

Guidance for identifying and retaining records which may become relevant to an actual or alleged incident of child sexual abuse

Purpose

This document provides guidance to Australian government agencies (referred to in this advice as institutions) to support the recordkeeping-related recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIIRCSA).

In particular this guidance addresses Recommendation 8.3:

The National Archives of Australia and state and territory public records authorities should provide guidance to government and non-government on identifying records, which, it is reasonable to expect, may become relevant to an actual or alleged incident of child sexual abuse; and on the retention and disposal of such records.

Where applicable this guidance can be voluntarily adopted by non-government institutions.

The Final Report of the RCIIRCSA, containing all the recommendations, can be viewed at <https://www.childabuseroyalcommission.gov.au/final-report>.

Responsibilities

Australian government institutions must ensure that official records are created as evidence of government business and that those records are managed for as long as needed and disposed of appropriately.

Australian government institutions must abide by the recordkeeping legislation, policies and record retention decisions issued by the archives and records authorities in their jurisdiction. Website links for Australian government archives and records authorities can be found at the end of this guidance.

For non-government institutions it is equally as important to manage records as evidence of business activity to meet business and stakeholder needs for the documented information. Non-government institutions can use government recordkeeping advice as a resource and adopt or adapt that advice as suits their regulatory and business environment.

Principles for records and recordkeeping

The RCIIRCSA recommended (Recommendation 8.4) that all institutions that engage in child-related work should implement the following principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution:

Principle 1:

Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.

Institutions that care for or provide services to children must keep the best interests of the child uppermost in all aspects of their conduct, including recordkeeping. It is in the best interest of children that institutions foster a culture in which the creation and management of accurate records are integral parts of the institution's operations and governance.

Principle 2:

Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.

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

Records created by institutions should be clear, objective and thorough. They should be created at, or as close as possible to, the time the incidents occurred, and clearly show the author (whether individual or institutional) and the date created.

Principle 3:

Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.

Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained in an indexed, logical and secure manner. Associated records should be collocated or cross-referenced to ensure that people using those records are aware of all relevant information.

Principle 4:

Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.

Records relevant to child safety and wellbeing, including child sexual abuse, must only be destroyed in accordance with records disposal schedules or published institutional policies.

Records relevant to child sexual abuse should be subject to minimum retention periods that allow for delayed disclosure of abuse by victims, and take account of limitation periods for civil actions for child sexual abuse.

Principle 5:

Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.

Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.

Individuals should be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.

Full and accurate records

A record is an object or item that contains information or from which information can be reproduced and which is created or received in the conduct of an institution's business. Records can be in a variety of formats including paper, digital (email, word document and database), photograph, film or plan. Records can be created or received through many different channels including social media platforms and mobile devices.

Institutions must create and keep full and accurate records. These records provide evidence of the actions, decisions and advice of that institution. For a record to be trusted and reliable an institution must ensure that it remains a true and accurate account of what occurred, that the record has not been altered without authorisation, that the records' authenticity can be assured and that it is accessible.

The importance of maintaining good records is heightened in areas of high importance or risk such as the protection of children and investigation into incidents and allegations of child sexual abuse.

Many records relating to the provision of services to children are likely to contain sensitive or personal information. It is important that institutions take necessary steps to ensure these records are stored in a secure manner, with access limited to authorised staff only. Access to sensitive records must be monitored and documented. There must be mechanisms in place to report suspected or known breaches.

Assessing Institutional Risk

Each institution is different and will have different levels of risk associated with the provision of its services to children. Services that involve children may be regular or ad hoc. Institutions need to carefully assess what records need to be created and retained as evidence of their interaction with children in order to protect the interests of the child.

There are costs associated with retaining records so that:

- They are secure from unauthorised access
- They are held in conditions where they will not be damaged over time
- They can be identified and accessed when required.

Institutions need to balance this against the likelihood or risk of there being an allegation or incident of child sexual abuse. For instance, an institution might be at higher risk if one or more of the following apply:

- Children are cared for by your institution
- Children may be in the care of a single employee
- Children may be in an environment away from parents, guardians or public scrutiny.

Identification of records that may be of relevance to an actual or alleged incident of child sexual abuse

If your institution is advised of an actual or alleged incident of child sexual abuse, records which are likely to be of relevance include:

- Letters, emails or other records making an allegation or in relation to an allegation (where notification occurs verbally then a file note should be made of the allegation or report)
- Incident reports and witness statements
- Records of meetings or discussions (including notes)
- Case files and other records of the child who is alleged to have been abused (for example school attendance and admission records, work experience and placements, reports of accidents and injuries, medical records, counselling records)
- Relevant personnel and work placement records, including records relating to volunteers (for example counselling, mediation, and discipline records, travel records, minutes and agendas of meetings)
- Records which inform on a relevant person, in a place at a particular time (for example rosters, attendance sheets and permission slips, employee contracts, leave requests, off-site visits, day-trips and excursions)
- Relevant worker employment records including personnel files and terms of employment
- Reports or other records received from medical practitioners, health professionals, teachers, counsellors and other such third parties
- Records documenting actions taken to address allegations and cases of sexual abuse of children including reviews of actions, cases or decisions by external authorities
- Records documenting support to and remedial action for the child who is alleged to have been abused – for example records of claims, assessments reviews, and appeals.

The RCIIRCSA discovered that it takes survivors of child sexual abuse, on average, 23.9 years for them to disclose the abuse.¹ Therefore institutions need to consider which records should be retained because it is reasonable to expect that they may, now or in the future, become relevant to an actual or alleged incident of child sexual abuse

Such records could include:

- Children's case files
- Child attendance or registration records
- Carer's case files
- Records documenting the operations and monitoring of individual out-of-home care providers such as qualifications, working with children clearances, suitability assessments, details of other people living in or frequently visiting carer households, complaints and investigations of complaints
- Workers employment records, including period of time employed and places worked
- Complaints and discipline records relating to workers
- Records outlining programs of service and how services are delivered
- Evaluation records of services, comments or complaints
- Agreements, contracts, joint venture agreements, memoranda of understanding related to the care of children (including outsourcing arrangements); and
- Policies, procedures, reporting mechanisms and training material relating to the provision of services, particularly services to children

Not all institutions have the same level of risk that an incident or allegation of child sexual abuse could occur. Each institution is likely to have different records that may be relevant to a current or future child sexual abuse incident or allegation. This is likely to depend on the type of services provided to, and nature and extent of interaction, with children.

It is imperative that institutions understand the context within which they provide services as this will help determine which records may be relevant to a current or future investigation. It is important that institutions undertake an assessment of what these records may be and ensure they are managed according to risk as well as business, stakeholder and legislative requirements. This should include any relevant services which have been outsourced.

Institutions also need to be aware that records that relate to general operations (and not specifically to services delivered to children) may become relevant to an actual or alleged incident of abuse.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Recordkeeping and information sharing*, Volume 8, Commonwealth of Australia 2017, p. 79.

Creation of records as part of a response to an allegation

In the case of an actual or alleged incident of child sexual abuse, the institution should:

- Create a full and accurate record to document the allegation /incident, how this was investigated, responded to and managed. This should be clear, objective and thorough and created as close as possible to the time that the incident occurred or the allegation was made;
- Identify and include supporting records (or a copy of them) in the incident/investigation record. This includes records of evidence; and
- Create and capture contextual information about the supporting records, for example the original reference numbers of any files, or parts of files, which have been copied and included.

Institutions should refer to the five principles recommended by the RCIIRCSA to guide their recordkeeping practices.

Retention and disposal

As part of maintaining records as evidence of business activity it is important that institutions consider and document how long records should be retained. Retention decisions should be based on an analysis of business and stakeholder needs for the information, including protection of rights and entitlements. These decisions will be influenced by the services provided, risks to be mitigated by retaining the information, and the legislative environment within which an institution operates.

Each government archives and records authority in Australia issues retention decisions in documents which are called 'records authorities', 'records disposal schedules' or some variation of these titles. Australian government institutions need to comply with the retention periods set out in the records authorities/records disposal schedules issued for their jurisdiction.

The RCIIRCA recommended (Recommendation 8.1) that institutions that engage in child-related work should retain for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred.

The Australian government archives and records authorities have been working to ensure that retention periods within their jurisdictions meet this recommendation. Depending on the context of a particular institution, or the extent to which particular records can support the interests of child sexual abuse victims and survivors, including to support redress, retention periods may be longer than 45 years. Australian government institutions should contact the relevant archives or records authority in their jurisdiction to seek advice about how long relevant records should be retained.

Website links for Australian government archives and records authorities can be found below.

Further information

Each of the Australian government archives and records authorities provides records and information management advice for government institutions within their jurisdiction. This advice supports implementation of the five recordkeeping principles recommended by the RCIIRCSA. The advice is written within a specific regulatory and legislative context to assist government institutions within that jurisdiction manage their records and information.

This advice is primarily delivered through the websites of the Australian government archives and records authorities. To the extent that it is applicable, it can be voluntarily adapted by non-government institutions to assist with records and information management. The advice should be adapted to suit the size of an institution and the context within which it operates.

Website links for Australian government archives and records authorities:

Commonwealth of Australia	<u>National Archives of Australia</u>
Australian Capital Territory	<u>Territory Records Office</u>
New South Wales	<u>State Archives and Records Authority of New South Wales</u>
Northern Territory	<u>Northern Territory Archives Service</u>
Queensland	<u>Queensland State Archives</u>
South Australia	<u>State Records of South Australia</u>
Tasmania	<u>Tasmania Office of the State Archivist</u>
Victoria	<u>Public Record Office Victoria</u>
Western Australia	<u>State Records Office of Western Australia</u>