of the limited number of discussion participants, this research must be considered in a qualitative frame of reference. Focus groups seek to develop insight and direction, rather than formulate quantitatively precise measures.

The value of focus groups is in their ability to provide observers with unfiltered comments from a target population, enabling decision-makers to gain insight into the beliefs, attitudes, and perceptions of the identified group. The data presented should not be extrapolated as being the same as might emerge from a wider universe of similar respondents.

We remind readers that this report is intended to clarify some of the known challenges with regard to recordkeeping policy and practice for childhood records, and suggest potential avenues for positive change. It does not propose to hold solutions to the many complex and contested issues at stake for care leavers and others accessing records about their childhoods.

EXECUTIVE SUMMARY

This section of the report summarizes high level findings of the three focus groups in Canberra, Brisbane and Sydney. A more detailed breakdown, including anonymised verbatims from participants, is captured in Section III – Key Findings.

Acknowledging that the rights of children have far greater social, legal and political currency now than in the past, participants across all three focus groups identify persistent shortfalls in relation to rights in records. The rights of children – and the adults they become – to exercise active agency in the determination and record of decisions is integral to their identity and wellbeing. Our research indicates these rights continue to be compromised, with each focus group articulating the need for systemic change to address longstanding failures and contradictions in both the application of policy and the interpretation of guiding legislation.

Shortfalls most commonly expressed by respondents exist in relation to issues of: informed consent; inclusive participation; (mis)representation of identity; information portability; and post-care disclosure of records. Much frustration is caused by divergent access regimes across differing jurisdictions and cohorts, and the inflexibility of FOI processes is identified as the cause of some individuals abandoning attempts to gain access to their records, due to the mental and emotional toll being exacted. Similarly, current redaction practices are overwhelmingly disparaged as being inconsistent, opaque, and ultimately detrimental; further eroding any trust care leavers may have in government or past care providers. A shared advocacy agenda with national cooperation across State and Federal governments is seen as both crucial and lacking.

Participants speak of the need for a cohesive change agenda with national leadership to drive it, suggesting high profile sponsors of transformational change are required. While agreeing that positive (if incremental) action is taking place to address co-creation and simplified access to records, the examples shared by respondents indicate this is often enacted on a discretional basis, outside of organisational policy. Or, it is occurring on a localised project basis, with little opportunity for cross-jurisdictional collaboration or ongoing program funding to embed and evaluate value longer term.

One area where sustained change is seen to be occurring is in the training of government case workers. All groups drew attention to the shift toward child-centred practice as a focus in policy frameworks, and to the benefits of programs that directly engage care leavers and support services to share their experiences as part of training models for those working with children. However, without recordkeeping systems that keep pace with and support changing practice, the potential for this enhanced learning to be reflected in record cannot be fully realised.

A common theme for models of practice-led change emerging from the focus groups is the strategy of engaging and empowering young people through technology. This is seen as an area where recordkeeping systems can be improved to the benefit of both children and case workers. Enthusiasm for the possibilities of new digital technologies is tempered by notes of caution with regard to the complexities of developing participatory systems in and for CALD (culturally and linguistically diverse) environments; for use in remote locations lacking network infrastructure; or simply in ways that appeal to young people while also adequately protecting and respecting their

immediate and future privacy needs. A number of participants flag the need for such endeavours to be undertaken in a sustainable manner, expressing concern that prototype systems to date are rarely developed with longevity or interoperability as a part of their technical specification.

The observations of respondents with recent experience living in care, and/or working with young people in care or detention, echo many of the same frustrations as are evidenced in the testimony of adult care leavers to Senate Inquiries and numerous other consultations (including this one). While positive examples are also provided, data collected in this research suggests that children who are placed into protection or detention in Australia today continue to experience pervasive failures in the duty of care in relation to how records about them are being collated, managed, consulted and released.

An identified service gap also exists in the provision of support for adult care leavers who are over 25 years of age (and so outside the standard post-care support network), but who are not eligible for support services offered to Stolen Generations or Forgotten Australians. These people are at risk of "falling through the gaps" and not having adequate support for locating, requesting and receiving their childhood records.

Systemic change to recordkeeping and archival practice is required if child-centred practice is to more fully extend into this domain, and if the keepers of records about children are to avoid becoming complicit in the repetition of similar patterns of compound and intergenerational trauma as have occurred in Stolen Generations, Forgotten Australians, Former Child Migrants and Forced Adoption communities. We are seeing disturbingly familiar trends in relation to records of children in immigration or juvenile justice detention, as well as those young people currently, or recently, in the out-of-home care system. This study suggests an opportunity exists for the ARK (archives and recordkeeping) community to work together with others in community, government and allied sectors (law, technology, research, education) toward common principles for change; positioning the rights of children as vital to the integrity of their records. To this end, we propose a first iteration of five Principles for Inclusive Recordkeeping, formulated using the insights of our focus group participants.

KEY FINDINGS

A.

Participants

Respondents nominate key motivations for their participation in the focus discussions as: wanting to contribute to record making and disclosure processes becoming more inclusive and less distressing; respecting multiple rights in records; and, a desire to see the records themselves become more meaningful to persons seeking information about their childhood.

For me, being here today is trying to make things a little bit easier for people that might want to access their information in the future, because it was very difficult for me.

– CREATE young consultant, Canberra.

What's really interesting to me is how we can change the systems to make contemporary recordkeeping responsive to the requirements of people. So it's an access issue, it's a rights issue, but the institutions are fundamentally geared to institutions still, so I'm really interested in playing around with that notion.

– Independent consultant, Sydney.

My interest is very much on the balance between access and privacy, when it comes to sensitive records, and I think that's a challenge. – Archivist, Brisbane.

I'm really interested today in conversations about children and young people owning their records … it's stuff we've grappled with for lots of years, record ownership and what that looks like.

– Federal government employee, Canberra.

I work in an area which is responsible for out of home care policy under the National Framework for Protecting Australia's Children … we want to make sure the policies really recognise the child's right to access their records and that we're making records that are going to be useful.

– Federal government employee, Canberra.

Often in some of the research we do directly with young people, they bring up the issue of wanting to access the records and the impact of not being able to actually access things like their care plan, to which they're entitled, and the bureaucratic barriers…

– CREATE employee, Sydney.

In a variety of contexts, participants highlight disconnects across legislative standards, or between policy directives and their own experiential or practice-based knowledge of situations faced by children in care, or in a post-care context.

The child who's had 12, 15, 18, 30 placements is not leaving care with any of those records really. I mean I've gotta say that. Not happening.

– State government employee, Canberra.

One of the big gaps that we do have in our recording is around placement matching and decision making, because a huge amount of work does go into finding placements for kids [but] it often isn't well recorded … it's in their Outlook system, so there's lots of emails, telephone calls … we're not as good as we should be at recording how a placement decision was made, or a change in placement was made. – State government employee, Sydney.

Young people we're talking to really want an honest reason why placements break down.
– CREATE employee, Sydney.

Going through the case notes, we noticed that they weren't kept … as things were happening. They'd filled them in later. There was a lack of honesty there with what was being reported.
– Advocacy worker, Sydney.

We might go to Adoptions for that client, we might have to go to RTI [Right to Information] for that client who was fostered, we might have to go to The Sisters of Mercy for that client who was in an institution run by them. But they are all entitled to a completely different quality of information. So for our adopted clients, they can actually get quite a lot back now and they can even get the name of their putative father now. But [if] we're going through RTI … they can't get anything. Nothing. They can't even get the name of their birth mother. That's not their information. So it's very hard, and it's very hard to also explain why…
– Support worker, Brisbane.

The need to continually humanise and contextualise recordkeeping processes and administrative practice to support the welfare of children was agreed. Concerns were expressed about how well this is monitored, especially where human services are outsourced. This was articulated as being both a moral rights issue, and also a legal or human rights issue.

These things are happening now – detention centres, juvenile justice centres … this is not an appropriate way of dealing with children. – Independent consultant, Sydney.

I have grave concerns about these issues … with the State outsourcing its responsibilities of looking after children to organisations that used to be religious organisations that have now morphed into multi million, billion dollar corporations with a façade of having a church in front of them … I find that very troubling, because they have control, private organisations have control over the aspects of that person's life. – Advocacy worker, Sydney.

I sometimes think back, how was my recording, what did I do with that, what was that like? And I know what the pressures looked like in organisations. If you didn't document it, it didn't happen, and you've got to … and it's so bureaucratically structured and so fraught, and so difficult, and so scrutinised, that some of that humanity can then be stripped out of it.
– State government employee, Canberra.

There has been quite an emphasis around the UN Convention on the Rights of the Child and us getting better at ensuring that kids understand their rights and that we respect those rights.
– State government employee, Sydney.

B.

The whole record, the whole person

Participants were clear that it is crucial for children's records to include information of individual significance (as well as administrative use), to ensure later life access not only to identity documents, but also to histories of personal development.

Administrative records – and – what's the most important thing for the child or young person: these concepts need to be brought together. If you've got fifteen files and someone's reading and saying "well, this is not helpful for me," then what was the point?

– Federal government employee, Canberra.

People see it as their records and it's telling their story, [but] when those records were created they weren't creating a record for the subject of the record, they were creating the record for the administrative [purpose]… And that's what makes it so heartless and disappointing.

– Archivist, Brisbane.

They're really thinking [now] about how they're contributing to someone's identity and all their training materials and guidelines around writing stories or creating records is that they're creating identity for people, that they're holding stories and capturing lives. No, I don't think they always get it right, but I think their intention is very much is on the right track.

– Support worker, Brisbane.

The danger is to say the life story book is on the file, tick, when it's actually…it's the engagement in making it, keeping it, adding to it, talking about it, telling the stories, and it's that storytelling as much as the documentation that needs to be supported...

– Researcher, Canberra.

Opinion was less unified about how to best achieve this, with attitudes divided between those – in the majority – who advocated for two distinct sets of records to be kept (an administrative record for organisational purposes, and a personal record set for self-identity); and those supportive of retaining the concept of the holistic record, albeit better augmented with personal, participatory, and post-care material – and better able to be segmented as required.

I'd also like elements of the file, especially digital files to be made really clear so … the personal history can be quickly, digitally, easily separated.

– NGO worker (record holding organisation), Sydney.

Records are both for *the child and* about *the child and I don't think we can mush those two necessarily.*

– Independent consultant, Sydney.

This is life … understanding recordkeeping is a skill that you need for life.

– Researcher, Canberra.

Most recognise that records of childhood are not static; and the process of seeking information may be contributing more to the record.

When we talk about NGOs … we're supporting people to access records [and] becoming default record holders because they ask us to hang onto a copy… There's a lot of issues there.

– Support worker, Brisbane.

Some of the requests that we took in the early 1990s are … records in their own right, because those clients have now passed on, but they wrote their little stories back then, which their kids might not know about.

– State government employee, Brisbane.

Redaction of material on files before release to the subjects of those files was almost unanimously disparaged. All three groups indicated that people are rarely surprised by what's in their records – rather, they are more likely to be upset by what's missing or redacted.

I wish that there were no redactions on the files. We can deal with the shittiness.

– Care leaver and advocacy worker, Sydney.

Consistently, without exception, every young person we talk to really wants to know what happened, who their parents were, and they do get very frustrated and anxious around not knowing their past and also having parts of their records blanked out, they can't get the information. That's the trauma, that's a source of anxiety for young people: they might not want to make the same mistakes as their parents, but they haven't a point of reference.

– CREATE employee, Sydney.

In my own situation … things have been redacted and I had them already … so it gets to be a bit absurd. Or my siblings have the information, and I can't get it. It just … it's kind of a frustration.

– Adoptee and advocacy worker, Brisbane.

I can think of a case where I've got a father and son. The father became the client over ten years ago. We have on file when he went searching for his son, the same records where a lot more was released. We found the son, the son became a client very recently; we applied for those records on his behalf and everything seemed blacked out. So those records are actually about him too but it's quite phenomenal how much has been taken out.

– Support worker, Brisbane.

The redaction thing is just a major, major thorn in the side to a lot of people.

– NGO worker (record holding organisation), Sydney.

We've taken the view that we're not going to redact a word … we're possibly in breach of something or other, but we've just seen too much pain and we're not going to do it to people. And the conversation today has confirmed me in that view. I'm going to continue to do that.

– NGO worker (record holding organisation), Sydney.

C.

Silos and stumbling blocks

The appropriateness of FOI/RTI as the mechanism for individuals requesting records about their childhood and identity is heavily questioned.

Often we will say when we begin an FOI; depending on who the applicant is, because we don't know when we get the application, we don't know what the story is until we start unpacking it, reading the files: and we often go "This should not be happening through an FOI process".

– State government employee, Canberra.

I'm tired of fighting Western Australia where if you request your state ward file you have to stipulate what you want. How do care leavers know what they want when they don't know what's on the file?

– Care leaver and advocacy worker, Sydney.

It would be nice to think that somewhere in the future it's a different way [other than FOI] that people can access their information that's held by government, in particular in this arena … when people have been in care.

– State government employee, Canberra.

Lack of resourcing is a recurring theme. Some participants note the struggle to maintain service levels in the face of budget cuts and "efficiency dividends"; others highlight the threat to embedding and maintaining practice-led improvements where funding support is only made available on short-term project basis.

I think a lot of us are still not resourced enough … I feel really greedy saying that, because we do have a big unit, but it's just not enough. We get over a thousand requests a year and some of them take months to do … We have clients at the moment; about 10% of our clients would wait more than four years to get records. – State government employee, Brisbane.

From an Information and Privacy Commission perspective, [the magic wand would be] resourcing for government agencies to be able to proactively release records … when a child leaves the school, they get their record, or when they leave care that they get their record; or it could be going back to look at the historical records and looking at how they might be digitally made available so they can be proactively given to people rather than people having to battle a system to request and to access them that way.

– State government employee, Sydney.

Information sharing is hampered by lack of interoperability between systems, especially across State and Territory borders.

-Do the client information systems talk to each other in each state?

-No.

- Exchange between session facilitator and State government worker, Sydney.

There is a real danger of policy having negative impacts – whereby intended protections or improvements lead to "worse" outcomes in practice.

-The Hughes decision [QLD, 2012; Hughes and Department of Communities, Child Safety and Disability Services]…

-That affected everything after that. They've really battened down.

-But that's a very interesting reflection because Queensland was quite liberal and went through a period of giving a lot of access to individuals… then they did redress and they kind of closed the doors… it was either an administrative arrangement and so they were enabled to do it, they are still able to do it [or] something changed and they've stopped.

– Exchange between Independent consultant and Support worker, Sydney.

We have no discretion any more. At one point we had discretion. We have no discretion – under RTI [Right to Information legislation], this is what I'm talking about; not generally. No discretion.

– State government employee, Brisbane.

*We have to work resourcefully **around** things and find public information in many cases, so there's a whole question around, this is just stuff I've found from my computer anywhere in the world that's available, but there's these things that are there to protect, like the Child Safety legislation that is there for confidentiality, which actually does the opposite of providing support and information.*

– Support worker, Brisbane.

Tensions exist between the wishes of those wanting to close (or destroy) their records and the desire to safeguard intergenerational rights in records.

I've spoken with grandparents who've been through the system themselves and they talk about their experience going through children's homes, so you have that … multi-generational as well.

– State government employee, Canberra.

You can't understand your story without understanding the role of other people in it…

– State government employee, Brisbane.

D.

Positive practice and pathways for change

Inclusion of care leavers and support workers in the co-design and/or delivery of training.

Create Foundation works in partnership [with the government] to train case workers … we have a session where we bring in young person with care experience … and they can speak to what makes a good case worker and I think it's really encouraging for [having] the factors in place to make the record a lot more child friendly.

– CREATE employee, Sydney.

One of the things that brings me great joy in my work is… the opportunity to facilitate training for new people in the Department of Child Safety here in Queensland, which gives me an opportunity to talk to them about records and how they can start to make an impact before it's too late for young people. I guess that's my passion and joy, apart from just my work.

– Support worker, Brisbane.

Using technology to prioritise the rights of children in creating layered records of care that enable multiple voices to be present in ways that facilitate access for all parties.

The conversation is: everyone should be able to enter data. In those consultation groups it was like, so should the young person, so should the parent, so should the foster carer. So, you know, probably the birth parent isn't going to see what that worker … you know, there's going to need to be some privacy stuff within there, but that young person should be able to access their records digitally, or have input in that way, or in a number of ways.

– State government worker, Canberra.

Apps come and go … it's great for the immediacy, but if we want it to serve the life history, the story purposes, it needs a sustainability base; which none of the apps I've seen have even thought about.

– Independent consultant, Sydney

At times I reckon I would have used [participatory apps, if they had been available]; but then, there were also a lot of times when I didn't want to participate in anything, with anything really … And then obviously, if there's someone who's going through something that's quite traumatic, then I think even more reason they wouldn't want to … But … it's good to have more tools than nothing, and provide more support.

– CREATE young consultant, Canberra.

We've got to make sure it's not just about children who are in care, it's actually any child where there's been intersection, really, with a statutory-type service … what happened that there was someone else involved in my life at this time … it's actually how to help an adult make sense of the memories that they've had when they were a child so they can move forward.

–State government employee, Canberra

Recognise that 'family' is a broad concept.

It's not always the biological thing that's important as the significant person.

– Advocacy worker, Brisbane.

I'd like to see more cultural consideration in policy. One example … Aboriginal and Torres Strait Islander concepts of family are very different … In Aboriginal kinship systems there are instances where what is considered by Western society as a cousin is actually more of a sibling relationship. For example, a [woman] and her female cousin may relate as sisters if their mothers were sisters.

– Support worker, Brisbane.

Supportive release of information is an area where further improvements can be made.

I was in care till I was 18, from six weeks old. My case file took me almost two years to get access to … I didn't get any support, reading files. I was pretty much just sent them in the post; massive boxes and left to read them by myself. It was just really not nice to do... And on top of that, a lot of the information that I did want to access was considered sensitive so it was left out anyway … the answers I wanted weren't in there anyway. So yeah, it was really disappointing.

– CREATE young consultant, Canberra.

What we've been seeing … people come with their box. They bring it to our [art] sessions and they're really crying out for more, much more support in how they deal with these records, because for them it's very traumatic. There are so many mysteries and traumas around their childhood that get, in a way, re-opened; Pandora's box, literally. I'm not sure what exists, but they seem to feel that they're alone in this process.

– Arts worker and researcher, Sydney.

We find that when we send the big files out to the recent care leavers, we often get reports back from our case workers that it's traumatic for those young people to have to contend with all of that stuff. While the case workers are very well meaning in putting nice stuff on the file, how do you find the nice stuff in an 80 volume file about you?

– State government employee, Sydney.

Hurdles to accessing records is exacerbating trauma for already vulnerable people, whereby the obstacles to accessing information about their own lives heightens existing feelings of fear, mistrust, uncertainty, intimidation, guilt and angst.

Standardise the legislation under which all the records are held and kept, standardise access requirements, and provide free and full access.

– Support worker, Sydney.

CONCLUSION: FIVE PRINCIPLES FOR INCLUSIVE RECORDKEEPING

- **Inclusive recordkeeping requires inclusive language and design**
- **Inclusive recordkeeping requires clarity around the terms of participation**
- **Inclusive recordkeeping means having a right of reply**
- **Inclusive recordkeeping allows people agency over their information**
- **Inclusive recordkeeping recognises multiple rights in records**

- **Inclusive recordkeeping requires inclusive language and design.**

Records can't be inclusive if meaning is not able to be drawn from the file.

– Support worker, Brisbane.

- **Inclusive recordkeeping requires clarity around the terms of participation.**

Clarity in all structures and processes … making it clear what is going on the record and what is not is very important.

– Advocacy worker, Brisbane.

The young people that we talk to, they're usually really horrified that the Department can continue to keep files about them ... they are really worried others will read about them afterwards and they don't want it to be used like a case study.

– CREATE employee, Sydney.

- **Inclusive recordkeeping means having a right of reply.**

One of the things that comes up … is that children are consulted and they give their opinions and then something different happens and they never know why.

– CREATE employee, Canberra.

In terms of contemporaneous records, if [young people who are currently in care] are not participating in the creation of their records, with multiple agencies involved in child protection now, if information is put on their record that perhaps is a mistake, or misunderstood information, and if the young person can't correct it, or express their own meaning … the decision makers in their life can make decisions based on that [false] information … so it's not just a future issue, of looking back.

– State government employee, Canberra.

- **Inclusive recordkeeping allows people agency over their information.**

We've actually had young people make suggestions about how they could get better control of their records and we know some young people that are developing their own app working with a team at FACS [Family and Community Services] to inform the shift … it's portable and they're not relying on the Department to get records … they own that account. It carries the kids' records and the case workers have input into it. They contribute to that. When they turn 18, they know where their birth certificates are, they know the records on their account – so I guess there's a sort of solution coming from young people in care today about how to resolve the issue of placement instabilities and the discontinuity of records.

– CREATE employee, Sydney.

Some of the women working with us haven't opened the files. They say … part of it is just having the power to have them.

– Arts worker and researcher, Sydney.

- **Inclusive recordkeeping recognises multiple rights in records.**

The training that I used to deliver to CYPS [Child and Youth Protection Services] staff…my first thing was: who are you writing this for? The child is the primary, and then there's all these other people. Of course the government has that need for accountability; in terms of planning, there's a whole lot of stakeholders; but the main audience, thinking about who's going to read that in the future, could be that child.

– State government employee, Canberra.

It's about you, but it's also about a whole bunch of other people, a string of people that we've talked about – they've all got a stake in it, in some way, and so at some point, some of them are going to want to get access the records as well…

– NGO worker (record holding organisation), Sydney.

I think it's joint ownership. At the end of the day. Because it's an interaction between the Department or the organisation and the child … I think both entities have rights, yeah, absolutely, without doubt. It's a two way street.

– Care leaver, Canberra.

APPENDIX 1: FLYER

THE UNIVERSITY OF MELBOURNE

Focus Discussion: Records and rights of the child

The eScholarship Research Centre at the University of Melbourne is staging a half-day of creative thinking and knowledge exchange: *Records and rights of the child*.

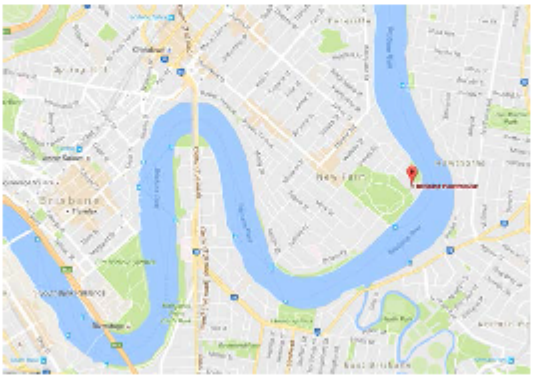
The event is an opportunity for public conversation exploring new possibilities for old problems; and sharing strategies to drive informed policy change. The discussion will bring together people directly affected by policy and practice relating to the records of out-of-home care or custody in childhood alongside representatives of the government and non-government bodies responsible for making, regulating, or altering those frameworks.

Three focus discussions, facilitated by Louisa Coppel of The Big Picture, will be held in Canberra, Brisbane and Sydney in September 2016. They form the core of a research and engagement project which has been fully funded by the University of Melbourne. Discussions will be centred around four broad topic areas:

- Inclusion on the Record
- Privacy and Possession
- Implications of Outsourcing
- Making Change Happen

Our project builds on existing research activity at the University's eScholarship Research Centre and the experience of a project team coming from the *Who Am I?* and *Find & Connect Web Resource* projects. We are committed to working together with communities disadvantaged by policy failures and shortfalls in Australian records/archives practices to help achieve lasting change.

When: Monday 12 September 2016, 10.30am to 2.30pm
Venue: Graffiti Room, Brisbane Powerhouse, 119 Lamington St, New Farm



For more information, contact Dr Antonina Lewis: antonina.lewis@unimelb.edu.au, 03 9035 3883.

APPENDIX 2: CONDITIONS OF USE FOR SESSION RECORDINGS / CONSENT FORM

Conditions of use for session recordings

Discussion sessions will be recorded (audio only) and transcripts of these recordings created.

Participants will not be name-identified on transcripts; initials will be used instead.

Where applicable, transcripts will identify participants as representing members of the Care Leaver community, according to the terminology preferred by the participant.

Transcripts may identify participants by their position and/or place of employment.

The original source recordings, transcripts, consent forms and these conditions of use will be held by the eScholarship Research centre (ESRC) in a secure location, for as long as the Centre is in existence, in accordance with the relevant retention and disposal schedule (under jurisdiction of the University of Melbourne).

Direct quotes from transcript that are reproduced in reports or published materials produced by the ESRC will be de-identified as standard practice, and no quotation will be publicly ascribed to a participant unless specific permission has been given by that person to do so.

The primary use of any material contained in the recordings and transcripts will be to inform or illustrate reports and other publications produced by the ESRC for the *Records and rights of the child* project, funded under the Melbourne Engagement Grant Scheme. Transcripts may also be referenced internally for outputs of the Find and Connect project, or for other related projects in which the ESRC is a partner. In all such cases, these conditions of use will continue to apply.

Copies of transcript will be provided on request and without cost to any person who was a participant in the session for which transcript is requested.

By accepting a copy of a session transcript, recipients acknowledge they will exercise due care and respect for the privacy and intellectual rights of other session participants.

Consent Form

eScholarship Research Centre

THE UNIVERSITY OF MELBOURNE

Records and rights of the child – focus discussions

Primary contact: Antonina Lewis

Additional contacts: Cate O'Neill, Rachel Tropea

Name of Participant: _____

1. I consent to participate in this group focus discussion and I have been provided with a written plain language statement to keep.

2. I understand that my participation is voluntary and I am free to withdraw from the discussion at any time without explanation or prejudice.

3. I understand that the purpose of the discussion is to identify problems and possibilities relating to access and inclusion for the subjects of childhood records: to share experience of the way things are now and to speculate constructively on how they might be made different in the future.

4. I will be asked to use case studies, hypothetical scenarios, and respectful discussion to identify where access and inclusion are inhibited by existing policy models, and to help articulate alternatives that can provide better outcomes for children and adults.

5. I understand that my participation will be audio-taped.

6. I understand that the data from this project will be stored at the University of Melbourne in accordance with the "Conditions of use for session recordings" which have been provided to me.

7. I understand that after I sign and return this consent form, it will be retained with the project data.

Participant Signature: _____ **Date:** _____

Date of report: 27 January 2017.