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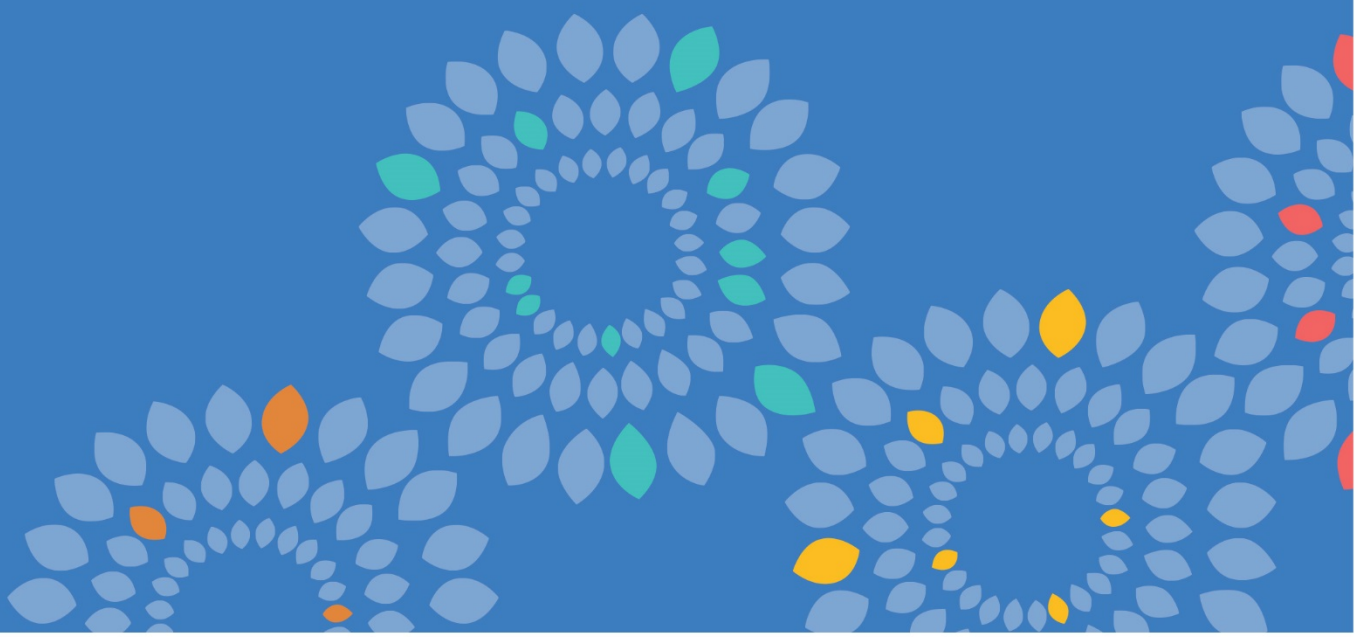
Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation paper on records and recordkeeping

17 October 2016



INTRODUCTION

knowmore is a free, national legal service established to assist people engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse. Advice is provided through a national telephone service and at face to face meetings, including at outreach locations. **knowmore** has been established by the National Association of Community Legal Centres, with funding from the Australian Government, represented by the Attorney-General's Department. Our service is multidisciplinary, staffed by solicitors, counsellors, social workers and Aboriginal and Torres Strait Islander Engagement Advisors, and is conducted from offices in Sydney, Melbourne, Brisbane and Perth.

Our service was launched in July 2013 and since that time has assisted over 5,500 clients. The majority of those clients are survivors of institutional child sexual abuse.

Our service has regularly assisted clients seeking their personal records and information. This has been done for a variety of purposes, including to assist clients in their engagement with the Royal Commission, and to assist clients we are referring to other lawyers for further advice around redress and compensation claims.

knowmore is committed to ensuring its clients are supported to minimise likely triggers and re-traumatisation through their engagement with our service. For some of our clients, the idea of applying to obtain their records from government or the institution(s) where they spent part of their childhood, and suffered abuse, can bring up past experiences and cause significant distress, even before the records are accessed and read.

Among our client group, the records most commonly sought are those relating to time in care (government and non-government), health, justice, education and redress. To access these different records it will often be necessary to make multiple applications. These applications will often have different requirements for the application detail, consent and identification processes.

The ease with which records can be obtained may also depend on where the applicant lives; whether they have access to a computer; their literacy level; whether there are mental health issues which make completing the application form difficult; and whether they have stable housing, and therefore an address, where the records can be sent.

Finally, accessing and reading records has the potential of triggering significant memories of the past. Strong feelings of disappointment, mistrust and suspicion can arise from what is in the records and from what has been redacted. For some clients, their records may be inaccurate or incomplete; the language used (reflecting the times when the records were created), may now be perceived to be demeaning or insulting.

To date, over 22% of our clients have identified as being Aboriginal or Torres Strait Islander people, and many of the comments in this submission have been informed by our experience of working with and assisting Aboriginal and Torres Strait Islander clients. It has been the experience of **knowmore** that accessing records for the purpose of establishing identity will often be of particular importance for these clients. Some of **knowmore's** Aboriginal clients have told us that they had no knowledge they were Aboriginal until they received their institutional records, which revealed their cultural heritage. Many survivors who identify as Aboriginal or Torres Strait Islander people lost contact with their family and cultural heritage

as a result of being removed from their families and placed with white families, or institutions run by non-Indigenous people.

In responding to the Royal Commission's Consultation Paper,[1] **knowmore** acknowledges the extensive amount of research that has already been undertaken. In providing this submission **knowmore's** focus has been to add organisational-specific reflections and examples, and/or additional content or ideas where helpful, rather than revisiting the thorough and comprehensive content already produced in the Consultation Paper. **knowmore** will also provide responses under the broad headings of the five principles, as opposed to responding to individual questions. The questions have been used as a way of informing the responses to the five principles.

[1] Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper on Records and Record Keeping* (September, 2016)

LIST OF RECOMMENDATIONS

1. CREATING AND KEEPING ACCURATE RECORDS IS IN THE BEST INTERST OF CHILDREN

Recommendation 1.1 Consistent with the Royal Commission's views, that the United Nations Convention on the Right of the Child be adopted as the underpinning foundation for all legislation, policy and practice in relation to records and recordkeeping about children.

Recommendation 1.2 That all approaches to records and recordkeeping in relation to children be based on practice principles that are child inclusive, person-centred, trauma-informed and culturally secure.

Recommendation 1.3 That consideration be given to making mandatory the National Standards for Out of Home Care in relation to recordkeeping, and that services be audited against these standards as part of quality assurance requirements.

Recommendation 1.4 The role of government at national and state levels in relation to record and recordkeeping be inclusive of legislative and contractual regulatory roles.

Recommendation 1.5 That all relevant staff in institutions and organisations (including volunteers) receive comprehensive training regarding the importance of good records and recordkeeping practices.

Recommendation 1.6 That the role of consumer participation be given full consideration for the review and enhancement of record and recordkeeping practices.

2. ACCURATE RECORDS MUST BE CREATED ABOUT ALL DECISIONS AND INCIDENTS AFFECTING CHILD PROTECTION

Recommendation 2.1 That records relating to child sexual abuse should be kept as accurately and in as much detail as possible.

Recommendation 2.2 All recordkeeping for children should be linked to the organisation's relevant risk assessment, case management frameworks and internal case review/auditing processes.

Recommendation 2.3 All case files relating to children should consider not only what the institution or organisation requires but also what the child might want to know as an adult.

Recommendation 2.4 That all government and non-government services be required to meet as a minimum the National Standards for Out of Home Care, as those standards relate to records and record-keeping.

Recommendation 2.5 That the confidentiality of records detailing child sexual abuse be respected, and that those records not be released to third parties without the consent of the person whose records they are, other than in exceptional circumstances (such as where a court determines that the records be produced).

3. RECORDS RELEVANT TO CHILD SEXUAL ABUSE MUST BE APPROPRIATELY MAINTAINED

Recommendation 3.1 That previously successful projects through Find and Connect for the restoration, indexing and archiving of historical records be reviewed to assist other record holders in arranging and maintaining their records.

Recommendation 3.2 That the priority for indexing and archiving of historical records should be based on the age of the documents and likely age of those requesting them.

Recommendation 3.3 That all governments assume an interest in the records of institutions or organisations dealing with children to ensure their records will be stored in accordance with best practice. If the service is ceasing but sits within a non-funded institution such as a church, that the diocese or similar authority retain responsibility for the records. Where no such options exists, that the State archives be made available to store and release (in appropriate circumstances) such records.

4. RECORDS RELEVANT TO CHILD SEXUAL ABUSE MUST ONLY BE DISPOSED OF SUBJECT TO LAW OR POLICY

Recommendation 4.1 That urgent steps be taken to establish standards and practices for the digitisation of all records relating to child sexual abuse.

Recommendation 4.2 That until records are stored digitally, that minimum retention periods be established for records of child sexual abuse. That these minimum retention periods allow for the delayed disclosure of child sexual abuse.

5. INDIVIDUALS' RIGHTS TO ACCESS AND AMEND RECORDS ABOUT THEM CAN ONLY BE RESTRICTED IN ACCORDANCE WITH LAW

Recommendation 5.1 Records about a person should be made available to them free of charge, and in the most timely, least intrusive manner possible.

Recommendation 5.2 That governments consider allowing funded services to allocate current funding or to allocate additional funding to support the enhancement of records and recordkeeping (or record release) practices.

Recommendation 5.3 That supported record release practices be seen as highly specialised.

Recommendation 5.4 That redaction standards should be nationalised and monitored across government and non-government institutions with the establishment of key principles.

Recommendation 5.5 That the Department of Social Services' paper Access to Records by Forgotten Australians and Former Child Migrants be considered as a foundational document to guide current and future recordkeeping standard, practices and supported record release work.

6. SUBMISSIONS ON POSSIBLE SIXTH PRINCIPLE DIRECTED AT ENFORCING THE INITIAL FIVE PRINCIPLES

Recommendation 6.1 That the enforcement of the first five principles be considered as essential for future records and recordkeeping practices.

Recommendation 6.2 That any such enforcement should demonstrate clear links to the service/institution's risk assessment and case management frameworks wherever possible, to ensure quality recordkeeping and the adoption of best practice principles.

Recommendation 6.3 That funded, non-government, state-based records advocacy services be funded by government, either through the continued funding of existing, specialist services such as Find and Connect or through additional funding of similar service models for contemporary care leavers and others seeking records relating to their childhood abuse.

Recommendation 6.4 That the core functions of such services could include information and referral, records access, supported record release, networking and systemic advocacy capacity, with a strong consumer participation framework.

1. CREATING AND KEEPING ACCURATE RECORDS IS IN THE BEST INTEREST OF CHILDREN

The best interests of the child is one of the fundamental principles underpinning the rights of children pursuant to the United Nations Convention on the Rights of the Child (UNCROC),[2] to which Australia is a State party. The creation and keeping of detailed and accurate records is intrinsic to children's rights to name, nationality and family relations, as enshrined within the Convention.[3] It is also inherent to their rights to protection from and effective responses to all forms of child abuse, including child sexual abuse.[4]

The founding principles for the creation and keeping of accurate records in the best interests of children need to reflect the UNCROC and be based on practice principles that are child inclusive, person-centred, culturally secure and trauma-informed. We need to be asking the question – what does 'getting it right' look like?

Accurate and detailed records will be vital to compile at a later date that child's medical, educational and legal history. Records also might bring therapeutic benefits to those who have been in institutional care. These include establishing their identity, making sense of their experiences, discovering why they were in the care of an institution, locating family members or discovering what the institution did to assist them.[5]

It is clear from our clients' experiences that the lack of available, detailed or accurate records relating to their time in institutional care can be highly distressing and re-traumatising, particularly where feelings of being uncared for and abandoned are triggered. The absence of records or poor record keeping practices will also have an adverse impact on survivors' prospects to pursue any legal rights they may have arising from the abuse they suffered while in care, including police reporting and claims for compensation.

Case study – K was removed from her parents care as a young child and placed in Institutional care. She asked **knowmore** to assist her in finding records from the institution. When those records were available **knowmore** staff were able to sit with K to go through the records. The issues for K were:

- no indication that she was residing in the same institution as her siblings;
- no identification of her Aboriginality;
- despite numerous formal reports to authority regarding her abuse in care, there was no documented evidence provided within the records; and

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[2] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

[3] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Articles 7(1), 8(1)

[4] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Article 19

[5] We have previously made submissions about these issues and the importance of appropriate record-keeping in our submission responding to the Royal Commission's Issues Paper 4 *Preventing sexual abuse of children in out-of-home care,* at p.9. All of **knowmore's** previous submissions to the Royal Commission can be viewed at http://knowmore.org.au/resources/issues-papers/

- there was no record of her interactions with health services. K suffers with significant hearing problems for which the institution never sought medical help. The only medical records available were psychiatric records, which labelled K troublesome, slow and difficult to manage, possibly due to her neglectful background, and her parents' inability to provide adequate care.

In our response to the Royal Commission's Issues Paper 7: *Statutory victims of crime compensation schemes,* **knowmore** provided the following commentary and example of the importance to Aboriginal and Torres Strait Islander survivors of having access to knowledge of cultural heritage:

> *"….many of **knowmore's** clients talk about the sadness of losing contact with their family and their cultural heritage. This is especially an issue for many Indigenous clients who were removed from their families and placed with white families or in institutions run by non-Indigenous people.*
>
> *For many survivors removal from their parents was accompanied by ongoing separation from their siblings, with family contact often discouraged. Many survivors do not know who their family is, have incorrectly believed their parents to be dead, or cannot find their relatives. It is critical that survivors be given assistance to locate and reconcile with family members.*
>
> *This is particularly significant for Indigenous survivors, many of whom were taken from their families under government policy at that time, and are members of the Stolen Generations. **knowmore's** Indigenous clients regularly talk about loss of family, language and culture. **knowmore** has assisted an Aboriginal man who was removed from his mother's care at a young age, by the relevant State department, and later sexually, physically and emotionally abused while 'in care'. He ultimately established a life outside Australia, returning decades later 'in search of his Aboriginality':*
>
> "I came home to claim my Aboriginality. I was deprived of my Aboriginality. I was culturally dislocated. People don't understand the cultural complexity of Aboriginal life".[6]

As identified in the *Bringing them Home* report, Aboriginal children who were forcibly removed from family, kin and community have very little information or documentation explaining why they were removed from their parents. Many of the records found within state and territory archives may show that a person was in receipt of some type of payment or located within an institution; however, it is common that there is little information which is relevant or useful in a search for answers about kin, culture or community connectedness, and/or offer any reason for removal.

[6] **knowmore** Submission (Issues Paper 7, *Statutory victims of crime compensation schemes*) to the Royal Commission into Institutional Responses to Child Sexual Abuse, at p.16

The issues identified in the *Bringing them Home* report have been reflected in the experiences of some of **knowmore's** Aboriginal clients who have attempted to access their records. It is not uncommon for our Aboriginal clients to discover that no records can be located, despite extensive searches.

Building of a culture

There needs to be an awareness within institutions that good records and recordkeeping enhance the safety of and minimise the risks for children. Training for staff in government and non-government institutions about records and recordkeeping would assist in facilitating and fostering a culture which values good records and recordkeeping practices.

Consistent with the experiences of the Royal Commission, as outlined in the Consultation Paper,[7] **knowmore** has heard many stories from clients of the damaging impact of poor-record keeping. It is not uncommon for clients to have the distressing experience of either being told that no records can be located at all, or that the only information that exists is a one page document recording admission and discharge dates. Furthermore, for those clients where records can be located, those records may be incomplete and missing significant information.

Many of our clients have expressed the wish that their records had contained information about their medical history, their school reports and importantly photographs. For many, the reality is that their records contain little or no information of this type.

Case study – One client of **knowmore,** who spent ten years in various Catholic homes, obtained his records, which showed only his admission and discharge dates. There was no information about what had happened to him during those ten years. The impact of this lack of information was profound; the client felt that he had been of no worth as a child, and that no-one really cared about him.

Case study – Another **knowmore** client had applied to obtain her Ward file, because she wanted information about her family and had hoped that it might contain some photographs. There were no photographs on her file and it didn't contain any information that would assist her to locate her family members. When she later was able to do this through other means, she discovered that she had siblings who had been placed in the same institution as her, yet she had not been told that at the time and there had been no record of this on her file.

Case study – We are aware of a survivor who cherishes a rare photograph she possesses, which was taken of her as a young girl in an orphanage where she spent many years. The photo depicts the young girl smiling and in the company of other children. The survivor explained that she treasures the photograph as it reflects that there must have been times, contrary to many of those that she remembers, where she was happy and shown friendship by other children.

[7] Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper on Records and Record Keeping* (September, 2016) at p. 9.

Training of staff

Training for staff should cover the various purposes for which records might be needed, and the principles and legal requirements associated with good record keeping, maintenance, storage and supported release.

The importance to and potential impacts on care leavers who will later have access to those records should be incorporated as a key part of any training program. The training should also cover the importance of good record keeping for enhancing safety and minimising risks for children. We address issues specific to training regarding child sexual abuse in our response to Principle 2 proposed by the Royal Commission, below.

Training programs should include a strong cross-cultural awareness component, with an emphasis on culturally safe and sensitive record keeping practices.

Training should be mandatory as part of any induction process but also ongoing. Such training must be afforded priority by any institutions with responsibility for care, supervision or authority in relation to children. Training activities and staff participation should be recorded and reported against, for accreditation and monitoring purposes.

Role of government

Governments can and should play a key role in creating and keeping accurate records. In the first instance all government organisations should be audited to ensure they are meeting best practice standards. The National Standards for Out of Home Care[8] sections on record-keeping should be reviewed for their applicability across all areas of record-keeping requirements for children, with a view to making them mandatory. Flowing from this it should be a contractual requirement of all government funded services that as a term of their funding, funded services must meet best practice standards for recordkeeping.

Consideration should be given to attaching legal responsibilities to record-keeping and attaching penalties for failures to meet those responsibilities.

Role of children, parents and others

knowmore supports the need for children's views and experiences to be recorded as part of any model of best practice concerning record keeping practices involving children.

Survivor support groups such as the Alliance for Forgotten Australians and CLAN can and do provide valuable insights into the legacy of poor records. Institutions both government and non-government with responsibility for care of children, should be encouraged to facilitate consumer reference groups who can provide ongoing input regarding the issue of records and recordkeeping practices.

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

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Recommendation 1.6 **That the role of consumer participation be given full consideration in the review and enhancement of record and recordkeeping practices.**

2. ACCURATE RECORDS MUST BE CREATED ABOUT ALL DECISIONS AND INCIDENTS AFFECTING CHILD PROTECTION

Article 19 of the United Nations Convention on the Rights of the Child sets out the rights of children to be protected from all forms of physical, mental and sexual abuse, as well as their rights in relation to identification, reporting, investigation and treatment of, and response to, such abuse.[9] Accurate and detailed record-keeping is vital in facilitating the effective detention and investigation of child sexual abuse in accordance with Australia's obligations under the Convention.

We have noted in previous submissions that in the context of child sexual abuse, proof of offending can be problematic, especially in historical cases. Where an institution's records are in existence, they are unlikely to document the abuse. Poor and non-existent record keeping by institutions has adverse impacts upon clients' prospects of successfully obtaining compensation for abuse suffered in an institutional context and in holding offenders to account.

It has been the experience of clients of **knowmore** that the absence or paucity of records has meant many prosecutions have not been able to proceed. For our clients this has been particularly difficult; to be advised that an offender cannot be prosecuted because of insufficient evidence compounds their distress.

In its Response to Issues Paper 5 – Civil Litigation, **knowmore** detailed the importance of records to survivors' prospects of seeking compensation:

> *"Legal claims relevant to child sexual abuse, and the ability of lawyers to provide timely and accurate legal advice to clients about their rights regarding those claims, are vitally dependent on the existence of and access to relevant institutional records. There are many evidentiary and practical reasons for why this is so, including:*
>
> - *at the most fundamental level, records may establish the presence of the plaintiff in the relevant institution, thus identifying relevant defendants. We have spoken with clients whose claims for redress have faltered, almost at the outset, when met with a claim by the institution that "we have no record of you ever being here" (either because there are no records relating to that specific client, or no records whatsoever relating to that institution and/or period);*
> - *records may contain direct evidence of sexual abuse or injury, such as contemporaneous police reports, forensic samples or health records;*
> - *due to the age of the survivor, the lack of witnesses and delay in complaint, records are often the only way to corroborate a client's version of events with probative inferences, such as identifying behaviour symptomatic of sexual abuse, periods of hospitalisation; the presence of the claimant in an institution at the same time as*

[9] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Article 19

when a proven offender was known to be employed and committing sexual abuse of other children, and so on;

- *records may also be the only way to establish a client's version of events or instructions, as the client may not be able to recall the abuse due to lapse in memory (whether lost or repressed), due to the level of trauma accompanying the memories and/or the passage of time (often decades);*
- *records might contain further lines of inquiry or reveal potential witnesses or factors that might explain delay in commencing proceedings;*
- *records might identify the offender;*
- *lawyers may not be prepared to assist a client with a claim unless the basis of the claim is sufficiently communicated to them."* [10]

The varying standards of proof in criminal, civil and institutional redress processes are also relevant in the context of the capacity of records to support a survivor's claim.

For example, the Catholic Church in its institutional redress scheme *Towards Healing* states:

> *"The assessors shall review the evidence for the complaint, examine the areas of dispute and make findings about whether they consider the complaint to be true on the balance of probabilities, based upon the evidence available at that time."* [11]

When a survivor has little or no documentation in the form of records to support their claim, there is an impact upon their prospects of success. The approach of the Catholic Church in its *Towards Healing* protocol can be compared with the approach taken by Anglicare Sydney, which applies the *"more likely than not"* standard in relation to claims of abuse. In practice, records establishing that a survivor was at an institution at the same time as the alleged offender assist greatly to meet this latter standard of proof.

However, despite the differing standards of proof under the Anglican and Catholic schemes, the importance of basic records in establishing a claim is evident.

As noted above, the absence of corroborative records can also impede a client's ability to obtain legal assistance. We said the following in relation to this issue in our response to the Royal Commission's Issues Paper 5, Civil Litigation:

> *"The most pronounced difficulty is access to, and the existence of, records and other documentary evidence. Obtaining records is often key to verifying the client's account, obtaining instructions and assessing a claim's merit. The existence of these records is often important to persuading a firm to take on a matter. Many clients report that they have, throughout their life, attempted to seek advice from solicitors about the*

[10] **knowmore**, submission responding to the Royal Commission's Issues Paper 5 *Civil Litigation,* at pp.17 - 19.
[11] Clause 40.9 of the *Towards Healing* principles and procedures

potential of seeking compensation. Clients have routinely reported that the advice received is that there is not enough corroborative evidence…." [12]

We also said the following regarding the links between records and potential claims:

"Clients may also need support in accessing their records for the purposes of seeking legal advice. Clients have reported that when they have sought assistance from lawyers in relation to possible avenues of compensation available to the, this advice is often given without the solicitor considering any records that may be held by government and non-government agencies, where many solicitors are unwilling to assist clients in accessing these records and clients are unable to access their own records or unaware as to how to do this. One client reported that he was told by a solicitor to access his records and then come back to that practitioner for subsequent advice. That client reported that they were unaware as to how to access such records, so "gave up" on his attempt to seek compensation." [13]

What records are to be created relating to child sexual abuse?

It is a given that records relating to child sexual abuse should be kept and in as much detail as possible. However, the records need to be created with a view to not only what the institution requires, but also what the child might want to know as an adult.

At a minimum these records need to detail the following for children in out-of-home care (OOHC):

- the dates, times and names of visitors and the relationship of the visitor to the child;
- the names and addresses of their foster parents and times they were placed there;
- any medical, educational, psychological, legal and court reports; and
- statements of complaint made by the child.

It is important that consistent language be used. This information would identify key information, capturing areas of potential risk and actual harm including grooming activities, exposure to pornographic materials and other identifiers of risk that may be important to be noted.

All contemporary record-keeping for children receiving services and for those who are in OOHC should be linked to organisational risk management and case review frameworks. Little is to be gained in having highly detailed records that highlight the risks that are being observed for a child, if there is nothing done about addressing those risks.

[12] **knowmore**, submission responding to the Royal Commission's Issues Paper 5 *Civil Litigation,* at p.28
[13] At p.28

Language of the records

It is very important that the records be written in language which is non-judgmental, sensitive and respectful. In many of the records **knowmore** has obtained on behalf of survivors, what information there is has been recorded in language which is insensitive (although arguably reflective of the times).

Case study – One client who was put in care at an early age read in his records that he had been taken into care because his mother was 'subnormal'. The client was extremely distressed to read this reference, commenting that had he been born in Germany in the 1930's his mother *"would have been exterminated."*

Case study – Another **knowmore** client told us that she suffered severe psychological injury after reading her State Ward file. The file contains a handwritten note (undated and unsigned) about the client which includes the words *"short term plan find her and shoot her"*. The Department investigated the matter at the client's request and reported that it was unable to identify who had written the note.

Although the aforementioned are among the more extreme examples, many other clients have had to read records which described them in very negative terms such as 'sub-standard', 'delinquent', 'retarded', 'low intelligence', 'manipulative', 'disturbed' and 'horrible'. Such language reflected the institution's view that the child was of very little value to society and that the child was unlikely to succeed in life.

While it has been rare in **knowmore's** experience of working with survivors who have accessed their records, for there to be any information recorded about their sexual abuse, we have seen instances where information has been recorded, which again can be inaccurate, misleading, framed in insensitive terms and/or in ways that deny or minimise the abuse or the impact upon the child.

Case study - **knowmore** assisted a client who ran away from home aged nine years old with another boy of the same or similar age. An adult male offered the two boys a ride in his car and then proceeded to indecently expose himself to them. The boys escaped and notified police. The version of the incident in the client's State ward file states that the client and the other child *"participated in acts of a homosexual nature".* The client was made a ward of the State following that incident.

Aged ten years, the same client and other boys were sexually abused by a staff member at the boys' home where he had been placed. The client says that he and the boys reported the incident and that this had been a distressing experience. The version of the incident documented in the client's ward file refers to him participating in a "sex orgy". The records go on to state:

> *"each boy admitted he was a willing participant to the indecencies. None admitted shame or humiliation in relating their experiences, in fact they spoke freely and I believe they would relish the notoriety they would gain from the experience of Court proceedings and any press publicity involved. X, prior to his admission to the Department, had received money from men for acts of gross indecency ……..*

…….It appears, therefore, that little or no serious moral harm has been occasioned."

The client was extremely angry and distressed about the inaccuracies the records contained and the manner in which his sexual abuse had been characterised and minimised. He found particularly offensive the suggestion that he had been a willing participant in the abuse and that it had not caused him any harm.

In our submission responding to Issues Paper 10 *Advocacy and Support and Therapeutic Treatment Services,* **knowmore** said:

> "*that all language used should be considered in terms of its primary audience; the people we support. Often, organisations can think more about the context of other professionals who may read their material; it has been* ***knowmore****'s experience that the ways in which people are written about (whether they are the intended reader or not), can have a profound impact on their lives. We believe therefore that the people we support should always be considered the primary reader of any terminologies, records or other documents."* [14]

Training needs

Staff, including volunteers, need to be trained in the understanding of key terminology and how to record information as accurately as possible about children, detailing both actual and potential child sexual abuse. The training should incorporate information about the behaviours that constitute all forms of sexual abuse, including grooming behaviours. It should also incorporate the risk factors and barriers to disclosure for children, both within an institutional context and more generally.

This training needs to sit alongside training regarding the legal responsibilities of institutions and individuals associated with those institutions, regarding recording and reporting instances of child sexual abuse.

In our submission responding to Issues Paper 4 *Out of home care* we said:

> *"From the experiences related by many of our clients, we believe that training in complex trauma is an essential requirement for all service providers working with children who might have experienced sexual abuse. An understanding of complex trauma and the ways in which this manifests for children who have experienced abuse and neglect can lend itself to more compassionate, timely, informed and effective responses to disclosures or indicators of sexual abuse, and consequently mitigate the risks of children becoming further traumatised through uninformed care and response practices.*

[14] **knowmore**, Submission to Issues Paper 10, *Advocacy and Support and Therapeutic Treatment Services*, at p.24

It is critical that such training be ongoing and afforded priority by OOHC providers. The devastating impact of sexual abuse upon a child mandates that such training be given high priority. It is not enough that training is delivered on a one-off basis as part of induction (although all induction training should include a component of this type) and then not repeated or refreshed during a worker's career. It should be conducted in person (not on-line or simply through the provision of reading material), and be inter-active and involve scenarios so that staff can relate the training and learnings to their individual roles, and the needs of the children in their care. All managers must participate, to show leadership and to help bridge gaps between procedure and actual practice, and organisations must allocate appropriate resources to support such training activities." [15]

Training programs should also include a strong cross-cultural awareness component, particularly in light of how cultural norms and customs may impact upon children's understanding and disclosure of sexual abuse.

Reflection of children's views and experiences

Any case file about a child needs to also reflect the whole of a child; all children, no matter how terrible their childhood may have been, are always more than just the sum of abuse or the bad things that have happened to them. Consideration needs to be given to the construction of files that highlight risk and harm but also positive events and life stories, as identified in the Consultation Paper.[16]

Children's views and experiences need to be recorded. When children are cared for at home, their parents are the holders of stories about childhood experiences. They tell the child about happenings that the child might be too young to remember; i.e. *"…when you fell out of the tree and hurt your back…"*, or what they achieved *"…you won third place…"* Whenever authorities are acting *in loco parentis*, they should be charged with the same responsibilities.

Children in out of home care often do not receive birthday or Christmas cards or presents, have parties or get invited to special outings. Any such experiences should be recorded and cards and invitations kept as part of that record.

It should not be beyond the resources of organisations using foster carers to include training in creating life story books. This would also be a positive exercise for any of their own children living at home. It needs to be made clear that these books are owned by the child, not the carer. As children are often moved between carers or from one institution to another, their life story book should form part of an inventory of the child's personal belongings. The transfer form could be expanded to include a checklist of personal belongings that accompany a child.

[15] **knowmore**, Submission to Issues Paper 4, *Out of home care*, at pp.6-7
[16] At p.21

The DSS paper *Access to Records by Forgotten Australians and Former Child Migrants* talks about documenting the care leaver's story:

> *"The records that document time in care may represent a very different view of reality to that perceived and experienced by the Care Leaver themselves. Recordkeeping of the past was a bureaucratic process, designed to serve the needs of the organisation or institution, not the people documented in the records.*
>
> *The Care Leaver should be encouraged to annotate or add to the record, by creating their own account of their time in care, to include with the organisational record. This enables Care Leavers to present their view of the events documented in the organisational file. The annotation/addition will be located with the organisational record/s and always be presented with the organisational record when future access is allowed.*
>
> *Such annotation of/addition to personal records is allowed under the legislative Privacy and Freedom of Information/Right to Information regimes in many states and territories."* [17]

While the above focuses on older care leavers who may want to amend the official record, there is no reason why children, still in out of home care, should not be given the opportunity to add their experience (either in writing or audio) to the records.

More specifically regarding sexual abuse, we said the following in our response to the Royal Commission's Issues Paper 4 *Out of home care*:

> *"Over and over our clients have recounted that no-one cared about them, or the abuse they suffered, often over periods of years. No-one followed up on their welfare or when they left one form of institutional care for another (e.g. foster care, or were moved to another foster care family). This facilitated both commission of sexual abuse and the offenders remained undetected – no-one knew or cared to ask the child.*
>
> *While an exit interview is certainly a good idea, in terms of gathering both general and specific information from children about their experiences, which may in turn lead to service delivery improvements, children who experience child sexual abuse in OOHC will often be offended against well before they leave the institutional setting. Regular interviews and independent, accessible disclosure mechanisms during the time the children are in OOHC, are better means of obtaining timely information about behaviours that may be concerning and indicative of sexual abuse."* [18]

[17] At p.18
[18] At p.7

Monitoring

All funded providers of services to children should have built into their practice standards, by government and/or through their auditing process including Quality Assurance audits, the obligation to meet the requirements for records and record-keeping as per the National Standards for OOHC, or other agreed government standards. These standards should include consumer participation and review principles.

Unintended consequences

It is generally accepted that the keeping of detailed records relating to child sexual abuse will be of benefit to clients in criminal or civil proceedings they may instigate. However, there can be a risk that detailed records of institutional child sexual abuse may be subpoenaed or discovered by parties in legal proceedings other than those initiated by the survivor in relation to the abuse. **knowmore** is aware of situations, for example, where clients' institutional files (containing psychiatric reports) have been produced in victims of crime proceedings only then to be used against those same clients in family law proceedings.

Case study - **knowmore** assisted a client whose institutional records relating to her sexual abuse in State care were discovered in legal proceedings she initiated against the Traffic Accident Commission many years later following her involvement in a serious car accident. The records were used against her to minimise her claim for damages in the TAC proceedings, on the basis that pre-existing trauma she had suffered as a child was primarily responsible for her pain and suffering.

Recommendation 2.1 That records relating to child sexual abuse should be kept as accurately and in as much detail as possible.

Recommendation 2.2 All recordkeeping for children should be linked to the organisation's relevant risk assessment, case management frameworks and internal case review/auditing processes.

Recommendation 2.3 All case files relating to children should consider not only what the institution or organisation requires but also what the child might want to know as an adult.

Recommendation 2.4 That all government and non-government services be required to meet as a minimum the National Standards for Out of Home Care, as those standards relate to records and record-keeping.

Recommendation 2.5 That the confidentiality of records detailing child sexual abuse be respected, and that those records not be released to third parties without the consent of the person whose records they are, other than in exceptional circumstances (such as where a court determines that the records be produced).

3. RECORDS RELEVANT TO CHILD SEXUAL ABUSE MUST BE APPROPRIATELY MAINTAINED

Resourcing implications

Resourcing implications are acknowledged for historical record holders, however these cannot and should not be prioritized over the rights of the people, about whom the records are written, to gain access to them.

The Find and Connect model of funding projects concerned with sorting and archiving historical records should be examined for replication. A similar process could be offered again via Find and Connect or another government organisation to institutions with historical records. Best practice standards could be established at the same time to ensure the records were easily accessible.

Indexing of historical records

Priority in indexing historical records should focus on those records most likely to be requested. The records most likely to be requested with some degree of urgency are those for older people – those in care in the 1940's, 1950's and 1960's. These records would relate to government and non-government institutions who cared for children during those decades.

It is unlikely that any process for indexing historical records would involve a detailed examination of notes. This being the case, a consistent approach to highlighting anything relating to child sexual abuse should be determined. For contemporary records this should done in accordance with the National Standards for OOHC or something similar. For historical files, national guidelines should be developed to enable a consistent approach to be adopted when these files are indexed and notations made about child sexual abuse.

Indexing of files to enable them to be located and retrieved

The indexation of all files should include information about where the files will be stored should the service be closed. This requirement could be mandated for government institutions and a mandatory requirement for any institution receiving government funding. **knowmore** noted in its submission responding to Issues Paper 5 *Civil Litigation*:

> "*Despite the importance of records, a frequent complaint we receive from clients is that government and non-government institutions have lost or cannot locate their records. The older the record, the more likely it is that the record cannot be retrieved. Our experience in locating and retrieving clients' records confirms our clients' complaints.*" [19]

[19] At p.18

knowmore also noted in its Response to Issues Paper 11, *Catholic Church Final Hearing:*

> "*Many missions no longer exist, have changed hands, or have failed to keep adequate or any records – factors making it incredibly difficult for a survivor to 'prove' that they were at a particular institution at a particular time, or to 'prove' what happened to them."* [20]

The DSS paper *Access to Records by Forgotten Australians and Former Child Migrants* highlights the complexities associated with good-keeping and storage:

> *"Records of the past can be complex. They are often an interconnected set of records. To be able to find a particular file it may be necessary to investigate indexes, registers and supplementary finding aids that direct searchers to files. Files can change their numbering over time as different people and systems are introduced. This change of numbering can make the older index and register entries invalid.*
>
> *It may require considerable knowledge of the organisational context of the records to be able to work out where records may have ended up, if the originating organisation is no longer in existence. Sometimes Records Holders have done the archival investigative and descriptive work to know these things. Sometimes this work is still to be done, but known about, and sometimes in the absence of knowledge of the records, there is little to no organisational knowledge of where record relating to Care Leavers may be found."* [21]

It is essential that as well as archival investigations, comprehensive training and possibly a mentor system might well be needed to safeguard against loss of corporate knowledge as people invariably move on to other sections, other departments and other occupations.

<u>When an institution closes or changes ownership</u>

Where a service which is closing is within a faith-based institution, the indexation of the files should reflect that the file is to be located within the peak body within that institution. For example, for a service operating within the Anglican Church, Sydney Diocese, the index for the records should reflect that the location and retrieval of the records will become the responsibility of the diocesan office.

Where an institution without any peak body ceases to exist, the indexing of those records should reflect that the records are now within the care of the State Archives.

[20] At p.4
[21] At p.48

Recommendation 3.1 That previously successful projects through Find and Connect for the restoration, indexing and archiving of historical records be reviewed to assist other record holders in arranging and maintaining their records.

Recommendation 3.2 That the priority for indexing and archiving of historical records should be based on the age of the documents and likely age of those requesting them.

Recommendation 3.3 That all governments assume an interest in the records of institutions or organisations dealing with children to ensure their records will be stored in accordance with best practice. If the service is ceasing but sits within a non-funded institution such as a church, that the diocese or similar authority retain responsibility for the records. Where no such options exists, that the State Archives be made available to store and release (in appropriate circumstances) such records.

4. RECORDS RELEVANT TO CHILD SEXUAL ABUSE MUST ONLY BE DISPOSED OF SUBJECT TO LAW OR POLICY

Despite the importance of records, a frequent complaint we receive from clients is that government and non-government institutions have destroyed their records. Our own experience in attempting to retrieve clients' records confirms our clients' experiences. Institutions often claim that records were destroyed in natural disasters such as floods or in fires or the relevant State Archives authorised destruction. Nothing can undo these historical practices despite how detrimental they are to client wellbeing and claims for compensation.

Record destruction (with or without authority),[22] particularly with respect to members of the Stolen Generation, will place survivors at significant disadvantage when attempting to collate documentary evidence proving their connection to the institution where they were abused.

It is a reality that some who suffer abuse as children, for a variety of reasons, will be unable to make timely complaints. The trauma suffered will inevitably cause some survivors to suppress memories of the abuse, or inhibit their capacity to take action, for many years. The Royal Commission's 2014 Interim Report states that the average age of disclosure for survivors who had engaged with the Royal Commission was 22 years from the time of the abuse.[23] Although we have not specifically collected data in relation to the average age of first disclosure of abuse by our clients, most have not disclosed until many years or decades later. Indeed, we have had clients in their eighties and nineties disclosing their experiences of child sexual abuse for the first time.

Even with the most supportive institutional environments and accessible complaint mechanisms, historical complaints about child sexual offending will continue to be made. Record-keeping systems must therefore be established and maintained in a way that recognise and respond to that reality, as well as the other and multiple needs of the children in institutional settings, the provider and monitoring and evaluation agencies.

We note that limitation periods for claims relating to child abuse have been removed in Victoria, New South Wales and the Australian Capital Territory and proposed reforms are currently before Parliament in Queensland.[24] A Private Member's Bill to abolish limitation periods has also been introduced in Western Australia.[25] If there is nationwide reform of limitation periods, we support consideration being given to whether relevant amending legislation should be enacted to extend record retention periods and suspend or revoke destruction authorisations for certain classes of records relating to children in institutional care settings. Such records might include police reports and forensic evidence, court records

[22] Commonwealth of Australia, Senate Standing Committees on Community Affairs, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* (August 2004), at pp.262-268.
[23] Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report Volume 1*, June, 2014, at p. 6
[24] *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill* 2016 (Qld)
[25] *Limitation Amendment (Child Sexual Abuse Actions) Bill 2015* (WA)

related to sexual abuse, health records, schooling records and records related to a child's time in state care.

Currently, different legislative requirements regarding retention and destruction of public records apply both within and between different jurisdictions throughout Australia. It is also the case that most non-government organisations are not subject to legislative requirements regarding retention or destruction or records. In the interests of addressing these disparities, we propose that any implementation of mandatory national standards for both government and non-government institutions regarding record-keeping practices includes uniform obligations regarding the retention and destruction of documents.

In view of the established thinking now around delayed disclosure of abuse, any uniform standards for record keeping practices should provide for minimum records retention periods that allow for delayed disclosure.

It is acknowledged that mandatory requirements regarding minimum records retention periods may place a higher burden on small not-for-profit institutions. However, these issues can arguably be addressed by taking into account the size and resourcing of the relevant institution in the development of standards to which respective agencies should be held.

As part of any mandatory national standards for record keeping and management, institutions with responsibility for care, authority or oversight in relation to children should be required to maintain registers of records they destroy, when those records were destroyed, and upon what authority. There should be a requirement of annual reporting in relation to the destruction of records and compliance audits conducted by the relevant Office of the Information Commissioner or Ombudsman.

knowmore has heard from a limited number of survivors who have expressed that they do not wish for institutions to retain their records indefinitely. Some survivors want their records destroyed and others want to access to their records but do not want any information about them to remain in the control of the institution responsible for their abuse and in whom they have no trust.

In recognition of the differing views of survivors, we reiterate the view expressed above that Institutions (both government and non-government) with responsibility for the care of children, should be encouraged to facilitate consumer reference groups who can provide ongoing input regarding this issue and others.

knowmore listed as a recommendation in its Response to Issues Paper 5, *Civil Litigation* the following:

> *"That improved digital records management standards and practices be implemented across Australia for government and non-government records that are likely to be relevant to claims of child sexual abuse, including:*
>
> *a. the removal of State Archive record destruction authorities;*
> *b. compliance audits by the relevant Office of the Information Commissioner or Ombudsman."* [26]

[26] At p.5

We would now suggest that there be included an additional point, namely *"the implementation of uniform and minimum records retention periods that allow for delayed disclosure of abuse."*

Recommendation 4.1 That urgent steps be taken to establish standards and practices for the digitisation of all records relating to child sexual abuse.

Recommendation 4.2 That until records are stored digitally, that minimum retention periods be established for records of child sexual abuse. That these minimum retention periods allow for the delayed disclosure of child sexual abuse.

5. INDIVIDUALS' RIGHTS TO ACCESS AND AMEND RECORDS ABOUT THEM CAN ONLY BE RESTRICTED IN ACCORDANCE WITH LAW

Access Principles for Records Holders and Best Practice Guidelines

In 2015 the Commonwealth Department of Social Services (DSS) released the publication, *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing access to records* ('DSS Access Principles and Guidelines').

The DSS Access Principles and Guidelines, while to be commended, were developed for a specific category of survivors, namely care leavers seeking access to records concerning their time in state based out of home care. They do not apply to all public or non-government agencies which may hold records relevant to institutional abuse survivors, notably those whose abuse did not occur in an OOHC context. Furthermore, despite the introduction of the Access Principles and Guidelines, it has been the experience of some clients of **knowmore** that many of the complexities associated with applying for records identified in previous reports[27] remain a barrier to meaningful access for care leavers.

i. Application processes

One of the barriers to accessing records from the outset for many survivors will be their anxiety and reluctance about engaging directly with the institution responsible for their abuse. Indeed, some survivors may be too traumatised by their experiences to even contemplate that prospect, while others have expressed concerns about whether the institution may still have ties to the offender who abused them. Indeed, **knowmore** has been confronted with a situation where in attempting to access records from a local Catholic Diocese, it became apparent that the offender named by the client may have been the representative responding to the initial telephone inquiry.

The processes for accessing records required can differ significantly between private and public agencies, between different government departments within each State and Territory, as well as across jurisdictions. The differences include the application forms to be completed, the costs associated with applying, and the forms of identification required. Particularly for survivors who may have lived in more than one institution, this can be confusing and frustrating to navigate. In the absence of consistent processes and procedures, applicants will continue to struggle to understand the full measure of documentation available and what they are entitled to, and to exercise rights of review when applications are not handled as they should be.

The phrasing of a request for personal information can be critical to the type and amount of information released to survivors. Anything not specifically requested will not be released even if it is relevant and releasable to the applicant. On the other hand, a request that is too

[27] See for example, National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families (1997), *Bringing them Home*, Commonwealth of Australia; Senate Community Affairs References Committee (August, 2001), *Lost Innocents: righting the record – report on child migration*, Commonwealth of Australia and Senate Community Affairs References Committee (August, 2004), *Forgotten Australians*, Commonwealth of Australia

broad in scope such as *"I want all of my records",* is likely to be rejected because it is not specific enough.

It should also be recognised that many clients lack the capacity and personal resources to pursue access to their records without assistance. Survivors with literacy issues, limited education or whose mental or physical health has been severely impacted by their experiences will be particularly disadvantaged.

The application process can also be adversarial, or at the very least intimidating to survivors, with some non-government agencies requiring requests for records to be directed to their legal representatives including where no application for compensation has been made.

knowmore supports the need for consistent national processes for requests for records relating to children in institutional contexts, applicable to both government and non-government institutions. The processes should be consistent in terms of the application process, identity requirements and costs. Broadly speaking, **knowmore** supports the implementation of the DSS Access Principles and Guidelines in relation to both private and public institutions with responsibility for care or oversight regarding children.

ii. Cost

While right to information schemes in most jurisdictions will allow clients to access personal information for free, the provisions are inconsistent among States and Territories. The Department of Families and Communities, NSW and the NSW Police, for example, will not agree to waive application fees for applicants in prison.

Further, while a fee may not be applied to some records, such as ward files, it may cost to access other information, such as hospital, police and education records. In the case of many government departments, an application fee may be waived on the grounds of financial hardship, but applicants will still be charged for copying and production of documents. Those associated costs may be considerable and prohibitive for many survivors. In the case of one **knowmore** client, for example, a request was made for records from Justice Health NSW. Although the application fee was waived on the basis of financial hardship, there was no applicable waiver for the costs of $200 to produce the records.

knowmore has been able to obtain medical, police, court and other institutional records on behalf of many survivors that these clients may not otherwise have been able to obtain, by meeting the expenses associated with production of the documentation.

knowmore supports the adoption of principle 4 of the DSS Records Access Principles and Guidelines, that there should be no application fee, copying or other charges for access to records containing personal information. This principle should be enshrined in the development of mandatory record keeping and management standards applicable to all government and non-government institutions with responsibility for care of children.

iii. Delay

Further, in our experience, accessing records, especially files from state child protection agencies, can take considerable time. In the case of one State child protection agency, **knowmore** has assisted survivors who have had to wait between 9 to 12 months from the date of the initial request to receive their ward files. This is despite the governing Freedom of Information legislation providing for release within 30 days. In these particular instances, the agency relied upon an exception that allows for delay where a large number of documents are sought, such that compliance with the time frame would unreasonably divert resources from use by the agency in the exercise of its functions.

knowmore has furthermore assisted several survivors where similar provisions have been relied upon by various government agencies throughout Australia as a reason for refusal to grant release in full or within legislated time frames. In some cases, survivors have been asked to reframe their application so as to request their file in several parts. FIND, a Victorian Department of Health and Human Services records service for care leavers, for example, will only allow requests to be made for up to 500 pages at a time. For clients who have been in state care most of their childhood and in respect of whom extensive volumes of records exist, several requests may need to be made before the file is released in its entirety. In many of those cases, this can add to extensive delay in production of the entirety of the material to which the survivor is entitled. It is not uncommon, for example, for a State Ward file to have be requested in parts over several months.

Within the context of a possible criminal prosecution or civil claim, any such delay may contribute to delay in the legal processes. The ability for the client to receive proper legal advice on the prospects of a claim for compensation will also be adversely impacted.

In other cases where we have made applications on behalf of clients, we have been directed by the relevant agency to revise the request in order to reduce the volume of material sought. Such requests can be difficult for survivors to understand and, to be effective, require a working knowledge of the way the relevant agency records and categorises information. It may also mean that survivors could potentially be denied access to documents of probative value for the purposes of criminal or civil proceedings. Survivors have also reported feeling aggrieved that they should be denied access to the entirety of their records on the basis of convenience to the agency.

iv. *Proof of identity requirements*

The identity documentation required as part of the application process can vary widely across institutions and State and Territory governments. It has been the experience of some of **knowmore's** clients in prisons in particular that identity requirements associated with applying for records can be unduly restrictive.

Case study – **knowmore** has assisted an Aboriginal women in prison, who has spent most of her childhood in foster care. She sought access to her NSW ward file but did not have the required (or indeed any) identity documents. The client was furthermore unable to apply for her birth certificate from the Registry of Births, Deaths and Marriages in Queensland where

she was born, as she was also unable to meet the proof of identity requirements of that agency.

It is common for survivors in prison not to have access to identity documents. For example, some clients have no documents as they are currently awaiting their hearing and the police have retained their identity documents; or they may have been sentenced, but their identity documents are with a family member or former partner who they are unable to contact.

In some States, applicants in prison are able to meet proof of identity requirements for some government agencies by production of a certified copy of their prisoner identity card. However, different requirements may apply depending on which State or Territory the applicant is presently incarcerated in.

Case study – **knowmore** has assisted a client incarcerated in regional Victorian centre to obtain records from his time in State care in Queensland. In this case the client was required to produce identity documents certified by a lawyer or a Justice of the Peace. The prison had no staff with either qualification, and difficulties associated with sourcing assistance within the region (e.g. from visiting lawyers), proved extremely challenging. A **knowmore** lawyer ultimately travelled to visit the client to certify the documents, comprising nearly a day trip. If the client had been incarcerated in Queensland, the proof of identity requirements to obtain the same records would have enabled him to have a copy of his prisoner identity card certified by an authorised corrections officer within the prison.

Furthermore, even in some states where the relevant government agency has been willing to accept the client's prisoner identification or a statutory declaration verifying the applicant's identity signed by a Corrections Officer, not all prisons are willing to provide those documents. Further, this type of identification is not accepted in other jurisdictions and by all institutions.

Recognising the importance of identity documents in verifying the identity of the applicant, there should still be some mechanism for the applicant to request that the provision of identification be waived in prescribed circumstances. The prescribed circumstances could also include categories of survivors known to be disadvantaged by proof of identity requirements, such as applicants in prison.

Standardised requirements applicable to private and public institutions concerning the identity documents required to access records would significantly reduce confusion and difficulty for survivors, and for those advocating on their behalf.

In our response to the Royal Commission's Issues Paper 5, we recommended that consideration be given to the States and Territories introducing uniform right to information schemes to ensure consistent processes for survivors in accessing records, including with respect to fees (allowing for fee reduction or waiver on all records) and identity requirements. We further recommended that there should be priority access for clients requesting records for the purposes of litigation or other redress claims.[28]

[28] **knowmore** Submission (Issues Paper 5 –*Civil Litigation*) to the Royal Commission into Institutional Responses to Child Sexual Abuse, at p. 18

knowmore further recommends that private institutions with responsibility for care, supervision or authority regarding children also develop processes for accessing records in line with any standardised right to information scheme applicable to State and Territory government agencies.

Refusal of access and amendment of records

We have acted for clients in a number of cases where access to relevant records has been withheld initially.

Case Study – The client was sexually abused by a teacher. As an adult she reported the sexual abuse to the police in her state. The police tried to locate the alleged perpetrator and it was found several years later that he was living overseas. The alleged perpetrator subsequently returned to Australia but died before he could be apprehended. The client wanted information on the circumstances of his arrival in Australia and the steps the police took to apprehend him once he had arrived back in Australia.

knowmore requested records from the Australian Federal Police (AFP) for this purpose. The AFP provided a record of the alleged perpetrator's arrival in Australia, but redacted most of the document so it was effectively meaningless. On instructions we appealed via the internal review process. The initial decision was affirmed and no further information was disclosed. We then appealed to the Office of the Australian Information Commissioner (OAIC) which resulted in parts of the document been disclosed. The appeal process took several months resulting in considerable stress to the client. It obviously would have been preferable for all of the relevant information to be disclosed at first instance.

The perpetrator's date of birth and date and place of arrival in Australia remained redacted on the basis of privacy for third party information. The client instructed that this information would have assisted her in understanding the circumstances surrounding the alleged perpetrator's arrival in Australia, and the time lines.

knowmore has also assisted survivors in applications where the records received have had large paragraphs redacted, on the grounds of preserving the privacy of third party information, sometimes almost to the point of rendering the source documents incomprehensible. Where large paragraphs of information have been redacted, it can be difficult to discern the nature of the information and the reason it has been redacted. This is particularly so where provisions of the relevant FOI or RTI legislation are quoted in explaining the reason for the redaction without any additional clarification specific to the client's records; i.e. the communication may refer to a refusal to release information under the privacy provisions of the relevant legislation, but without specifying that the information was about another child.

Extensive redactions can also lead survivors to question whether the institution is deliberately attempting to conceal information from them, as well as heightening feelings of mistrust and

distress. The negative impact on many survivors of redactions and incomplete records is profound.

This is particularly the case where the redacted information concerns third parties who are in fact family members of the applicant survivor. **knowmore** has sighted documents on survivors' institutional files where there have been redactions from records like handwritten letters from a parent, of (already known) family details such as names. These instances can be deeply upsetting for people, who understandably view any such episodes in the broader context of childhood separation from their family members.

Case study – in one case, the institutional file contained a handwritten letter to a client from the client's mother which was signed *"Your loving* (redacted)". Not only had the client never received the letter as a child, they had been told their mother had abandoned them and never tried to contact them. The client was devastated that they couldn't have a copy of the letter addressed to them, that had their mother's name on it. This then brought up significant distress from the past about the client's relationship with their mother, and who they thought she had been.

Distress can also be caused to survivors where documents contain intrusive 'release' markings on personal records.

Case study - in a case involving a **knowmore** client, the relevant child protection agency had stamped "IP RELEASE" across her school scrap book, family drawings and a childhood photograph of the client from her ward file. The photograph was the only childhood picture she had from her time in care and was furthermore a black and white photocopy.

Some of **knowmore's** clients have also been asked to obtain consent of family members for the release of information in their records, on the grounds of third party privacy requirements. This can be incredibly distressing for some survivors, particularly those who may not have had contact with the relevant family member since they were in institutional care, if at all. Many may have fractured relationships with the relevant family member. In other cases the third party may be deceased. Clients have reported that the request in itself has been triggering, not only because of the relationship they have with those third parties, but also due to distress about being denied access to even basic information about third party family members.

Case study - a **knowmore** survivor was advised by a state child protection agency that her ward file contained a letter that her mother had written to the institution about her, but the document would only be released with her mother's permission or upon confirmation that she was deceased. In this case the client had experienced significant abuse at the hands of her mother and had not had contact with her for many years.

Many survivors accept that information relating to third parties needs to be kept private and that likewise they would be unlikely to want information about themselves released to a third party. Many survivors are concerned that someone within an institution, who is a stranger to

them, has the power to determine what they can and cannot know about their life and the abuse they experienced.

The DSS Records Access and Best Practice Principles set out the following Principles regarding access to personal information and third parties:

> ***Principle 1: Maximum provision of access to records***
> *Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves, their family, identity and connection; circumstances surrounding placement in care; and details of time in care.*
>
> ***Principle 2: All information about themselves, and core identifying information about close family***
> *Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at minimum, include name, community of origin and date of birth where these are available.*

"Sensitive personal information about others" is described elsewhere in the DSS Access Principles and Guidelines as information, the release of which may potentially cause distress to others, with examples listed:

- psychiatric evaluations of family members
- beliefs in relation to religion
- political affiliations
- personal habits
- information about other family members divulged by one person.[29]

knowmore supports consideration being given to the adoption of those principles more broadly to apply to records held by all government and non-government institutions with responsibility for care or supervision of children. Redaction standards should also be nationalised, and training given to the application of these standards for all staff responsible for determining records access requests.

[29] Commonwealth Department of Social Services, *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines* (June 2015)

knowmore supports principles that:

- focus on the person for whom the records are about when applying redaction principles;
- provide the minimum amount of redaction required to protect third party privacy;
- view removal of essential words rather than entire paragraphs or pages as best practice in terms of redaction;
- provide as much information on what is redacted without releasing the information:
- leave the names of immediate family members including siblings and parents in records; and
- do not apply 'stamping' or other official release identification practices to things such as report cards and photos; and to wherever possible supply colour copies of these records.

knowmore also supports consideration being given to amending the *Privacy Act 1988* (Cth) to make the Australian Privacy Principles, relevant to information access and amendment applicable to all private institutions that care for or provide services to children. The obvious difficulty with the alternative of enabling small private institutions to 'opt-in' to the Australian Privacy Principles scheme is that some may not be minded to do so.

Case study – **knowmore** has had experience of a private institution declining to comply with the Australian Privacy Principles where they were not required to do so. In this case, we assisted a survivor who experienced abuse at an independent school. The school refused to release his records on the grounds that they were created prior to the *Privacy Act 1988* (Cth) coming into effect and that the records had not been used or disclosed since that time. The letter added that the request to access the records was declined on the basis of legal advice received.

Supported release

knowmore recognises the need for person-centred, trauma-informed and culturally secure practice principles in relation to supported record release processes. The right of the survivors to make decisions about their records and how, when and where to read them, and whether or not they have support to do so, is recognised as central to any such process. Many people will require support for practical reasons, including literacy, and many will also require support for their emotional and psychological well-being.

Revisiting records from the past can be a re-triggering experience for many clients who experienced institutional abuse and this can be particularly so if they contain distressing information about which the client has no prior recall.

Case study - A **knowmore** social worker assisted a client whose records contained information that he had been sexually abused by a parent and sibling. The client had no recollection of the abuse and up until receipt of the records his relationship with his sibling had been amicable. The client was particularly distressed not only to learn of the abuse but also how that knowledge might impact his relationship with his sibling.

Case study - The value of supported release is also highlighted through the experience of a **knowmore** client who had the opportunity to read through his ward file with the support of his sexual assault counsellor. The client found aspects of the information in the file very distressing, as there were many aspects of his childhood that he was not aware of prior to reading the file, such as having suffered brain damage at birth. As he had a counsellor present while viewing the file, he could discuss the troubling aspects with her and she was able to reframe some of his negative reactions in a more positive light. Even though the information he discovered as an adult was challenging for him, overall he found that his ward file answered some important questions and he was able to gain some closure after reading through his file. Importantly, the benefit to the client of reading through his ward file would have been greatly decreased if he did not have a counsellor present to draw out the positive aspects of his past and to discuss troubling aspects of his file with him.

The aforementioned scenario is to be contrasted with that of survivors in prison, most of whom will not have access to trauma informed counsellors or other support staff available to view their records with them.

Case study - **knowmore** requested State ward files for a client in prison. Some of the content was very distressing and although we were able to warn the client about this, he insisted on receiving his records as soon as possible. The client found the process of reading his files extremely difficult and would have benefited from support through this process. In particular, he was not aware of the full extent of his parent's rejection of him prior to reading the file. However, as he was incarcerated, there were no available support services to assist him while he read through his records.

knowmore furthermore supports the practice principles and guidelines outlined in section five of the DSS Records Access Principles and Guidelines, regarding the specifics of supported record release for institutional records relating to the care and supervision of children. In particular, Principles 7 and 8 below are proposed as underlying principles regarding supported release, with modifications to ensure their applicability to all private and public institutions with care, supervision or authority regarding children:

> ***Principle 7: Records will be provided in context and applicants alerted to possible causes of distress***
> *Every applicant will be advised of the nature and context of the information provided and the possibility of distress that may result from accessing records about them.*
>
> ***Principle 8: Right to know about support and assistance services***
> *Every applicant has a right to receive information, both orally and in writing, at the time of application about appropriate support and assistance services available to them and be encouraged to use supported access services.*

At a very minimum, applicants should be warned that the content of the records may be potentially distressing and provided with referrals to appropriately qualified counsellors or records advocacy services that can assist them with viewing their records.

Case study - Most child protection agencies now provide some information to this effect in their covering letter to care leavers releasing records. The correspondence that the Department of Health and Human Services in Tasmania, for example, currently provides information for survivors under varying headings. These include General File Information; a Summary of Your File; Personal Information; Overview of Legislation; and Supports Available. The Department's 'General File Information' section includes an acknowledgement that reads:

> *"Older records may contain language which reflects past attitudes that may sound judgmental and offensive. A significant shift in thinking and practice has occurred in recent decades and such language and attitudes are no longer acceptable."*

Case study - the Families SA covering letter advises that clients may find the sensitive information in their records potentially distressing, and provides contact details for Relationships Australia. We have also seen correspondence for historical files that includes an apology for *"the poor quality of the records which often become faded or discoloured when copied."*

We also make the observation that in the interests of making the records as easy for people to follow as possible, it would be beneficial for institutions to provide records in order, from the earliest document at the very front of the file and the most recent at the back. Many institutions currently provide records in the reverse order which can be difficult for survivors

to follow. We note the General File Information section of the DHHS Tasmania covering letter (mentioned above) also provides an instruction to read the file from the back to front, in order to read the documents in date order.

The copying should also be one sided, so that personally important documents can be separated from documents that might harbour unwanted memories.

Case study - **knowmore** is aware of a survivor who received 340 pages of records, photocopied front and back, and found that a letter she sent to her mother had been photocopied backward, and the first and last pages were on the reverse side of institutional documents noting her transfer from one place of incarceration to another.

Recommendation 5.1 Records about a person should be made available to them free of charge, and in the most timely, least intrusive manner possible.

Recommendation 5.2 That governments consider allowing funded services to allocate current funding or to allocate additional funding to support the enhancement of records and recordkeeping (or record release) practices.

Recommendation 5.3 That supported record release practices be seen as highly specialised.

Recommendation 5.4 That redaction standards should be nationalised and monitored across government and non-government institutions with the establishment of key principles.

Recommendation 5.5 That the Department of Social Services' paper Access to Records by Forgotten Australians and Former Child Migrants be considered as a foundational document to guide current and future recordkeeping standard, practices and supported record release work.

6. SUBMISSIONS ON POSSIBLE SIXTH PRINCIPLE DIRECTED AT ENFORCING THE INITIAL FIVE PRINCIPLES

Is a sixth principle required?

Based on the information provided by our clients about their experiences, **knowmore** supports the notion of a sixth principle directed at the enforcement of the first five principles. It has been our experience that past poor practices of recordkeeping by institutions have had hugely negative impacts on the people who are the subjects of those records. Reviewing such a range of records has led **knowmore** to conclude that there needs to be standards for records, recordkeeping and record maintenance and there needs to be independent, regulatory oversight of institutional recordkeeping practices. Enforcing the five principles would be a way in which this could be achieved.

Adoption of a two-tiered approach to the enforcement of recordkeeping practices

knowmore agrees with the proposition that there be a two-tiered approach to the enforcement of recordkeeping practices. For services working directly in the care and protection of children or in primary services such as education or health, there should be the highest standards of recordkeeping applied. These institutions would be grouped in tier one.

However, for institutions involved in recreational activities for children (many of which will be not-for-profit organisations), for example sporting clubs, Scouts, youth groups a lesser standard of recordkeeping practices should be required. These organisations would be grouped in tier two. At a minimum these institutions would be required to detail all of the adults who were in contact with the children for the purpose of their activities; for example coaches, camp leaders, volunteers and so on; together with their Working with Children checks.

Records advocacy service and existing services?

In working with our clients, **knowmore** has observed the benefits flowing from records advocacy services and would recommend they continue into the future. There are funded service models in existence doing records advocacy. For historical care leavers there is the Find and Connect service and for some contemporary care leavers there is the service CREATE.

It is our submission that record advocacy services be provided nationally, by an organisation or organisations with no direct links to care provision either historical or current. A national focus is important, given the numbers of likely clients who now reside in a state or territory different to the jurisdiction where they were in institutions as a child.

From our work with our client group we are also of the view that the records advocacy service/s should be available to all care leavers and not just to those who may have

experienced abuse in care. Consideration should also be given to allowing access to this service/s to family members of care leavers.

Powers, functions and responsibilities of any records advocacy service?

We would anticipate that the key functions for a records advocacy service/s could include the following:

- information and referral services;
- records application support;
- supported record release (including therapeutic support where needed);
- establishing and maintaining key links to other support services including legal, case management, cultural and therapeutic supports;
- network linkages to record holders and information access points relevant to the client group;
- facilitation of consumer participation into records and recordkeeping practices;[30] and
- systems advocacy about records and recordkeeping/management practices and their impact on care leavers and others seeking records.

It is also important that any records advocacy service has the capacity to bring internal and if necessary external review proceedings (e.g. to an Information Commissioner), against decisions that appear to be incorrect or unjust. Some legal knowledge and capacity should be present in the service to facilitate this work, or the records advocacy service should have close links with a legal service able to undertake this work for clients.

Existing bodies or agencies?

We have noted above the Find & Connect and CREATE services. Our legal service currently undertakes many records requests, supported records release and review applications. Beyond these existing agencies, those states which have established Commissions for Children and Young People or similar bodies, have existing statutory agencies and roles that have broad responsibilities, some of which include oversight and regulatory functions to protect and promote the interests of children.

[30] As recommended above

Recommendation 6.1 That the enforcement of the first five principles be considered as essential for future records and recordkeeping practices.

Recommendation 6.2 That any such enforcement should demonstrate clear links to the service/institutions' risk assessment and case management frameworks wherever possible, to ensure quality recordkeeping and the adoption of best practice principles.

Recommendation 6.3 That funded, non-government, state-based records advocacy services be funded by government, either through the continued funding of existing, specialist services such as Find and Connect or through additional funding of similar service models for contemporary care leavers and others seeking records relating to their childhood abuse.

Recommendation 6.4 That the core functions of such services could include information and referral, records access, supported record release, networking and systemic advocacy capacity, with a strong consumer participation framework.