CAARA

Council of Australasian Archives and Records Authorities

# Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse – Consultation paper – Records and Recordkeeping practices.

This submission is provided on behalf of the Australian council members of the Council of Australasian Archives and Record Authorities (CAARA). This submission focuses on the issues common to Australian government archive and record institutions, from a regulatory and practical perspective. In a number of cases separate and more detailed submissions may have been provided by the individual states and territories through their local reporting structures.

CAARA is the peak body in Australia and New Zealand, representing the State and Territory government archive and record institutions including:

- National Archives of Australia
- Public Record Office Victoria
- Queensland State Archives
- State Records Authority of New South Wales
- State Records Office of Western Australia
- State Records Office of South Australia
- Northern Territory Archives Service
- Territory Archives
- Tasmanian Archives and Heritage Office

Please Note: Archives New Zealand (ANZ) is also a member of CAARA, but has not contributed to this submission.

## Comments on the five principles

### Five principles for the creation and management of records

CAARA supports the five proposed principles and believes they provide a common sense approach to assisting institutions embrace and integrate the idea of records as core business and in the best interest of the child. CAARA also notes fostering good recordkeeping practices within organisations is an on-going task that requires adequate resourcing, robust monitoring frameworks, and active engagement by the organisations themselves.

**Principle two**

***Accurate records must be created about all decisions and incidents affecting child protection.***

*Institutions should ensure that records are created to document any identified instances of grooming, inappropriate behaviour (including breaches of institutional codes of conduct) or child sexual abuse and all responses thereto.*

*Records created by institutions should be clear, objective and thorough. They should be created at, or as close as possible to, the time that the incidents they document occur, and clearly indicate the author (whether individual or institutional) and the date of creation.*

CAARA suggests that this principle will be strengthened be amending the principle to read "***Full** and accurate records must be created by institutions**…."*** as this reflects a commonly understood principle of recordkeeping best practice and legislation.

**Principle three**

***Records relevant to child sexual abuse must be appropriately maintained.***

*Records relevant to child sexual abuse should be maintained in an indexed, logical and secure manner. Associated records should be co-located or cross-referenced to ensure persons using those records are aware of all relevant information.*

For greater clarity CAARA suggests that this principle be amended to read "*Records relevant to child sexual abuse must be appropriately maintained and **safeguarded*** to reinforce the need to keep records securely and the need to implement records preservation solutions to ensure records created in any form are accessible in the future."

The description of this principle focuses on indexing, and whilst this is key to ongoing management and accessibility of records, it is only an aspect of what maintenance needs to encompass, particularly in the digital environment, to ensure records are accessible for as long as they are required.

**Principle four**

***Records relevant to child sexual abuse must only be disposed of subject to law or policy.***

*Records relating or relevant to child sexual abuse should only be destroyed in accordance with records disposal schedules or published institutional policies.*

CAARA suggests that this principle be amended to read "*Records relevant to child sexual abuse must only be disposed of subject to law or **properly authorised** policy* to ensure that policies used are more likely to be well considered and reflect best practice."

## Requests for views on Principle One

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

Government archive and records institutions across Australia provide resources and guidance, based on the same basic recordkeeping principles, to public sector bodies to support and assist good institutional records and recordkeeping. Basic recordkeeping principles apply, however, across all organisations, and materials produced for government

agencies are often equally applicable to non-government organisations. While the advice provided by CAARA members is freely available to be reused by private and not-for-profit sectors, CAARA acknowledges that there is an unrealised potential for providing recordkeeping awareness and training materials it develops for public sector employees to non-government institutions. For example, the Public Record Office of Victoria has developed a basic online recordkeeping training module which non-government organisations could use, preferably making this mandatory for staff to undertake.

CAARA members have a strong history of collaboration with each other and with the profession more broadly, and can continue to take a leadership role in developing strategies that can improve recordkeeping performance outside their own jurisdictions and leading by example.

## Requests for views on Principle Three

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

CAARA members that have been involved in the indexing of large volumes of records report the costs are significant and suggest that without extra funding indexing projects would be beyond the resources of many organisations both government and non-government. CAARA believes that it is important that archive and records professionals manage this work, to ensure that the most effective and efficient methods for ensuring accessibility are employed.

It should be noted that indexing is only one means of making records accessible. There are other methods available and generally speaking the best method is determined by the form that the records take and should be assessed on a case by case basis.

***11. Whether and how indexing of historical records should be prioritised (for example, prioritising records of elderly care leavers, or de-prioritising files over 100 years of age)***

The types of examples the Royal Commission has used in its Consultation Paper are sensible criteria. Other factors might be informed by the records involved. These could 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).

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

The most appropriate methods need to be determined for each group of records. 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 CAARA members also have substantial experience in the design of records indexes in response to previous Reports and Royal Commissions.

For example, in New South Wales, Family and Community Services (FaCS) has, since 1991, contracted the business unit of State Records NSW, the Government Records Repository (GRR), to manage its inactive care-leavers' records. All know extant accumulations of client records have been identified, and transferred to the GRR where they are housed in conditions conducive to their continued preservation. GRR has comprehensively indexed all client records within its care and within the custody and control of the NSW State archival collection. It hosts and maintains a specially designed database of the data associated with these records.

The database currently contains entries relating to nearly 1,512,000 individuals whose details appear in files held in the State's archival collection and stored on behalf of the agency in the GRR. The database also includes a further 1,344,000 names which have been compiled from various registers held in the State's archival collection, including admission, discharge and medical registers of government institutions. This data makes these records instantly discoverable to the agency's Care Leaver Records Access (CLRA) Unit. Since 2014, records required by the CLRA Unit have been digitised by the GRR, the digitised copy being retained in the database where it can be downloaded by authorised users as required.

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

For example in Victoria , the Department of Health and Human Services and the Public Record Office of Victoria worked on a project to digitise 42,000 Ward Record Cards, because these were the records which allowed the detailed individual files to be identified and located. It was only through the creation of full text discoverability of the digitised records that the full set of information for an individual (many of whom had different or misspelt names recorded) could be found. The individual files then only needed to be listed, because the digitised Ward Record Cards provided all of the links.

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

CAARA suggests there should be a national framework for establishing obligations and responsibilities with respect to ongoing maintenance of records when institutions close or change ownership, including nomination of a repository of last resort for both public and private service providers.

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.

If there is no suitable inheriting institution which is prepared and able to take custody, the records should be transferred to the most appropriate government agency. Where CAARA members maintain archival repositories, records of permanent value, should then be transferred to the archival authority.

## Requests for views on Principle Four

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

In recordkeeping practice, appraisal is the process of evaluating business activities to determine which records need to be captured and how long the 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. The views of these important stakeholders should be sought when institutions are establishing disposal policies. CAARA suggests that while seeking the views of all individuals discussed in institutional records would be impractical, consultation with stakeholder groups is vital.

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

How long records relevant to child sexual abuse should be retained, and under what (if any) circumstances should they be destroyed is a complex question. The Royal Commission has noted that there may be a wide variety of records relevant to child sexual assault (footnote 3).

There may be no one retention period suitable for records that potentially provide details of child sexual abuse or allegations of child sexual abuse.

Ideally, rather than individual institutions developing their own disposal policies, sector-wide policies should be established. These could be based on existing government retention and disposal schedules where there is sufficient functional cross-over. This would mean that there was a standardised approach across government and non-government organisations and may result in less confusion for the individuals who are trying to access records.

***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***

The abolition of statutory limitation periods for civil claims would be a factor that agencies and CAARA members would take into consideration, when determining the duration period of rights and entitlements for individuals in records.

***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***

Yes, there should be mandatory retention periods, agreed on a sector-wide level and taking into account both government and non-government requirements. A similar framework already exists for all health records in some states and those could be used as a model.

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

CAARA supports the maintaining of registers. It is considered best practice for organisations to keep a record of any records destruction including the policy under which the records were destroyed.

## Requests for views on Principle Five

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

CAARA has considered and generally endorsed the *Access Principles for Records Holders*. As the *Access Principles for Records Holders* state*,* "the Principles and accompanying Best Practice Guidelines are aspirational. They do not always reflect current practice, but they act as clear statements of intent." Some of the principles may present practical difficulties in some circumstances, particularly where they may conflict with local archives and records legislation. These include the principle that care leavers may annotate records or limit access to records, and where government records holders are required to be the repository of last resort.

## Requests for views on a Sixth Principle

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

It is difficult to see how the principles could be enforced, without specific legislation and the establishment of some sort of accompanying inspectorial or audit function.

### *29. 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)*

Considering the ongoing failure of many organisations to create and keep full and accurate records of matters as serious as the protection or abuse of children, it may be appropriate to seek an enforcement regime to support better practice. However, given the range and complexity of the organisations involved, their circumstances, resources and business practices, it would be difficult to construct a workable enforcement regime.

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 also 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.

## Requests for views on records Advocacy Services

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

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

### *32. 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 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, may have been in institutional or out of home care, or may have been subject to forced adoption, either as a child or a parent. If a new records advocacy group is not a practical 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 would be the potential 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.