Royal Commission
into Institutional Responses
to Child Sexual Abuse

CONSULTATION PAPER

Records and recordkeeping practices

SEPTEMBER 2016

ISBN 978-1-925289-79-4

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September 2016

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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.

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