



NATIONAL ARCHIVES OF AUSTRALIA - SUBMISSION

Royal Commission into Institutional Responses to Child Sexual Abuse – Consultation paper on records and recordkeeping

The National Archives is pleased to provide this submission in response to the Royal Commission into Institutional Responses to Child Sexual Abuse's consultation paper *Records and recordkeeping practices*. The Archives makes this submission to ensure that its role in overseeing Australian Government recordkeeping, and in identifying, preserving and making the Commonwealth's archival resources publicly available both:

- informs the discussions and decisions in relation to recordkeeping practices by institutions that care for or provide services to children; and
- is not affected inadvertently by any outcomes from the consultation process.

The National Archives is also Chair of a Council of Australasian Archives and Records Authorities (CAARA) Working Group which aims to provide advice to the Royal Commission on recordkeeping matters, as well as advise on future custody, disposal and access arrangements for records created by the Royal Commission. This arrangement will see consistent access, disposal and custody regimes applying to records of the Royal Commission, thereby eliminating jurisdictional differences.

About the National Archives of Australia

The National Archives of Australia can best be described as the memory of our nation – collecting and preserving Australian Government records that reflect our history and identity. Our collection traces events and decisions that have shaped the nation and the lives of Australians.

As well as preserving our history, the National Archives plays a key role in helping to ensure the Australian Government and its departments are effective and accountable to the people.

Under the [Archives Act 1983](#), the National Archives has two main roles:

- to preserve Australia's most valuable government records and encourage their use by the public; and
- to promote good records management by Australian Government agencies by setting standards and providing advice to Australian Government agencies.

In fulfilling these responsibilities, we ensure that Australians have access to a national archival collection so they may better understand their heritage and democracy.

Through individuals' interaction with various government departments, aspects of their lives are preserved for future generations. Family historians find a wealth of information in our records, as do academics and other researchers.

We encourage good records management by government agencies to support:

- Australia's cultural heritage
- the rights and entitlements of citizens
- informed decision-making
- government accountability.

There is a variety of authoritative information and records management advice on the National Archives' website and the websites of other national and international government records and archives authorities. This advice is freely available to be reused by private and not-for-profit sectors noting, as the Commission has remarked in its consultation paper, that specific legislative and regulatory requirements may vary between jurisdictions.

National Archives' collection

The Archives is responsible for caring for the most significant records of the Australian Government. Most of these records were received, created or kept by government agencies from the time of Federation in 1901. The archive consists of tens of millions of items, and includes records about immigration, military service, transport, Indigenous Australians, science and the environment and much more. The records the National Archives holds are about people – from the ordinary to the famous – and their interactions with the Australian Government.

While the National Archives has some material relevant to the scope of the Commission, it is expected the majority of current case records relating to individuals would be created by agencies regulated by the state and territory government records and archival authorities, or with private institutions.

The historic material held by the Archives includes records relating to:

- Aboriginal children removed from their families under former government policies, primarily:
 - in the Northern Territory which the Commonwealth administered from 1911 to 1978) and
 - in Victoria because the Victorian government transferred records dating from 1860 to 1970 to the Commonwealth in 1975.
- Child migrants: the role of the Australian Government was mainly that of an overseer of the programs being administered by the states and so most of the records held by the National Archives are general policy files. However, there are some case files.

These records are made available in accordance with the access arrangements under the Archives Act. More information is provided in response to comments on the proposed principles and related questions below.

Key points

The Archives provides the following comments in relation to the 5 principles identified in the Consultation paper.

Principle 1 Creating and keeping accurate records is in the best interests of children

Good information governance is critical to fostering a culture that promotes and recognises good information and records practices. Providing a framework that supports the creation and maintenance of full and accurate records ensures that care leavers and other stakeholders can access the information they need now and into the future.

An information governance framework documents the legal, regulatory and business context in which records are created. This includes describing the factors, business drivers, and guiding principles which influence the creation, management and use of information and records. For institutions caring for children it would particularly consider the long-term needs of all stakeholders including care leavers and parents.

A framework states the importance of a culture that supports good information governance. An information framework should be supported by an information management strategy and policy. These document how an institution will plan to manage information and records, to meet current and future needs and regulations. The policy sets out guidance for records creators, and outlines responsibilities for records creators and managers. Strategies might include ensuring records creators are appropriately trained so that they understand how to carry out their responsibilities. Ideally records management should be guided by qualified and skilled professional advice.

Government records and archival authorities provide advice on how to manage information to the agencies in their jurisdiction. Public institutions caring for children should firstly seek the advice of the records or archival authority for their jurisdiction. However, while there may be some legislative or regulatory variations for different jurisdictions, principles for good information and records management tend to be universal. Advice provided on government records and archival authorities' websites could be used as a basis, and scaled appropriately, by private institutions to assist with the creation and management of their information and records.

In addition to the recordkeeping requirements identified in the *National Standard for Out-of-Home-Care*¹, it may be possible to set minimum metadata standards for all institutions that care for or provide services to children to create a baseline of information retained. This will promote certainty for children and their families regarding the information to be collected, retained and later made accessible.

The National Archives' website provides further advice on:

[Information Governance](#)

[Information Governance Framework](#)

[Information Management Strategy](#)

[Information Management Policy](#)

[Minimum metadata for government records](#)

¹ Department of Families, Housing, Community Services and Indigenous Affairs, *An outline of National Standards for out-of-home care*, July, 2011, Australian Government.

Capabilities, skills and knowledge

Digital Information and Records Management Capability Matrix which identifies capabilities for all staff, ICT specialists and information and records management specialists

Principle 2 Accurate records must be created about all decisions and incidents affecting child protection.

The recently updated (April 2016) international standard on Records Management, ISO 15489², stipulates four characteristics of authoritative records, ie authenticity, reliability, integrity and useability. The characteristic of reliability in particular requires that records capture a ‘full and accurate’ record of the event that can be depended upon in the course of subsequent transactions or inquiries. In addition, it notes that records should be created at the time of the event to which they relate, or soon afterwards, by people who have direct knowledge of the facts, or by systems which routinely capture information associated with the event. This international standard is applicable to all organisations, whether government or public, and should be used as a basis for the recordkeeping practices and policies of institutions providing services to children. This standard is a revised and updated version of, and consistent with, the Australian Standard on Records Management AS 4390 which is referenced in Chapter 2 of the Consultation Paper.

We would suggest the description under Principle 2 expand on the word ‘thorough’ by indicating that the record should contain sufficient detail to support the rights and entitlements of the child so that others in the future, in particular the child / care leaver and family, can understand what was said, decided or occurred. The Principle could be expanded to refer to ‘complete and accurate’ records, consistent with the requirements of ISO 15489 and AS 4390.

Templates and or check lists including minimum metadata requirements could be one approach to ensure that complete records are created relevant to child abuse.

The National Archives recommends that agencies conduct information reviews of the ability of their core information assets (records) to meet their business needs. This review can be scaled up so that it covers all aspects of information management or scaled down so that it covers an aspect of information management such as whether suitable records are being created to meet the needs of the agency and its stakeholders.

The National Archives’ website provides advice on:

[Conducting an information review](#)

Principle 3 Records relevant to child sexual abuse must be appropriately maintained

Records should be secure from deliberate or accidental destruction such as technological obsolescence. In addition, access should be given in accordance with the Privacy Act and other relevant legislation, depending on the jurisdiction.

The *National Archives’ Digital Continuity 2020 Policy* advises Australian Government agencies to ensure that their digital information is created and managed to meet both current and future

² International Standards Organisation (2016), Information and documentation -- Records management -- Part 1: Concepts and principles, http://www.iso.org/iso/catalogue_detail?csnumber=62542, Accessed 29 September 2016.

business and user needs. The benefits of well managed digital information include better control over records including automatically capturing audit trails, increased security and faster, more accurate access to records using advanced search tools. Maintaining digital records over time minimises loss through technological obsolescence or corruption, and supports long-term access by care leavers and other stakeholders.

In the Australian Government jurisdiction records follow functional responsibility. Therefore, if an agency is abolished, that function, whether ongoing or defunct, is allocated to a current portfolio department. The inheriting department takes on responsibility for the ongoing management of the business and related records, or if the function is defunct, ownership responsibility for the records. An example, unrelated to child care, is the wartime rationing function. The records are currently the responsibility of the Department of Industry, Innovation and Science.

Indexing

Indexing of records can assist to ensure that records are not only maintained, but are also accessible. Indexing large volumes of historical records is however resource intensive and would be beyond the resources of many organisations, both government and non-government.

As part of the Australian Government's response to the *Bringing Them Home* report, \$2 million over four years was provided to the National Archives to index records to assist Aboriginal and Torres Strait Islander people link up with their families and communities in accordance with Recommendation 22. Indexing teams were established in Darwin, Canberra and Melbourne to index records. Indexing was undertaken over six years and approximately 21,000 files (862,000 pages) were checked for names. Approximately 12,000 files were identified as containing names and these were indexed. Over 420,000 index entries were included in the National Archives' Bringing Them Home name index.

This project was undertaken because, although many relevant item titles are listed, the Archives holds few case files with the person's name in the title and so contents of files needed to be indexed to identify names. The Bringing Them Home name index has proved a most useful resource in assisting Aboriginal and Torres Strait Islander clients in finding information more quickly and efficiently, particularly about Aboriginal people in the Northern Territory, Victoria and South Australia.

In addition to the Bringing Them Home name index, the National Archives has prepared guides and fact sheets to assist those trying to find out about their past and to link up with family and community. For example, the National Archives has published a guide, [Good British Stock: Child and Youth Migration to Australia](#) by Barry Coldrey which provides details about its holdings.

A most useful initiative is the Records Access Documentation grants which are open to Australian not-for-profit organisations that hold or have created records relating to children in 'care' during the period 1920-1989. The grants can be used for activities such as listing, describing, indexing, preserving and digitising records. These grants are administered through the Find & Connect web resource project with funding from the Commonwealth. This program helps promote good record-keeping practices and builds a culture of preserving and making records available.

The National Archives' website provides advice on:

[Digital Continuity 2020](#)

[Benefits of digital information and records management](#)

[Storing digital information and records](#)

[Transferring records following administrative change](#)

[Protecting online information](#)

[Aboriginal and Torres Strait Islander People](#)

[Child Migration](#)

Principle 4 Records relevant to child sexual abuse must only be disposed of subject to law or policy.

In 2013 the Archives implemented a disposal freeze on records likely to be required by the Royal Commission into Institutional Responses to Child Sexual Abuse. This suspends the Archives' permission for agencies to destroy relevant records. The Archives noted at the time that the freeze may be a useful reference for State and Territory governments as well as the not-for-profit and private sectors.

In the Australian Government jurisdiction, disposal of all records created by Australian Government agencies is regulated by section 24 of the *Archives Act 1983*.

Agencies may only destroy information with the permission of the Archives which is provided in records authorities, or as required by law. As the Commission has noted, agencies may routinely destroy short-term or facilitative records as a normal administrative practice (NAP). The Archives expects agencies to develop and distribute a policy on using NAP to destroy records which clearly distinguishes records covered by a records authority and those where destruction as a normal administrative practice is appropriate.

It would be impractical to seek the views of each individual regarding disposal of their personal information; however some Australian Government agencies have used consultation groups with the individuals documented in their case files when developing records authorities. There are groups such as CLAN³ which could also be consulted.

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 Commission has noted that there may be a wide variety of records relevant to child sexual assault extending so far as to include records relating to bus routes which were used to identify students who may have been sexually abused by the school's bus driver (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. This period would be determined, in the context of the Australian Government, by how long the agency needed them for its operational purposes and

³ CLAN is a support, advocacy, research and training network for people who grew up in Australian orphanages, children's Homes, foster care and other institutions. <http://www.clan.org.au/>

for how long the individuals described in those records needed them to be retained to prove their rights and entitlements. It would probably be at least for the expected lifetime of the child. Some records may become national archives (ie designated for permanent retention) if they are of national significance or of public interest with continued value to the Australian Government and the community for generations to come, for example the records created by this Royal Commission.

The abolition of statutory limitation periods for civil claims would be a factor that agencies and the Archives would take into consideration, when considering the duration period of rights and entitlements for affected individuals in Australian Government records.

It is best practice to maintain registers (or their digital equivalent) on what records are destroyed, when and under what authority.

For further information please see:

[Notice of Disposal Freeze: Records related to institutional responses to child sexual abuse](#)

[What we keep: Principles for selecting the Australian Government's national archives](#)

Principle 5 Individuals' right to access and amend records about them can only be restricted in accordance with law

The discussion under Principle 4 in the consultation paper relates primarily to the issues relating to the difficulty of, and lack of consistency in, accessing records. The focus of Principle 5 is on limiting restriction of access to records. The Archives recommends that Principle 5 be revised to focus more on supporting access to records, or alternatively, that an additional principle be included that promotes consistent access to records of care leavers. The Principle could cover access principles for record holders and best practice guidelines in providing access to records. The Principle could be based on the principles outlined in *Access to Records by Forgotten Australians and Former Child Migrants*⁴, and seek broad support for consistent access to records, regardless of where they are held. The records advocacy service mentioned in the consultation paper could be included in this additional principle, and would assist in addressing the issue with lack of guidance for care leavers in accessing their records.

The National Archives has embraced the principles outlined in the Australian Government Department of Social Services' *Access to Records* publication. As mentioned, the National Archives works under the provisions of the *Archives Act 1983* which regulate its activities, particularly in relation to access. The Archives believes that the general intentions of the principles set out in the Department of Social Services' publication can be met within the framework of the Archives Act.

Under the recommendations of the Royal Commission into Aboriginal Deaths in Custody and *Bringing Them Home*, the report of the Human Rights and Equal Opportunity Commission, the National Archives entered into memoranda of understanding with Aboriginal people in the Northern Territory, Victoria and South Australia (in 1997, 2000 and 2002 respectively) to assist those removed from their families under former government removal policies to link up with family and community.

⁴ Australian Government Department of Social Services (2015), *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing access to records*

The procedures developed over 20 years meet the general intentions of the principles set out in the Department of Social Services' publication and have been extended to cover care leavers as a result of the *Lost Innocents* and *Forgotten Australians* reports.

Particular points we would like to make are:

- Under the *Archives Act 1983* (Cth) the National Archives makes records created by Australian Government institutions publically available when they reach the open access period, unless the records contain information that is exempt under section 33. The National Archives' Access Examination Policy on access to information relating to the personal, business and professional affairs of a person is available on the Archives [website](#).
- Where information is closed under section 33 of the Archives Act, the Archives considers providing discretionary access to an individual under section 58 of the Archives Act where relevant.
- Records can be viewed free of charge in an Archives' reading room and clients can use cameras to photograph the records they are viewing.
- The Archives charges for copies at a cost recovery rate. Under certain circumstances, the Archives does waive charges. For example, the Archives has arrangements for waiving charges for copies under memoranda of understanding and agreements with Stolen Generations and care leaver organisations.
- The Archives has arrangements in place for the review of decisions and for handling complaints.
- The Archives has material available for clients about distressing information and support and assistance services and is looking at developing this further.
- The Archives has worked with the Find & Connect Services and with Stolen Generations and care leaver organisations and agrees that working collaboratively is most important.

In terms of restricting access to information (existing Principle 5), careful thought should be given to preserve the right to privacy of the child and other family members. For government institutions there are sufficient laws in place that enable a person to access a record without it being released in the public domain. It appears that these laws are not consistently applied. For example, under Australian Government legislation an individual can access a record about them under the *Freedom of Information Act 1982* (s12) even when the record is publicly accessible in accordance with the *Archives Act 1983* (s31).

A proposed sixth principle

The seriousness of the issues that the Commission is considering is understood, as is the devastating impact on the affected children. It is however difficult to imagine how a sixth principle directed at enforcing the initial five principles would be implemented across the variety of sectors of potential records creators.

In 2015 *The independent Review of Whole-of-Government Internal Regulation (Belcher Red Tape Review)* noted that regulation should be the minimum needed to achieve policy outcomes, should be mandatory only where policy failure cannot be dealt with through other measures, and should consider the cumulative compliance burden imposed on small and micro entities. These findings, while directed at internal regulation within the Australian Government, are brought to your attention as considerations with regard to the proposed sixth principle.

For further information please see:

[The independent Review of Whole-of-Government Internal Regulation \(Belcher Red Tape Review\) – Principles for Internal Regulation](#)

Recommendations

The Archives recommends that:

1. The Commission considers inclusion of an additional principle promoting consistent access to records to complement Principle 5. This Principle could include the creation of a records advocacy service to provide guidance to care leavers seeking access to their records.