



**Submission from the
Truth Justice and Healing Council**

Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation Paper | Records and Recordkeeping

21 November 2016



PO Box 4593
KINGSTON ACT 2604

T 02 6234 0900
F 02 6234 0999
E info@tjhcouncil.org.au
W www.tjhcouncil.org.au

Justice Peter McClellan AM
Chair
Royal Commission into
Institutional Responses to Child Sexual Abuse

Via email: solicitor@childabuseroyalcommission.gov.au

Dear Justice McClellan

As you know, the Truth Justice and Healing Council has been appointed by the Catholic Church in Australia to oversee the Church's response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

We now provide the Council's submission in response to the Royal Commission's consultation paper on Records and Recordkeeping.

Yours sincerely

Neville Owen
Chair
Truth Justice and Healing Council

21 November 2016



Our Commitment

The leaders of the Catholic Church in Australia recognise and acknowledge the devastating harm caused to people by the crime of child sexual abuse. We take this opportunity to state:

- Sexual abuse of a child by a priest or religious is a crime under Australian law and under canon law.
- Sexual abuse of a child by any Church personnel, whenever it occurred, was then and is now indefensible.
- That such abuse has occurred at all, and the extent to which it has occurred, are facts of which the whole Church in Australia is deeply ashamed.
- The Church fully and unreservedly acknowledges the devastating, deep and ongoing impact of sexual abuse on the lives of the victims and their families.
- The Church acknowledges that many victims were not believed when they should have been.
- The Church is also ashamed to acknowledge that, in some cases, those in positions of authority concealed or covered up what they knew of the facts, moved perpetrators to another place, thereby enabling them to offend again, or failed to report matters to the police when they should have. That behaviour too is indefensible.
- Too often in the past it is clear some Church leaders gave too high a priority to protecting the reputation of the Church, its priests, religious and other personnel, over the protection of children and their families, and over compassion and concern for those who suffered at the hands of Church personnel. That too was and is inexcusable.
- In such ways, Church leaders betrayed the trust of their own people and the expectations of the wider community.
- For all these things the Church is deeply sorry. It apologises to all those who have been harmed and betrayed. It humbly asks for forgiveness.

The leaders of the Catholic Church in Australia commit ourselves to endeavour to repair the wrongs of the past, to listen to and hear victims, to put their needs first, and to do everything we can to ensure a safer future for children.

Authorising Church Bodies

The following Catholic Church bodies have authorised the Truth Justice and Healing Council to represent them at the Royal Commission:

Dioceses

| | | |
|----------------------------------|-------------------------------|--|
| Archdiocese of Adelaide | Diocese of Broome | Diocese of Sandhurst |
| Archdiocese of Brisbane | Diocese of Bunbury | Diocese of Toowoomba |
| Archdiocese of Canberra-Goulburn | Diocese of Cairns | Diocese of Townsville |
| Archdiocese of Hobart | Diocese of Darwin | Diocese of Wagga Wagga |
| Archdiocese of Melbourne | Diocese of Geraldton | Diocese of Wilcannia-Forbes |
| Archdiocese of Perth | Diocese of Lismore | Diocese of Wollongong |
| Archdiocese of Sydney | Diocese of Maitland-Newcastle | Eparchy of Ss Peter & Paul Melbourne |
| Diocese of Armidale | Diocese of Parramatta | Maronite Catholic Diocese of St Maroun |
| Diocese of Ballarat | Diocese of Port Pirie | Military Ordinariate of Australia |
| Diocese of Bathurst | Diocese of Rockhampton | Personal Ordinariate of Our Lady of the Southern Cross |
| Diocese of Broken Bay | Diocese of Sale | |

Religious Institutes

| | | |
|--|--|--|
| Adorers of the Blood of Christ | Institute of Sisters of Mercy Australia & Papua New Guinea | Sisters of Charity of Australia |
| Augustinian Recollect Sisters | Loreto Sisters | Sisters of Jesus Good Shepherd "Pastorelle" |
| Augustinian Sisters, Servants of Jesus & Mary | Marist Brothers | Sisters of Mercy Brisbane |
| Australian Ursulines | Marist Fathers Australian Province | Sisters of Mercy North Sydney |
| Benedictine Community of New Norcia | Marist Sisters – Congregation of Mary | Sisters of Mercy Parramatta |
| Blessed Sacrament Fathers | Ministers of the Infirm (Camillians) | Sisters of Nazareth |
| Brigidine Sisters | Missionaries of God's Love | Sisters of Our Lady of Sion |
| Canons Regular of Premontre (Norbertines) | Missionaries of the Sacred Heart | Sisters of St Joseph |
| Canossian Daughters of Charity | Missionary Franciscan Sisters of the Immaculate Conception | Sisters of St Joseph of the Apparition |
| Capuchin Friars | Missionary Sisters of Mary, Queen of the World | Sisters of St Joseph of the Sacred Heart |
| Christian Brothers | Missionary Sisters of St Peter Claver | Sisters of St Joseph, Perthville |
| Cistercian Monks | Missionary Sisters of Service | Sisters of St Paul de Chartres |
| Columban Fathers | Missionary Sisters of the Sacred Heart | Sisters of the Good Samaritan |
| Congregation of the Mission – Vincentians | Missionary Sisters of the Society of Mary | Sisters of the Good Shepherd |
| Congregation of the Most Holy Redeemer – Redemptorists | Missionary Society of St Paul | Sisters of the Holy Family of Nazareth |
| Congregation of the Passion – Passionists | Oblates of Mary Immaculate | Sisters of the Little Company of Mary |
| Congregation of the Sisters of Our Lady Help of Christians | Order of Brothers of the Most Blessed Virgin Mary of Mount Carmel (Carmelites) | Sisters of the Resurrection |
| Daughters of Charity | Order of Friars Minor Conventual | Society of African Missions |
| Daughters of Mary Help of Christians | Order of Saint Augustine | Society of the Catholic Apostolate (Pallottines) |
| Daughters of Our Lady of the Sacred Heart | Order of the Friar Servants of Mary (Servite Friars) | Society of Jesus |
| Daughters of St Paul | Our Lady of the Missions | Society of St Paul |
| De La Salle Brothers | Patrician Brothers | Society of the Divine Word Australian Province |
| Discalced Carmelite Friars | Pious Society of St Charles – Scalabrinians | Society of the Sacred Heart |
| Dominican Friars | Poor Clare Colettines | Sylvestrine-Benedictine Monks |
| Dominican Sisters of Eastern Australia & The Solomons | Prelature of the Holy Cross and Opus Dei | Ursuline Missionaries of the Sacred Heart |
| Dominican Sisters of North Adelaide | Presentation Sisters – Lismore | Verbum Dei Missionary Fraternity |
| Dominican Sisters of Western Australia | Presentation Sisters – Queensland Congregation | Other Entities |
| Faithful Companions of Jesus | Presentation Sisters – Tasmania | Australian Catholic Bishops Conference |
| Family Care Sisters | Presentation Sisters – Victoria | Catholic Religious Australia |
| Franciscan Friars | Presentation Sisters – Wagga Wagga Congregation | Catholic Church Insurance Limited |
| Franciscan Missionaries of Mary | Presentation Sisters – WA | National Committee for Professional Standards |
| Franciscan Missionaries of the Divine Motherhood | Religious of the Cenacle | Professional Standards Office Tasmania |
| Franciscans of the Immaculate | Salesians of Don Bosco | Professional Standards Office NSW/ACT |
| Holy Cross – Congregation of Dominican Sisters | Salvatorian Fathers – Society of the Divine Saviour | Professional Standards Office NT |
| Holy Spirit Missionary Sisters | Secular Institute of the Schoenstatt Sisters of Mary | Professional Standards Office Qld |
| Hospitaller Order of St John of God | Servants of the Blessed Sacrament | Edmund Rice Education Australia |
| | | Good Samaritan Education |
| | | Kildare Ministries |
| | | Loreto Mandeville Hall Toorak |
| | | Trustees of Mary Aikenhead Ministries |



The Truth Justice and Healing Council

The Catholic Church in Australia (the Church) welcomes the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse as an opportunity to acknowledge the truth about child sexual abuse within the Church, and to have these issues investigated and considered, objectively and publicly. It is an opportunity to bear witness to the suffering of the many victims of this abuse.

The Church is committed to cooperating with the Royal Commission, without reservation or qualification.

In February 2013 the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA)¹ jointly established the Truth Justice and Healing Council (the Council) to coordinate and oversee the Church's overall response to and appearance at hearings of the Royal Commission.

The Council is a body of 11 people, with expertise spanning such fields as child sexual abuse, trauma, mental illness, suicide, psycho-sexual disorders, education, public administration, law and governance. The majority of Council members are lay, two of its members are bishops, and one of its members is a Brigidine sister. Two of the Council members are either themselves victims of abuse or have immediate family members who are victims. The Council provides independent advice to the ACBC and CRA, through a Supervisory Group, which is comprised of the Permanent Committee of the ACBC, and representatives of CRA. The Supervisory Group may accept or reject the advice.

The Supervisory Group endorses this Submission. The members of the Supervisory Group are listed on the Council website [here](#).²

The Council is chaired by the Hon Neville Owen, former judge of the Supreme Court of Western Australia and former HIH Royal Commissioner.

The other members of the Council are:

- Ms Elizabeth Proust AO, Deputy Chair, former Secretary to the Victorian Department of Premier and Cabinet, Chairman of the Bank of Melbourne and Nestlé Australia and member of other boards
- Archbishop Mark Coleridge, Archbishop of Brisbane
- Professor Maria Harries AM, Adjunct Professor at Curtin University, Research Fellow in Social Work and Social Policy at the University of Western Australia, Chair of Catholic Social Services Australia
- Professor Rosemary Sheehan AM, Department of Social Work, Faculty of Medicine, Nursing and Health Sciences, Monash University
- Hon Greg Crafter AO, former South Australian Minister of Education, Chair of National Catholic Education Commission
- Sr Maree Marsh, former Congregational Leader of the Brigidine Sisters and psychologist with Anti-Slavery Australia at the University of Technology Sydney, Faculty of Law

¹ CRA is the peak body, previously known as the Australian Conference of Leaders of Religious Institutes, for leaders of religious institutes and societies of apostolic life resident in Australia.

² <http://www.tjhcouncil.org.au/about-us/members-of-supervisory-group.aspx>

- Bishop Bill Wright, Bishop of the Diocese of Maitland-Newcastle
- Professor Greg Craven, Vice-Chancellor and President of the Australian Catholic University
- Mr Stephen Elder OAM, former Member of the Victorian Legislative Assembly and Parliamentary Secretary for Education and currently Executive Director of Catholic Education for the Archdiocese of Melbourne
- Dr Marian Sullivan, child and adolescent psychiatrist.

The CEO of the Council, Mr Francis Sullivan, has worked in government and private practice and has held positions as Secretary-General of the Australian Medical Association, Chief Executive of Catholic Health Australia and consultant to the Pontifical Council for the Pastoral Care of Health Care Workers at the Vatican. He is an Adjunct Professor at the Australian Catholic University.

The Council oversees the Church's engagement with the Royal Commission, including by:

- speaking for the Church in matters related to the Royal Commission and child sexual abuse
- co ordinating the Church's legal representation at, and the Church's participation in, the Royal Commission.

The Council's role extends to:

- initiating research into best practice procedures, policies and structures to protect children;
- assisting in identifying any systemic institutional failures that have impeded the protection of children;
- providing information to the Royal Commission concerning the various procedures, policies and structures that have been successively put in place by Church organisations over the past 25 years to deal with complaints and instances of child sexual abuse and any improvements which might be made to them to provide greater protection for children; and
- seeking to promote lasting healing for the victims and survivors of abuse.

Dioceses and religious institutes (commonly referred to as congregations and orders) have given authorisations to the ACBC or CRA, authorising those bodies to represent and act for them in the engagement of the Church with the Royal Commission.

The ACBC and CRA have in turn delegated that authority to the Council. The Council therefore seeks to appear at the Royal Commission for all the authorising bodies, and speak with one voice for all of them.

Pursuant to these arrangements, the Council acts for all archdioceses and dioceses in Australia, with the exception of three of the Eastern Rite Eparchies, and for all the major religious institutes. The Council also acts for a number of other Catholic organisations including Catholic Church Insurance Limited (CCI).

For practical purposes, the Council ordinarily speaks for the whole Church: its dioceses, its religious institutes, its priests and religious, in the Royal Commission.

The Catholic Church in Australia today is an extensive and diverse religious organisation committed to worship, prayer and pastoral care. It is involved in providing pastoral, educational, health, human and social services across Australia.³

Notwithstanding that all the dioceses and religious institutes are autonomous and independent, each from the other, with no one central or controlling authority, and with each free to govern its affairs separately and independently, all are united in their support for the principles stated in the Commitment at the head of this Submission.

Those principles are also fully shared by all the innocent and high-minded priests and religious whose long years of devoted and selfless service have been admirable and who are heartbroken by the revelations of sexual abuse which have emerged in recent decades.

The Council's aim is to do everything in its power to ensure that the Royal Commission has available to it from the Church all the material that it needs for the work it seeks to do, so as to ensure that a light is shone on dark places and times and events, and to ensure that nothing is concealed or covered up in respect of what Church personnel did or failed to do.

The Council seeks to fulfil that role, on behalf of the Church, in a spirit of honesty, openness and genuine humility.

³ See Annexure B, TJHC Submission to Royal Commission Issues Paper No 2: Towards Healing, 30 September 2013
http://tjhcouncil.org.au/media/39435/30549468_2_TJHC-Towards-Healing-submission-30-Sep-2013.pdf

Contents

| | |
|---|-------|
| Summary | 7 |
| • Principle 1 | 7 |
| • Principle 2 | 7 |
| • Principle 3 | 8 |
| • Principle 4 | 8 |
| • Principle 5 | 9 |
| • Additional Matters | 9 |
| Introduction | 10 |
| MacKillop Family Services and its Heritage Services | 12 |
| Responses to questions | 14-48 |

Summary

1.1 Principle 1: Creating and keeping accurate records in the best interests of the child

- 1 The Council agrees with the Commission's view that the absence of records, and inadequate and inaccessible records can have a profound impact on victims and survivors.
- 2 Records related to a child or young person's time in care are important documents that help them understand why they were in care and they provide information about the person's life and identity.
- 3 Training in record keeping should be provided as part of relevant vocational and tertiary courses and staff training.
- 4 The Council supports the development of national standards for record keeping with monitoring and reviewing undertaken by children's commissioners and guardians.
- 5 Data gathering templates provided by state governments would be of value to service agencies as would support with the development of software and business systems.
- 6 Children and families should be involved in care planning and their thoughts about their care should be accurately recorded.

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

- 1 When an allegation of child sexual abuse is made information should be recorded by the person to whom the disclosure is made using the words of the person who made the disclosure.
- 2 Information should be recorded on the file of the victim and on the file of the person against whom the allegation is made. It should also identify details of reports made to relevant authorities.
- 3 Statutory retention periods in relation to staff records should be extended to take into account the time it takes for people to disclose abuse.
- 4 Staff induction and training should include legal obligations, writing for purpose, implications for case practice and the role of supervision in this area.
- 5 In addition to training, templates for questions and client feedback mechanisms, creating 'Life Books' can be a way of including children's views and experience in records about them.
- 6 A life book can include artwork, school work, photos, certificates and information about significant milestones. Copies of the life book should travel with the child if they move placement, and also stay with the agency.
- 7 Institutional records should be reviewed regularly by supervisors. File audit tools can assist by ensuring the views of the child or young person are present in their records and ensuring rationale for decisions making is clearly set out. For organisations subject to external standards or

accreditation, comprehensive reviews of records should be included in independent monitoring processes.

- 8 Staff need to be skilled at managing names and other potentially distressing material which may appear on file.

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

- 1 MacKillop undertook its ground breaking work with the support of their founding congregations and grants from the Australian government's Find & Connect service. It has indexed 115,000 records, dating from 1850 to 1997 at an estimated cost of \$1 per individual record. The cost of maintaining the MacKillop Heritage and Information Service in 2016-17 will be \$435,000.
- 2 The significant costs associated with maintaining, indexing and storing records and also transitioning records from hard copy to electronic formats (including the ongoing cost of upgrading and updating data as technology improves) should be appropriately reflected in funding agreements.
- 3 Priority should be given to indexing the historical records of people who are still living.
- 4 Organisations which hold records that are over 100 years old should consider making name indexes publicly available.
- 5 An index of all disclosures should be maintained and cross referenced and include the names of the victim and the name of the person against whom the allegation was made.
- 6 When an organisation changes ownership, responsibility for records transfers to the new owner with the same obligations. If an organisation closes, custody transfers to the parent body or in the absence of a parent body, to the government.

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

- 1 The Council supports the principle that former clients should be able to make a notation on their file that it cannot be accessed after their death.
- 2 The Council supports national standards on the retention and destruction of records. This would be useful for organisations which operate across state jurisdictions.
- 3 The abolition of statutory limitation periods places a greater responsibility on organisations to retain records that may be used in civil claims.
- 4 Records should be subjected to mandatory retention periods where they relate to the separation of children from their families, out-of-home care, foster care and adoption
- 5 Statutory retention periods in relation to staff records should be extended to take into account the fact that the average delay in disclosing child sexual abuse is 22 years.
- 6 Institutions should maintain registers of what records they destroy, when and upon what authority.

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

- 7 The Access Principle for Records Holders and Best Practice Guidelines provide useful guidance for organisations undertaking this work and could be expanded and used in a range of other institutions.
- 8 The Access Principles have encouraged and promoted good practice. The guidelines are easy to follow and provide a framework for release of information.
- 9 The Council is supportive of the Principles and Guidelines being adapted for all institutions.
- 10 Principles of access and amendment that operate as part of the Australian Privacy Principles should apply to all organisations that currently or in the past provided services for children.
- 11 Even when a small agency is not bound by law to the privacy principles, they provide a sound framework to follow.
- 12 Records should be made available without charge.
- 13 Some people experience re-traumatisation when viewing their records. This is not a reason to restrict access, rather it is an opportunity to ensure that the former resident is well supported. Many Catholic organisations strongly recommend victims seek counselling support when accessing a file. MacKillop has developed a model of supported release of records to assist former residents read and interpret their files.
- 14 National standards should guide the practice of redacting. These could be linked to the National Privacy Principles and would give clarity to applicants and institutions.
- 15 Files should be amended when requested, acknowledging that the information about an individual is their information.

1.6 Additional matters

- 1 Council supports the five principles that have been developed to guide organisations in ensuring best practice in record keeping and promoting access to records, but suggests that a sixth "enforcement" principle is unnecessary (please see notes in relation to a two-tiered approach).
- 2 A two-tiered system would be appropriate to deal with different organisation types although care must be taken to ensure it does not result in inconsistent or confusing responses to requests for access to institutions operating under different compliance obligations.
- 3 Council views the concept of an advocacy service for victims and survivors of child sexual abuse favourably. Some people need support to "navigate" the system and help to identify and make contact with relevant organisations.
- 4 The Council agrees that the functions of an advocacy service could be as described in the Consultation Paper on page 47.
- 5 There are a number of advocacy and support organisations that might fulfil this role. Find and Connect, CLAN, Tuart Place in WA.

Introduction

- 6 In this consultation paper, the Royal Commission examines the records and recordkeeping practices of both historic and contemporary institutions that cared or care for, or provided or provide services to children, to identify primary areas of concern. As they account for around 70 per cent of the feedback to the Royal Commission, the paper focuses mostly on the records and recordkeeping practices of out-of-home care providers and schools.
- 7 The Council agrees with the Commission's view that the absence of records, and inadequate and inaccessible records can have a profound impact on victims and survivors, including:
- eroding victims' and survivors' sense of self, their capacity to establish that they had been abused and their confidence in disclosing abuse
 - preventing identification of risks and incidents of child sexual abuse
 - delaying or obstructing responses to risks, allegations and instances of child sexual abuse
 - obscuring the extent of institutional knowledge of abuse
 - hindering disciplinary action, redress efforts, and civil and criminal proceedings.
- 8 Drawing on their analysis and discussion, the Commission proposes five high-level principles to help improve institutional practices and the experiences of victims and survivors. The Commission also considers the utility of a sixth principle directed at enforcement of good recordkeeping practices, and it examines whether a records advocacy service would be useful for victims and survivors. The Commission suggests the principles are intended to complement existing law and practice, promote and guide institutional best practice and inform future policy development and law reform.

1.1 Five Principles

- 9 The five principles for discussion are:
- (a) Creating and keeping accurate records is in the best interest of children.
 - (b) Accurate records must be created about all decisions and incidents affecting child protection.
 - (c) Records relevant to child sexual abuse must be appropriately maintained.
 - (d) Records relevant to child sexual abuse must only be disposed of subject to law or policy.
 - (e) Individuals' rights to access and amend records about them can only be restricted in accordance with law.
- 10 The Commission also seeks advice on whether a sixth principle is needed regarding the enforcement of good recordkeeping practice.
- 11 The Council invited responses from Church Authorities which include dioceses, religious orders and public juridic persons and from Catholic social services, education and professional

standards bodies conducted by those authorities to the issues raised in the consultation paper, including to the 32 specific questions asked by the Commission under each of the five proposed principles.

- 12 A copy of the Royal Commission's consultation paper is available [here](#).
- 13 Catholic Church authorities and their services, through the Truth Justice and Healing Council provide the following response to the Royal Commission's records and recordkeeping consultation paper.
- 14 The Council acknowledges the leading role of MacKillop Family Services specifically on this occasion in the area of the records of men and women who as children were placed in institutional care. While expensive, the Council submits that other service providers might aim to meet these standards and that a cooperative approach across services and Church Authorities might well be more cost effective.

MacKillop Family Services and its Heritage and Information Services

1.1 Background to MacKillop Family Services

More than 150 years ago the Christian Brothers, the Sisters of Mercy and the Sisters of St Joseph, three religious congregations within the Catholic Church, commenced their work in Victoria. Inspired by the charisma of their founders, Edmund Rice, Catherine McAuley and Mary MacKillop, the three congregations established Homes for children who were orphaned, destitute or neglected and Homes for mothers who were in need of care and support.

Over time, the original model of institutional care evolved into different forms of residential care, foster care, education and family support services. In 1997 MacKillop Family Services (MacKillop) was formed as an amalgamation of the earlier works, to provide a range of integrated services for children, young people and families.

The leadership of the new organisation had a strong connection to and belief in the rights of former residents. The leadership made a commitment to offer a special program for men and women who had experienced childhood care and for mothers who had stayed with the congregations while pregnant and after the birth of a baby. MacKillop believed that those who had grown up in these Homes and Orphanages and services users of the new entity should be able to access their own records with minimum constraints and with as much support as they needed. The MacKillop Heritage and Information Service was developed to support this work and was a core MacKillop program from the beginning of the organisation in 1997.

1.2 Background to MacKillop's Heritage and Information Service

MacKillop's founding board and management also recognised that the organisation had much to learn from recollections and experiences of previous generations and the Heritage and Information Service was established within the first six months to preserve thousands of personal and organisational stories.

The Heritage and Information Service holds a collection of historical documents relating to children who were placed in Orphanages and Children's Homes established in Victoria by the Sisters of Mercy, the Christian Brothers and the Sisters of St Joseph. This collection of records dates from 1857. The service is also responsible for the preservation and safe storage of client records created from the commencement of MacKillop in 1997.

In July 2013 MacKillop officially opened a heritage display on the site of the former St Vincent de Paul's Boys' Orphanage in South Melbourne, Victoria. MacKillop began work on the display in response to the findings from the 2004 Senate Inquiry report *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*⁴ on Australians who experienced institutional or out-of-home care as children. The inquiry recommended that heritage display centres be constructed on the sites of former institutions as a memorial to the lives of care leavers.

MacKillop's display tells the story of the history of Catholic child welfare in Victoria with a particular emphasis on the lived experience of residents and staff of the agencies that formed MacKillop.

MacKillop's display acknowledges that the past always contains lessons for the future. MacKillop has listened carefully to former residents and their feedback has shaped the development of MacKillop's services. Many have expressed the importance of MacKillop bearing witness to their experience as children.

⁴ Community Affairs References Committee 2004 *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* Commonwealth of Australia

1.3 The role and operations of the Heritage and Information Service

The Heritage and Information Service:

- Provides comprehensive supported access to records by former residents of MacKillop's founding agencies
- Searches for separated family members, facilitates family reunion
- Reconnects former residents with each other and supports many social events for former residents.

The archive holds over 120,000 individual records of former residents and clients. In 2015-16 MacKillop responded to 782 requests for information. The number of people requesting information has risen steadily over the last eight years, from 270 in 2008-09 and 347 in 2009-10.

MacKillop favours supported release of records to former residents. In some cases the content and substance of the material to be released will be of a distressing nature and likely to be re-traumatising for the person. The offer of a face-to-face meeting should be sensitively explored with each person. There should be an invitation for the person to be accompanied by a family member or advocate.

Most face-to-face meetings will last for several hours and will usually be done over morning or afternoon tea and will take place in the MacKillop Welcome Room. While practice wisdom favours a face-to-face meeting with people accessing records, it must be remembered and understood that this will not be the preferred mode for all who apply for records.

Some people prefer to receive records by post; they may live too far away or be too frail to visit in person. Others may be distressed or angry by the fact that they are required to have contact with the Heritage and Information Service as this may be a reminder of the institution in which they grew up.

If a person doesn't want to attend in person to access records, MacKillop considers the possible impacts of the records on the person and seek alternative ways of providing support. The Heritage and Information Service has a team of four staff and the budget for this work in 2016-2017 will be \$435,000.

1.4 Further information

MacKillop's work is recognised as leading the field. For example, its work has been discussed in *Supporting adult care-leavers; International good practice* by Suellen Murray, *After the Orphanage: life beyond the children's home* by Suellen Murray, John Murphy, Elizabeth Branigan and Jenny Malone and *Building a Life Story: Providing Records and Support to former residents of Children's Homes* by Jenny Glare, Suellen Murray and Jenny Malone.⁵

Additionally, the Hon Jenny Mikakos MP, Victoria's Minister for Families & Children presented the 2016 Robin Clark Leadership Award to Jenny Glare, MacKillop's Manager of the Heritage and Information Service. Ms Glare was recognised for her pioneering work in the release of records to care leavers which has had a profound effect on the lives of thousands of Australians who grew up in former child institutions. The work of Ms Glare and her team has helped former residents to construct their life story, access the information they need to establish a sense of self and identity and reconnect with long-lost family members.

MacKillop warmly invites the Commissioners and Commission staff to visit the heritage display to see first-hand the support that it provides to former residents and their families.

⁵ Suellen Murray, 2015, *Supporting adult care-leavers; International good practice*, Policy Press, Great Britain

Suellen Murray, John Murphy, Elizabeth Branigan, Jenny Malone 2009 *After the Orphanage: life beyond the children's home* University of New South Wales Press.

Jenny Glare, Suellen Murray and Jenny Malone "Building a Life Story: Providing Records and Support to former residents of Children's Homes" *Australian Social Work* vol 61, no3, September 2008

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

- 1 Record keeping about the support provided to a child or young person should be accurate, impartial and complete. The Council supports the principle in the *Records and recordkeeping practices consultation paper* that creating and keeping accurate records is in the best interests of children.
- 2 Comprehensive and accurate record keeping is at the heart of an effective case management system, and it also means that files routinely provide reliable information going forward for pastoral and legal purposes, or should they be required for government commissions of inquiry. Therefore, it is important that relevant documents are retained, that case notes are recorded relatively contemporaneously, and that the electronic data record is consistent with the hard copy equivalent. All case notes should be recorded sensitively on the basis that at some time they may well be accessed by the victim or other persons potentially impacted by the sensitivity of the material.
- 3 Robust record keeping practice should be outlined in organisational policies and procedures that reflect regulatory and legislative requirements and extend to areas such as the security, storage and ongoing access to records.
- 4 MacKillop's experience supporting adults after they have left care has illustrated how records should always be created with the client as an adult in mind. Records related to a child or young person's time in care are important documents that help them understand why they were in care. They can also provide information about the person's life and identity.
- 5 Ideally, record keeping should be viewed as an essential part of the care and support provided, recording milestones, photos and letters, alongside care plans, outcomes and progress.
- 6 In terms of building identity and narrative, the Council believes that when a child or young person enters care, they should be given age-appropriate information about why they are in care. This should also be recorded in the child's file, including notes about how this information was discussed and shared with the child.
- 7 As well as encouraging staff to view record keeping as part of the care provided, it is also important that good record keeping practice is taught and modelled. As part of supervision, managers and coordinators should be required to monitor the practice of case managers.
- 8 Records are used to document incidents involving children and young people. In residential care, "day sheets" and "incident reports" can contain negative and upsetting information. It is therefore important that these records are impartial and accurate as they serve a range of purposes. Release of this information should be done by skilled professionals who are able to provide emotional support and assist in interpreting the records.
- 9 In the education sector in Victoria, it is a requirement under new child safety reforms and specifically [Ministerial Order No. 870 - Child Safe Standards - Managing the risk of child abuse in schools](#) for schools to keep clear and comprehensive notes on all observations, disclosures and other details related to suspected abuse.

- 10 Victorian education sectors have produced a recently updated joint protocol, PROTECT, Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools, involving the Victorian Department of Education and Training (DET), the Catholic Education Commission of Victoria (CECV) and Independent Schools Victoria (ISV) to protect the safety and wellbeing of children and young people. The protocol includes a Template for record keeping for use by staff to document any incident, disclosure or suspicion that a child has been, or is at risk of being abused.

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

- 1 Record keeping practice and privacy law should be taught to students of helping and teaching professions and covered in all training courses including vocational training, tertiary undergraduate and postgraduate degrees (for example, teaching, social work, youth work, community development etc.). This training should be included in both the theoretical and practical elements of the core curriculum. Incorporating this across all training programs will foster a robust practice expressed through future workers, professionals and leaders that upholds the importance of transparency and accountability as well as record keeping.
- 2 Training on the importance of record keeping is needed for new staff within a few days after commencement.
- 3 Such training would also reflect the principle that record keeping about children and young people should be done with the client as an adult in mind.
- 4 Additionally, organisations should support tertiary learning through internal good practice manuals and supervision. Organisations have a duty to ensure the care provided to children and young people is professional, and this includes ensuring that record keeping is undertaken professionally.
- 5 Regular file auditing and review is a useful mechanism to encourage good practice and identify areas for improvement. The frequency of audit should reflect the size and complexity of the records and the perceived risk posed to the quality of record keeping practices (i.e. more frequent audits for those areas of greater complexity or higher risk).
- 6 In out-of-home care, MacKillop has seen good contemporary practice, for example, a carer who writes “letters” for the child’s file that talk about significant activities and experiences (including photos).
- 7 Photographs are useful in files. They should be dated, activities described, and the names of the people in the photo should be recorded.

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

- 1 The development of national standards for record keeping, that would be agreed to by the Australian and state and territory governments and various children's commissioners and guardians is supported.
- 2 Any national standard development needs to consider the standards and accreditation regimes that are already in place across many government funded programs with the aim of minimising unnecessary duplication.
- 3 As state and territory governments also have roles and responsibilities in child protection, it is important that the record keeping practice of their staff should be exemplary.
- 4 Monitoring and reviewing of record keeping practices, including storage and access to records, should occur through the children's commissioners and guardians and like agencies, just as other practice is regulated by those independent agencies.
- 5 The crucial question for care leavers seems to be why they were placed into care in the first instance (see p. 24 of the Consultation Paper). The responsibilities of state and territory governments in terms of record keeping is noted in the Response to Question 3, but this could be expanded to highlight the value of templates for framing and eliciting information from clients for the archival record.
- 6 State government agencies should be providing the data gathering templates to the service delivery organisations to capture the key client information such as incidents of, and the response to, suspicions and allegations of child sexual abuse. Additionally, support should be provided for the development of long-term storage enablers (e.g. the software and the business systems to record the information, the secure data storage on the cloud) to ensure the archival record is accessible over the long term. This would better manage the risks and challenges brought about by the increased reliance on digital technology by small organisations (as highlighted on p. 30 of the Consultation Paper, last paragraph). Innovative digital solutions could be overlaid to provide opportunities for clients to record and maintain their own life story. An example is Annelie De Villiers' proposal for "Designing personal digital archives for children in out-of-home care". This relates to her master's thesis in Archival Systems at Monash University and was previewed on the Find and Connect blog on 27 June 2016 @ <http://www.findandconnectwrblog.info/2016/06/let-me-tell-you/>

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

- 1 Good practice dictates that children and families should have a role in care planning and identifying outcomes. They should also have a role in determining the types of information that is recorded. Mechanisms for doing this include encouraging children to have a say about how staff should record achievements and milestones. When a child or young person expresses ideas and wishes about their care, this should be accurately recorded. Parent's involvement and views expressed in care teams should be included in files.
- 2 In terms of monitoring, record keeping practices, the Council supports the development of a mechanism that involves people with lived experience of care in file audits.
- 3 With regard to the Catholic education sector, schools are entrusted with the holistic education of the child, in partnership with parents, guardians and caregivers, who are the primary educators of their children. This partnership extends to the application of good practice in this area which dictates that children and families should have a role in care planning and identifying outcomes.

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

- 1 All organisations should have clear procedures on the steps to take when a disclosure is made.
- 2 When a disclosure of child sexual abuse is made, information should be recorded on an incident register by the person to whom the disclosure is made. The information should accurately record what the recorder is told. The information recorded should use the words of the person making the disclosure and not substitute words or meaning. The support provided to the person making the disclosure should also be recorded.
- 3 The disclosure should be recorded on the file of the child or young person who has made the allegation, or is the reported victim.
- 4 Information about the report should also be recorded on the file of the staff member, volunteer or other individual against whom an allegation is made. If the allegation is made against another child or young person, the record of the allegation in their file should avoid demeaning or negative language.
- 5 The file should also clearly identify how this information is disseminated, and by which individual, to relevant civil authorities (Police, Child Protection Agencies, Ombudsman), legal advisers, counsellors, investigators, facilitators etc.
- 6 When a report is made to the police or relevant government department, the name of the person to whom the report is made should be recorded, along with information about their role and status/rank within the organisation. Attention should be paid to recording the date of the report and the surname of the individual to whom the report is made.
- 7 A file related to the incident should also be created which records the steps taken in relation to the report, including an investigation.
- 8 Outcomes of investigations should be recorded on client and staff/volunteer files. The existence of an investigation file and a file reference should also be recorded on the client and staff/volunteer files.
- 9 Care should be taken not to destroy files that may contain material relevant to other files.
- 10 Consistent with existing legislative requirements, some staff records are destroyed after a relatively short period of time (for example, seven years). Statutory retention periods in relation to staff records should be extended to take into account the time it takes for people to disclose abuse.
- 11 Schools should have clear procedures on the steps to take when a disclosure is made.
- 12 The Queensland Catholic Education Commission reports schools in Queensland comply with legislative requirements. Record keeping is an important issue for Catholic School Authorities (CSA) under mandatory reporting obligations prescribed by Queensland legislation, including the reporting of child sexual abuse to police. Mandatory reports must be made in writing to the relevant state authorities, and the retention of these documents and associated material is a

required element of the student protection process. Such records are generally retained permanently in secure, confidential locations by CSAs.

- 13 All schools in Victoria have a clear procedure, documented in the joint protocol for schools, [*Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*](#) which includes [*Four Critical Actions*](#) required of schools when responding to incidents, disclosures and suspicions of child abuse. These processes support schools with clear procedures, including record keeping, when a disclosure is made.
- 14 Catholic Education Melbourne has provided further guidance for schools through [*Policy 2.19 Child Protection - Reporting Obligations and Policy 2.19a Police and DHHS Interview Protocols*](#)
- 15 The West Australian Professional Standards Office (WAPSO) uses principles and policies which direct the nature and purpose of the documents including contact and assessment reports, file notes and correspondence. WAPSO suggests national guidelines would help ensure the integrity of the information from the person making the complaint is respected.

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

- 1 Record keeping practice and privacy law should be taught to students of helping and teaching professions and covered in all training courses including vocational training, tertiary undergraduate and postgraduate degrees (for example, teaching, social work, youth work, community development etc. cetera).
- 2 This training should be included in both the theoretical and practical elements of the core curriculum. Incorporating this across all training programs will foster a robust practice expressed through future workers, professionals and leaders that upholds the importance of transparency and accountability as well as record keeping.
- 3 Institutions need to include in staff induction and training the following topics:
 - legal requirements and obligations for record keeping
 - writing skills and writing for purpose (e.g. creating clear and concise records – differentiating between fact and opinion)
 - case practice implications (for example, the reasons that good record keeping is in the best interests of children, young people and families)
 - role of supervision in ensuring good practice in this area.
- 4 Staff need training about the importance of a file as a record of childhood, not just the work that was done to care for the child. Training should reinforce that records are a way for former clients to make sense of their life, and find out why they were in care.
- 5 Staff should also be trained to record balanced information about the child or young person's family. Experiences of positive access visits should be recorded, alongside reasons why an access visit might not have taken place, for example the challenges that the parent may have needed to overcome to attend the access visit.
- 6 The research project titled *Who Am I? Making records meaningful: Research to support archiving and record-keeping in Victorian Out of Home Care* was an action research project looking at the role that records play in building a sense of identity and wellbeing in children in out of home care.
- 7 The project also created resources and training materials that can be used for staff training. It includes vignettes from adult care leavers about their experience of accessing records. This is a powerful way of helping those who create records to be informed about the re-traumatisation that can occur if childhood record-keeping methods are poor. More information about the research and research outputs can be found on the Centre for Excellence in Child and Family Welfare website at:
<http://www.cfecfw.asn.au/know/research/sector-research-partnership/partnership-projects/out-home-care/who-am-i>
- 8 Assistance that institutions can give to staff and volunteers might include templates and shell documents, which can help consistency.

- 9 Schools require clear internal processes for record keeping, including notetaking, storage of files, access to files and communication of information beyond the school, e.g. Catholic Education Offices.
- 10 To ensure consistency, Catholic Education Offices require similar clear internal processes for record keeping with respect to records relevant to child sexual abuse. This includes related misconduct reports held by the Office of Professional Conduct and Ethics/Professional Standards.
- 11 Educational institutions need to include the following topics in staff induction and training:
 - legal requirements and obligations for record keeping
 - writing skills and writing for purpose
 - case practice implications (for example, the reasons that good record keeping is important to the best interests of children, young people and families)

7 How children’s views and experiences can be accurately reflected in records about their childhoods and decisions affecting them

- 1 The practice of creating “Life Books” can be a way of including children’s views and experiences in records about them. In our experience, a Life Book can include artwork, school work, photos, certificates and information about significant milestones. They should be viewed as one part of the child or young person’s records, which contain positive memories. Copies of the Life Book should travel with the child if they move placement and, also, be retained by the agency.
- 2 Staff and volunteers are likely to need training to be able to elicit the views of children and young people and involve them in decision making.
- 3 Templates should include questions to help staff to elicit the views of the children and young people, including:
 - case planning and review documents
 - change of placement documents
 - complaints about care
 - preparation for review of child protection orders.
- 4 Asking for and hearing the views of children and young people in services must be embedded practice. The Council supports the use of client feedback mechanisms (for example “Viewpoint”⁶) to bring the views of the child or young person into the planning process.

⁶ <http://www.vptorg.com.au/>

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

- 1 Institutional records should be reviewed regularly by supervisors. File audit tools can assist by ensuring the views of the child or young person is present in their records and ensure rationale for decisions making is clearly set out. For organisations subject to external standards or accreditation, comprehensive reviews of records should be included in independent monitoring processes.
- 2 With support, young people can be provided the opportunity to review certain parts of their records, for example, planning documents.
- 3 In the school setting part of the internal processes recommended in the Victorian joint protocol for schools, [*Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*](#) includes conducting a debriefing session and a review of the reporting process 4-6 weeks after a report has been made. At the local level, these types of post-reporting arrangements potentially enable the related record keeping associated with an incident to be reviewed.

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).

- 1 Although there may be unintended consequences, the Council affirms the importance of creating and maintaining clear, consistent, regular records, and ensuring they are accessible.
- 2 Staff need to be skilled at managing names and other potentially distressing material which may appear on file. This might include suppression and non-publication orders in the face of legal subpoenas and summonses.

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

- 1 There are resourcing implications for organisations to index historical records.
- 2 MacKillop undertook this work with the support of their founding congregations and grants from the Australian government's Find & Connect service. It has indexed 115,000 records, dating from 1850 to 1997. This was undertaken by two staff members, each working two days per week (approximately equivalent full time 0.8 for 2.5 years). MacKillop estimates that the cost of this was \$1 per individual record.
- 3 The cost of maintaining the MacKillop Heritage and Information Service in 2016-17 will be \$435,000.
- 4 Congregations, predecessor agencies and government share an obligation to ensure that records are indexed and, therefore, searchable.
- 5 Digitising archival records would increase search-ability and reduce the risk of loss.
- 6 In the school setting record keeping is an ongoing task that requires consistency of processes regardless of transitioning staff in an organisation.
- 7 Schools should have local level record keeping arrangements in line with the sector policy.
- 8 There would be significant human and financial resource implications associated with the introduction of a central repository. Such a system would require:
 - Reaching agreement between schools and Catholic education offices about the processes.
 - Large scale database development and ongoing maintenance
 - Training, implementation and quality assurance
- 9 Changes in arrangements must be supported by adequate resourcing to be robust and effective.
- 10 The significant costs associated with maintaining, indexing and storing records and also transitioning records from hard copy to electronic formats (including the ongoing cost of upgrading and updating data as technology improves) should be appropriately reflected in funding agreements.
- 11 The NSW Professional Standards Office, for example has almost from its inception developed discrete computerised databases which sit alongside the hard copy filing system. The computerised systems have been, and continue to be regularly upgraded and enhanced and this has demanded over time a very significant financial contribution from the auspicing NSW Bishops and the NSW Conference of Leaders of Religious Institutes.

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)

- 1 It is important to prioritise the indexing of historical records in which the person to whom the file relates is living, and the records of victims and survivors of child sexual abuse.
- 2 Organisations that hold records that are over 100 years old should consider making name indexes publicly available.
- 3 Prior to any indexing process the following should take place:
 - A survey of such historical records that are held, the volume of such records, the location of the records, the media that the records are held in, the risk of loss of the records, the current accessibility arrangements for certain types of records and others
 - Developing a matrix based on the above of what records are a priority and then ensuring resourcing to process them, a reporting mechanism to trace progress and a review and appeal process to reprioritise as circumstances change.

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

- 1 Any records relevant to child sexual abuse need to be identified. Those records that are identified as either investigation or complaint records need to be classified as such. Any potentially related records that may be subject to discovery in an investigation should have a hold placed on them so relevant access is maintained.
- 2 In all organisations an index/register of all disclosures should be kept, which cross-references relevant client, staff/volunteer and disclosure/investigation files. The index/register should include information about whether a disclosure and investigation is referred to the relevant human services department and/or the police.
- 3 The index/register of disclosures should be searchable by the name of the victim or survivor and the name of the person against whom an allegation is made.
- 4 As well as a register of disclosures, MacKillop also keeps a register of all requests for information from police. This register includes the names of people (for example, a client, staff member or volunteer) whose records are requested by police.
- 5 All requests and their resolution should be kept as part of the history on these records.
- 6 A description of the information provided to the police is also kept. This includes a description of what is provided.
- 7 MacKillop's archives includes a designated storage section for all requests from police investigating child sexual abuse.
- 8 MacKillop also receives requests for information from its founding congregations in relation to compensation matters. When this occurs, it also keep a record of the request.

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

- 1 When an organisation changes “ownership” responsibility for records transfers to the new owner. If organisations change ownership, custody changes to the new owner with all the same obligations. The Council anticipates that social policy reform (e.g. NDIS, service recommissioning or redesign) will continue to create an environment of organisational rationalisation, amalgamation and/or redevelopment. Within this context it is clear that protocols are required to ensure the secure transition of the responsibility for records.
- 2 If an institution closes then custody needs to be transferred to
 - Any organisation that takes custody/responsibility of the rest of that institutions records, or
 - The parent organisation of an institution e.g. if the institution is that of a church, the local diocese inherits custody/responsibility, or
 - If there is no parent or associated organisation or inheriting body for records exists then it is incumbent on government to take custody/responsibility
- 3 If a community service organisation closes, it is appropriate for records to be transferred to an agency with a similar purpose, or to the relevant human services government department, or to a state library or national archives.
- 4 For schools, when a Principal leaves a particular school, the incumbent Principal assumes responsibility for all school records.
- 5 Should a school close, the relevant educational governing authority assumes responsibility for the school records. In the Catholic sector in Victoria, this will involve dual systems and overlaps as required (e.g. the School Congregation and the relevant Catholic Education Office).
- 6 Transfers of records must be supported by resources to create an index system. The Council notes the underinvestment over many years of most Australian governments in the development and maintenance of storage, indexing and accessibility systems for records for both government delivered and funded services. Raising the standards of record keeping practice will have significant cost implications.

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

- 1 The Council supports the principle that former clients should be able to make a notation on their file that it cannot be accessed after their death.

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

- 1 National standards on retention and destruction of records related to child sexual assault would be useful for organisations which operate in multiple state jurisdictions. Records relevant to child sexual assault, as with other elements of a record, should be held for a period of not less than 100 years.
- 2 If an adult victim requests that these records be destroyed at their death, this should be honoured. However, the Council considers it would be appropriate to explore whether it might be appropriate to release photos, dates and addresses, without release of sensitive information as children or other decedents may want access.
- 3 All NSW Professional Standards Office (PSO) files are retained on an indefinite basis. None of their files have been destroyed since the office was established in 1997.

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

- 1 The abolition of statutory limitation periods places a greater responsibility on organisations to retain records that may be used in civil claims. As noted above, files can be requested by victims and survivors of child sexual abuse and also by congregations (in the case of Catholic agencies) wishing to explore compensation matters.

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

- 1 MacKillop's experience working with adult care leavers has enabled its deep understanding of the anguish and heartbreak experienced by people whose records have been destroyed.
- 2 MacKillop formed in 1997. At that time, it committed to retaining and indexing the records of its seven formation services, originally operated by three Catholic congregations/orders. MacKillop has not destroyed any of those records.
- 3 Records should be subjected to mandatory retention periods in particular circumstances, especially where they relate to the separation of children from their families, out-of-home care, foster care and adoption. Often, these records provide the only source of childhood information. This should be available for future generations.
- 4 MacKillop is aware that consistent with existing legislative requirements, some staff records are destroyed after a relatively short period of time (for example, seven years). Statutory retention periods in relation to staff records should be extended to take into account the time it takes for people to disclose abuse. Given the average delay in disclosing child sexual abuse is 22 years the existing requirements regarding the retention of staff records is a significant concern.
- 5 Professional Standards Office (PSO) NSW believes all PSO files held by church authorities should be retained in perpetuity.

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

- 1 If records are destroyed, organisations should be required to keep a detailed register of the nature of the information contained in the record that was destroyed (for example, client file of [name] who was resident at [address] on [dates] or staff file of [name] who was employed on [dates]).
- 2 The register should also include the destruction date and the legislation and organisational policy that authorised the destruction and cross references to any other records (existing or destroyed).

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

- 1 The Access Principles for Records Holders and Best Practice Guidelines provide useful guidance for organisations undertaking this work and could be expanded and used in a range of other institutions.

20 Whether the Access Principles for Records Holders and Best Practice Guideline have resulted in simplified and more open access processes

- 1 The Access Principles have encouraged and promoted good practice. The guidelines are easy to follow and provide a framework for release of information.

21 Whether and how they might be adapted to apply to access to the records of all the institutions within our Terms of Reference

- 1 The Council is supportive of the Principles and Guidelines being adapted for all institutions.

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

- 1 Principles of access and amendment that operate as part of the Australian Privacy Principles should apply to all organisations that currently or in the past provided services for children.
- 2 At the time of collecting information, individuals representing organisations and private institutions should explain the reasons for collection and how the information how it will be used.
- 3 Services are obliged to inform people about what information will be recorded about them.
- 4 Under privacy legislation, people have the right to access their own information and to amend that and make corrections. They may also restrict access of their information to others in particular circumstances.
- 5 Even when a small agency is not bound by law to the privacy principles, they provide a sound framework to follow.
- 6 MacKillop has a liberal approach but does not release information about other people, except if it is information about a parent, and why the children came into care.
- 7 The NSW Professional Standards Office (PSO) notes it complies with privacy guidelines as developed by the National Professional Standards Office for the National Committee for Professional Standards.

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

- 1 The information contained in a person's records belongs to the person. Records should, therefore, be made available without charge. If the costs to an organisation of supporting the release of records is excessive, the Council is of the view that investment should be made by government to reimburse organisations for this important work.

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

- 1 Since MacKillop was formed in 1997, it has developed a model of “supported release” of records to assist former residents read and interpret their files. MacKillop acknowledges that some information contained in files might be distressing for a former client, so it sees it as its role, as the holder of the information, to support the person to review their information.
- 2 Some people experience re-traumatisation when viewing their records. This is not a reason to restrict access, rather it is an opportunity to ensure that the former resident is well supported.
- 3 Support options include face to face support to prepare for the release, at the time of release and regular telephone support following the review of records.
- 4 MacKillop has also developed a practice of allowing former residents to be supported to access their records by an agency other than MacKillop if they are not comfortable with the agency that holds their records.
- 5 MacKillop also offers financial support to former residents travelling long distances to access their records. It provides a warm hospitable space to create a sense of safety and welcome. There is a private meeting space for families and an open kitchen and lounge space with accessible computers.
- 6 Other bodies, such as the NSW Professional Standards Office (PSO), strongly recommend to victims that they seek counselling support when accessing the file.

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

- 1 National standards should guide the practice of redacting. These could be linked to the National Privacy Principles and would give clarity to applicants and institutions.
- 2 Redaction should occur with a clear understanding of privacy law, and the knowledge that information should only be collected for particular purposes and for the intent for which it is to be collected. Best practice would only allow people to have access to the information to which they are entitled to have access.
- 3 However, it is important to note the differences between redaction of a file that has been subpoenaed. MacKillop notes it is obliged to protect the identity of individuals in subpoenaed files in a different way than the way that information is released or redacted for a former resident's access. For example, when a former resident reviews their file it is unnecessary to redact information about their family. However, if the file is subpoenaed for the purposes of compensation, best practice would dictate the redacting of information about their family.
- 4 The standard should allow for the release of information about third parties (and reversing of redaction) if the third party provides permission.

26 In relation to refusal of access and amendment, whether existing exceptions are appropriate in the context of records relevant to child sexual abuse

- 1 MacKillop's practice is to amend files when requested, and place alternative statements into files and make corrections to records. This accords with our view that the record of information about an individual is their information.
- 2 The NSW PSO routinely makes amendments to files when requested and retains the alternative statement on file. However they also retain the superseded record on file.

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

- 1 Ongoing education and staff training about the proper application of third party privacy exceptions is always required as is ongoing training in all aspects of release of records.

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

- 1 The Council supports the five principles that have been developed to guide organisations in ensuring best practice in record keeping and promoting access to records, but suggests that a sixth “enforcement” principle is unnecessary (please see notes in relation to a two-tiered approach).

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)

- 1 While sporting clubs and volunteer run organisations do not have the same responsibilities in relation to record keeping as other institutions (for example out-of-home care and schools), they will have a range of relevant regulations in relation to record keeping if they are incorporated associations and should keep sound records of allegations of sexual abuse and actions taken in relation to allegations.
- 2 A two-tiered system would be appropriate to deal with different organisation types although care must be taken to ensure it does not result in inconsistent or confusing responses to requests for access to institutions operating under different compliance obligations.

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

- 1 The Council views the concept of an advocacy service for victims and survivors of child sexual abuse favourably. Some people need support to “navigate” the system and help to identify and make contact with relevant organisations.
- 2 MacKillop frequently provide this advice and support.
- 3 It would be appropriate to add this to the functions of an existing advocacy/support organisation (for example care leaver’s support).

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

- 1 The Council agrees that the functions of an advocacy service could be as described in the Consultation Paper on page 47.

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

- 1 There are a number of advocacy/support organisations that might fulfil this role. Many already play an important part in operating as brokers to assist people to locate and access their childhood records.
- 2 The introduction of Find & Connect has improved access to records for Forgotten Australians, including assistance to locate records and ongoing support for those accessing records.
- 3 The Care Leaver's Australia Network (CLAN) also plays an important role supporting care leavers to access records.
- 4 Tuart Place in WA is also provides records advocacy services.
- 5 It is important that people wanting to find and review their records be given a choice about using an advocacy service, and access to their records should not be denied on the basis of that choice.