

Royal Commission into Institutional Responses to Child Sexual Abuse
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To the Royal Commission into Institutional Responses to Child Sexual Abuse

Submission to the *Records and record keeping practices* consultation paper

Thank you for providing us the opportunity to comment on the Royal Commission into Institutional Responses to Child Sexual Abuse *Records and record keeping practices* consultation paper.

The creation and maintenance of accurate records and the use of good record keeping practices by institutions that care for or provide services to children, plays a critical role in addressing, identifying, preventing and responding to child sexual abuse. The absence or poor quality of records can have profoundly damaging effects on individuals, including disconnection from family and community, loss of ethnicity and culture, lack of knowledge about personal and family medical histories, and diminished self-esteem and sense of identity.

The consultation paper documents a historic culture of extremely poor record keeping practices. Over the past three decades a comprehensive information management regime has emerged in Australia, consisting of records management, privacy, data protection and freedom of information (FOI) laws. Most Australian jurisdictions have enacted public records legislation, as well as FOI legislation covering the public sector. With the exception of Western Australia, every jurisdiction has incorporated information privacy principles into a legislative or administrative scheme. Although there are slight jurisdiction-to-jurisdiction variations in the way these principles are implemented, they are all based on guidelines developed by the Organisation for Economic Cooperation and Development, which set the universal information privacy law benchmark.

While these mechanisms have contributed to better record keeping practices, a number of issues remain. In many cases organisations that care for or provide services to children do not have obligations under record keeping or information management laws. For example, many private institutions are not subject to public records or FOI legislation. In addition, most small businesses and non-profit organisations providing services to children are exempt from privacy legislation. Where outsourcing arrangements are in place, many are crude, unsophisticated and unmonitored.

To address these gaps, any reforms should include measures to ensure that all organisations that care for or provide services to children are subject to record keeping schemes. While there are some inconsistencies between state and Commonwealth information management regimes, tying all organisations to relevant legislation would ensure there are minimum standards for the creation, maintenance, retention and destruction of records.

Centralised record keeping advocacy, support and advice service

Despite well-established record keeping requirements across the country, there appears to be a general lack of awareness and understanding of legislative record keeping obligations amongst those organisations that *are* subject to such requirements. To address this, the consultation paper canvassed the possibility of the creation of a records advocacy service for victims and survivors of child sexual abuse. This service would be designed to provide independent, confidential advice to individuals about how to seek access to records about them (or their immediate family members), and to assist individuals to make applications for access. I support the creation of such a service, and recommend that its mandate be widened to include an awareness, training and advice component for institutions that care for or provide services to children. Institutions would greatly benefit from purpose-built training on record keeping, privacy and FOI obligations,

and also a range of tools to assist in compliance. A centralised records advocacy service could also provide guidance where there are gaps or inconsistencies in legislation, for example, in relation to retention periods for certain types of documents. Such a service would also be well placed to provide a coordinated response to cross-jurisdictional requests.

Third party access

A number of victims and survivors of child abuse have cited the protection of third party privacy as an obstacle to gaining access to records about them. In some cases, individuals have been incorrectly advised that it is their responsibility to seek the consent of third parties mentioned in records, in order to gain access to their information.

Access to third party information will always require balancing competing considerations between the seeker of the information and the individual the information is about

Existing privacy and FOI legislation include provisions to balance an individual's right to know with the privacy of third parties. For example, under section 33(1) of the *Freedom of Information Act 1982* (Vic), documents will not be provided if they would unreasonably disclose information relating to the personal affairs of any other person (including a deceased person). The agency holding the records must also consider whether the disclosure of the information would be reasonably likely to endanger the life or physical safety of any person. The agency is required to notify the person, if practicable, prior to release of the information and advise them of their right to appeal to the Victorian Civil and Administrative Tribunal. A similar mechanism exists under the *Privacy and Data Protection Act 2014* (Vic) with respect to contracted service providers to government organisations.

A centralised records advocacy service as discussed above could also provide training or guidance to relevant staff in relation to their obligations to provide individuals with access to their personal information, and any exemptions that might apply.

Conclusion

While information management and record keeping practices have greatly improved in Australia, significant issues remain. Current problems could be addressed by ensuring that all organisations that care for or provide services to children are subject to safeguards in existing record keeping, privacy and FOI legislation. In addition, investments in staff awareness and understanding of legislative obligations must be made. To this end, I support the creation of a centralised records advocacy service, not only to provide advocacy and support to individuals, but also to provide organisations with training and advice about their record keeping obligations, and tools to assist in compliance. It needs to be common practice for organisations providing care for or services to children, to have a legislated or contracted obligation to adopt robust information management practices now, and into the future.

~~Yours~~ sincerely,

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