

Submission by the Tasmanian Government

Royal Commission into Institutional Responses to
Child Sexual Abuse: Records and Recordkeeping
Practices Consultation Paper

The Tasmanian Government welcomes the opportunity to make a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse on the Records and Recordkeeping Practices Consultation Paper.

While the Royal Commission is focused on institutional child sexual abuse, many of the areas addressed in the Consultation Paper should be considered with regard to the broader impact for government.

The Tasmanian Government considers that the creation of detailed and accurate records and the exercise of good recordkeeping practices are both important elements of any institution's good governance and promote consistency of practice, retention of organisational memory, transparency and accountability of institutional operation and decision-making.

The Tasmanian Government acknowledges the impact of the loss of historical records or poor recordkeeping practices on survivors of institutional child sexual abuse. The reality is that there is little that can be done to effectively redress poor record creation and recordkeeping practices of the past.

The Tasmanian Government has previously acknowledged the importance of personal records to survivors of institutional child sexual abuse. The Tasmanian Government Abuse in State Care scheme, which operated between July 2003 and February 2013, assisted more than 1800 survivors of sexual, physical and emotional abuse whilst in State care as children. Ex gratia payments of in excess of \$54 million were made and wholly funded by the State regardless of whether or not claimants were abused in wholly State-run institutions or institutions operated by non-government organisations on behalf of the State. An important feature of the scheme for claimants included the opportunity for guided access to records as requested. Currently, an After Care Support Programme provides support to people who have left care in accessing their personal file.

The creation of records and recordkeeping in the digital age provides the opportunity for vast improvement in policy, practice and procedure. While there is capacity for digitisation of paper records and with digitisation the opportunity for indexation and improved collation, the transfer of paper-based records into a digital format is an extremely expensive, time-consuming and labour intensive task that cannot remediate issues in relation to the quality of the record or absence of records.

However, the role of government in mandating records or recordkeeping policy and practice for services which are wholly or substantially funded by government is a complex issue. There is a balance between promoting good information management practices and therefore, good institutional governance and increasing the regulatory burden on the non-government sector. Any changes to the requirements for non-government providers of child-related services would require extensive local consultation and analysis so that there are no unintended consequences on the sector.

The Tasmanian Government considers that the key areas of discussion for the Royal Commission in this area is future-focused with the aim of providing principles that reflect best practice in relation to records and recordkeeping practices that can be implemented by jurisdictions in respective legislative and policy frameworks.

In Tasmania there has been an increasing reliance on non-government organisations to provide child-related services. The Tasmanian Government acknowledges that with the increased

outsourcing of child-related government services, the role of government in regulating organisational governance of those organisations requires further consideration and review.

Tasmanian legislative framework

In Tasmania, government records and record keeping practices are governed by the following legislative instruments:

- *Archives Act 1983*
- *Archives Regulations 2014*
- *Personal Information Protection Act 2004*
- *Right to Information Act 2009*
- *Right to Information Regulations 2010*

The commencement of the *Personal Information Protection Act 2004* on 5 September 2005 introduced a new regime in relation to the management of personal information by public sector agencies. The Act regulates the way in which personal information collected by agencies is maintained, used and disclosed in the course of delivering services. In October 2009, the Act was amended to provide a process by which individuals may access and amend personal information where they believe it is misleading, wrong, out-of-date or incomplete.

In 2005, the *Archives Act 1983* was amended to reflect the increase in the range of public bodies created by governments. For example, it was recognised that some government business enterprises specifically excluded their records from the provisions of the Tasmanian Archives Act, meaning the records of all their activities as public bodies could be destroyed at any time their management felt inclined to do so.

At that time, the definitions of the State and local government bodies covered by the Tasmanian Archives Act were expanded and made more generic to ensure that all such past, present and future public bodies are included, without the need for ongoing amendment as new government entities are developed. Nonetheless, these amendments do not encompass government funded service providers.

Tasmanian Government Information Strategy Unit

The Tasmanian Government is supported with a management framework of legislation, guidelines and advice about the creation, capture, retention and ongoing management of state records. The Government Information Strategy Unit operates as part of the Tasmanian Archive and Heritage Office (TAHO) and supports state and local government, government business enterprises and state owned companies by providing training, forums and appraisal advice, including the selection and transfer of records into Tasmania's archival collection.

The Government Information Strategy Unit provides the following services:

- Advice and guidance on managing digital and hardcopy records and information by phone, email and in person.
- Recordkeeping Audit Program for benchmarking and continual improvement.

- Storage certification for Secondary Storage Providers and Places of Deposit.
- Mandatory Guidelines, Best Practice Advices, and Toolkits.
- Reviewing and Approving Retention and Disposal Schedules, Disposal Authorities, and Transfers of Custody/Ownership.
- Recordkeeping Training and information awareness raising sessions.

A key function of the Government Information Strategy Unit is to assist government agencies to cope with corresponding changes in recordkeeping and management of government information as practices within government change and evolve, such as the amalgamation or outsourcing of certain functions within an agency, changing legislative environments and the use of new technologies including social media.

The Government Information Strategy Unit also provides an on-site consultancy service to state and local government organisations as requested on aspects of managing the records that those organisations create, receive and control including organisation-specific advice in relation to:

- System implementation, including setting up a records management system, or undertaking the review and evaluation of an existing system.
- Agency project plans, business classification system, records management policy, and procurement of recordkeeping services.
- Specific issues, including problem-solving and making recommendations on particular records management matters.
- Emergency management response where records are at risk of damage, destruction, compromised integrity.
- Certification of Secondary Storage Providers and Approved Places of Deposit.

The Government Information Strategy Unit provides advice on the disposal authorisation techniques for Tasmanian Government agencies to employ including:

- Advice and guidance on records including inspections.
- Development of disposal schedules.
- Oversight of Custody. Authorisation from the State Archivist may be required under certain circumstances, where the custody of agency records is to be managed outside of an agency's direct physical control, or records are to be transferred to a successor agency or organisation. Circumstances that may require a formal Transfer of Custody include:
 - When a function is transferred between Tasmanian Government agencies.
 - When a function is transferred to another tier of government.
 - Amalgamation of agencies into larger agencies/entities.

- Transfer of Ownership. This is required when the agency, or a series of records, passes out of government control. TAHO assists to identify records that:
 - Need to be transferred to the succeeding organisation.
 - Need to be transferred to TAHO (Permanent records not required by the succeeding organisation).
 - Need to be transferred to Treasury (temporary records not required by the succeeding organisation).
- Transfer Exemptions. Agencies are required to transfer State records identified as having permanent value to TAHO when business use ceases.

The Government Information Strategy Unit utilises the following Records Management Principles:

- *Principle 1- Create + Capture*

Alignment with this principle ensures that the agency creates and captures State records which comply with the *Archives Act 1983*, have evidential integrity, meet accountability requirements, and mitigate business risks.

- *Principle 2 Govern*

Alignment with this principle ensures that the agency has information governance structures, policies, procedures, processes and controls in place to manage State records. This will support immediate and future regulatory, legal, risk, environmental, and operational requirements.

- *Principle 3 Store*

Alignment with this principle will ensure that the agency has met their obligation under the *Archives Act 1983*, and ensure that:

- Records are stored cost effectively, and with minimal risk
- Records are protected, secure and accessible as long as required
- Permanent value records are stored in optimum conditions whilst in agency custody

- *Principle 4 Access*

Alignment with this principle will ensure that agency records and associated metadata can be easily located and retrieved for the required amount of time. Access to and movement of records will be controlled and monitored to protect against inappropriate use.

- *Principle 5 Dispose*

Alignment with this principle will ensure that agencies comply with the requirement in the *Archives Act 1983* for records to be delivered to the State Archivist for public use or

reference, unless lawfully destroyed. The prompt, secure and lawful disposal of non-current records is essential to support accountable and efficient records management.

The Government Information Strategy Unit's advice and guidelines are available online at <https://www.informationstrategy.tas.gov.au/Records-Management-Principles> and are intended to complement agency specific policies and procedures in relation to records and records management.

Institutional records relating to children

The Tasmanian Government supports in principle the Royal Commission's five principles in relation to records and recordkeeping practices as follows:

- Creating and keeping accurate records is in the best interest of children.
- Accurate records must be created about all decisions and incidents affecting child protection.
- Records relevant to child sexual abuse must be appropriately maintained.
- Records relevant to child sexual abuse must only be disposed of subject to law or policy.
- Individuals' rights to access and amend records about them can only be restricted in accordance with law.

The Tasmanian Government notes the Royal Commission consideration of a sixth principle in relation to enforcement. The Government already provides supports for people who wish to access to institutional records. As noted above, 2009 amendments to the *Personal Information Protection Act 2004* introduced a process by which individuals may access and amend personal information where they believe it is misleading, wrong, out-of-date or incomplete. Tasmania, unlike other jurisdictions, does not have a Privacy Commissioner but the *Personal Information Protection Act 2004* provides a right to make a complaint to the Ombudsman. The Departments of Health and Human Services and Education provide guidance, forms and contact points for people wishing to access and amend personal information on their departmental websites. In our view the establishment of a separate body may be duplication of existing services and have unnecessary resource implications.

The Tasmanian Government acknowledges the distress, frustration and trauma that some victims of institutional child sexual abuse can experience as a result of poor records and recordkeeping practices. The Tasmanian Government notes that the impact on survivors can either be personal such as having an impact on a victim's sense of self or personal history or hinder a victim's capacity to achieve 'justice' through disciplinary action, access to redress or victims of crime compensation, and civil and criminal proceedings.

The Tasmanian Government notes that the Royal Commission's Redress and Civil Litigation Report's recommendation that governments legislate to introduce a statutory duty on institutions for the criminal conduct of their employees that cause harm to children. If such a duty is introduced the non-government sector is likely to reconsider existing policies and procedures in relation to records and recordkeeping due to the increased risk of liability for the conduct of their members.

The Tasmanian Government also notes that there are general complexities in relation to the nature and content of the record creation. For example, historically there has been significant concern about the impact of recording an unsubstantiated allegation in an employee's employment record.

An additional issue for records and recordkeeping policy is the determination of when and how to allow access to records or information that may be vague, based on suspicions, third hand or confused in presentation. In addition, records should be accessed with due concern for issues of privacy for children and employees concerned and the principles of natural justice with respect to suspicions or rumour. A balance is required to ensure that relevant incidents are recorded such as to assist with risk, but also to ensure that the system is not overburdened by irrelevant incidents and that the rights of individuals to procedural fairness are protected.

The provision of out-of-home care and reliance on the services provided in the contemporary education sector by independent schools requires careful consideration in terms of the role of government in regulating aspects of non-government organisational governance. While the Government Information Strategy Unit's advice and guidelines are available publicly online, none of the legislative frameworks in relation to records or records management apply or require compliance from non-government sector organisations providing contracted services or receiving funding from government.

In the absence of a legislative framework applicable to non-government service providers, Departments use funding agreements to impose some obligations on non-government organisations engaged in child-related work. The Tasmanian Government acknowledges that the current use of funding agreements to regulate practices of non-government service providers may provide challenges for government to monitor compliance.

For example the current terms of the funding agreements in relation to the out-of-home care sector do not require compliance with government recordkeeping policy nor provide guidance in relation to best practice principles in relation to records and recordkeeping. Funding agreements with organisations include clauses relating to:

- Recordkeeping including comprehensive written record of the conduct of the Service.
- Crown access to records relating to the Agreement.
- Confidential material and information.

The agreements do allow the Secretary of the Health and Human Services access to all records relating to the funding agreement after 24 hours' notice is given in writing and requires personal information to be kept confidentially. The agreements do require compliance with serious incident reporting in accordance with the Crown's *Consumer Related Serious Incident Monitoring Policy for Tasmania's Agency Funded Community Sector Service Providers* and provide that where "consumer-related serious incident" has occurred notice is not required and access to records requested by the Secretary is immediate.

The Government Information Strategy Unit's provides advice to government departments in relation to recordkeeping issues in the outsourcing of government functions. Specifically, the Unit has issued Guideline 10 relating to contracting with non-government service providers. The Unit's advice and guidelines are available at <https://www.informationstrategy.tas.gov.au/Records-Management-Principles/Pages/Numeric-List.aspx>.

The Tasmanian Government is currently undertaking significant reform projects related to child protection services and out-of-home care. The Tasmania Government committed to redesign and build a new and more contemporary child protection system to provide for the safety and protection of children. The Out-of-Home Care Reform in Tasmanian project introduces a framework that takes into account the impacts of trauma on children. The out-of-home care service system is being progressively redesigned to provide intervention options that are designed to effectively respond to the needs of children who have experienced trauma.

Some of these reforms are aimed at decreasing confusion in regard to information management by consolidating child protection intake services into a single point of contact for families in need of support. The project recognised that multiple points of entry into service systems create challenges in information collection and sharing, particularly when agencies may use in-house information systems which collect and manage data in unique ways and which are difficult to integrate with due to intellectual property issues. These enhancements to existing information management systems and training will lead to better recordkeeping practices.

In addition, the Tasmanian Department of Health and Human Services has recently created a new Information Coordination and Strategy Unit which will have a role in information management policy and procedure across the agency. At the local operational level there is also a continual process of review to embed more robust information management practices.

The Tasmanian Government also acknowledges that good records and recordkeeping practices assist in the prevention of child sexual abuse through the identification of risk of child sexual abuse and enabling effective information sharing across relevant institutions engaged in the protection of children.

However, the Tasmanian Government recognises the diversity in size and structure of institutions that provide child related services to children. As the Tasmanian Government noted in its submission to the Royal Commission in relation to the Redress and Civil Litigation Consultation Paper, it is important to acknowledge that not only will governments and larger institutions be impacted, but also many smaller, less well-resourced entities will be affected by requirements to comply with recordkeeping policy and implementing necessary training in relation to best practice records creation.

Noting the outsourcing of services relating to children as routinely undertaken, particularly in the area of out-of-home care, the Tasmanian Government must carefully consider any policies that may affect the capacity of service providers to deliver necessary services for children. As the Tasmanian Government has previously submitted to the Royal Commission, there is a balance between the benefits of increased regulatory burden on the community sector and the risk of market reduction.