



# Submission

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**Records and recordkeeping practices**

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# **Wesley Mission Victoria**

## **Submission**

### **Records and record keeping practices**

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#### **Introduction**

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Wesley Mission Victoria (Wesley) is part of the Uniting Church in Australia (UCA) and a founding agency of Uniting (VicTas). Uniting (VicTas) is the new community services organisation of the Uniting Church Synod of Victoria and Tasmania and will operate across metropolitan, regional and remote parts of Victoria and Tasmania offering a broad range of services and advocacy to support thousands of vulnerable people.

With a combined annual budget of about \$250 million, over 3,500 staff and 3,500 volunteers, the services of the new organisation will include emergency relief, financial counselling, housing and homelessness services, employment services, early childhood services, child, youth and family services, disability services, mental health services, non-residential aged care, alcohol and other drugs services and Lifeline.

2016/17 is a year of transition with a single Board of Governance overseeing the 22 entities (founding agencies) and a full merger expected to be effected by the middle of 2017.

We welcome the Royal Commission's consultation paper on records and record keeping and are pleased to be able to offer this response, which we provide in the context of out-of-home care.

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## Background

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Wesley and seven other founding agencies of Uniting (VicTas) currently provide or of have histories of providing institutional or out-of-home care to children. These seven agencies are:

- Kildonan UnitingCare
- Lentara UnitingCare
- UnitingCare Gippsland
- UnitingCare Harrison
- UnitingCare Werribee Support and Housing
- Wimmera Uniting Care
- UnitingCare Victoria/Tasmania.

Some of these agencies operated large institutions over many years, with thousands of children and young people having spent some or all of their childhood in their care. Other agencies have run relatively small programs and or have shorter or more recent histories in providing out-of-home care to children and young people.

Recognising the significance of records to past residents, in late 2015, these agencies joined with Wesley to establish a Heritage Service for past residents of Uniting Church institutions. The service, which commenced operation in August this year, provides supported release of records to past residents amongst other services. While individual agencies have done their best to meet requests for records over the years, the benefits offered through providing a single point of entry and a skilled and experienced practitioner are significant.

Sadly, past record keeping practices mean that we cannot always provide past residents with a record of their time in care, and even when we can, the information that we can provide is quite minimal. We do not wish to repeat the mistakes of the past with respect to records, and have started and will continue to educate current staff about the impact and importance of record keeping for children in care today and individuals who return as adults to read their records.

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## Contemporary Records

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### **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.**

- The importance of good record keeping practices and the significance of records to the individual whom they relate needs to be addressed at staff induction, through on the job training, and supported by robust policies and procedures. It is important that training and procedure content is informed by voice of the client (current and former) and takes into account lessons from past practice.
- In environments such as out-of-home care, where documentation can tend to be risk orientated, and focused on 'what goes wrong,' life story work and documentation of positive developments in the child or young person's life needs to be mandated and supported.
- Records can help tell a child's 'story' and can provide a sense of their personal history. By focusing on the future importance of records to the person whom the record relates, other elements of 'good records' take on wider significance. For example, using the full names of people involved in the child's life, accurately documenting dates of events, and recording the full name of the person making a record, is not only important from the perspective of continuity of care, and provider accountability, it may also be vital information for a person who seeks their records as an adult in an effort to understand events in their past.
- Requiring institutions to provide more prominent or explicit statements of an individual's right to view their records may have the effect of improving records practices - knowing that a person is aware of and may request to review their records at any time, may encourage greater accountability by record holders.

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

- In addition to the legal aspects of record keeping, staff and volunteers would benefit from training that highlights the personal meaning records may have for an individual, and how their record keeping practices may significantly influence how a person responds to those records.
- Hearing the experiences of adult individuals seeking their childhood records would be a powerful addition to such training, and may present an opportunity for advocacy groups to work with past and current providers of services for children to create training resources.

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

- Organisations that deliver services on behalf of the Victorian State government are contractually required to deal with all records in accordance with the standards issued under the *Public Records Act 1973* (Vic), including but not limited to: storing the records; implementing and maintaining a recordkeeping system that creates and maintains full and accurate hard copy and / or electronic records; and, ensuring the security of the records for all services delivered on the governments behalf.
- Government could also promote good record keeping practices by engaging with the VET and tertiary education sector to ensure that record keeping requirements are covered in relevant vocational and tertiary courses, so that graduates enter employment with an understanding of good record keeping practices, including the significance of records to individuals. A vehicle or forum to share better practice in institutional records management could also be initiated by government.
- Government grants to support records projects could also be expanded and the application process simplified to make it easier for smaller agencies to obtain extra resourcing to undertake records projects.

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

- Children and parents could be consulted in the development of record keeping policies and procedures and training content. Feedback could also be sought from children, parents and others about what they expect will be recorded during the time of their engagement with the agency.
- By inviting children (or parents) to view their records to check things such as the spelling of their name, siblings' names etc. a culture of openness about records may also be conveyed.
- When children leave the services of the organization they should also be given information to enable them to access records in the future.

**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.**

- Many institutions would have an incident reporting process, and rather than add a new process, we think it preferable that case notes and incident reports remain the primary place to record initial disclosures. Incident reports can also be pre-populated with fields that guide the person who receives the report to record required information.

- For smaller or less resourced agencies lacking in such tools, there may be a role for relevant peak bodies to develop a template that could be used for this purpose.
- When a child discloses abuse, we believe that the child's own words need to be used as much as possible. It is therefore important that volunteers and staff that work with children are also provided with education and training on identifying and responding to child sexual abuse, so that they understand their role and the role of police in responding to such disclosures.
- It is important that disclosures are described as specifically as possible. The behavior that is alleged to have been abusive needs to be described clearly and unambiguously. As an example the commonly used term 'sexualized behaviors' gives little sense of what behaviours are being described. A general term such as this creates a sense of 'coyness' and discomfort with the truth which can compound the difficulty for all concerned.
- The names to describe sexual body parts need to be those used by professional sexuality educators, using slang and euphemisms is unhelpful and value laden.

**What training or assistance institutions and their staff or volunteers might need to enable them to create accurate records relevant to child sexual abuse.**

- Rather than add new processes, it is preferable that assistance is directed to strengthening existing processes for creating accurate records relevant to child sexual abuse, for example, training on case note reporting and incident reporting. The development of resources that cover the basics of documenting an incident (factual, objective) would be helpful. In smaller agencies where resources are limited, the ability to provide a volunteer or new staff member, with a DVD or web link that directs them to this information may be helpful.
- Training that assists staff in capturing and reflecting in records the voice of the child would be of benefit to staff working in the sector, as would training addressing appropriate language to use (for example in the names of sexual body parts).

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

- Mechanisms exist in the Victoria out-of-home care system to record children's views about decisions affecting them; for example, the 'Looking after Children' assessment and care planning process. We observe that the information recorded in these tools can be variable, for reasons of the child's engagement in process, but also the capability of workers, highlighting the need for staff to receive training in good records practices during vocational training and early in their employment/engagement.

- Children can be asked to write their own 'stories.' They would know that this is available for them to read in the future and that it would be placed in their files.
- Regular brief summaries of what has happened in the child's life could be written in an informal and 'non-reporting' style. These are the memories they will come back to read about.
- Decisions can be recorded in a way which describes the reasoning behind the outcome and the dilemmas often faced by those with responsibility for the decisions. This helps the adult later have some sense of why some things were decided and the care taken in arriving at the decision.

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

- We believe that institutions need to undertake regular record keeping and records management audits, firstly to identify and address deficits that lead to inaccuracies in records, before they compound and secondly to ensure that indexing and archiving processes are being consistently followed.

#### **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).**

- Where the records of a person are released to them in an unsupported manner (i.e. mailed to them without an appropriately skilled person to support them read the records), there is a risk that the person may be re-traumatised by reading about their abuse.
- We are also aware of situations where the child of a care leaver has requested the records of a parent and those records contain information about their parent being the survivor of child sexual abuse and the child is not aware of this.
- We can also foresee situations where a staff member may be terminated because of allegations of child sexual abuse, who then contests the action in a tribunal or court which may potentially lead to disclosure of information about the survivor.

**What the resourcing implications of requiring institutions that hold large volumes of un-indexed historical records to index their files are.**

- The resourcing implications for indexing files are significant. We hold a large volume of archives which are unindexed. Depending on the contents and level of organisation within each box and file, it can take between one and three hours to index a box, including entering the indexing information into a database for future searching.
- Where suitable storage space is unavailable within an institution, there is also significant cost associated with the continuing storage of permanent records with a commercial provider. While this may be partially overcome through digitization of records, there is also cost attached to this exercise.
- In addition to cost, there needs to be acknowledgement that the process could be slow, particularly for institution with large holdings, or smaller institutions who can only undertake small pieces of work at a time.
- As mentioned earlier, an expansion of grants assisting institutions in undertaking this work would be helpful.

**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)**

- It makes sense that the indexing of records of elderly care leavers is a priority; however this assumes that these records can be readily identified within an institution's total holdings. If institutions have to search boxes to identify such records, there is an argument to index as 'they go.'

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

- In the out-of-home care context, we believe that records relevant to child sexual abuse should be held with a child's other records so they remain as complete as possible, but in a distinct section of the file so it is readily identifiable. By separating the information, there is a risk that it may not be retrieved when a person returns to seek their records.
- A database that notes files recording incidences of abuse should enable the files to be easily identified and retrieved.

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

- The treatment of records from closed institutions should depend on whether the closed and successor institutions share a common governance structure which

continues to exist beyond closure of the institution. For example, if a church institution closes, records become the responsibility of the church governing body.

- In situations where the institution is purchased by another entity, that entity should be responsible for the management of those records as part of the transmission of business, and indexes of records transmitted as part of that exchange.
- If the entity ceases to exist, the Government department with responsibility for the area (i.e. education, early childhood) should arguably be responsible for those records, which could then be passed on to the Public Records Office when their administrative use has concluded.

**Whether and how the views of individuals discussed within institutional records could be canvassed and represented in decisions concerning disposal**

- As a condition of our funding agreement with the Department of Health and Human Services, we must comply with Public Records Act and the standards issued under that Act. For out-of-home care services, this includes the Victorian Public Record's Office retention and disposal authority for child protection and family services functions. We find this to be a very unambiguous instruction about retention and disposal of children's records, with very few records being able to be destroyed under this authority. We do not know whether or not people to whom records relate were consulted when this authority was developed as anecdotally, we are aware of former residents of institutions who are not comfortable with their records being permanently retained.
- We would be interested in exploring with other record holders, past residents and their advocates, a process by which the needs of the past residents to have control over their records are balanced with the needs of the record holders to fulfil their statutory requirements. It is also important to be mindful in this exploration of the possibility of future requests by family of the past resident for information.
- In other jurisdictions/sectors that have not developed such instructions (and in future reviews), there may be scope to consult with children and their guardians to seek their views about records disposal and seek to reflect this in instructions or guidelines that may be developed.

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

- These records should remain with the child's record in keeping with the statutory retention requirements.

**What implications abolition of statutory limitation periods for civil claims by victims and survivors of child sexual abuse may have for record retention practices.**

- As mentioned above, most records relating to children in out-of-home care are permanent records. Retention practices are therefore generally unaffected by the abolition of civil limitation periods.

**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.**

- We support the permanent retention of all institutional childhood records in the context of out-of-home care in recognition of the importance to past residents of these records. With respect to other institutions that provide services to children, we support mandatory retention periods for records, however note that these periods need to be carefully identified and applied, so that meeting these requirements is not too onerous for smaller institutions and becomes a deterrent to providing services.
- There may be scope for relevant peak bodies to develop resource kits that provide the templates for the above records and simple guidelines on how to maintain and archive them, so smaller institutions do not have to develop these processes themselves.

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

- We believe that institutions should maintain registers of records that have been destroyed and the authority under which they can be destroyed. Even if records are destroyed, the knowledge that they were once created is helpful, and also demonstrates transparency.
- There are some records that are created, that have no need to be retained and it would not be sustainable to require the destruction of such records to be documented on a register, for example document drafts and working notes used in the preparation of records. In Victoria, the Public Records Office describes these as materials that can be destroyed under 'normal administrative practice.'

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## Access to Records

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

- The guidelines have informed the development of our policies and procedures for past residents to access to their records. Up until the time these were developed, and the recent appointment of a dedicated staff member to support past residents access their records, our application and identification process had been slightly more formal than that described in the best practice guidelines.
- Our application process now encourages personal contact and a simple consent form. If identification documents are limited, the staff member is skilled in being able to verify identity via other means. Personal contact and conversation enables the worker to determine if there may be other records that can be sought for the person to whom the application relates (i.e. ward records).
- While we encourage this personal approach, as it can enable us in many instances to offer the past resident information and support , there remains a mechanism for people to request records without having to speak with a staff member of the institution should they so choose.
- With a skilled and consistent staff member administering the guidelines/policy and procedure, they are practical and effective.

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

- See above.

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

- Having operated under these guidelines, with more work to scope limitations and risks, we believe that they could be adapted to apply for many institutions. For example, there may be a need for more rigorous application and identification processes and removal of references to third parties in some circumstances, i.e. in situations of family conflict or where the individual to whom the records relate is still a child.

**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 scheme.**

- To ensure consistency, we believe that all institutions need to comply with the *Australian Privacy Principles* and would welcome support being given to smaller private agencies to assist them in meeting these requirements; for example with education, training and policy and procedure development.

**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.**

- While there are resourcing implications for institutions in responding to records requests, costs associated with this should not be passed on to the individuals who are seeking their records.
- While grants or other incentives to record holders are valuable in helping index collections etc, to ensure the fee-free release of records to record holders can be sustained over the longer term, we believe there needs to be some recognition of the costs of the records management process in recurrent funding.

**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**

- Institutions with large records holdings could be encouraged to have a dedicated and suitably trained person to support individuals to access their records.
- In Victoria, agencies can refer past residents of children's homes to Open Place, for the supported release of records to 'Forgotten Australians'. Extension of this service or creation of another service to cater to the needs of past residents who left care following 1989 would be a positive development. Services such as Open Place also provide past residents with an option for supported release if they do not wish to deal with institutions directly.

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

- We believe that there should be a nationally consistent standard for the redaction of information from childhood records, and that the *'Access to Records by Forgotten Australians and Former Child Migrants'* is a good guideline for redaction, which strikes a balance between the right of an individual to their childhood records, and the right of third parties referred to in records to have certain personal information protected.

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

- This will depend on who is applying for the records. As a general principle it is reasonable that the person to whom the record relates, have access to their records, however the privacy of third parties recorded in these records may still need to be protected. Please see 9 for issues associated with a relative requesting the records of the person who was abused as a child.
- Consideration would also need to be given as to the status of any related prosecution or action and whether legal privilege may apply to any of the records.
- Past residents should have the right to provide annotation to their records.

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

- Requests for records in smaller agencies can be infrequent, meaning that there is often no person dedicated to this job, and even if there is, the knowledge is applied so irregularly, individuals can lack confidence in applying privacy exceptions, and 'err on the side of caution.'
- Publications such as *'Access to Records by Forgotten Australians and Former Child Migrants'* provide a succinct, non-legalistic guideline to redaction that could be adapted for other sectors.
- As larger institutions, Wesley and Victorian UnitingCare agencies have been able to fund a dedicated fulltime staff member to provide supported release of records to care leavers and their families. Through the experience of this staff member in continually considering and applying these exceptions, less information is being redacted.

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

- Provided advocacy agencies are appropriately resourced, we do not believe an enforcement mechanism is required. Funds for additional enforcement mechanisms would be better directed to supporting agencies develop records release processes, train staff and foster cultures of openness and transparency.
- The role of the office of the information privacy commissioner in supporting information access could also be better promoted, to increase community awareness of this aspect of the office's role.

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

- Due to the level and type of involvement in a child's life, we believe that it is reasonable that institutions such as out-of-home care providers and schools be held to a higher standard of record keeping practices than other institutions.
- For other institutions, we believe that at a minimum records need to be maintained to enable them to track the attendance of children (i.e. registers) the attendance of staff or volunteers (i.e. rosters), contact guardians in the event of an emergency, safely provide first aid (i.e. medical information) and report and record the investigation of incidents that are not in keeping with the normal function of the service i.e. an injury to a child or a disclosure of abuse.
- It would be regrettable if small and or volunteer operated institutions providing important activities or with a valued role in the child's life were to cease operating because record keeping requirements became too burdensome.

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## **Additional Matters**

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

- In the context of institutional out-of-home care, in Victoria there are organisations such as Open Place, CLAN, Connecting Home and Link-Up that we believe fulfil this function quite effectively.

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

- With the written permission of the person to whom the records relate, such advocacy groups should have the ability to request records on a person's behalf, to speak with the agency holding the records to understand redactions and request amendments/notation to the records on the person's behalf.

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

- We believe that existing advocacy services such as CLAN, Open Place, Link-Up and Connecting Home effectively perform a records advocacy function for past residents of institutions. We also acknowledge the work of CREATE foundation in raising awareness with recent care leavers about their right to access their records.