

State Records Office of Western Australia – Response

State Records Office of Western Australia (SROWA)

Response to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper on Records and Recordkeeping Practices – September 2016

Views on Principle 1 – *“Creating and keeping accurate records is in the best interests of children.”*

1. *“how institutions can build and foster cultures that promote and recognize good records and recordkeeping practices as being in the best interests of the child”*

Response: The value of Recordkeeping within these institutions must be instilled within the business culture of the organisations and promulgated from the Chief Executive to all Officers. Recordkeeping audits should be part of the formal audit process and Chief Executive Officers should be accountable officers required to achieve good recordkeeping practices within the organization and report on same via a staff development or similar performance appraisal process.

2. *“what training staff and volunteers in institutions need to help them understand the importance and significance of good records and recordkeeping practices”*

Response: A thorough induction (relevant to recordkeeping and legislative requirements) for all staff entering the organization and regular refresher courses (perhaps on-line) for all staff thereafter. The completion of all courses should be linked to performance appraisal.

3. *“what role governments may play in promoting good institutional records and recordkeeping”*

Response: Government should endorse and fund the appointment of a qualified and experienced Records Manager or Document Manager to manage the recorded information of these institutions. Standards and guidelines produced under the jurisdictional Archival Authorities are extremely useful in determining the minimum recordkeeping and compliance requirements.

4. *“what role children, parents and others may play in helping institutions develop, share and monitor their recordkeeping practices”*

Response: No comment.

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

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”*

Response A: Institutions have a duty of care to create records relevant to all aspects of the care and services provided to children, including records which indicate limitations of that care and all incidents where children have been abused or are suspected of being at risk from such abuse.

Response B: The language used must be plain and clear and therefore devoid of ambiguity. The level of detail should be relevant to the incident and provide clarity so that there is no doubt of what did or did not happen.

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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”*

Response: Institutions and their staff require training and resources that provide an understanding of the value of keeping records; the recordkeeping compliance requirements; and the systems and processes specific to the institution which are to be / have been implemented to enable creation, capture and management of records relating to the care of children for which the institution is responsible. Perhaps medical practitioners or law enforcement officers can provide relevant training on how to detect abuse.

7. *“how children’s views and experiences can be accurately reflected in records about their childhoods and decisions affecting them”*

Response: Allowing the children to express their own thoughts and feelings either in writing or by other means and ensure that is captured onto the records.

8. *“how institutional records can be monitored to ensure they are accurate”*

Response: In conjunction with induction; continual refresher training of staff; the employment of qualified Records Managers; Annual and random compliance audits should give a level of confidence regarding accuracy.

9. *“whether there may be any unintended consequences arising from requiring institutions to create accurate and detailed records relating to child sexual abuse...”*

Response: In this instance, the health, safety and care of the children; their right to protection; and their future right of discovery is the paramount objective not consequences relevant to “other parties”. Clearly, the children must be afforded the full protection of all legislative requirements governing the sensitivity of such records.

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

10. *“what are the resourcing implications of requiring institutions that hold a large volume of un-indexed historical records to index their files are”*

Response: The resourcing implications could be significant for those institutions that hold a large volume of records. If retrospective “indexing” or capturing of the records is to be undertaken it should be done in such a manner that ensures the information captured is accurate, complete and retrievable. An information management professional, eg a records manager or archivist, should be involved to ensure that records management practices compliant with industry standards are implemented, including quality assurance.

11. *“whether and how indexing of historical records should be prioritized...”*

Response: Yes, prioritizing the retrospective capture and indexing of historical records is the most sensible approach which will allow such projects to be conducted in a phased approach relevant to the importance of certain groups of records and the corresponding budget. Records Management professionals within the organization will develop effective plans for such projects.

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12. *“how records relevant to child sexual abuse should be indexed to allow them to be easily located, retrieved and associated”*

Response: For contemporary records in electronic format, full text indexing is recommended. For hard copy records, the ideal would be to scan the records to OCR to enable full text indexing. Alternatively, hard copy records should be indexed using controlled language to describe the contents and context of the record. Controlled language will assist in searching and retrieval of records.

The system used to capture the records should have appropriate records management functionality to ensure that the records cannot be deleted or altered; an audit trail is kept of all actions and access to the records; and the records are associated with all other records relevant the child.

13. *“what should happen to records of institutions that close, or change ownership or function before the expiry of any record retention period”*

Response: Any records that are required to be kept permanently should be transferred into the custody of the government funding / licensing authority. That institution **must** continue to take responsibility for custody of any temporary records until such time that they can be legally destroyed. If there is a new owner, it may be necessary to provide some copies of current records, that is, records relevant to existing children in care, to enable the new entity to continue operating the service however, all other records must be transferred to the custody of the government funding / licensing authority or other government department.

A memorandum of understanding should be established between the government and the new owner to ensure that all records relating to children under their care are created, managed, accessed and disposed of in accordance with government Standards and legislative requirements or else returned to the government for safe-keeping.

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

14. *“whether and how the views of individuals discussed within institutional records could be canvassed and represented in decisions concerning disposal”*

Response A: Whilst it is important to canvas and consider the views of individuals discussed within institutional records, care should be taken to ensure that valuable information is not destroyed solely based on those views. Any decisions regarding the record retention period and disposal decision should be based on the social and evidential value of the records to the community in the future.

Response B: Should records of this nature fall due for destruction, it may prove to be the ultimate service of care to give the individuals an opportunity to take ownership of their own records if they wish.

15. *“how long records relevant to child sexual assault should be retained, and under what (if any) circumstances should they be destroyed”*

Response: In Western Australia, the State Records Commission is the body responsible for determining the retention period and disposal decision for government records. The Commission has already determined that records, created and received by government organisations, relevant to child sexual assault are State archives to be retained permanently under restricted access for certain periods of time.

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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”

Response: Clearly, retention periods are reflective of legislative requirements where they exist. However, where children are concerned, the abolition of limitation periods should not affect the retention period of such records since the existence of that information may be complimentary to the health of the future adult.

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 may be mitigated”

Response: It is considered that the records of all institutions caring for or providing services to children should be subject to mandatory retention periods, in accordance with the approved disposal authorities issued by the records/archives authority within relevant jurisdictions. Whilst the mandated retention periods would require institutions to keep certain records permanently, or for an extended time period, it would also allow for the timely destruction of certain temporary records. The impact of mandatory permanent retention of certain records would be mitigated by the ability to dispose of time expired temporary records.

18. “whether institutions should maintain registers of what records they destroy, when and upon what authority”

Response: Yes, institutions should maintain such registers. The registers would serve to protect the institution against potential allegations that appropriate records were not created or that they have been illegally destroyed.

19. “how the Access Principles for Records Holders and Best Practice Guidelines in providing access to records have been applied in practice”

Response: In Western Australia the State Records Act stipulates that access to government records is determined under the Freedom of Information (FOI) Act. The State Records Act defines a government record and the State Records Commission determines if that government record is to be a State archive. A person has a right to be given access to open access archives held in the State archives collection, as well as to State archives held by agencies. The Commission has already determined that records relevant to child sexual assault, created and received by government organisations, are State archives to be retained permanently under restricted access for certain periods of time. Generally any right that a person may have to be given access to a restricted access archive held by a government agency is determined under the FOI Act. If a restricted access archive has been transferred to the State archives collection any application for access must also be made under the FOI Act. The decision to grant access to restricted State archives ultimately lies with the government agency responsible for creating those records. In cases where the creating agency is no longer in existence then the successor agency assumes responsibility for control of the records. Advice on how to apply for access to restricted records can be obtained from SROWA staff, along with an application form from the relevant agency. Once written approval is obtained by the applicant, access to restricted access State archives is administered by SROWA.

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20. *“whether they have resulted in simplified and more open access processes:*

Response: Access arrangements for open access and restricted access State archives held by the SROWA operate under the State Records Act and the Freedom of Information Act. A clear access process is described under the legislation and can be explained to clients by SROWA staff giving assistance in the provision of access. The legislation requires reasons for restrictions on access to be documented and approved by the State Records Commission, providing a start and end date for restriction periods, resulting in restricted records becoming open over time and a clear method for applying for access to those records currently restricted.

21. *“whether and how they might be adapted to apply to access to the records of all the institutions within our Terms of Reference”*

Response: Clearly access to both government records and State archives are described in legislation intended to deal with government information being created and received by government organizations. It is unlikely that the recordkeeping regime described in the legislation would translate to non-government organizations.

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...scheme”*

Response: Amendment to the Privacy Act in this instance is supported.

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”*

Response: The Freedom of Information Act permits agencies to charge fees to cover costs in processing and assessing applications for access. Currently these fees are imposed on applicants by the agency to recover costs. Should applications to records holders to access records created about children be free, the cost will be borne by those agencies. However access to all State archives held at the SROWA is free. Clients are permitted to view and take digital photographs of archives at no cost. Should a client wish to order a digital copy of a State archive, fees and charges will apply in order to cover costs.

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”*

Response: Staff at the SROWA can provide information about creating and successor agencies, assist with reading difficult calligraphy, provide additional contextual information about the archive being examined, locate related records from the collection and deal with creating and successor agencies in processing applications for access to restricted access archives. SROWA staff provide access to information but do not interpret or curate the information. Staff will often assist clients to access information which may contain difficult, sensitive and distressing information, however when accessing records relevant to child sexual assault it may be appropriate for government to provide targeted professional psychological support services.

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25. *“in relation to redactions, whether nationally consistent standards for redaction should be established; and what those standards should be”*

Response: The SROWA does not make decisions with regard to the redaction of restricted access archives held in the State archives collection. Decisions about access are determined by the creating/successor agency within the provisions of the FOI Act.

26. *“in relation to refusal of access and amendment, whether existing exceptions are appropriate in the context of records relevant to child sexual abuse”*

Response: The SROWA does not make decisions with regard to approval of access to restricted access records. Access is determined by the creating/successor agency within the provisions of the FOI Act.

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”*

Response: Training is essential.

28. *“whether a sixth principle directed at enforcing the initial five principles is required”*

Response: No comment.

29. *“whether it would be necessary or appropriate to adopt a two-tiered approach to the enforcement of recordkeeping practices, whereby certain institutions...are held to a higher standard than others (such as local sports clubs.)”*

Response: Requires further consideration.

30. *“whether a records advocacy service would be useful for victims and survivors of child sexual abuse in institutional contexts”*

Response: Yes, but a “records advocacy service” would be best placed at the Archival Authority in each jurisdiction, where the service could be made available to all institutions. In addition, employing professional Records Managers in each institution will ensure that records are captured and managed to best practice standards and the advantage of all parties.

31. *“what powers, functions and responsibilities a records advocacy service should have”*

Response: See response to item 30 above.

32. *“whether there are existing bodies or agencies that may be suited to delivering records advocacy services.”*

Response: Yes, jurisdictional Archive Authorities.