

## **Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper 'Records and recordkeeping practices', September 2016**

**13 October 2016**

### **PART ONE: ABOUT THE AUSTRALIAN SOCIETY OF ARCHIVISTS**

#### **1.1 About the Australian Society of Archivists**

The Australian Society of Archivists Inc (ASA) is the peak professional body in Australia representing archivists and archives, and the recordkeeping profession. The ASA was established in 1975, and has been actively informing, educating, and leading Australians in their understanding of archives and recordkeeping since that time.

One of the principal activities of the ASA is to advocate for the establishment and support of reliable, accountable, and accessible recordkeeping systems within Australian institutions and organisations.

The ASA recognizes and advocates that recordkeeping systems are a core element of effective business management, in both public and private arenas, in all institutions, from the smallest voluntary society, to a substantial multi-office company, or a government agency.

The ASA asserts that recordkeeping is most efficient when it encompasses and reflects the entire cycle of recordkeeping from creation of a record to document an activity, to permanent retention (or disposal) of that record, and subsequent access.

The ASA recognizes that core rationale for creation and retention of records is that they can be accessed at a later date. Records are created by people to document the activities of people, and the most powerful use of records is that which brings reliable evidence to light, and informs society accurately about lives lived.

The ASA advocates for the employment of professionally trained archivists and recordkeepers in Australian institutions in order that recordkeeping systems can be designed and implemented according to Australian and International Standards on recordkeeping.

The ASA asserts that recordkeeping systems lie at the heart of effective business practices, because recordkeeping systems enable institutions to be accountable for their activities.

## 1.2 Previous ASA Submissions & publications

The ASA has contributed a number of submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter referred to as the Royal Commission) on the topic of recordkeeping, in 2012, 2015, and 2016.

These submissions can be found on the ASA website:

<http://www.archivists.org.au/about-us/submissions>

The ASA journal *Archives and Manuscripts* has published articles on the topic of recordkeeping relating to child sexual abuse in institutions, and to records of children in out-of-home care including:

- Viviane Hessami, “Recordkeeping issues arising from the public hearings of the Royal Commission into Institutional Responses to Child Sexual Abuse”, Vol 43, No 3, Nov 2015
- Kim Eberhard, “Unresolved issues: recordkeeping recommendations arising from Australian commissions of inquiry into the welfare of children in out-of-home care, 1997-2012”, Vol 43, No.1, March 2015

In addition to publishing the widely used recordkeeping manual *Keeping Archives*, the ASA recently launched a suite of six e-learning courses in archives and recordkeeping to provide training for non-qualified staff who require an understanding of best practice recordkeeping and archival principles and processes. The ASA’s *Records Retention Schedule for Non-Government Schools* first published 2007, second print-run 2012, third edition in progress has been an essential tool for this sector in retaining the necessary records to document their actions and care of children.

## PART TWO: ASA COMMENTS ON CONSULTATION PAPER

Congratulations to the Royal Commission for this Consultation Paper on Records and Recordkeeping Practices. The problems associated with poor recordkeeping practices past and present are well known to the ASA and we are committed to working with, and through, our members to address the issues where we have agency. To that end, members of the ASA are currently working on revising our guidance on retention and disposal of records in schools – a tool widely adopted as best practice in Australia’s independent school sector. Similarly, we are committed to recordkeeping best practice through support of initiatives to improve recordkeeping standards (through Standards Australia), by setting curriculum and competencies for our professional members, and supporting research into new methods of people-centric recordkeeping (through collaboration with University research programs).

## Recordkeeping culture embedded in institutional culture<sup>1</sup>

The issues raised by the Consultation Paper have been widely considered in any number of State and Federal commissions of inquiry on related subjects. The problem encountered with the recordkeeping in institutions presenting to the Royal Commission are unfortunately symptomatic of practices found in many other sectors. The issue needs to be addressed as a strategic priority – without records, accountability to the past, present, and future is impossible. Sporadic efforts to address a particular deficiency highlighted in a public manner is not sufficient. To affect significant change, the requirements for efficient and accountable recordkeeping must be articulated as measurable KPIs (Key Performance Indicators) for senior management within institutions to ensure they lead and support a culture of accountability and transparency through the appropriate recording of decisions for all parties and ensure adequate resourcing of this requirement. As the Consultation Paper accurately identifies, this is, in large part, a matter of organisational culture ([Question 1](#)).

Our experience has shown that a recordkeeping culture must be embedded within an organisational culture to be effective, and organisational cultures can be resistant to change. Staff, parents and children should be encouraged to know what records are being kept about them, and be able to access them routinely without excessive bureaucracy or feelings of guilt. An emphasis on this ability to access (given under state right to information/freedom of information/personal information or privacy legislation, but with extension to the private sector) will contribute to a culture of good recordkeeping and transparency. ([Questions 1, 4](#))

We believe that significant and sustained improvement in the type of recordkeeping matters raised by the Paper cannot be embedded into institutions where it has been deficient without a degree of compulsion. For this reason, we support recommendations from the Royal Commission on introducing some form of enforcement to recordkeeping requirements. ([Question 28](#))

## Recordkeeping Principles

The Consultation paper has accurately reflected the complexity of recordkeeping which is addressed within state and territory as well as Commonwealth legislation (in particular referenced in Chapter 4). This plethora of legislative provisions makes uniformity and consistency in practice difficult to achieve at a national level. The use of principles as a mechanism for achieving better national consistency in this environment is understood and endorsed as a practical approach.

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<sup>1</sup> Please note: to conform to the Royal Commission's terms of reference, we have used the word institutional to reference organisations of all types

We note that there are no questions on the principles themselves. Principles-based recordkeeping requirements already exist, most notably in standards such as AS/ISO 15489 which is applicable to all institutions – private and public. The principles outlined by the Commission are acceptable, but there is a strategic question of how to ensure that the principles adopted by one community remain consistent with the broader professional principles and standards.

We suggest that a more uniform adoption of best practice recordkeeping principles, with specific performance or tailored implementation in collaboratively-derived standards for the care of children would allow a greater cumulative influence for better recordkeeping across the whole community.

At minimum we would recommend that reference to the best practice recordkeeping standards is maintained so as not to create unnecessary confusion. These principles (AS/ISO 15489) are:

- a) the creation, capture and management of records are integral parts of conducting business, in any context);
- b) records – regardless of form or structure – are authoritative evidence of business when they possess the characteristics of authenticity, reliability, integrity and usability;
- c) records consist of content and metadata describing the context, content and structure of the records, as well as their management through time;
- d) decisions regarding the creation, capture and management of records are based on the analysis and risk assessment of business activities, in their business, legal, regulatory and societal contexts; and
- e) systems for managing records, regardless of their degree of automation, enable the application of records controls and the execution of processes for creating, capturing and managing records (see 5.4). They depend on defined policies, responsibilities, monitoring/evaluation and training in order to meet identified records requirements.

## Different recordkeeping in different types of institutions

The Consultation Paper asks whether recordkeeping in all institutions should comply to the same principles or whether a two tiered approach to enforcement is needed (**Question 29**). Our position is that the principles should remain applicable in all circumstances, while implementation expectations can be aligned to different types of institutions. It is not practical to assume a sporting club run by volunteers can implement recordkeeping at the same level as a party responsible for out of home care of children, for example. The risk profiles of the type of institutions are different, and yet as the Royal Commission has uncovered, sexual abuse can occur in any context.

Recordkeeping requirements can be tailored to particular types of institutions and expectations on recordkeeping can be established. In the case of a sporting body, for example, expectations could be set that assign responsibility for establishing and monitoring implementation of the recordkeeping expectations to state, national, or peak body for the organisation.

One of the particular areas known to cause problems is what happens to records if the organisation ceases to exist (**Question 12**). Such records might be needed to prove incidents such as sexual abuse which may not come to light for a considerable period of time, as the Royal Commission has found. We suggest it be a part of the general principles or recommendations of the Commission that any institution dealing with records relating to children, and particularly those where allegations of sexual abuse have been made, be required to appoint a place of deposit of last resort to ensure the rights of the individuals potentially affected.

## **Training and awareness of recordkeeping**

Recordkeeping is usually in the background and only gains prominence and attention when records are needed to prove/disprove actions; often at times of crisis, such as in front of the Royal Commission. While there are instances of deliberate detrimental and obstructive practices, more often poor recordkeeping results through a lack of attention, policy, resourcing or simply a lack of understanding of the importance of records.

The Consultation Paper asks about training. Recordkeeping awareness training needs to be part of induction into any organisation providing services to children. This needs to be managed in ways that are not simply 'tick and flick' as evidenced in other awareness programs (the example provided in the Consultation Paper being the student protection kit, in Case Study 6). Policies and procedures which are not incorporated into working practices will fail to achieve desired outcomes. The consequences of poor recordkeeping on children and the experiences documented by the Royal Commission should be incorporated into training, so that it is clear that this is not a bureaucratic exercise, but a fundamental component of appropriately providing services to individuals. Examples of good practice can be actively sought and supported as models – such as mentoring in the writing of case notes, case reviews reliant upon records, peer review and critique of records created, performance reviews referencing recordkeeping requirements, etc. (**Questions 6 & 8**).

Recordkeeping awareness and training is needed at all levels, and for all circumstances, including in emergency departments, police departments and counsellors. It is essential to ensure that recordkeeping is part of the curriculum for the professional training of all service providers who impact on victims of sexual abuse (for example social workers) (**Question 2**). People tend to appreciate the importance of records at an instinctual level, but lack systematic support to ensure records are made, maintained and kept accessible. In time and resource-poor environments there is a constant need to reinforce recordkeeping practice, not as a rule-following activity, but one that can have critical repercussions for an individual. Failing to make and keep good records needs to have a consequence for the service provider and be linked to senior management KPIs.

## Access to records

### (Questions 18-26)

Access to records has long been problematic because of the multiple jurisdiction problem which creates different rules to be applied. It is also a problem because records of the past tend to be found wanting by the standards of today. Legacy problems have been well documented, most notably in Victoria, but these problems exist in all states. Targeted resources are needed to remediate the problems of neglect and poor practices of the past. Systemic approaches can be designed.

We endorse The Access Principles for Records Holders and Best Practice Guidelines and agree that these can be expanded to provide guidance to all recordkeeping. They are not specific to one type of organisation and seek to operate across jurisdictional boundaries. In practice, while adopted by representatives of all jurisdictions, no single jurisdiction has adopted the principles formally. In contrast, anecdotally, the principles have been influential in guiding access practice in private and church institutions.

The Consultation Paper asks if the principles can be adopted for the broader range of institutions needing to consider access to records for victims and survivors of child abuse. We endorse such extension. The range of institution type will make this challenging, as does the requirement to address changes proactively, rather than retrospectively. The case based approach on what to release and how to release information can be used as an effective model for guidance. In practice, the multiple jurisdictional rules will act against public institutions adopting such guidelines where they suggest approaches different to those contained in specific legislative provisions. The legislation will trump all other actions for government employees, and all too often, that legislative interpretation is risk adverse and aimed at protecting institutions rather than enabling the individual or collective social good. Hiding behind restrictions is a risk adverse stance attractive to those that feel vulnerable to questioning.

The Consultation Paper acknowledges issues with third party privacy, and the jurisdictional differences in approach with separate legislation having different provisions. Adopting the Australian Privacy Principles and requiring them to be applied to all private institutions that care for or provide services is desirable. But this approach will not address the problems that have caused ongoing distress to Care Leavers now, and into the future, where they cannot get access to records about themselves and their family. The Access Principles provide case based examples of how to release information. Extending and mandating this type of approach might prove more effective in achieving better access than the adoption of the APPs.

The Consultation Paper suggests a redaction standard ([question 25](#)). It is difficult to know what is meant by this, as redaction is necessarily very specific to the content of a particular record. If a requirement to accurately and sympathetically reveal the nature of what is redacted, then we would support this suggestion. Again, the Access Principles provide a model.

## Rights in records

Where a child is in out of home care, the practice of creating life stories, genograms or history boxes has arisen specifically to document a child's circumstances – their family connections as well as their experiences of their own childhood. This has developed to compensate in part for the lack of shared family memory. These records are deliberately constructed on behalf of the child and where possible, with the participation of the child. They belong to the child. They should be given to the child at an appropriate point (either when they leave specific instances of care, or when they leave care altogether).

These records are different from the records made to document the institution's responsibilities, administration, management etc. This type of records belongs to the institution and will continue to belong to the institution for their administrative and management purposes. While a much greater degree of transparency and sensitivity about the wishes of the child can be observed in the creation and management of the institutional records, making the distinction between the two types of records clear would be helpful moving forward.

Records are made for different purposes. The institution will still need to create and maintain records for their own purposes which will have information about the individual. Making clear the distinction between the records of the institution (to which the individual presently has rights of access) and the records made for the child will potentially clarify some confusion over ownership of records. (Question 7)

Records have different meanings and personal value at different times of a person's life. At a time when a child is in care, or when a traumatic event has occurred, or more focused on navigating a complex world, the role of records is likely to be undervalued. The Royal Commission has found a gap between events and when people wish to address traumatic events in the context of their lives. Advocacy about records and the role that they are likely to have in later life is particularly critical in relation to how individuals manage records during the period between the event and needing to reflect on the event. It is likely that without understanding the future importance that records may have to them, records will be neglected, abandoned or destroyed. Yet this act may be quite detrimental to asserting their own rights. An advocate for records would be a great asset in these circumstances. This is a different notion of advocacy supporting someone viewing and accessing a potentially traumatic record of their past. In addition to our expanded notion of advocacy, we support the ongoing funding and training of those who assist victims and survivors to interpret, contextualize and react to records. (Question 32).

## Addressing the legacy of poor recordkeeping

(Questions 9-11)

Much is made of the legacy of poor recordkeeping and the resources needed to adequately address the accumulated body of records which are in disarray. There is a clear requirement for the responsibility to be accepted by those who have allowed the neglect to occur.

Attention to remediating these circumstances can be framed as part of a reconciliation process. The example of Victoria's Department of Health and Human Services might prove a model for how the issues should be tackled. A strategic, system based response is needed. Resourcing is also required, and those responsible should undertake to assign appropriate resourcing to address the problem.

The Consultation Paper asks about possibilities of prioritisation for remedial action. The Access Principles for Records Holders and Best Practice Guidelines in providing access to records referenced in the Paper recommends criteria to establish priorities for access to records. These apply to specific circumstances of an individual applicant. Assigning priority to records of those that are presumed to be alive is practical and we support the proposition that priority be given to enabling access to the individual themselves – thus concentrating on records created in the last 100 years.

Given the lack of impact previous inquiries have had in providing sustainable actions to addressing problems with recordkeeping, we suggest that the Commission develops very targeted actions to guide particular institutions to address recordkeeping. Developing specific actions with clearly assigned responsibilities, leadership, target dates will contribute to the desired improvement in practices. This was done with good effect in the Stolen Generations Report, where targets were assigned to national, state and territory recordkeeping regulators and indexes, guides and assistance to communities resulted. Such targets should be measurable, directed and can be the subject of specific funding.

## **Moving forward**

### **(Questions 13-16 inter alia)**

Records are transactional – they record something – an action, a response, a recommendation. Most commonly they involve multiple parties in that transaction. Thus records can relate to multiple parties. The power of the record however resides with the person who makes and maintains the record, as the Consultation Paper acknowledges in relation to access (p39). Within our professional discourse, this model of recordkeeping is being challenged. In particular, this has arisen due to both the arrival of enabling technology, and a growing appreciation of rights of a person to their own personal information, and an increasing professional sensitivity to issues of social justice and human rights.

Care Leavers, in particular, have shone a compelling spotlight on recordkeeping failures, basic human rights issues and the long term consequences of inadequate attention to individual rights in our recordkeeping practices – these issues are motivating our profession. A considerable academic push is leading the profession to consider how to re-fashion recordkeeping to be more person-centric. Previous determinants of what records were retained have been disrupted by technology. It is now quite conceivable to keep all personal information recording interactions with institutions for as long as the person is alive.

Such reconsiderations focusing on the person, rather than solely on the institution are relevant to the considerations of the Royal Commission. However, such a professional transformation is a long term endeavour. The transformation will potentially include shared rights in records (for example rights to use personal information, rights to access information, rights in how information is managed and destroyed). (Question 13).

Such changes are large scale. They involve many shifts in thinking and redesigning institutional and professional approaches to recordkeeping. They are unlikely to be retrospective, nor achievable within a 5-year timeframe to reshape current recordkeeping systems. But it will come and with it will come a much greater capacity for the individual to assert rights to their personal information. Contributing to the wider social and political conversation on what those rights are, and what they should be, is a crucial part of our role as a professional body.

We would be happy to provide any further information that may be of assistance and can be contacted on either email [kpercival@archivists.org.au](mailto:kpercival@archivists.org.au) or by telephone 0420 959 261.

Yours sincerely,

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