



Anglicare Victoria's Submission to the  
Royal Commission into Institutional Responses to  
Child Sexual Abuse –  
Records and Recordkeeping Practices

October 2016

## Introduction

Anglicare Victoria welcomes the opportunity to contribute a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse on records and recordkeeping practices. The agency supports the proposed way forward to improve the protection of children, ensure organisational accountability and ensure that useful records are kept for other important purposes, such as legal proceedings. We strongly support the five proposed principles. We submit the following responses for questions related to each principle, as well as additional matters pertaining to regulatory intervention and records advocacy services.

### **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 recognise good records and recordkeeping practices as being in the best interests of the child**

Anglicare Victoria's history of providing services to vulnerable Victorians dates back to the 1890's. Today, Anglicare Victoria operates out of office 34 sites across Victoria. Our services include: home based care and residential care, family services, family violence support, financial counselling, emergency relief and victims assistance, to name but a few. These services are delivered by 1,400 staff and over 1,800 volunteers. The number of geographic locations and wide range of services provided by the agency provides a challenge in relation to how to build and foster cultures that promote and recognise good records and record keeping practices. As with other community services providers with long and varied histories of service, Anglicare Victoria has continued to strive to improve the quality of its service delivery, including how it creates and manages its client records. To meet the challenge of ensuring that our recordkeeping practices are in the best interests of children across the organisation requires a number of factors to be operation.

1. Anglicare Victoria's organisational culture is one that continues to reflect on its practice in order to develop and promote recordkeeping practices that are in children's best interests. Our policies, procedures, documentation systems, training, hiring practices, supervision practices, communications (both internal and external) and a myriad of other components are designed to maintain a "child safe" focus.
2. Anglicare Victoria works to ensure compliance with the Child Safe Standards introduced in Victoria 1 January 2016 (see <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/child-safe-standards> ). We strongly advocate that requiring organisations that work with children and young people to be in accordance with "Child Safe Standards", such as Victoria's Child Safe Standards is a useful step that Governments can take in order to foster cultures that promote and recognise good records and record keeping practices.
3. The structure of record templates and forms (both paper-based and electronic) can usefully guide recordkeeping practices so that both descriptions of observations/events, as well as written analyses of these, are usefully focused on children's best interests. This means that templates and forms must contain appropriate fields and an appropriate overall structure in this respect, in context of the overall purpose and function of each type of specific form/template. Examples of such forms/templates are case note templates, assessment templates, case or care planning templates and critical incident report forms (Anglicare Victoria versions of these forms can be provided to the Commission upon request).

4. Staff require support and guidance on how to complete records using the abovementioned forms/templates, and other kinds of recordkeeping tools. Such support and guidance is multi-layered; involving organisational policy/procedures (e.g. Anglicare Victoria's Case and Service Record Quality and Security Policy and Procedures, which can be provided to the Commission upon request), training, and supervision. With regard to supervision, we contend that this should have some focus on supervisors reviewing supervisees' service records. This can serve as both a catalyst for discussion/reflection about the provision of case-management, counselling, care services, etc., and to check that these records have been in the best interests of the child.

We would also draw the Commission's attention to the usefulness of projects such as the 'Who Am I?' project. Anglicare Victoria was one of 15 partner agencies, which joined with the University of Melbourne and the Australian Catholic University multidisciplinary team of archivists, social workers and historians to conduct research on the following under the four research strands:

- Historical records of care
- Archiving practice and policy
- The experience of accessing records, and
- Current practice.

The findings of the 'Who Am I?' project, conducted from 2009 to 2012, and the resources developed by project are particularly relevant to the establishment of recordkeeping practices and organisational culture. These resources are accessible, to all organisations that need to keep client records, from the Centre for Excellence in Child and Family Welfare website (<http://www.cfecfw.asn.au/know/research/sector-research-partnership/partnership-projects/out-home-care/who-am-i>) Anglicare Victoria has used the project's findings, videos and tips sheets as a guide to development of recordkeeping policy and practice. Other organisations may likewise wish to use the project's findings and resources as a guide to review and improve their policies and practice.

## **2. What training staff and volunteers in institutions need to help them understand the importance and significance of good records and record keeping practices**

In many ways, the answer to this question must be tailored to each organisation in light of the kinds of services and operations it conducts, and the profile of staff and volunteers who are recruited. For example, in a human or health services organisation that recruits only degree-qualified and experienced professionals (e.g. counsellors, social workers, psychologists, psychiatrists, etc.) and not volunteers to provide services, a certain level of competence and ability with regard to appropriately completing structured forms/templates can be assumed. However, on the other end of this spectrum in an organisation that recruits staff with qualifications (such as TAFE certificates), staff with little or no professional experience and/or volunteers, ability and competence cannot be assumed.

Anglicare Victoria inhabits a point about half-way along this spectrum. This is because we provide a significant breadth of services and recruit a diverse range of professionals, as well as volunteers. Some of our staff have TAFE qualifications and may have little or no professional experience prior to commencing work with us. These staff mainly work in our residential care programs. Others have Bachelors or Masters level tertiary qualifications in social work, family therapy, counselling, psychology, etc. and a broad range of experience, from new-graduate through to sector-veteran. These staff mainly work in our family services, drug treatment services, family violence services and other specialised programs. We also recruit volunteers from the community to become foster carers with whom we place vulnerable children that Child Protection have removed from the care of the families due to safety concerns.

Accordingly, Anglicare Victoria has implemented four approaches to training staff and volunteers so that they understand the importance and significance of good records and record keeping practices:

1. A two-week induction course ('Jump Start') is undertaken by all new residential care staff - those staff less likely to have a level of qualifications and experience from which adequate recordkeeping capabilities can be assumed. One of the modules in this program is called *Documentation and Case Notes*. The learning outcomes of this program include participants: having a working understanding of the policy requirements; understanding how to document client contacts and other service events in ways that adhere to organisational, legal and professional requirements; understanding the relevance and usefulness of case notes; understanding the elements of good record writing.

An additional module in the Jump Start training focuses on *Client Critical Incident Reporting* using Anglicare Victoria's incident reporting system, Riskman. Such reports are completed and disseminated to relevant managers internally, as well as to the Victorian Department of Health and Human Services (for programs funded by DHHS, only – all programs engage in internal incident reporting, though) whenever reportable critical incidents occur (see DHHS documents at <http://www.dhs.vic.gov.au/funded-agency-channel/about-service-agreements/incident-reporting/human-services> . All Anglicare Victoria training and policy related to client critical incident reporting are in accordance with these). This includes when allegations of child sexual abuse, sexual assault or sexual exploitation are made.

Volunteer foster carers, who are also less likely to have a level of qualifications and experience from which adequate recordkeeping capabilities can be assumed, undergo 'Shared Stories, Shared Lives' training prior to being accredited as carers. This training has quite a minimal focus on recordkeeping, as foster carers are very rarely required to complete any documentation for children in their care. However, foster carers are encouraged during the training to keep written notes of any observations they make of children's behaviour and presentation before and after the children have access with their biological parents. This is because such observations can become important for Anglicare Victoria, Child Protection and the criminal-justice system to detect and investigate child abuse that may be occurring during children's access visits with their biological parents and other family members.

2. When analysis (conducted by Anglicare Victoria's Quality department or another organisational structure) determines that there are organisation-wide inconsistencies with regard to the quality of particular kinds of recordkeeping, Anglicare Victoria responds to this with an appropriate improvement strategy. This may involve internal communications, monitoring and auditing, and/or agency-wide training. An example of such a strategy relates to client critical incident reporting.

Throughout 2014 and 2015, Anglicare Victoria provided group-training sessions to every service team and program, and their managers, on the correct approach to recording client critical incidents in our incident database, Riskman (see our response in this submission to question 5). The intention of this strategy was to improve organisational culture and knowledge in relation to incident-reporting so that, even with ongoing staff attrition and new recruitment, there would be a critical mass of capability regarding incident reporting sufficient that new staff would be able to learn effectively from their colleagues and supervisors - making the change self-sustaining. This strategy was very successful.

3. Supervisors are expected to monitor the quality of their supervisees' service records, and to discuss these during supervision (as reflected in Anglicare Victoria's

Supervision Policy and Procedures). Where individual supervisees demonstrate that the quality of their recordkeeping needs improving, supervisors focus on this as part of the individual supervisee's ongoing professional development.

In addition to these approaches, Anglicare Victoria has begun development of a web-based learning-management-system. Senior Management and the Board intend to implement a "core competencies framework"; whereby new staff must complete a series of web-based modules during the initial probationary period of their employment. Such modules may focus on topics such as how to detect the signs that a child may be experiencing abuse and what to do, assessing family violence, working in a culturally competent and culturally safe way with Aboriginal clients, suicide risk assessment, and so on. As appropriate, core competency modules would certainly have a focus on good recordkeeping practices.

We consider that learning-management-systems are a cost-effective way to improve the consistency of staff competencies. However, we would point out to the Commission, that the development of such resources is costly and resources-intensive, making it a difficult and often slow process for not-for-profit organisations such as ourselves. We would strongly advocate that Commonwealth and State Governments provide financial and other assistance to not-for-profit organisations to help them develop such resources so that recordkeeping practices, and other practices intended to serve children's best interests, are improved.

### **3. What role governments may play in promoting good institutional records and recordkeeping**

#### Developing and disseminating written resources to inform good practice

The Victorian Department of Health and Human Services provides guidance regarding such matters in the form of fact sheets, management instructions, program requirements and practice models/frameworks. These set out best practice and, in some cases, legal and/or accreditation-related obligations regarding: the completion of service records (e.g. required fields in particular forms/templates); the characteristics of records management systems (including information security safeguards), and; observance of relevant privacy and health records law.

Anglicare Victoria refers to these fact sheets, management instructions, etc., in developing policy and procedures, forms and templates, workflow systems and in training programs. They also inform our minimum specifications which we require to be met in order in the event that the agency purchases and implements any client-related information-technology systems and other business systems.

We contend that the quality of the Victorian Government's fact sheets, management instructions, program requirements and practice models/frameworks is generally good, as is their availability (usually on the public websites of statutory bodies, such as the Department of Health and Human Services). However, the Victorian Government's approach to communicating with our sector that they have developed new fact sheets, management instructions, etc., or amended existing ones, is sometimes inadequate.

With regard to the Commonwealth Government, the availability and quality of fact sheets, management instructions, program requirements, practice models/frameworks and so on is generally not as good as with the Victorian Government. We would recommend that the Commonwealth Government invest in improving development and communication of such resources as these pertain to national service standards/frameworks, best practice frameworks/fact sheets developed by Commonwealth Government Departments and Commonwealth-funded organisations, as well as the requirements of Commonwealth legislation.

#### Auditing

With regard to our state-funded services, Anglicare Victoria undergoes auditing from the Victorian State Government every three years in order to qualify us for registration to continue providing these services. A substantial component of this external auditing focuses on recordkeeping practices and whether these serve children's (and adults') best interests. We have generally found these auditing processes to be fair, reasonable and practicable and we support their continuation. It is also our understanding that, having introduced the Victorian Child Safe Standards (see <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/child-safe-standards>), future external audits from the Victorian State Government will focus on assessing compliance with these standards – including those sub-standards related to recordkeeping. We strongly support this.

We would encourage the Commonwealth to engage in such auditing, also, with regard to services it funds. However, so as to reduce the regulatory burden on not-for-profit organisations, we would suggest that such auditing be dovetailed with state-Government auditing processes, and/or that the Commonwealth Government allows for state-Government auditing to serve as sufficient evidence that an organisation is compliant with relevant standards and requirements for best practice, where state and Commonwealth requirements/legislation are reasonably consistent.

#### **4. What role children, parents and other may play in helping institutions develop, share and monitor their recordkeeping practices**

Hearing the voices of children, young people and other family members is critical for the continual improvement of many processes within human services organisations. This includes recordkeeping processes.

For such feedback to be received, clients need to feel confident that they are entitled to give it and also that feedback will be received in a spirit of receptiveness and good will. Additionally, clients must also be made aware of the mechanisms through which feedback can be given (Anglicare Victoria has a number of mechanisms through which clients can give feedback, including in-person at our sites, over the phone, and via our website. A Complaints and Compliments Management Policy and Procedure set out how such feedback is then managed and responded to within the organisation).

Moreover, in specific regard to the issue of recordkeeping, clients need to be informed of their right, in accordance with privacy and health records law, to request access to their personal information contained in organisational records and to seek its correction (note: in accordance with this law, access may sometimes be lawfully declined under particular circumstances, such as when allowing access might pose a threat to someone's safety).

To ensure that people are made aware of such information, Anglicare Victoria provides all of our new clients with an information booklet which outlines, among other things:

- Their rights under relevant privacy and health records law, including their right to request access to their personal information contained in our records and to seek its correction.
- That Anglicare Victoria welcomes feedback, including complaints and compliments, and how these can be lodged (clients are encouraged to lodge feedback via our website, including anonymous feedback).

In addition to this general feedback mechanism, Anglicare Victoria periodically seeks feedback from our clients via a number of other strategies. These include an annual, organisation-wide consumer satisfaction survey ('Satisfaction September'), and many programs also provide clients with a program-specific feedback questionnaire they may opt to complete at the point of service exit. Also, children and young people in residential care and lead tenant homes are

invited to participate in team meetings to provide input and suggestions into how their house operates.

Within some Anglicare Victoria programs, where appropriate in context of the nature of these programs, an “open file” practice is in operation. This practice stems from the strengths approach and is founded on a belief in open information flow and transparency, respect for the dignity and rights of people, respect for the right to self-determination and actions that enables those concerned to direct the processes of change.

What this means in practice is that case managers share information with families, including children (where appropriate), and where possible case notes are co-authored with clients. The practice also includes encouraging clients to write letters to add to their client record as a way to reflect on their thoughts and experiences of our work together.

## **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**

We contend that when children, young people or adults make disclosures of child sexual abuse, or disclose that they suspect child sexual abuse of another person has been perpetrated, written records need to immediately be created by people who receive these disclosures to record their content, *verbatim*. Given the potential implications for these records in subsequent police investigation and prosecution of perpetrators, as well as other legal proceedings, detail should be as comprehensive as possible.

This includes using direct quotes (or, preferably, voice recordings to be appended to written records, where disclosers consent to this). Whilst we acknowledge that disclosers’ phrasing when describing their abuse may be graphic and disturbing in nature, it is important that people composing written records documenting disclosures do not paraphrase, omit or add any statements on behalf of the discloser out of a sense of social propriety at the risk of compromising subsequent investigation/prosecution.

Within Anglicare Victoria, we use critical incident reports to document disclosures of child sexual abuse, sexual assault and sexual exploitation, and the steps we take to respond to and manage these (including reporting to Child Protection and police (see below), and other appropriate actions to keep children and others safe, and promote their wellbeing and resilience (such as referrals for sexual assault counselling, etc.)). We would endorse this type of approach being mandated in any organisation that works with children and young people.

Anglicare Victoria operates a Critical Incident database (Riskman) that captures all incidents across the organisation (see

[http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0008/684710/critical-client-incident-summary-guide-categorisation-table-12-2012.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0008/684710/critical-client-incident-summary-guide-categorisation-table-12-2012.pdf) for a taxonomy of incident types and categories). Child sexual abuse, which is recorded as a ‘sexual assault’ incident type, is a Category 1 critical incident (most serious). Accordingly, there are strict and swift timeframes that must be adhered to for reporting and actioning the incident, both internally, and externally - in relation to reporting to the Child Protection unit of the Victorian Department of Health and Human Services.

Additionally, DHHS management instructions, Anglicare Victoria internal policy and procedure, and Victorian legislation (*Crimes Amendment (Protection of Children) Act 2014* (Victoria) mandate that suspected/known sexual offences against a child must be immediately reported to police except where a lawful excuse or exemption for this applies (see

<http://www.justice.vic.gov.au/home/safer+communities/protecting+children+and+families/failure+to+disclose+offence> ).

When child sexual abuse is disclosed to Anglicare Victoria and concerns an Anglicare Victoria client, further records may be created in addition to a critical incident report, depending on whether the client is in Out-of-Home Care. Where this is the case, DHHS requirements mandate that a Quality of Care (QOC) investigation for occurs (see <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/Guidelines-for-responding-to-quality-of-care-concerns-in-out-of-home-care> ).

It is crucial that all records of child sexual abuse disclosures and their management – whether critical incident reports, QoC investigation reports, or other types of reports (e.g. case notes), are composed in an objective manner with assessments, recommendations and decisions clearly supported by relevant information. The file must plainly communicate that the process was timely and accountable and provide a comprehensive record of the incident and subsequent investigation process and outcomes.

The guiding principle in the construction of these reports must be the understanding that they will be read in years to come and must provide a complete picture of the incident and the actions taken in response to it.

## **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**

Please see our response to Question 2 in this submission.

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

Children and young people’s views regarding their experiences, and their wishes (especially in regard to decisions affecting them) should be recorded throughout their records, and inform service response. These view must be elicited using a developmentally appropriate approach - e.g. pictures drawn by younger children, more direct discussion with older children/adolescents, but which may be facilitated using resources such as ‘bear cards’, etc. (see <http://innovativeresources.org/> for examples of such resources. Innovative Resources is an arm of Anglicare Victoria St Luke’s which produces these for use in our programs as well as the broader child welfare sector).

It is important that service professionals who engage children to discuss their experiences and wishes are appropriately trained to do so (via professional qualification such as social work, psychology, etc. and/or through on-the-job training/supervision and third-party training focused specifically on this skillset). Otherwise, such interactions may be approached clumsily, inflating the risk of this leading to emotional harm and/or disengagement. Additionally, when interactions with children and young people may result in disclosures of child sexual abuse, professionals need to know how to receive these in ways that are in the best interests of children. This includes not asking leading questions which may compromise future investigation/prosecution of perpetrators.

Anglicare Victoria is currently developing a specific set of policy, procedures and training which focuses on this issue, as part of our ongoing project to enhance our organisational accordance with the Victorian Child Safe Standards see <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/child-safe-standards> ).



Provided that professionals are appropriately qualified and skilled in engaging children to elicit their views and wishes, they should engage with children and young people both in a general sense, as well as during specific, structured points of a service or care episode.

For instance, in family-focused case-management services, children and young people should be consulted during the stages of assessment, case planning, intervention activities (e.g. counselling, support engaging resilience-enhancing extracurricular activities), case plan review, and case closure.

Within out-of-home care contexts, a different approach is required, as the care environment should attempt to approximate that of a nurturing family environment, more than a formal service episode. As such, children and young people's views and wishes will usually be elicited via informal, everyday discussion (around the breakfast table, etc.).

However, particular structured activities commonly undertaken in care environments may also be useful to this end— such as foster carers and residential care staff members assisting children/young people to compile a "Life Book". This is a narrative of individual and personal memories of children or young people over the course of the placement/s. It includes information about and mementos from significant and memorable events in the life of the child or young person, which they may keep for later reference in adulthood (such as records, certificates, photographs etc.). This activity commonly occurs for children and young people in care in recognition that many may live transient lives (going in and out of different care arrangements), which gives rise to the risk that they may lose access to important mementos and have difficulty forming a cohesive narrative of their life experiences.

## **8. How institutional records can be monitored to ensure they are accurate**

Anglicare Victoria maintains a focus on continuous quality improvement that includes a program of regular internal file reviews across all programs, as well as participation in external audits that occur every three years (see our response to question 3, regarding auditing).

Reviews ensure programs are accountable and help identify any gaps in record keeping, requirements for staff training or adjustments in processes required. At the program level accuracy of records is monitored through regular staff supervision to ensure staff are able to perform their roles and fulfil their recordkeeping requirements.

Anglicare Victoria supports an external accreditation process linked to the provision of government contracts to supply services to the most vulnerable members of our community. Accreditation ensures all organisations are accountable in their record keeping practices and a minimum standard is maintained across different organisations.

Anglicare Victoria also supports the provisions of State and Commonwealth privacy and health records legislation which allow people to request access to organisational records containing their personal information. As outlined in our response to question 4, we advise all new clients of their right to make such a request. However, in accordance with this legislation, there are sometimes good and lawful reasons for us to refuse such access – such as when providing access may compromise someone's safety, or interfere with a law enforcement investigation.

## **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)**

We agree that a potential unintended and undesirable consequence arising from requiring institutions to create accurate and detailed records relating to child sexual abuse is that abuse

survivors may experience distress and detriment upon these records being subpoenaed during legal proceedings. We recommend that service standards (tied to service funding, as well as registration/accreditation) and relevant legislation require a very high threshold of specific relevance to proceedings for parties to Court matters to be able to subpoena records related to child sexual abuse disclosures and investigation/management (similar to many State laws around subpoenaing records of sexual assault counselling). This is of particular relevance to Family Court matters, during which parties may subpoena records in order to go “fishing” for evidence they can use against their ex-partners during proceedings.

Given that records relating to child sexual abuse are likely to contain a large volume of highly sensitive information, this would be extremely undesirable, and may inflate the risk of suicide or severe psychosocial deterioration for child sexual abuse survivors, who are at increased risk of these. Moreover, concern about this possibility may motivate survivors of child sexual abuse who are now adults and who are mindful of the potential for Family Court matters in their future not to engage with services and/or to withhold important information from services and police (including making disclosures of their experiences of child sexual abuse at all).

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

#### **10. What the resourcing implications of requiring institutions that hold large volumes of unindexed historical records to index their files are**

Since the Royal Commission into Institutional Responses to Child Sexual Abuse was established, Anglicare Victoria has allocated significant resources to index its historical records. Anglicare Victoria’s history as a welfare agency caring for disadvantaged children and adults dates back over 120 years and our record collection begins documenting the services provided from the 1890’s. The recordkeeping practices of Anglicare Victoria’s founding agencies: The Mission of St James and St John, St John’s Homes for Boys and Girls and the Mission to the Streets and Lanes, were of poor quality in comparison to today’s standards.

Anglicare Victoria self-funded a project beginning in March 2016 to index 900 boxes of unindexed closed client records at its offsite storage facility. Before this project began, it agency was unable to provide access to thousands of records of which we are the custodian. This had serious implications for any former client who approached the agency in relation to abuse they experience while in the care of Anglicare Victoria or one of the founding agencies. If we were unable to establish whether or not they were in fact a client at the time of the abuse, there would be a question of legal liability and whether or not the agency should provide redress.

The project took one full time staff member four months to index over 22,000 closed client records at a cost of \$18,000. We are now in the process of going through records request applications received where no records were found and searching the client database again to see if the records have been indexed and access can be provided due to this project.

A second project continues at our central office with indexing historical client information from old registers and index cards. With the exception of photographs, Anglicare Victoria will have indexed its entire historical record collection by the end of 2016.

Little funding has been made available to assist record holders to index their records. In 2012 the federal Government, in recognition of the recommendations in from the senate inquiry into Forgotten Australians and Former Child Migrants, provided grants of up to \$15,000 for indexing and cataloguing records. Anglicare Victoria was successful in its application and indexed approximately 1,000 historical photographs from its three founding agencies. Another round of grants will be available later in 2016, which Anglicare Victoria will apply for to complete the indexing of its photographic collection.

## **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)**

Given limited resources Anglicare Victoria considers prioritising the indexing of historical records an appropriate course of action for organisations to ensure that those who have waited the longest to access their records, for example from a children's home, may be made a higher priority than someone wanting to access their records from adult services, such as Drug and Alcohol services. Accessing records from Out-of-Home Care programs addresses issues of identity, unlike other services where a former client may have a specific document, such as a medical diagnosis they are searching for. Such information may be able to be accessed from another source, such as the relevant medical professional. In conducting our own indexing project, Anglicare Victoria prioritised the indexing of its historical records as follows:

1. Adoption
2. All Out-of-Home care programs including institutional/congregate care, family group homes, foster care, kinship care and residential care
3. Family Services
4. All other programs, such as Alcohol and Other Drugs, Financial Counselling

Anglicare Victoria recognises that the lives of relatives, particularly children, of care leavers can be significantly impacted by the decision to place the child in care. Some care leavers, for example, may not want to discuss their care experience with their children but will allow them to access those records after their death. Therefore, we affirm that there should be no time limit places on the indexing of client records.

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

Organisations who care for or provide services to children need to have appropriate record keeping systems in order to be able to locate, retrieve and provide access to them.

Records relevant to child sexual abuse should be indexed using a unique identifier that they themselves know if and when they approach an organisation. Various service systems generate a client number, such as the Department of Health and Human Services system CRISS/CRISSP, but the client will not necessarily know what their client number is as it has been generated for internal purposes and for communicating about service provision between the funding body and the funded agency.

### Date of birth

The date of birth must be captured accurately in organisational client databases in order to locate their records. Anglicare Victoria recognises that this may not always be possible. For example, Aboriginal people may not always know their date of birth. Historical client records often captured the age of the client at the beginning of engagement on an intake form.

### Names and siblings

Ensuring accuracy of spellings is another important issue when indexing client records, including all known names of the child or young person. Children in Out of Home Care can often have many names, particularly surnames. Capturing all 'otherwise known as' names in a client database assists with locating all records relating to that person. Sometimes all

siblings' records will be together in one file so it is important that all names are captured when indexing.

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

Records from the Victorian Department of Health and Human Services funded agencies should be transferred to the custody of the Department of Health and Human Services or the Public Records Office Victoria. We would advocate that similar such arrangements should be made by relevant Statutory Bodies of other State and Commonwealth Government departments with regard to any institutions they fund or have funded in the past.

### **Principle 4: Records relating 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**

Anglicare Victoria considers that it would be practically difficult to canvas the views of individuals discussed within the agency's records regarding decisions concerning disposal. Our records contain information about hundreds of thousands of people, a great many of whom would likely be very difficult to track down and contact. Furthermore, even if this significant practical difficulty could be overcome, many people would have disparate views regarding what the agency should do, and fulfilling each individual former client's wishes in relation to their record would be practically impossible.

We understand that some care leavers feel very strongly that they should be given the opportunity to decide whether and when their record should be destroyed. Other care leavers are happy to have their children and grandchildren access their records after they die, but not before as they do not wish to talk about it. Therefore, in the interest of observing the former clients' wishes, our Records Access Policy and Procedure stipulates that if their wishes are put in writing and added to their file, the agency will uphold them.

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

Anglicare Victoria asserts that records relating to child sexual assault should be kept in perpetuity. These may be very important for the purposes of investigations and reparations that may occur years, decades, possibly even centuries later, concerning institutional sexual abuse, and other kinds of sexual abuse.

### **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**

Anglicare Victoria endorses the Victorian Government's recent changes to the statute of limitations in relation to historical child abuse. Our records and retention schedule stipulates that all Out-of-Home Care program records should be kept in perpetuity to ensure that any claims made in future in relation to a child or young person's time in care can be substantiated to the agency's redress scheme's requisite burden of proof, which is that there was a *reasonable likelihood* that the abuse occurred. The research shows that very few people ever lie about child sexual abuse. Therefore having a record of the child or young person at the time of the alleged abuse goes a long way to assisting them with their claim, and any furtherance of wellbeing and resilience it might bring.

Certainly there are cost implications for keeping paper records in perpetuity. Anglicare Victoria would not consider destroying physical records after they have been digitised as best practice as many Out-of-Home Care records hold original birth certificates, achievement certificates and photos which are significant items for care leavers and their families.

We call on the Commonwealth and State Governments to assist organisations in meeting these costs.

**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**

There are two distinctly different requirements depending on whether the organisation provides care for the child (Out-of-Home Care services) and/or provides a service to the child (i.e. playgroup, disability, youth groups, family counselling, family violence services, mental health services etc.).

1. For organisations providing Out-of-Home Care services – Anglicare Victoria support the position that these records should be kept in perpetuity. This is both for the reasons outlined in our response to question 15, as well as because people may have a strong personal need to access records pertaining to their childhood in care later on in their life for other reasons (e.g. to help develop a narrative of personal development and belonging).

Keeping records in perpetuity does have a financial impact which must be accounted for in future organisational financial planning and future contractual arrangements with the government. Government certainly should play a role in assisting organisations to meet these costs.

2. For organisations providing other kinds of services to children and their families – Anglicare Victoria supports that these records should be subject to a mandatory retention period appropriate to the type of program (bearing in mind how these records may need to be used in the future – e.g. what is the likelihood of their relevance to future legal proceedings?). These decisions should be made by funding bodies. Organisations will then need systems for storage of records and ensuring they are destroyed at the end of the mandatory retention period. There are also implications should the mandatory retention period change during the life of the file.

**18. Whether institutions should maintain registers of what records they destroy, when and upon what authority**

Anglicare Victoria agrees that organisations should have a register of records they have destroyed and be able to identify the relevant legislation or funding agreement upon which the decision was made to destroy the records. When former clients approach the agency that provided them with services, it is important to be able to confirm that a record was held by the organisation for the requisite retention period as well as the date it was destroyed. It is important for records containing personal or sensitive information to be destroyed securely to protect against the information being accessed by an unauthorised party.

As mentioned in our response to question 17, funding bodies should provide service providers with clear instructions and expectations in relation to retention periods for each specific program.

### **19. How the *Access Principles for Records Holders and Best Practice Guidelines in providing access to records* have been applied in practice**

The *Access Principles for Records Holders and Best Practice Guidelines in providing access to records* provide clear and concise advice for organisations, particularly in relation to how to interpret the Information Privacy Principles. The highly relevant and detailed examples seek to affirm past practices and train those who are less experienced in preparing records for release.

### **20. Whether they have resulted in simplified and more open access processes**

Victorian past providers of Out-of-Home Care have wrestled with the question of ‘what constitutes an unreasonable impact’ on a third party named in a record at a quarterly Records Holders meeting for government and non-government organisations, facilitated by Open Place, the Victorian support service for Forgotten Australians. This professional practice forum has provided invaluable opportunities for organisations, such as Anglicare Victoria, to review and amend its practices to remain up to date with current thinking. So while there was very little in the guidelines that required Anglicare Victoria to change its practices, other organisations that are not participants in that forum have no doubt benefited from the development and distribution of such a well-researched and comprehensive document.

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

Anglicare Victoria endorses adapting the *Access Principles for Records Holders and Best Practice Guidelines in providing access to records* in order for them to be applicable to all the institutions within the Royal Commissions Terms of Reference. A consultation process with a range of educational, religious, sport, child care and other organisations to determine the types of records and information held by those organisations will assist in this process.

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

### **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**

Anglicare Victoria’s Out-of-Home Care services, and most of our other programs (where these are funded by the Victorian Government), fall into the scope of the *Privacy and Data Protection Act 2014 (Victoria)* and *Health Records Act 2001 (Victoria)*. Commonwealth-funded programs fall into the scope of Commonwealth privacy law. We contend that the provisions in these Acts regarding access to records are largely satisfactory.

### **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 arise for records holders**

Anglicare Victoria does not charge for access to any historical files and has dedicated staff to provide support and assistance for previous service users to review their file, wherever

access can be provided. We acknowledge that reviewing a file may be a difficult and challenging step for someone and that every effort should be made to support them in this process. Providing staff to support and assist in this process has substantial financial implications for any long-standing organisation, however Anglicare Victoria acknowledges considers this to be an ethical responsibility.

**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**

The *Access Principles for Records Holders and Best Practice Guidelines in providing access to records* provide clear and concise advice for organisations in relation to providing a supportive release of records. The guidelines rightly outline the importance of providing information about the organisation's history, explaining what certain terms or acronyms contained in the records mean and explaining the context to care leavers or former clients. However, the guidelines do not make mention of the importance of the physical environment in which the supported release takes place. Anglicare Victoria recognises that while our supported release service currently takes places within our corporate central office, other organisations such as Open Place, MacKillop Family Services and Link-up have created spaces specifically for this meeting to take place.

As part of its supported release service, Anglicare Victoria offers to follow up with the care leaver, should they wish it, as it is important to check-in after they have had some time to process the information they have received about themselves from the organisation. Referrals to support services, such as Open Place are also made during service delivery.

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

Anglicare Victoria supports the establishment of nationally consistent standards for redaction. This is required both for State and Commonwealth privacy and health records legislation, as different service records may fall in scope of these laws (as well as, for statutory bodies, Freedom of Information laws), depending on which level of Government funded them.

As to what these standards should be, this is a very complex and multi-faceted issue, given the enormous breadth of types of information that may be included in records, and the diverse range of impacts that may occur for third parties if information is not redacted (and, in light of the risk/severity of each of these, whether redaction is justified, in light of adverse impacts redaction may also have for information-seekers). We suggest that the Commission considers this issue in detail and dedicates a consultation paper solely to it which requests input from the sector via structured questions. We also note that guidelines would need to take into account the requirements of State as well as Commonwealth privacy and health records legislation (which are very similar, though have some differences).

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

Anglicare Victoria's policy and procedures in relation to records access state that both State and Commonwealth privacy legislation, and the *Health Records Act 2001*, allow service providers to refuse access to information contained in client records under specific circumstances. These circumstances include, but are not limited to, when:

- Providing access would pose a serious and imminent threat to the life or health of an individual.

Anglicare Victoria believes that consideration should be given to potential risks to an individual's mental health. For example, if a care leaver is experiencing severe depression or has suicidal ideation, providing access to distressing information may not be in the interest of supporting the care leaver's recovery. In these instances, organisations should seek to consult with the care leaver's psychologist/psychiatrist or medical professional, with the care leaver's consent. If the legislation was amended in this regard it would be important for organisation making decisions about what information to release to avoid being paternalistic.

We have at times been faced with situations where collection/use/disclosure of information without consent, and/or refusal of access to information, is reasonably required because of a serious and ongoing threat of family violence (or some other danger), but it is difficult to make the case that such serious threat is also "imminent". Consideration could also be given to reword the relevant section of the *Privacy and Data Security 2014* (Victoria) to replace "serious and imminent threat" with "serious, imminent or ongoing threat". In light of the fact that most of our records fall into scope of this State legislation, rather than the *Commonwealth Privacy Act 1988*, we would however make the same recommendation regarding the relevant section of the *Privacy Act 1988*, for the same reasons. Additionally, organisations should feel able to interpret a "serious, imminent or ongoing threat" as pertaining to mental health, etc. adding the word "ongoing" to this exception in the legislation.

**27. In relation to third party privacy, how public and private institutions can be better educated about the proper applications of third party privacy exceptions**

We contend that this issue is inextricably related to that covered in question 25 (please see the recommendation contained in our response to that question).

**A sixth principle on enforcement/regulatory intervention**

**28. Whether a sixth principle directed at enforcing the initial five principles is required**

As set out in our response to question 3, we consider external auditing of recordkeeping practices to be a reasonable and helpful process of accountability and quality assurance. We encourage that all organisations that work with children and young people should undergo some form of auditing in this respect (whether this is set out in a "sixth principle", or enabled via another instrument/legislation).

However, as stated in our response to question 3, we would suggest that such auditing be dovetailed with state-Government auditing processes, and/or that the Commonwealth Government allows for state-Government auditing to serve as sufficient evidence that an organisation is compliant with relevant standards and requirements for best practice, where state and Commonwealth requirements/legislation are reasonably consistent. This will be critically important so as to reduce the regulatory burden on not-for-profit organisations, which is already substantial.

**29. Whether it would be necessary or appropriate to adopt and two-tiered approach to the enforcement of record keeping practices, whereby certain institutions (such as OOHC service providers and schools) are held to a higher standard than others (such as local sports clubs)**

We consider that a two-tiered approach is reasonable; with organisations that are much more substantially responsible for the care of children and young people, and/or which are demonstrably at higher risk for institutional sexual abuse (e.g. churches), being held to a higher standard of recordkeeping requirements.



## **Suggested support – Records advocacy services**

### **30. Whether a records advocacy service would be useful for victims and survivors of child abuse in institutional contexts**

Anglicare Victoria agrees that a records advocacy service would be useful for victims and survivors who do not want to contact the relevant organisation directly.

### **31. What powers, functions and responsibilities a records advocacy service should have**

See our response to question 32.

### **32. Whether there are existing bodies or agencies that may be suited to delivering records advocacy services**

The Commonwealth government, through Find and Connect, funds records advocacy services in each state. In Victoria, Open Place undertakes the functions listed in the consultation paper. Anglicare Victoria asserts that this service should be extended to include individuals who were in Out of Home Care or residential care after 1989, as this cohort also requires support and assistance in relation to locating and retrieving records, as well as other services such as family tracing. The expansion of this service will have cost implications which we call on Commonwealth and State Governments to meet.