

# Consultation Paper

## Records and record keeping practices

### *Submission from The Gatehouse Centre (for the Assessment and Treatment of Child Abuse)*

#### *Royal Children's Hospital, Melbourne.*

#### **Gatehouse Centre**

The Royal Children's Hospital welcomes the opportunity to respond to the Records and record keeping practices consultation paper released by the Royal Commission into Institutional Responses to Child Sexual Abuse.

The Gatehouse Centre (Gatehouse) is a department of the Royal Children's Hospital in Melbourne. We provide counselling, advocacy and 24 hour Crisis Care to children and young people who have experienced sexual abuse, either as victims, as children displaying problematic sexualised behaviour or as young people engaging in sexually harmful behaviour.

#### 4.2 Contemporary understandings of records and recordkeeping

**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**

Institutions can create policy and practice guidelines that provide a rationale for the keeping of client records and that outline processes for creating and keeping records.

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

Staff and volunteers should be trained in the practice of record keeping, with a focus on how to structure and organise records as well as the content of records. Attention should be paid to ensuring that staff and volunteers understand the purpose of record keeping, the limits to confidentiality around record keeping, issues of "ownership" of the record, as well as what makes suitable and unsuitable content of records. Staff and volunteers should also be trained in regards to the legislation that governs record keeping and release of information.

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

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

Children and parents should be encouraged to provide feedback about record keeping practices.

#### 4.3 Creation of records

- 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**

Comprehensive records that contain a history of the child, the reason for the child being brought into the care of the institution, details of important people in the child's life (including contact details of past and present people in the child's life), records & reports of any assessments, planning, service provision, supports provided and treatment undertaken with the child, the child's health and medical history, the child's consent and any other legal documentation regarding the child, the child's feedback regarding the service they have received.

- 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**

Training is the institution's record creation process and training as to record keeping practices.

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

Children's feedback regarding their experience of institutional care and the decisions made for them should be sought and recorded.

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

Regular in house audits.

- 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).**

There is always the possibility, once a record is created, that it might be subpoenaed or be the focus of a Freedom of Information request. Clients should be advised of this, and any other limits to confidentiality that may arise, in language that is accessible to them. There is legislation that governs the release and partial release of records. Going through a client's file with them can assist in managing any possible distress from seeing their file. In the possibility that this cannot be done, or a client does not wish this to occur, clients can be encouraged to have someone whom they trust to support them through the process of looking at their file.

#### 4.4 Records maintenance

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

If this is not something an institution already does, then additional resources are likely to be necessary; particularly if files need to be indexed retrospectively. Do they need to be indexed, or organised into categories, e.g. Legal, Reports, Medical History, Family/developmental History, Education, etc...?

**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)**

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

Categories could include: Legal, Assessments, Treatment, Goals, Needs, Reports, Medical History, Family/developmental History, Education, Employment

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

Institutions that change ownership should continue to maintain responsibility for records already created. Institutions that change function should forward records of any person in their care who moves to another institution and for those who leave the care system, files should be archived. Institutions that close should have files archived by the government department that has oversight of their service.

#### 4.5 Disposal – archiving and destruction

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

Individuals should be given the opportunity to access their records if required and provide feedback.

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

**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**

If statutory limitation periods for civil claims by victims and survivors of child sexual abuse are removed, records SHOULD be kept indefinitely.

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**

Storage of files will be an issue: either in regards to space and volume, or if they are stored electronically, in regards to the resources needed to create and store electronic records.

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

Yes.

## 5. Access to records

19. **How the *Access Principles for Records Holders and Best Practice Guidelines in providing access to records* have been applied in practice**
20. **Whether they have resulted in simplified and more open access processes**
21. **Whether and how they might be adapted to apply to access to the records of all the institutions within our Terms of Reference.**
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 scheme**

Laws and practice should be consistent across institutions and nationally.

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 raise for record holders**

Fees to cover the cost of making copies are reasonable; however consideration to those in financial hardship should always be given.

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**

Institutions should provide a trained staff member to support the access process and encourage clients to bring along anyone by whom they would feel supported.

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

Standards should be national and follow current Freedom of Information legislation.

- 26. In relation to refusal of access and amendment, whether existing exceptions are appropriate in the context of records relevant to child sexual abuse**
- 27. In relation to third party privacy, how public and private institutions can be better educated about the proper application of third party privacy exceptions.**

Institutions should be aware of legislation regarding privacy and train staff and volunteers accordingly. Standards and practice guidelines regarding record keeping practices in regards to siblings or other family members, or when two or more family members are seen together should be established.

## 6. Additional matters

- 28. Whether a sixth principle directed at enforcing the initial five principles is required**
- 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).**
- 30. Whether a records advocacy service would be useful for victims and survivors of child sexual abuse in institutional contexts**

Yes. Any support for victim/survivors is a good idea. Contacting large institutions, especially if they were the place where a victim/survivor was abused, would be a daunting thing for many.

- 31. What powers, functions and responsibilities a records advocacy service should have**  
Services should be responsible for advising victim/survivors of their rights to access records and processes for accessing records, support them to access their records, contact institutions on their behalf and with their consent, be able to support them in viewing their records.

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

Current victim/survivor support services (e.g. CASA) may be able to undertake such a role.