

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

Consultation Paper: Records and recordkeeping practices

**Department of Communities, Child
Safety and Disability Services, and
The Queensland State Archives**

October 2016

Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper: Records and recordkeeping practices, September 2016

Joint submission from the Queensland State Archives and the Department of Communities, Child Safety and Disability Services

Contribution from the Department of Communities, Child Safety and Disability Services

Thank you for the opportunity to provide a submission to the Consultation Paper: Records and Recordkeeping Practices.

The below submission provides contextual information for the Royal Commission's consideration in relation to item 26 of the consultation paper: *refusal to access and amendment, whether existing exceptions are appropriate in the context of records relevant to child sexual abuse*.

The Department of Communities, Child Safety and Disability Services (DCCSDS) makes the following comments:

- DCCSDS holds a large number of files and records relating to:
 - people who were under the care and protection of the Queensland Government and placed in orphanages
 - people who were under the care and control of the State and placed in detention centres.
- DCCSDS actively supports access to records, including providing records relevant to child sexual abuse to survivors.
- As noted in the consultation paper, Forgotten Australians can receive assistance to access their records and reconnect with family through the Queensland Find and Connect service located at Lotus Place.
- Forgotten Australians are also informed the Queensland State Archives hold records that may be of assistance such a school enrolment and historical records in relation to orphanages.
- In attempting to facilitate access to records, DCCSDS has developed administrative access schemes including: child protection history summaries and applications from the 2007-2010 Queensland Government Redress Scheme.
- Other departmental records contain information which is confidential under the *Child Protection Act 1999* (CPA) or subject to limitations on disclosure under the *Information Privacy Act 2009* (IPA).
- Applications must be made under the *Right to Information Act 2009* (RTIA) or IPA for access to that information. DCCSDS does not administer these Acts.
- DCCSDS processes approximately 600 applications for child protection information each year under the RTI and IP Acts.
- There are limitations on how much information DCCSDS can provide, as schedule 3, section 12 of the RTI Act provides that information is exempt from disclosure if its

disclosure is prohibited by, among other legislation, the CPA, sections 186-188. These exceptions reflect the policy intent to protect the free flow of information to DCCSDS from notifiers and the privacy of individuals in relation to the sensitive information that DCCSDS may hold about them.

- In particular, section 186 of the CPA prohibits the disclosure of notifier information except in very limited circumstances. DCCSDS acknowledges the Royal Commission is considering this in its work on criminal justice.
- In addition, section 187 is the general confidentiality provision which prevents DCCSDS from disclosing information gained during the administration of the Act, unless one of the exceptions applies, for example, where the information relates to the applicant. The Office of the Information Commissioner in Queensland has interpreted that section to apply only if the information is solely about the applicant. The equivalent provision in the repealed *Freedom of Information Act 1992* authorised disclosure if there was a compelling reason in the public interest, but that provision was not carried over into the RTI Act. DCCSDS does not have discretion about whether to disclose information about the applicant, if it is shared information about the applicant and others. This includes factual information about family relationships which may inform applicants about their family background.
- Under this regime, documents are redacted to remove all third party information.
- If information is required for litigation, records can be subpoenaed. Again, there are strict limitations on the disclosure of notifier information.
- The DCCSDS is reviewing the CPA, which includes consideration of information sharing and confidentiality.

Contribution from the Queensland State Archives, Department of Science, Information Technology and Innovation, Queensland

Thank you for the opportunity to provide a submission to the Consultation Paper: Records and Recordkeeping Practices. Queensland State Archives (QSA) notes that what is set out in the paper reflects the historical and contemporary recordkeeping challenges being faced across the Queensland jurisdiction.

- This consultation paper does not explicitly cover the management of digital records. Some records relating to the protection of children are required to be kept, managed and accessible over significant periods of time, sometimes up to 120 years. Managing digital records long-term requires appropriate infrastructure, such as a digital archive that can preserve these records for the time they are required.
- QSA notes that the principles outlined in the consultation paper broadly accord with many of QSA's objectives as the lead recordkeeping agency for Queensland. However, while the *Public Records Act 2002* requires that an Executive Officer (i.e. CEO) ensures a public authority makes and keeps full and accurate records of its activities it does not give the Queensland State Archivist enforcement or audit powers to ensure that this

happens. Currently agencies are only required to 'have regard' to the record keeping standards of QSA.

- We acknowledge that efforts have been made to improve recordkeeping and there are examples of good practice across the sector. For example, the Department of Education and Training issued an internal disposal freeze following the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse of its records, and has been working with QSA to develop an education sector Retention & Disposal Schedule.
- It should be noted that with regard to principle 5 in the consultation paper, the *Public Records Act 2002* does not currently contemplate amending, annotating, de-identifying and/ or expunging public records.
- Additionally in relation to principle 1 of the consultation paper: private organisations are not required to keep records by the *Public Records Act 2002*. However if these organisations receive public funds, the funding agency can require that records be kept as a part of the funding arrangement.
- QSA is dedicated to ensuring the recorded memory of government is preserved & is accessible for present and future generations. When determining how long records need to be kept, the State Archivist is guided by QSA's Appraisal Statement: www.archives.qld.gov.au/Recordkeeping/GRKDownloads/Documents/AppraisalStatement.pdf. 'Enduring rights and entitlements' (characteristic 3) and 'Significant impact on individuals' (characteristic 4) are key factors which guide our appraisal approaches. We are currently maintaining a close watch on the proposed changes to the statute of limitations concerning children within Queensland, in order to review any existing disposal authorisations which are impacted by this change.