



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: TRO2015/0067

Royal Commission into Institutional  
Responses to Child Sexual Abuse

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## **Consultation Paper: Records and Recordkeeping Practices—ACT Territory Records Office submission**

### **About the Territory Records Office**

The Territory Records Office is the recordkeeping regulator and public archives service for the ACT Government. It provides whole of government leadership and policy advice on recordkeeping matters for all ACT Government agencies. Its primary functions are to set mandatory standards for agency records management, to authorise and monitor the disposal of agency records, and to assist members of the public to have access to ACT Government archives that are more than 20 years old.

Unlike other government archives in Australia, the Territory Records Office does not collect, store or maintain archival records on behalf of the ACT Government. The *Territory Records Act 2002* requires ACT Government agencies to continue to preserve and make accessible ACT Government records for as long as they are required by the Government or the community.

### **General Observations**

As the Royal Commission has observed in its Consultation Paper, recordkeeping issues have been a feature of many previous inquiries into the treatment of vulnerable people in Australia. Issues about the adequate creation and management of and access to records were highlighted as early as 1991 by the Royal Commission into Aboriginal Deaths in Custody. Many of these issues remain unresolved and continue to contribute to circumstances that cause harm to members of our communities. They are also not unique to the area of child care and protection.

There are ongoing challenges that can continue to result in poor recordkeeping practices that may exacerbate the harm caused to victims and survivors of child sexual abuse. For example:

- Failures of recordkeeping can be attributed to a range of factors including organisational culture and leadership, the adequacy, complexity or sophistication of the systems in use to manage records, the resources (including the availability of professional recordkeeping advice) applied to the task, the training available to users, and the regulatory regime in which the organisation operates.
- There is no definitive picture of what good, or ‘good enough’, recordkeeping looks like, and the extent of any inadequacies may not be evident until there is a catastrophic failure.
- While recordkeeping professionals continue to work towards developing systems and processes that as far as possible automate the capture and management of organisational records, adequate recordkeeping continues to depend on the actions of individuals, including their decisions on whether to support the building of systems, processes and cultures that value recordkeeping.

These problems have no single solution. Recordkeeping professionals must continue to make their best efforts to facilitate cultures and processes that acknowledge, as the Consultation Paper suggests, that “the creation and management of accurate records...is critical to child protection and institutional accountability” and that institutions must “embrace and integrate the idea of records as core business”. The Territory Records Office supports the five principles proposed in the Consultation Paper as a framework within which organisations might promote cultural change with regard to recordkeeping.

### **Specific Comments**

***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***

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

The Territory Records Office provides policy leadership and guidance to ACT Government agencies on good recordkeeping practice. Recordkeeping regulators such as the TRO need to continue to improve on our existing range of training, simplified recordkeeping systems, fit-for-purpose processes, resourcing, and professionalisation opportunities for records management and other staff, to support recordkeeping in government organisations. These initiatives need to sustain improvements in organisational cultures so that recordkeeping is increasingly recognised as vital to good outcomes for children, a fundamental part of any business process, and core business for any organisation.

Government regulators such as the Territory Records Office also need to improve our communications around the value of recordkeeping. There is a broad consensus that messages about the business benefit of good recordkeeping, rather than urgings for

recordkeeping compliance, are more compelling for most records creators. We need to develop communication strategies that encourage records creators to place greater value on good recordkeeping. This could include making clearer the importance that governments place on both the benefits of good recordkeeping and the consequences of poor performance, including through meaningful sanctions against non-compliance.

Government archives and records authorities direct their resources towards government agencies. Basic recordkeeping principles apply, however, across all organisations, and materials produced for government agencies are at times equally applicable to private and not-for-profit organisations. Australian government archives authorities have a strong history of collaboration with each other and with the profession more broadly, and can continue to share many of the products they produce for government agencies with wider audiences where this is useful and appropriate.

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

***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)***

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

The Commonwealth Government's response to the *Bringing Them Home* report included \$2 million in funding to the National Archives of Australia to index the names of Aboriginal people and Torres Strait Islander people in Commonwealth Government archives. In its Annual Report for 2001–2002 the National Archives indicated that with this funding it identified 329 674 named individuals in 19 456 record items. This might provide a starting point for estimating the quantum of resources that would be required to conduct a similar indexing project for records of children in institutional care.

Archives and records professionals would be best guided by care leavers and their advocates on the highest priority categories of records for indexing. The types of examples the Royal Commission has used in its Consultation Paper are sensible criteria. Other factors might be suggested by the records involved, and might include the physical condition of or risk to the records, the extent to which indexes or other finding aids already exist, or the complexity of the arrangement of records (for example, files already identified and arranged by a child's name compared with those using less accessible systems of arrangement).

Similarly, victims and survivors of child sexual abuse will have important insights into the types of information suitable for indexing that might assist them to identify records about themselves and their families. These insights should be part of the development of any systems for indexing records. Some government and other archives also have substantial

relevant experience in the design of records indexes through their responses to the *Bringing Them Home* report.

It is important to note, however, that manual indexing may not be the only suitable option for making records discoverable. Some records will be amendable to digitisation and optical character recognition, which would support full-text searching, making access much more flexible.

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

Records are often viewed as assets of an organisation, disposal of which is regulated by company, incorporated associations or other relevant laws. It may be feasible to require through those laws appropriate treatment, such as transfer to a relevant successor body, for some types of records when organisations change ownership or are closed.

In government agencies it is generally accepted that “records follow function”. Records relating to child protection or other relevant functions would become the responsibility of any new agency responsible for that function in the event of administrative change. In the rare circumstance that a government ceases to carry out a function altogether, the government archives would usually accept responsibility for any permanently valuable records.

For organisations carrying out services on behalf of governments, such as foster care and other child protection services, most Australian government recordkeeping regulators would consider any resulting records to be government records. Contracts and other agreements governing these arrangements must make clear the government’s ownership of the records, the application of the relevant records or archives legislation, and require the return of the records to government at an appropriate time.

All of these circumstances pose a potential role for a government archives in providing a safe home for some records. In the ACT, however, there is no central government archives repository, and the Territory Records Office does not maintain a collection of archival records on behalf of government. Agencies retain responsibility for maintaining and providing access to their records for as long as they are required by government or the community. This would remain true for any records transferred to the ACT Government at the end of an outsourced arrangement or because of the closure without a suitable successor of the records creator.

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

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

In recordkeeping parlance, appraisal is the process of evaluating business activities to determine which records need to be captured and how long those records need to be kept, to meet business needs, the requirements of organisational accountability and community expectations. Good appraisal seeks to understand and represent the views of all stakeholders when making decisions about the creation, retention and disposal of records, and it is at this point that archivists would generally suggest that individuals can have an influence over whether and how long records about them should be kept.

In the ACT, the Territory Records Office's guidelines require agencies to incorporate in their appraisal recommendations the views of customers and other stakeholders, including through direct consultation where appropriate. The Territory Records Advisory Council also has a role in reviewing appraisal decisions, and is made up of representatives from a range of stakeholder groups interested in history, recordkeeping and organisational governance.

All ACT Government case files for children within the child protection system are currently retained permanently as Territory archives. The Territory Records Office is currently considering a proposal to reduce this period to 99 years from the date of birth of the child, and will consult with the Advisory Council before any change is made. Records documenting the health treatment and care of patients who were the victim of sexual assault when they were less than 18 years of age are retained for 75 years from the patient's date of birth.

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

The retention of registers or other data about the existence of records and the circumstances of their destruction is a basic tenet of accountable records management practice. That organisations may not have kept such records is illustrative of the general lack of regard for good records management practice in many organisational cultures.

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

***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)***

Given the range and complexity of the organisations involved, their circumstances, resources and business practices, it is hard to see how a workable enforcement regime

might be constructed. If such a regime were established it would of necessity require at least a two-tiered approach to provide the flexibility needed to impose realistic standards on such a wide range of agencies. A self-regulation regime could provide a flexible approach to individual circumstances. However, self-regulated enforcement may have little practical effect in an agency that has not upheld the first five principles.

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

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

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

A records advocacy service could potentially assist with the development of standards for better records creation and management practice, as well as assisting victims and survivors to have and influence others' access to records about their care. The services that have arisen in the wake of earlier inquiries, such as Link-Up and Find and Connect, have provided vital services to assist their clients with access to records, but have not taken an active role in influencing the current creation and management of records.

There is much overlap between the various groups affected by past institutional practices—an individual may be a child migrant or from the Stolen Generations, have been in institutional or out of home care, and have been subject to forced adoption, either as a child or a parent. Current inquiries into juvenile justice systems are likely to reveal additional groups in need of assistance to ensure the records about them are created, maintained and made accessible in ways that do not further injure them. This may beg the question of whether an additional advocacy group may be required, or if one of the existing groups could be resourced to expand its services to a broader constituency.

The advantage of establishing a specialist advocacy body for victims and survivors of child sexual abuse in institutions is that it would be able to more fully understand the experiences of and cater for the particular needs of those individuals. The proliferation of such groups may, however, suggest that archives and records holders themselves have not been capable of providing adequate advocacy services on behalf of a broad range of stakeholders who have an interest in the way both contemporary and historical records are managed. It may be preferable for archives and other relevant bodies to be resourced to better provide that advocacy, and to take advice from the various groups that require that assistance.

The Territory Records Office is very pleased to have the opportunity to contribute to the Royal Commission's work through the Consultation Paper. The focus the Royal Commission has given to the contribution of recordkeeping practice to the welfare of

vulnerable people is most welcome. If you have any further queries about this submission please contact me at [tro@act.gov.au](mailto:tro@act.gov.au) or on 02 6207 0194.

Yours sincerely

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4 October 2016