

FINAL REPORT

Recordkeeping and
information sharing



Royal Commission
into Institutional Responses
to Child Sexual Abuse

VOLUME 8

ISBN 978-1-925622-62-1

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Volume 8

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Content warning

This volume contains information about child sexual abuse that may be distressing. We also wish to advise Aboriginal and Torres Strait Islander readers that information in this volume may have been provided by or refer to Aboriginal and Torres Strait Islander people who have died.

Table of contents

Preface	1
The Royal Commission	1
Public hearings	1
Private sessions	2
Policy and research	3
Community engagement	3
Diversity and vulnerability	3
Our interim and other reports	4
Definition of terms	4
Naming conventions	5
Structure of the Final Report	5
Summary	9
Records and recordkeeping	9
Improving information sharing across sectors	12
Improving information sharing in key sectors	15
Recommendations	22
1 Introduction	30
1.1 Overview	30
1.2 Terms of Reference	31
1.3 Links with other volumes	31
1.4 Key terms	33
1.5 Structure of this volume	36

2	Records and recordkeeping	38
2.1	Overview	38
2.2	The importance of records and recordkeeping	38
2.3	Problems with records and recordkeeping	39
2.4	Defining records and recordkeeping	40
2.5	Why we looked at records and recordkeeping	42
2.6	Historical records	44
2.7	Contemporary records	54
2.8	Contemporary understandings of records and recordkeeping	61
2.9	Creation	63
2.10	Maintenance	70
2.11	Disposal	77
2.12	Access to records	87
2.13	Records and recordkeeping principles	106
2.14	Enforcing the records and recordkeeping principles	109
2.15	Records advocacy services	113
3	Improving information sharing across sectors	138
3.1	Overview	138
3.2	Current information sharing arrangements and the need for reform	141
3.3	Elements of a national information exchange scheme	173
3.4	Supporting implementation and operation	240
4	Improving information sharing in key sectors	282
4.1	Overview	282
4.2	Improving information sharing in the schools sector	283
4.3	Information sharing about students between schools	307
4.4	Improving information sharing in the out-of-home care sector	324
4.5	Information sharing in other sectors	355

Preface

The Royal Commission

The Letters Patent provided to the Royal Commission required that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’. In carrying out this task, the Royal Commission was directed to focus on systemic issues, be informed by an understanding of individual cases, and make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs. The Royal Commission did this by conducting public hearings, private sessions and a policy and research program.

Public hearings

A Royal Commission commonly does its work through public hearings. We were aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission was to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners accepted criteria by which Senior Counsel Assisting would identify appropriate matters for a public hearing and bring them forward as individual ‘case studies’.

The decision to conduct a case study was informed by whether or not the hearing would advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes so that any findings and recommendations for future change the Royal Commission made would have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings were also held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This enabled the Royal Commission to understand the ways in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identified a significant concentration of abuse in one institution, the matter could be brought forward to a public hearing.

Public hearings were also held to tell the stories of some individuals, which assisted in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact that it can have on people’s lives. Public hearings were open to the media and the public, and were live streamed on the Royal Commission’s website.

The Commissioners' findings from each hearing were generally set out in a case study report. Each report was submitted to the Governor-General and the governors and administrators of each state and territory and, where appropriate, tabled in the Australian Parliament and made publicly available. The Commissioners recommended some case study reports not be tabled at the time because of current or prospective criminal proceedings.

We also conducted some private hearings, which aided the Royal Commission's investigative processes.

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of sexual abuse as a child in an institutional setting. As a result, the Australian Parliament amended the *Royal Commissions Act 1902* (Cth) to create a process called a 'private session'.

Each private session was conducted by one or two Commissioners and was an opportunity for a person to tell their story of abuse in a protected and supportive environment. Many accounts from these sessions are told in a de-identified form in this Final Report.

Written accounts allowed individuals who did not attend private sessions to share their experiences with Commissioners. The experiences of survivors described to us in written accounts have informed this Final Report in the same manner as those shared with us in private sessions.

We also decided to publish, with their consent, as many individual survivors' experiences as possible, as de-identified narratives drawn from private sessions and written accounts. These narratives are presented as accounts of events as told by survivors of child sexual abuse in institutions. We hope that by sharing them with the public they will contribute to a better understanding of the profound impact of child sexual abuse and may help to make our institutions as safe as possible for children in the future. The narratives are available as an online appendix to Volume 5, *Private sessions*.

We recognise that the information gathered in private sessions and from written accounts captures the accounts of survivors of child sexual abuse who were able to share their experiences in these ways. We do not know how well the experiences of these survivors reflect those of other victims and survivors of child sexual abuse who could not or did not attend a private session or provide a written account.

Policy and research

The Royal Commission had an extensive policy and research program that drew upon the findings made in public hearings and upon survivors' private sessions and written accounts, as well as generating new research evidence.

The Royal Commission used issues papers, roundtables and consultation papers to consult with government and non-government representatives, survivors, institutions, regulators, policy and other experts, academics, and survivor advocacy and support groups. The broader community had an opportunity to contribute to our consideration of systemic issues and our responses through our public consultation processes.

Community engagement

The community engagement component of the Royal Commission's inquiry ensured that people in all parts of Australia were offered the opportunity to articulate their experiences and views. It raised awareness of our work and allowed a broad range of people to engage with us.

We involved the general community in our work in several ways. We held public forums and private meetings with survivor groups, institutions, community organisations and service providers. We met with children and young people, people with disability and their advocates, and people from culturally and linguistically diverse communities. We also engaged with Aboriginal and Torres Strait Islander peoples in many parts of Australia, and with regional and remote communities.

Diversity and vulnerability

We heard from a wide range of people throughout the inquiry. The victims and survivors who came forward were from diverse backgrounds and had many different experiences. Factors such as gender, age, education, culture, sexuality or disability had affected their vulnerability and the institutional responses to the abuse. Certain types of institutional cultures and settings created heightened risks, and some children's lives brought them into contact with these institutions more than others.

While not inevitably more vulnerable to child sexual abuse, we heard that Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds were more likely to encounter circumstances that increased their risk of abuse in institutions, reduced their ability to disclose or report abuse and, if they did disclose or report, reduced their chances of receiving an adequate response.

We examined key concerns related to disability, cultural diversity and the unique context of Aboriginal and Torres Strait Islander experience, as part of our broader effort to understand what informs best practice institutional responses. We included discussion about these and other issues of heightened vulnerability in every volume. Volume 5, *Private sessions* outlines what we heard in private sessions from these specific populations.

Our interim and other reports

On 30 June 2014, in line with our Terms of Reference, we submitted a two-volume interim report of the results of the inquiry. Volume 1 described the work we had done, the issues we were examining and the work we still needed to do. Volume 2 contained a representative sample of 150 de-identified personal stories from people who had shared their experiences at a private session.

Early in the inquiry it became apparent that some issues should be reported on before the inquiry was complete to give survivors and institutions more certainty on these issues and enable governments and institutions to implement our recommendations as soon as possible. Consequently, we submitted the following reports:

- *Working With Children Checks* (August 2015)
- *Redress and civil litigation* (September 2015)
- *Criminal justice* (August 2017)

Definition of terms

The inappropriate use of words to describe child sexual abuse and the people who experience the abuse can have silencing, stigmatising and other harmful effects. Conversely, the appropriate use of words can empower and educate.

For these reasons, we have taken care with the words used in this report. Some key terms used in this volume are set out in Chapter 1, 'Introduction' and in the Final Report Glossary, in Volume 1, *Our inquiry*.

Naming conventions

To protect the identity of victims and survivors and their supporters who participated in private sessions, pseudonyms are used. These pseudonyms are indicated by the use of single inverted commas, for example, ‘Roy’.

As in our case study reports, the identities of some witnesses before public hearings and other persons referred to in the proceedings are protected through the use of assigned initials, for example, BZW.

Structure of the Final Report

The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse consists of 17 volumes and an executive summary. To meet the needs of readers with specific interests, each volume can be read in isolation. The volumes contain cross references to enable readers to understand individual volumes in the context of the whole report.

In the Final Report:

The **Executive Summary** summarises the entire report and provides a full list of recommendations.

Volume 1, *Our inquiry* introduces the Final Report, describing the establishment, scope and operations of the Royal Commission.

Volume 2, *Nature and cause* details the nature and cause of child sexual abuse in institutional contexts. It also describes what is known about the extent of child sexual abuse and the limitations of existing studies. The volume discusses factors that affect the risk of child sexual abuse in institutions and the legal and political changes that have influenced how children have interacted with institutions over time.

Volume 3, *Impacts* details the impacts of child sexual abuse in institutional contexts. The volume discusses how impacts can extend beyond survivors, to family members, friends, and whole communities. The volume also outlines the impacts of institutional responses to child sexual abuse.

Volume 4, *Identifying and disclosing child sexual abuse* describes what we have learned about survivors’ experiences of disclosing child sexual abuse and about the factors that affect a victim’s decision whether to disclose, when to disclose and who to tell.

Volume 5, *Private sessions* provides an analysis of survivors' experiences of child sexual abuse as told to Commissioners during private sessions, structured around four key themes: experiences of abuse; circumstances at the time of the abuse; experiences of disclosure; and impact on wellbeing. It also describes the private sessions model, including how we adapted it to meet the needs of diverse and vulnerable groups.

Volume 6, *Making institutions child safe* looks at the role community prevention could play in making communities and institutions child safe, the child safe standards that will make institutions safer for children, and how regulatory oversight and practice could be improved to facilitate the implementation of these standards in institutions. It also examines how to prevent and respond to online sexual abuse in institutions in order to create child safe online environments.

Volume 7, *Improving institutional responding and reporting* examines the reporting of child sexual abuse to external government authorities by institutions and their staff and volunteers, and how institutions have responded to complaints of child sexual abuse. It outlines guidance for how institutions should handle complaints, and the need for independent oversight of complaint handling by institutions.

Volume 8, *Recordkeeping and information sharing* examines records and recordkeeping by institutions that care for or provide services to children; and information sharing between institutions with responsibilities for children's safety and wellbeing and between those institutions and relevant professionals. It makes recommendations to improve records and recordkeeping practices within institutions and information sharing between key agencies and institutions.

Volume 9, *Advocacy, support and therapeutic treatment services* examines what we learned about the advocacy and support and therapeutic treatment service needs of victims and survivors of child sexual abuse in institutional contexts, and outlines recommendations for improving service systems to better respond to those needs and assist survivors towards recovery.

Volume 10, *Children with harmful sexual behaviours* examines what we learned about institutional responses to children with harmful sexual behaviours. It discusses the nature and extent of these behaviours and the factors that may contribute to children sexually abusing other children. The volume then outlines how governments and institutions should improve their responses and makes recommendations about improving prevention and increasing the range of interventions available for children with harmful sexual behaviours.

Volume 11, *Historical residential institutions* examines what we learned about survivors' experiences of, and institutional responses to, child sexual abuse in residential institutions such as children's homes, missions, reformatories and hospitals during the period spanning post-World War II to 1990.

Volume 12, *Contemporary out-of-home care* examines what we learned about institutional responses to child sexual abuse in contemporary out-of-home care. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in out-of-home care and, where it does occur, to help ensure effective responses.

Volume 13, *Schools* examines what we learned about institutional responses to child sexual abuse in schools. The volume examines the nature and adequacy of institutional responses and draws out the contributing factors to child sexual abuse in schools. It makes recommendations to prevent child sexual abuse from occurring in schools and, where it does occur, to help ensure effective responses to that abuse.

Volume 14, *Sport, recreation, arts, culture, community and hobby groups* examines what we learned about institutional responses to child sexual abuse in sport and recreation contexts. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in sport and recreation and, where it does occur, to help ensure effective responses.

Volume 15, *Contemporary detention environments* examines what we learned about institutional responses to child sexual abuse in contemporary detention environments, focusing on youth detention and immigration detention. It recognises that children are generally safer in community settings than in closed detention. It also makes recommendations to prevent child sexual abuse from occurring in detention environments and, where it does occur, to help ensure effective responses.

Volume 16, *Religious institutions* examines what we learned about institutional responses to child sexual abuse in religious institutions. The volume discusses the nature and extent of child sexual abuse in religious institutions, the impacts of this abuse, and survivors' experiences of disclosing it. The volume examines the nature and adequacy of institutional responses to child sexual abuse in religious institutions, and draws out common factors contributing to the abuse and common failings in institutional responses. It makes recommendations to prevent child sexual abuse from occurring in religious institutions and, where it does occur, to help ensure effective responses.

Volume 17, *Beyond the Royal Commission* describes the impacts and legacy of the Royal Commission and discusses monitoring and reporting on the implementation of our recommendations.

Unless otherwise indicated, this Final Report is based on laws, policies and information current as at 30 June 2017. Private sessions quantitative information is current as at 31 May 2017.

Summary

This volume looks, first, at records and recordkeeping by institutions that care for or provide services to children. The creation of accurate records and the exercise of good recordkeeping practices are critical to identifying, preventing and responding to child sexual abuse. Records are also important in alleviating the impact of child sexual abuse for survivors. We make recommendations to improve records and recordkeeping practices within institutions.

The volume then examines information sharing between institutions with responsibilities for children's safety and wellbeing, and between those institutions and relevant professionals. Such information sharing is also necessary to identify, prevent and respond to incidents and risks of child sexual abuse. We make recommendations to improve information sharing so as to better protect children from sexual abuse in institutions.

Records and recordkeeping

Problems with records and recordkeeping

Inadequate records and recordkeeping have contributed to delays in or failures to identify and respond to risks and incidents of child sexual abuse and have exacerbated distress and trauma for many survivors. Obstructive and unresponsive processes for accessing records have created further difficulties for survivors seeking information about their lives while in the care of institutions.

Problems with records and recordkeeping practices are not confined to the past. During our inquiry we heard about poor records and recordkeeping practices by contemporary institutions such as non-government schools and agencies providing out-of-home care, as well as by historical institutions.

While recent reforms to legislation, policy and practice have improved records and recordkeeping practices, it is clear that institutional practices require further change. Institutions must dedicate time and resources to creating good records and managing those records. They also need to train their staff in the importance of records to institutional accountability and the promotion of child safety, as well as to the individuals whose lives are documented in them.

Records and recordkeeping principles

We recommend that all institutions that engage in child-related work implement the following five high-level principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution (see Recommendation 8.4):

1. Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.
2. Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.
3. Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.
4. Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.
5. Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.

These five high-level principles are intended to promote best practice by institutions. They have been shaped to provide flexibility, recognising that the institutions within our Terms of Reference vary considerably in size, function, responsibility, funding, resources and regulation. The principles are intended to complement institutions' existing recordkeeping obligations and to be adaptable to the different circumstances they face.

Good recordkeeping is an important part of making and supporting institutions to be child safe. Our principles for records and recordkeeping are supplementary to our 10 recommended Child Safe Standards – in particular, Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture (Recommendation 6.5).

State and territory governments should require all institutions that care for or provide services to children to comply with the five principles for records and recordkeeping. This is consistent with our recommendation to implement our 10 Child Safe Standards (see Recommendation 6.4). Oversight bodies in each state and territory would be responsible for monitoring and enforcing compliance with the principles in line with the flexible approach to enforcement discussed in Volume 6, *Making institutions child safe*.

Minimum records retention periods

We also recommend that institutions that engage in child-related work retain, for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred. This is to allow for delayed disclosure of abuse by victims and to take account of limitation periods for civil actions for child sexual abuse (see Recommendations 8.1 to 8.3).

Access to records

As noted, during our inquiry survivors expressed particular concern about difficulties they had encountered accessing records held by institutions. In accordance with our recommended records and recordkeeping Principle 5, individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless it is contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.

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

Records advocacy services

Records advocacy services should be an important component of improving service responses more generally for children and adults who have experienced sexual abuse in childhood.

We recommend in Volume 9, *Advocacy, support and therapeutic treatment services* that the Australian Government and state and territory governments fund dedicated community support services to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts (Recommendation 9.1). We also recommend that the Australian Government establish and fund a legal advice and referral service for victims and survivors of institutional child sexual abuse (Recommendation 9.4). Both the community support services and the legal advice and referral service should include records advocacy.

Enforcing the records and recordkeeping principles

State and territory governments should require all institutions that engage in child-related work to comply with the five principles for records and recordkeeping, consistent with our recommendations for implementing our 10 Child Safe Standards (Recommendations 6.8 to 6.11).

Oversight bodies in each state and territory would be responsible for monitoring and enforcing compliance with the principles in accordance with the flexible approach to enforcement discussed in Volume 6, *Making institutions child safe*.

Existing regulatory frameworks may also be used to monitor and enforce the records and recordkeeping principles in some types of institutions. Consistent with this approach, we also recommend that state and territory governments ensure that all schools are required to comply with the standards applicable to government schools in relation to creating and keeping records relevant to child safety and wellbeing, including child sexual abuse (Recommendation 8.5).

Improving information sharing across sectors

The importance of information sharing

Information sharing is important to protect children in institutions from child sexual abuse. Information sharing between institutions with responsibilities for children's safety and wellbeing, and between those institutions and relevant professionals, is necessary to identify, prevent and respond to incidents and risks of child sexual abuse.

During our inquiry we heard examples of relevant information either not being shared, or not being shared in a timely and effective manner. This can have and has had serious consequences, including enabling perpetrators to continue their involvement in an institution or to move between institutions and jurisdictions and pose ongoing risks to children. Inadequate information sharing within and between institutions, such as schools, about the harmful sexual behaviours of children can compromise the safety of other children in those institutions.

Barriers to information sharing

Inadequate information sharing is not only an historical problem. The evidence and information before us indicated that there are still a number of barriers to timely and appropriate information sharing to protect children from child sexual abuse in institutions.

The sharing of personal and sensitive information is restricted by obligations under privacy legislation, confidentiality or secrecy provisions in legislation governing the provision of services for children, and other laws. While all jurisdictions have some form of legislative or administrative arrangements to enable information sharing to protect children, these arrangements are limited in a number of ways, especially with respect to information exchange across state and territory borders.

Even where information sharing is legally permitted or required, there may be reluctance to share. Concerns about privacy, confidentiality and defamation, and confusion about the application of complex and inconsistent laws, can create anxiety and inhibit information sharing. Institutional culture, poor leadership and weak or unclear governance arrangements may also inhibit information sharing and, as a result, undermine the safety of children.

Elements of a national information exchange scheme

We recommend that nationally consistent legislative and administrative information exchange arrangements be established in each jurisdiction (see Recommendation 8.6). These arrangements should:

- provide for prescribed bodies to share information related to children's safety and wellbeing, including information relevant to child sexual abuse
- establish an information exchange scheme to operate in and across Australian jurisdictions.

The information exchange scheme should be consistent across jurisdictions (Recommendation 8.7) and should:

- enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing
- permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts
- require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions
- explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts
- provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme
- require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.

Supporting implementation and operation

Clear and robust information sharing arrangements, like those we recommend, will go a significant way to overcoming many of the current barriers to information sharing. However, legislative and policy reforms alone will not improve practice and create a culture of information sharing among agencies and institutions with responsibilities for children.

Considerable action, commitment and resource investment by Australian governments as well as institutions will be required to effectively implement reforms and improve institutional responses to child sexual abuse. This will need to be a coordinated effort across all jurisdictions.

For example, guidelines should be available to support individuals to make decisions about sharing information in accordance with the recommended information exchange scheme. Such guidelines could describe relevant legislative provisions, including privacy laws, plainly and in one accessible document.

More generally, for information sharing arrangements to operate effectively, they must be supported by organisational and professional cultures with strong governance and practice leadership, which understand and observe the proper limits of privacy. Staff need training and support in how to use information appropriately to assess risk.

A central contact point in each jurisdiction could provide institutions and individuals with advice on sharing information under the scheme. State and territory governments should consider whether an ombudsman, privacy commissioner or other body that provides an accountability mechanism and oversight for an information sharing scheme should also act as a contact point for prescribed bodies, and provide them with support and advice.

We recommend that the implementation of the information exchange scheme be supported with education, training and guidelines (Recommendation 8.8).

Phased implementation and review

Implementing our recommended information exchange scheme will have significant administrative and cost implications for governments and institutions. It will take time for state and territory governments to reach agreement on the aspects of the scheme that require consistency to ensure information can be shared effectively between jurisdictions, as well as within jurisdictions. In addition, institutions will need time to understand what is required, and how they can implement the scheme. Accordingly, a phased approach to agreeing on and including institution types in the scheme may be appropriate.

Our recommended information exchange scheme should be subject to a scheduled statutory review and evaluation of its operation.

Improving information sharing in key sectors

Reforms in the schools and out-of-home care sectors

Information sharing arrangements and practices in the schools and out-of-home care sectors could be strengthened to assist institutions to better identify, prevent and respond to incidents and risks of child sexual abuse.

We recommend reforms, including in relation to sharing information about teachers and students and carers, which would complement and be supported by our recommended information exchange scheme. Teacher registers and carers registers could also operate to enhance information sharing by collecting information relevant to child sexual abuse, and making it available to be shared, under our recommended information exchange scheme.

Improving information sharing in the schools sector

Evidence and information before the Royal Commission illustrated the risks to children that arise when information about child sexual abuse by teachers is not shared. Lack of information sharing between teacher registration authorities and employers can enable alleged perpetrators to move between schools and jurisdictions.

Improving teacher registration laws and registers

There is an existing mechanism for sharing information about teachers that may be improved to address this problem. Teacher registers, and the state and territory laws that underpin them, are a key mechanism for sharing information about teachers who may pose a risk of child sexual abuse. The registers capture and provide a platform to share information about teachers, including across jurisdictions. These existing mechanisms may be enhanced to better capture and share information about teachers relevant to risks of child sexual abuse.

The efficacy of registers as information sharing mechanisms about teachers who may pose risks to students' safety depends on what information is recorded on the registers, and who may access this information. There are significant inconsistencies across state and territory laws in these respects, and regarding information sharing by state and territory registration authorities more generally.

We consider that improved, and nationally consistent, capture of information on teacher registers would provide a stronger platform for information sharing about teachers. Provisions regarding registration authorities sharing information about teachers should be consistent across jurisdictions, and improved to facilitate more effective information sharing about child sexual abuse.

This would ensure that registration authorities provide their state and territory counterparts, and teachers' employers, with consistent and adequate access to information on teacher registers, and notification of circumstances relating to teachers and allegations or incidents of child sexual abuse.

In this context, we recommend that the Council of Australian Governments (COAG) Education Council consider the need for nationally consistent state and territory legislative requirements about the types of information recorded on teacher registers (see Recommendation 8.9); and nationally consistent teacher registration laws providing that teacher registration authorities may make information on teacher registers available to authorities in other states and territories and to teachers' employers (see Recommendation 8.10).

The COAG Education Council should also consider the need to ensure that teacher registration authorities notify authorities in other states and territories and teachers' employers of certain information relating to allegations or incidents of child sexual abuse, such as information about disciplinary actions, investigations and outcomes, and resignations or dismissals from employment (see Recommendation 8.11).

We recognise the need to provide privacy and other safeguards to protect information about teachers from unauthorised or inappropriate disclosure. In considering improvements to teacher registers and information sharing by registration authorities, the COAG Education Council should also consider what safeguards are necessary to protect teachers' personal information (Recommendation 8.12).

Information sharing about school staff other than teachers

School staff other than teachers include counsellors as well as other support and administrative staff (such as learning support officers, Aboriginal education officers and paraprofessionals). Sharing information about school staff is necessary where they may pose a risk of sexual abuse to children. It enables their employers to take action to address the risk to students. It may also prevent the staff member from moving between schools, including to schools in different jurisdictions.

In most states and territories, there is no specific legislation regulating information sharing about non-teaching staff in the schools sector.

Our recommended information exchange scheme could facilitate information sharing about non-teaching staff between schools (including schools in different systems and jurisdictions) and between schools and other agencies. It would apply to non-teaching school staff where Australian governments prescribe bodies that provide education services to children under the scheme. Information that could be shared under the recommended scheme relates to the ‘safety and wellbeing of children’, and could include risks of child sexual abuse posed by non-teaching staff members.

Information sharing about students between schools

Generally, transferring a students’ relevant information to their next school assists the school to address the student’s educational and support needs, and to meet its legal obligations, including its duty of care.

In particular, this may be necessary when the student moving has engaged in sexually harmful behaviours and, as a consequence, may pose risks to other students, or has experienced sexual abuse and as a consequence has particular educational and support needs.

The arrangements for sharing information about students between schools vary significantly across jurisdictions and school systems. These arrangements can be provided, for example, in state and territory child protection or education laws.

We recommend that state and territory governments ensure that policies provide for the exchange of a student’s information when they move to another school, where:

- the student may pose risks to other children due to their sexually harmful behaviours or may have educational or support needs due to their experiences of child sexual abuse, and
- the new school needs this information to address the safety and wellbeing of the student or of other students at the school (see Recommendation 8.13).

These policies should apply across government and non-government school systems, and provide that the principal (or other authorised information sharer) at the student’s previous school is required to share this information with the new school (Recommendation 8.14). We also make recommendations about safeguards in relation to sharing this information (Recommendation 8.15).

Improving information sharing between schools in different jurisdictions

The Interstate Student Data Transfer Note and Protocol (ISDTN) provides a national system for information sharing, where students move from one state or territory to another. When a student from another jurisdiction enrolls at a school, that school must use ISDTN processes to request the transfer of information from the previous school, and the previous school must comply with the request.

Our recommended information exchange scheme could provide a broader platform for existing procedures for inter-jurisdictional transfer of information related to risks of child sexual abuse or needs arising from a history of child sexual abuse. This is important given the limitations of the ISDTN in facilitating the sharing of such information.

We recommend that the COAG Education Council review the ISDTN in implementing our recommended information exchange scheme (Recommendation 8.16).

Improving information sharing in the out-of-home care sector

We have learned that inadequate information sharing between out-of-home care agencies about carer suitability can place children in care at risk. Our recommended reforms to improve information sharing about carers are aimed at reducing the risk of sexual abuse of children in care by carers and others in their household. This would be achieved by assisting the agencies responsible for assessing, authorising and supervising carers to make better-informed decisions about carer suitability and placement safety.

It is important that agencies responsible for screening, authorising and supervising carers – whether non-government out-of-home care service providers or government agencies – are able to obtain sufficient information to assess and manage risks of child sexual abuse in out-of-home care contexts. Current arrangements for sharing information relevant to carer suitability and placement safety do not appear adequate to address these risks.

Arrangements for sharing information about carers include those in information exchange schemes under child protection legislation and inter-jurisdictional protocols. However, these are subject to significant constraints, particularly in relation to the capacity of non-government providers to access and share information relevant to carer suitability. With greater contracting out of out-of-home care services by governments in some jurisdictions, more carers with problematic histories may be transferred from government to non-government providers, or move between different out-of-home care providers. As a result, relevant records may be fragmented and dispersed among different out-of-home care providers, increasing the risks of harm to children in care due to poorly informed decision making.

The need for carers register reforms

Some jurisdictions maintain a carers register as a standalone central index of information about people who have applied for authorisation or are authorised to care for children in out-of-home care in that jurisdiction. Information on these registers can be accessed by approved organisations. Other jurisdictions record this information on a government database available to employees of the relevant statutory child protection agency only.

Existing carers registers vary in the range of information they capture. There are also differences between jurisdictions as to whether the registers are legislatively or administratively established and governed, whether they are maintained by an independent out-of-home care regulator or by the jurisdictional child protection agency, and in the bodies that have access to the register. With variable and often limited arrangements for capturing relevant information about carers, opportunities to promote children's safety in out-of-home care may be missed.

Minimum national consistency in carers registers

We recommend that state and territory governments introduce legislation to establish carers registers in their respective jurisdictions. We recommend these registers are consistent in relation to the carer types on the carers register; the types of information which, at a minimum, should be recorded on the register; and the types of information which, at a minimum, must be made available to agencies or bodies with responsibility for assessing, authorising or supervising carers (Recommendations 8.17 and 8.19).

Our consideration of which carer types should be included on jurisdictional registers was informed by our understanding of the risk of sexual abuse of children in different placement types, and research on the different dimensions and degrees of risk of child sexual abuse in out-of-home care and other institutional contexts. On the basis of this assessment, we recommend the inclusion on carers registers of foster carers, relative/kinship carers and residential care staff (Recommendation 8.17).

The placement of children with disability in voluntary out-of-home care, and their particular vulnerability to abuse, creates a strong case for also including carers in these institutional settings on carers registers. However, this presents significant challenges. The existing regulatory framework recognises that voluntary out-of-home care providers should not be subject to intensive accreditation, as parents retain responsibility for the child or young person. In addition, the variability of voluntary out-of-home care arrangements both across and within jurisdictions, and limited regulation and oversight in some jurisdictions, may make some voluntary out-of-home care arrangements difficult to identify.

Types of information recorded and shared

We have considered carefully the types of information that should be recorded and shared on carers registers, including by reference to the model provided by the New South Wales Carers Register.

Carers registers need to specifically capture complaints or allegations against applicant and authorised carers, their household members and residential care staff. However, we have concluded that including information about all complaints would be excessive. Rather, carers registers should include only information about reportable conduct. Conduct that is reportable generally includes abuse or neglect of a child, including sexual abuse, physical abuse or psychological abuse (see Volume 7, *Improving institutional responding and reporting*).

We recommend that state and territory governments consider the need for carers registers to include, at a minimum, certain information about applicant or authorised carers, and household members. This should include information about: the lodgement or grant of applications for carer authorisation; the status of carer authorisation checks; the withdrawal, refusal, cancellation or surrender of applications for authorisation in circumstances of concern (including in relation to child sexual abuse); previous or current association with an out-of-home care agency, whether by application for authorisation, assessment, grant of authorisation, or supervision; and the date of reportable conduct allegations and their status (see Recommendation 8.19).

Compliance with minimum assessment and authorisation requirements

Carers registers are likely to promote children's safety in out-of-home care more effectively if they extend their operation beyond databases of carer records to function as legislatively mandated tools for the implementation of minimum carer assessment and authorisation requirements.

In Volume 12, *Contemporary out-of-home care* we identify the minimum processes and checks that should be undertaken for authorisation of foster and relative/kinship carers and residential care staff (Recommendations 12.6 to 12.8). We identify, in particular, the strong need for more effective oversight of residential care staff and the risks to young people in these environments. We recognise the need for expanded accreditation and support of kinship carers, but also the challenges this may present for many communities.

Nationally consistent carers registers should support the implementation of minimum assessment and authorisation requirements by obliging responsible agencies to record whether or not the requirements have been satisfied, and preventing authorisation where those requirements have not been satisfied. By operating as a mandated authorisation tool, carers registers can serve to both ensure agencies' compliance with their regulatory obligations, and assist them to prevent and respond to inappropriate authorisation.

We recommend that state and territory governments consider the need for legislative and administrative arrangements to require responsible agencies to record register information in minimal detail, record register information as a mandatory part of carer authorisation and update register information about authorised carers (Recommendation 8.20).

Access to register information

Making relevant register information available to agencies or bodies with responsibilities related to carer suitability will help to ensure that those who pose risks to children's safety are not authorised as carers.

Regulatory and structural arrangements for out-of-home care vary considerably between jurisdictions. This includes variation in the roles and responsibilities of government and non-government organisations and arrangements for monitoring, oversight and accountability in relation to out-of-home care service provision.

Some variation in arrangements for access to register information will be required to accommodate such jurisdictional differences. This should not, however, compromise the basic level of consistency required for certain essential purposes – for example, to ensure those responsible for authorisation have adequate access to register information, and for the inter-jurisdictional utility of registers.

We recommend that state and territory governments consider the need for effective mechanisms to enable agencies and bodies to obtain relevant information from registers in any state or territory holding such information. Consideration should be given to legislative and administrative arrangements, and digital platforms, which will enable agencies to obtain relevant information from their own and other jurisdictions' registers for the purpose of exercising their responsibilities and functions (Recommendation 8.22).

State and territory governments should also consider the need for guidelines and training to promote the proper use of carers registers for the protection of children in out-of-home care, and the need for specific safeguards to prevent inappropriate use of register information (Recommendation 8.23).

Recommendations

The following is a list of the recommendations made in this volume.

Records and recordkeeping (Chapter 2)

Minimum retention periods

Recommendation 8.1

To allow for delayed disclosure of abuse by victims and take account of limitation periods for civil actions for child sexual abuse, institutions that engage in child-related work should retain, for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred.

Recommendation 8.2

The National Archives of Australia and state and territory public records authorities should ensure that records disposal schedules require that records relating to child sexual abuse that has occurred or is alleged to have occurred be retained for at least 45 years.

Recommendation 8.3

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

Records and recordkeeping principles

Recommendation 8.4

All institutions that engage in child-related work should implement the following principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution.

Principle 1: Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.

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

Principle 2: Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.

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

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

Principle 3: Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.

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

Principle 4: Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.

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

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

Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.

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

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

Records of non-government schools

Recommendation 8.5

State and territory governments should ensure that non-government schools operating in the state or territory are required to comply, at a minimum, with standards applicable to government schools in relation to the creation, maintenance and disposal of records relevant to child safety and wellbeing, including child sexual abuse.

Improving information sharing across sectors (Chapter 3)

Elements of a national information exchange scheme

Recommendation 8.6

The Australian Government and state and territory governments should make nationally consistent legislative and administrative arrangements, in each jurisdiction, for a specified range of bodies (prescribed bodies) to share information related to the safety and wellbeing of children, including information relevant to child sexual abuse in institutional contexts (relevant information). These arrangements should be made to establish an information exchange scheme to operate in and across Australian jurisdictions.

Recommendation 8.7

In establishing the information exchange scheme, the Australian Government and state and territory governments should develop a minimum of nationally consistent provisions to:

- a. enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing
- b. permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts
- c. require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions
- d. explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts

- e. provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme
- f. require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.

Supporting implementation and operation

Recommendation 8.8

The Australian Government, state and territory governments and prescribed bodies should work together to ensure that the implementation of our recommended information exchange scheme is supported with education, training and guidelines. Education, training and guidelines should promote understanding of, and confidence in, appropriate information sharing to better prevent, identify and respond to child sexual abuse in institutional contexts, including by addressing:

- a. impediments to information sharing due to limited understanding of applicable laws
- b. unauthorised sharing and improper use of information.

Improving information sharing in key sectors (Chapter 4)

Sharing information about teachers and students

Recommendation 8.9

The Council of Australian Governments (COAG) Education Council should consider the need for nationally consistent state and territory legislative requirements about the types of information recorded on teacher registers. Types of information that the council should consider, with respect to a person's registration and employment as a teacher, include:

- a. the person's former names and aliases
- b. the details of former and current employers
- c. where relating to allegations or incidents of child sexual abuse:
 - i. current and past disciplinary actions, such as conditions on, suspension of, and cancellation of registration
 - ii. grounds for current and past disciplinary actions
 - iii. pending investigations
 - iv. findings or outcomes of investigations where allegations have been substantiated
 - v. resignation or dismissal from employment.

Recommendation 8.10

The COAG Education Council should consider the need for nationally consistent provisions in state and territory teacher registration laws providing that teacher registration authorities may, and/or must on request, make information on teacher registers available to:

- a. teacher registration authorities in other states and territories
- b. teachers' employers.

Recommendation 8.11

The COAG Education Council should consider the need for nationally consistent provisions

- a. in state and territory teacher registration laws or
- b. in administrative arrangements, based on legislative authorisation for information sharing under our recommended information exchange scheme

providing that teacher registration authorities may or must notify teacher registration authorities in other states and territories and teachers' employers of information they hold or receive about the following matters where they relate to allegations or incidents of child sexual abuse:

- a. disciplinary actions, such as conditions or restrictions on, suspension of, and cancellation of registration, including with notification of grounds
- b. investigations into conduct, or into allegations or complaints
- c. findings or outcomes of investigations
- d. resignation or dismissal from employment.

Recommendation 8.12

In considering improvements to teacher registers and information sharing by registration authorities, the COAG Education Council should also consider what safeguards are necessary to protect teachers' personal information.

Recommendation 8.13

State and territory governments should ensure that policies provide for the exchange of a student's information when they move to another school, where:

- a. the student may pose risks to other children due to their harmful sexual behaviours or may have educational or support needs due to their experiences of child sexual abuse, and
- b. the new school needs this information to address the safety and wellbeing of the student or of other students at the school.

State and territory governments should give consideration to basing these policies on our recommended information exchange scheme (Recommendations 8.6 to 8.8).

Recommendation 8.14

State and territory governments should ensure that policies for the exchange of a student's information when they move to another school:

- a. provide that the principal (or other authorised information sharer) at the student's previous school is required to share information with the new school in the circumstances described in Recommendation 8.13; and
- b. apply to schools in government and non-government systems.

Recommendation 8.15

State and territory governments should ensure that policies about the exchange of a student's information (as in Recommendations 8.13 and 8.14) provide the following safeguards, in addition to any safeguards attached to our recommended information exchange scheme:

- a. information provided to the new school should be proportionate to its need for that information to assist it in meeting the student's safety and wellbeing needs, and those of other students at the school
- b. information should be exchanged between principals, or other authorised information sharers, and disseminated to other staff members on a need-to-know basis.

Recommendation 8.16

The COAG Education Council should review the Interstate Student Data Transfer Note and Protocol in the context of the implementation of our recommended information exchange scheme (Recommendations 8.6 to 8.8).

Carers registers

Recommendation 8.17

State and territory governments should introduce legislation to establish carers registers in their respective jurisdictions, with national consistency in relation to:

- a. the inclusion of the following carer types on the carers register:
 - i. foster carers
 - ii. relative/kinship carers
 - iii. residential care staff
- b. the types of information which, at a minimum, should be recorded on the register
- c. the types of information which, at a minimum, must be made available to agencies or bodies with responsibility for assessing, authorising or supervising carers, or other responsibilities related to carer suitability and safety of children in out-of-home care.

Recommendation 8.18

Carers registers should be maintained by state and territory child protection agencies or bodies with regulatory or oversight responsibility for out-of-home care in that jurisdiction.

Recommendation 8.19

State and territory governments should consider the need for carers registers to include, at a minimum, the following information (register information) about, or related to, applicant or authorised carers, and persons residing on the same property as applicant/ authorised home-based carers (household members):

- a. lodgement or grant of applications for authorisation
- b. status of the minimum checks set out in Recommendation 12.6 as requirements for authorisation, indicating their outcomes as either satisfactory or unsatisfactory
- c. withdrawal or refusal of applications for authorisation in circumstances of concern (including in relation to child sexual abuse)
- d. cancellation or surrender of authorisation in circumstances of concern (including in relation to child sexual abuse)
- e. previous or current association with an out-of-home care agency, whether by application for authorisation, assessment, grant of authorisation, or supervision
- f. the date of reportable conduct allegations, and their status as either current, finalised with ongoing risk-related concerns, and/or requiring contact with the reportable conduct oversight body.

Recommendation 8.20

State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies to:

- a. record register information in minimal detail
- b. record register information as a mandatory part of carer authorisation
- c. update register information about authorised carers.

Recommendation 8.21

State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies:

- a. before they authorise or recommend authorisation of carers, to:
 - i. undertake a check for relevant register information, and
 - ii. seek further relevant information from another out-of-home care agency where register information indicates applicant carers, or their household members (in the case of prospective home-based carers) have a prior or current association with that other agency
- b. in the course of their assessment, authorisation, or supervision of carers, to:
 - i. seek further relevant information from other agencies or bodies, where register information indicates they hold, or may hold, additional information relevant to carer suitability, including reportable conduct information.

State and territory governments should give consideration to enabling agencies to seek further information for these purposes under our recommended information exchange scheme (Recommendations 8.6 to 8.8).

Recommendation 8.22

State and territory governments should consider the need for effective mechanisms to enable agencies and bodies to obtain relevant information from registers in any state or territory holding such information. Consideration should be given to legislative and administrative arrangements, and digital platforms, which will enable:

- a. agencies responsible for assessing, authorising or supervising carers
- b. other agencies, including jurisdictional child protection agencies and regulatory and oversight bodies, with responsibilities related to the suitability of persons to be carers and the safety of children in out-of-home care

to obtain relevant information from their own and other jurisdictions' registers for the purpose of exercising their responsibilities and functions.

Recommendation 8.23

In considering the legislative and administrative arrangements required for carers registers in their jurisdiction, state and territory governments should consider the need for guidelines and training to promote the proper use of carers registers for the protection of children in out-of-home care. Consideration should also be given to the need for specific safeguards to prevent inappropriate use of register information.

1 Introduction

1.1 Overview

Volume 8, *Recordkeeping and information sharing* examines records and recordkeeping by institutions that care for or provide services to children. It also examines information sharing between institutions with responsibilities for children's safety and wellbeing, and between those institutions and relevant professionals.

The creation of accurate records and the exercise of good recordkeeping practices play a critical role in identifying, preventing and responding to child sexual abuse. Records are also important in alleviating the impact of child sexual abuse for survivors. Inadequate records and recordkeeping have contributed to delays in or failures to identify and respond to risks and incidents of child sexual abuse and have exacerbated distress and trauma for many survivors. Obstructive and unresponsive processes for accessing records have created further difficulties for survivors seeking information about their lives while in the care of institutions.

In this volume, we make recommendations to improve records and recordkeeping practices within institutions. This includes recommending that all institutions that engage in child-related work implement five high-level principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution.

Information sharing is important to protect children in institutional contexts from sexual abuse. Information sharing between institutions with responsibilities for children's safety and wellbeing, and between those institutions and relevant professionals, is necessary to identify, prevent and respond to incidents and risks of child sexual abuse.

In this volume, we consider the need for reforms to improve information sharing and better protect children from sexual abuse in institutional contexts. Our recommendations on information sharing are underpinned by the principle that children's rights to safety and wellbeing, and specifically to protection from sexual abuse, should be prioritised over other rights and concerns. In some cases, these other concerns may include issues of privacy, confidentiality and defamation.

We recommend a scheme for sharing information related to the safety and wellbeing of children between key agencies and institutions to improve information exchange within and across different sectors and jurisdictions. We also consider additional reforms to improve information sharing in two key sectors – schools and out-of-home care.

1.2 Terms of Reference

The Letters Patent establishing the Royal Commission required that we ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’ and set out the Terms of Reference of the inquiry.

In carrying out this task, we were directed to focus on systemic issues, informed by an understanding of individual cases. We were required to make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

The Terms of Reference this volume particularly addresses, in relation to records and recordkeeping and information sharing arrangements, required us to inquire into:¹

- what institutions and governments should do to better protect children against sexual abuse and related matters in institutional contexts in the future
- what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts
- what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse
- changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

1.3 Links with other volumes

This volume, along with Volume 6, *Making institutions child safe* and Volume 7, *Improving institutional responding and reporting*, recommends a national approach to making institutions child safe.

Together, these volumes explain how institutions could be made safer for children by better preventing, identifying, responding to and reporting institutional child sexual abuse. Recognising that protecting children is everyone’s responsibility, they look at the role communities, institutions, governments, individuals and a range of other actors could play to create child safe institutions.

The three volumes recommend independent but interrelated initiatives to create child safe institutions.

Volume 6 recommends a national community prevention strategy; the implementation of Child Safe Standards for institutions, supported by improved regulatory oversight and practice; and initiatives that could help institutions to prevent online child sexual abuse and respond appropriately if it does occur.

Volume 7 recommends measures to improve institutional responses to complaints of child sexual abuse; the identification of unacceptable or concerning behaviours within institutions; obligatory reporting of child sexual abuse; and the oversight of institutional complaint handling and investigation.

This volume recommends best practice principles for institutional records and recordkeeping, and improved information sharing arrangements, including an information exchange scheme for prescribed bodies.

The recommendations in the three volumes aim to:

- reduce the risk of community and institutional child sexual abuse
- drive cultural change in communities and institutions so that all institutions put the best interests of children first and at the heart of their purpose and operation
- build a nationally consistent approach to making institutions child safe
- enable the community, parents and children to expect and demand institutions to be child safe and hold institutions to account for the safety of children in their care
- through improved reporting practices, enable governments to better identify and intervene in institutions that pose significant risk to children.

While Volumes 6, 7 and 8 address how *all* institutions could be made child safe, Volumes 12 to 16 consider child safety in particular institutional settings.

1.4 Key terms

The inappropriate use of words to describe child sexual abuse and the people who experience the abuse can have silencing, stigmatising and other harmful effects. Conversely, the appropriate use of words can empower and educate.

For these reasons, we have taken care with the words used in this report. Some key terms used in this volume are described below. A complete glossary is contained in Volume 1, *Our inquiry*.

Child/children

References to ‘child’ and ‘children’ are to a person or persons under the age of 18 years.

Children with harmful sexual behaviours

‘Children with harmful sexual behaviours’ refers to children under 18 years who have behaviours that fall across a spectrum of sexual behaviour problems, including those that are problematic to the child’s own development, as well as those that are coercive, sexually aggressive and predatory towards others. The term ‘harmful sexual behaviours’ recognises the seriousness of these behaviours and the significant impact they have on victims, but is not contingent on the age or capacity of a child.

The term ‘children with harmful sexual behaviours’ is used when referring to the general group of children with sexual behaviour problems. At times, more specific terms are used:

‘Problematic sexual behaviours’ refers to sexual behaviours that fall outside the normal or age-appropriate range for younger children. These may or may not result in harm to another person. Problematic sexual behaviours by young children may be an indicator of them having been harmed themselves and may place the child displaying such behaviours at risk of sexual exploitation.

‘Sexual offending’ refers to sexual behaviours that fall within the definition of a sexual offence, where the child could be held criminally responsible for their conduct. In Australia, children aged 10 and over may be charged with a sexual offence.

Confidentiality

‘Confidentiality’ and ‘confidential information’ refer to information held that is subject to obligations or rules preventing or restricting disclosure.

Information related to the safety and wellbeing of children

Under the child protection legislation in most jurisdictions, information related to the safety and wellbeing of a child or children (or safety, welfare and wellbeing of a child or children) can be shared between prescribed bodies. In the context of our work, this may be information about:

- adults who may pose a risk to a child or children
- children who have displayed harmful sexual behaviours
- children who have been, or are at risk of being, sexually abused.

Information sharing/information exchange

‘Information sharing’ and ‘information exchange’ refer to the sharing or exchange of information, including personal information, about, or related to, child sexual abuse in institutional contexts. The terms refer to the sharing of information between (and, in some cases, within) institutions, including non-government institutions, government and law enforcement agencies, and independent regulatory or oversight bodies. They also refer to the sharing of information by and with professionals who operate as individuals to provide key services to or for children.

Discussion in this volume encompasses the collection (or receipt), use and management, as well as the disclosure of information.

Personal information

‘Personal information’ refers to information or an opinion about an identified or reasonably identifiable person (see *Privacy Act 1988* (Cth) s 6(1) for a more comprehensive definition).

Prescribed bodies

The term ‘prescribed bodies’ refers to bodies (government agencies, public authorities or office holders, non-government organisations and service providers) specifically nominated by law for inclusion in current information sharing arrangements under child protection legislation (in particular, under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and Part 5.1A of the Northern Territory’s *Care and Protection of Children Act* (NT)).²

We also use this term to describe the bodies that should be considered by governments for inclusion in our recommended information exchange scheme.

Procedural fairness

‘Procedural fairness’ requires decision-makers to act fairly and reasonably, inform an individual of information that is adverse to their interests, and give them an opportunity to respond to that information before relying on it to make a decision.

Privacy

‘Privacy’ refers to a person’s ability to control access to, and use of, their personal information, and to comment on and correct personal information held about them. Privacy is a human right, recognised and protected by state, federal and international law.

Reportable conduct scheme

A ‘reportable conduct scheme’ is a legislated scheme for the reporting, investigation and independent oversight of a range of complaints or allegations made against employees and volunteers in certain government and non-government agencies, which may include child abuse, child neglect, and child-related misconduct.

In general terms, agencies subject to reportable conduct schemes provide services or activities for, or engage with, children. The objective of a reportable conduct scheme is to improve reporting of, and responses to, child abuse, neglect and misconduct that occurs in institutional settings.

Under a reportable conduct scheme, agencies must report complaints, allegations (and convictions) against their employees and volunteers to an independent oversight body. The oversight body is then authorised to monitor and scrutinise the agency’s handling and investigation of the complaint.

1.5 Structure of this volume

Chapter 2 looks at records and recordkeeping by institutions that engage in child-related work and makes recommendations to improve records and recordkeeping, including in relation to the creation, maintenance and disposal of records, and individuals' access to records about themselves.

Chapter 3 considers the need for reforms to improve information sharing and better protect children from sexual abuse in institutional contexts. We recommend a scheme for sharing information related to the safety and wellbeing of children between key agencies and institutions to improve information exchange within and across different sectors and jurisdictions.

Chapter 4 considers additional reforms to improve information sharing in two key sectors – schools and out-of-home care. We conclude that information sharing arrangements and practices in these sectors should be strengthened. We recommend the implementation and further consideration of reforms, including in relation to teacher and carers registers. We also discuss information sharing in the religious and sport and recreation sectors.

Endnotes

- 1 *Letters Patent* (Cth), 11 January 2013, (a), (b), (c), (h).
- 2 In the Northern Territory, the term ‘information sharing authorities’ is used rather than ‘prescribed bodies’: see *Care and Protection of Children Act* (NT) s 293C.

2 Records and recordkeeping

2.1 Overview

We examined institutional records and recordkeeping for two principal reasons. First, the experiences of numerous victims of child sexual abuse in institutional contexts made plain to us the profoundly damaging effect that poor records and recordkeeping practices can have for individuals. Second, it was evident from our inquiry that poor records and recordkeeping practices pose serious risks to preventing, identifying and responding appropriately to child sexual abuse. In this respect, records and recordkeeping practices fall within our Terms of Reference.

The quality of institutions' records and recordkeeping practices, and how they relate to the adequacy of institutional responses to child sexual abuse, were among the first significant issues raised with the Royal Commission. Records can be critical to an individual's sense of self and identity in later life.

2.2 The importance of records and recordkeeping

The creation of detailed and accurate records and the exercise of good recordkeeping practices are important elements of good governance. They help promote consistency of practice, retention of organisational memory and institutional accountability. They also help institutions to maintain descriptions of their processes, decisions, activities and responses to critical incidents, providing a level of transparency and evidence of practices that can be relied on in the future.

It quickly became apparent to us that detailed, high-quality records and good recordkeeping practices have particular significance in institutions that care for or provide services to children and that child safety within these institutions can be promoted when:

- there are clear expectations about what sorts of records need to be created (including records about risks, allegations and instances of child sexual abuse and how they are responded to), what detail they must include, how they must be kept and for how long they must be kept
- consistent recordkeeping practices are established
- records about seemingly minor or isolated incidents are available to be viewed holistically and provide a cumulative picture of risks to children¹
- perpetrators, senior institutional staff who may have failed in their duties of care, and potential victims and survivors can be more easily identified
- evidence is created and retained for use in complaint handling, redress efforts, civil litigation and criminal proceedings.²

2.3 Problems with records and recordkeeping

Problems with institutions' records and recordkeeping were raised directly or indirectly in virtually all of the Royal Commission's case studies, as well as in our private sessions. We heard about instances of poor records and recordkeeping practices in both historical and contemporary institutions, and in a wide range of sectors. There were examples of:

- no records being created³
- records with incomplete, inaccurate or insensitive content⁴
- records being improperly maintained, including by way of inappropriate indexing and storage
- records being lost or misplaced⁵
- records being destroyed by floods and cyclones⁶
- records being withheld or access to them refused.⁷

During our inquiry we heard that access to records has been a recurring concern for survivors of child sexual abuse in a range of institutional contexts, over many decades. Lack of support and guidance, excessive delays, prohibitive costs, inconsistencies in law and practice, refusal to release records and redaction of records were all raised with us as issues affecting survivors' personal wellbeing and ability to hold institutions to account.

Information gathered in case studies, private sessions and consultations with stakeholders demonstrated that, in the past, many institutions did not have clear and enforced policies for creating and managing records about children under their care. The fact that we also found poor records and recordkeeping practices in recent times⁸ suggests that the problems with creating and managing accurate records are systemic and enduring.

Similarly, the fact that survivors told us they were still experiencing considerable difficulty and distress in accessing records indicates that problems have not been overcome by reforms in response to the recommendations of earlier inquiries. The records and recordkeeping practices of many institutions operating today may still not meet the standard required to promote child safety and institutional accountability.

During our inquiry we heard about the significant and detrimental consequences that poor records and recordkeeping practices can have, which emphasised to us the importance of improving institutional practice in this regard.

We heard poor records and recordkeeping practices can:

- inhibit good governance
- contribute to inconsistent practices and loss of organisational memory
- hinder identification of perpetrators, victims and survivors
- delay or obstruct responses to risks, allegations and instances of child sexual abuse
- prevent or frustrate disciplinary action, redress efforts, civil litigation and criminal proceedings.

2.4 Defining records and recordkeeping

What constitutes a 'record' can vary depending on the context in which it is created, and who may have an interest in it. In the context of child sexual abuse, what victims, survivors, law enforcement officials and others might consider a 'record' may be very different from what might be considered a 'record' in other contexts.

The *Australian standard: Records management* defines a 'record' as 'information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business', regardless of medium, form or format.⁹

In the context of child sexual abuse and records about children, this definition is useful in that it encompasses both physical records¹⁰ and digital records,¹¹ as well as other items or articles such as audio and visual recordings, photographs and art works. It also has limitations, as it fails to capture the personal and emotional significance that records relating to childhood and child sexual abuse can have for survivors.

Although the terms 'recordkeeping' and 'records management' are sometimes used interchangeably, there is a distinction between the two. Recordkeeping comprises various functions to do with the creation, use and administration of records, of which 'management' is one component. 'Recordkeeping' can be defined as:

The making and maintaining of complete, accurate and reliable evidence of business transactions¹² in the form of recorded information. Recordkeeping includes the creation of records in the course of business activity, the means to ensure the creation of adequate records, the design, establishment and operation of recordkeeping systems and the management of records used in business (traditionally regarded as the domain of records management) and as archives (traditionally regarded as the domain of archives administration).¹³

‘Records management’ is defined within the International Organization for Standardization, *Information and Documentation – Management systems for records* as:

The field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition [disposal] of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records.¹⁴

Good recordkeeping typically involves several interrelated processes. We discuss the processes in terms of three ‘stages’ that occur over the life of a record: creation, maintenance and disposal.¹⁵ The three stages are outlined in Table 8.1.

Table 8.1 – Three stages of recordkeeping

Stage 1: Creation	<p>Records may be created as a part of routine business processes (for example, a letter or email), or after an event occurs or a decision is taken (such as in a report, minute or case file note). In creating a record, the author should be mindful that a good record needs to:¹⁶</p> <ul style="list-style-type: none">• describe what happened, when it happened and who was involved• be complete, accurate and reliable• reflect the purpose for which it was created• be detailed enough to suit the context and circumstances, and to be understood by others• be created close to the event to ensure it is accurate and reliable.
Stage 2: Maintenance	<p>Records should be used, maintained, filed, indexed, organised and preserved in a way that ensures they:</p> <ul style="list-style-type: none">• can be proven to be genuine and accurate• are complete and unaltered• are secure from unauthorised access, alteration and deletion• can be retrieved and accessed• can be linked with other, associated records.¹⁷
Stage 3: Disposal	<p>Records should be disposed of by way of authorised destruction or transfer to an archive for permanent retention.</p>

During our inquiry, we found that problems can occur at any or all of these three stages of the record lifecycle. The associated issue of access to records by parties other than the record creator or holder (typically at Stage 2 or Stage 3 of the record’s life) was an enduring concern.

2.5 Why we looked at records and recordkeeping

2.5.1 Impact of poor records and recordkeeping for survivors

Over the life of the Royal Commission, many survivors of child sexual abuse told us about the distress, frustration and trauma that poor institutional records and recordkeeping practices had caused them. We heard of numerous instances where records were either never created or contained only limited, inaccurate or insensitive content. We also heard accounts of records being lost or destroyed, and of it being impossible to determine whether records had survived.¹⁸ The difficulties of accessing surviving records was also a recurring concern.¹⁹

While each of those issues could individually cause distress, survivors often encountered several of these problems, the cumulative effect of which was often devastating.

Where institutional records are relevant to establishing that child sexual abuse has occurred, we heard how loss or destruction can be especially significant and can:

- prevent the identification of perpetrators
- obscure institutional knowledge and responsibility
- leave survivors feeling that their accounts are not believed and cannot be verified
- prevent or hinder redress and civil or criminal proceedings.

The impact of poor records and recordkeeping practices on many survivors can be profound. It can:

- erode survivors' sense of self, their capacity to establish that they had been abused and their confidence in disclosing abuse²⁰
- prevent the identification of risks and incidents of child sexual abuse
- delay or obstruct responses to risks, allegations and instances of child sexual abuse
- obscure the extent of institutional knowledge of abuse
- hinder disciplinary action, redress efforts, and civil and criminal proceedings.

Survivors told us in private sessions that the absence of records about their engagement with institutions, or the paucity of detail in those records, had been directly responsible for their inability to seek redress. One survivor told us that she made an application for redress at the time of the Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry), but she was not able to provide documentation about her time in a Queensland children's home because the institution had not kept any records.²¹ Another survivor was advised by her lawyer that there was not enough documentation or sufficient evidence to proceed with a claim for compensation.²²

We heard how the absence or poor quality of records could have profoundly damaging effects, particularly on survivors who spent time in residential care and out-of-home care. Impacts we heard about included:

- disconnection from family and community
- lack of knowledge about personal and family medical histories
- loss of ethnicity, language and culture
- loss of childhood experiences and memories
- diminished self-esteem and sense of identity.²³

For those who grew up away from their families, the absence of the records of childhood that many people take for granted – for example, birth certificates, photographs, art works, school reports and medical histories – can have profound consequences. Some survivors were unable to obtain passports, while others had to apply for Australian citizenship as adults, despite the fact that they were born and raised in Australia.²⁴ Without the childhood records and mementos that those who grow up with their families typically retain, survivors may feel lost, isolated and incomplete and that their childhoods were meaningless or insignificant.²⁵

2.5.2 Institutional conduct and accountability

The creation and management of accurate institutional records plays an intrinsic role in addressing child sexual abuse. The absence of institutional records, or inaccuracies or only scant detail in those that are kept, was raised in many case studies. We have seen examples where absent or inaccurate records may have:

- hindered the identification and prevention of child sexual abuse²⁶
- delayed or obstructed the identification and removal of perpetrators
- misconstrued or misrepresented grooming and other abusive behaviours
- minimised or obscured the extent of institutional knowledge of child sexual abuse.²⁷

Accurate records and good recordkeeping practices can play a central role in:

- providing accurate and complete pictures of individuals' and institutions' conduct
- allowing risks and incidents of child sexual abuse to be identified and appropriately responded to
- providing material to assist in complaint handling, disciplinary action, redress, and civil and criminal proceedings
- alleviating the impact of abuse on survivors by providing historical acknowledgement of their experiences.

In addition, good records and recordkeeping practices are integral to the realisation of many of the rights of children enshrined in the United Nations Convention on the Rights of the Child (UNCROC), to which Australia is a signatory. In particular, the creation and management of accurate and detailed records is fundamental to children's rights to identity, nationality, name and family relations.²⁸ The rights of children to be protected from all forms of physical, mental and sexual abuse²⁹ are promoted by good records and recordkeeping.

2.6 Historical records

Greater recognition of the significance of institutional records relating to children and child sexual abuse has developed gradually. Prior to the 1980s, most institutions were not under any statutory obligation to create or maintain particular records about the care of, or provision of services to, children. Several earlier inquiries examined and exposed the problematic practices of many older institutions.

In 1997, the Australian Human Rights and Equal Opportunity Commission conducted the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. The report, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing them home)*, found it was not possible to state with any precision how many children were forcibly removed. Many records had not survived; others failed to record the children's 'Aboriginality'.³⁰ It also found that much supporting evidence, including records, had been destroyed.³¹

In 2001, the Senate Community Affairs References Committee inquired into child migration. Its report, *Lost Innocents: Righting the record – Report on child migration (Lost Innocents)*, found that many Former Child Migrants had little information about their childhood. The committee was told that files sent with child migrants should have included a birth certificate, baptismal certificate, health report and some school reports, but the details on files were not always complete. Later information was scant, non-existent or lost following the closure of institutions. The report also found that the records of many child migrants were destroyed after they reached the age of 21.³²

In 2004, the Senate Community Affairs References Committee inquired into Australians who experienced institutional or out-of-home care as children. Its report, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children (Forgotten Australians)*, observed that state wards and children in homes often lost contact with siblings and their families, and retained few memories of their childhood before they were removed into care. The lack of information kept about these children has had a major impact on their sense of self and identity. For some survivors, their path of healing from prior traumatic experience was suspended.³³

Records created pre-1990 (historical records) were often of low quality in comparison to what would be expected today. While some older institutions had their own recordkeeping policies and practices,³⁴ the practices were often ad hoc and unsophisticated.

Many individuals are potentially affected by problems with historical records. For example, the *Forgotten Australians* report estimated that ‘more than 500,000 Australians have experienced life in an orphanage, home or other form of out-of-home care during the last century in Australia’.³⁵

The following section examines the issues we identified with the creation, maintenance and disposal of historical records.

2.6.1 Creation

We found that the creation practices of many older institutions as applied to historical records were poor. Without any obligation or expectation to the contrary, many older institutions created few records, or only created records about, or useful in relation to, their own operations. It was not uncommon for institutions to create no records about the children in their care, or to create records with minimal and sometimes inaccurate or insensitive content.

Absence of historical records

The total absence of historical institutional records, or lack of reference to critical incidents within historical records, have been concerns for many survivors, both in relation to their general engagement with institutions and in relation to child sexual abuse within institutions. The absence of records had tangible and very personal effects on survivors, frustrating their efforts towards redress, stymying civil litigation, and diminishing their sense of self and history.³⁶

In a private session, one survivor, ‘Archie’, told us that when he approached an institution for access to records, it told him it did not have records relating to the perpetrator.³⁷ He said ‘[The institution] lied to protect themselves’.³⁸

We heard about cases where institutions denied that particular children were ever in their care on the basis that they had no records about them, forcing individuals to rely on their own records (for example, letters addressed to the institution in which they had lived or their presence in a school photograph) to prove otherwise.³⁹ We heard that some care-leavers who spent the majority or all of their childhoods in out-of-home care were entirely undocumented. In some of these extreme cases, people who entered care as infants were never issued with fundamental identifying documents such as their birth certificates.⁴⁰ For these individuals, this has:

- caused or exacerbated loss of identity and childhood memories
- led to or exacerbated disconnection with family, ethnicity, language and heritage
- obscured relevant personal and family or hereditary medical histories.⁴¹

One survivor, 'Tui', told us she was placed in a babies' home when she was an infant and spent much of her childhood in care.⁴² Her siblings were also placed in care, and she was later separated from them. She told us that she faced a number of obstacles in trying to come to terms with her past and that her records were missing or unavailable.⁴³

'Deanna' told us that the lack of records about her life has been difficult for her.⁴⁴ She had never known her real birthday, as her date of birth went unrecorded. She said the welfare department assigned her an arbitrary date of birth when she came into care as a toddler. She was 20 years old, and applying for a passport, before she found out she did not have a birth certificate. She was forced to apply to become an Australian citizen because she had nothing to prove her citizenship, despite the fact that she had never been out of the country. The process took two years.⁴⁵

In addition to total absence of records about some children, historical records commonly do not include information relevant to child sexual abuse. Many institutions we examined operated in the first seven decades of the 20th century, and they had no written policies or procedures about child protection; preventing, identifying, managing and responding to risks to children's safety and wellbeing; or responding to risks, allegations and instances of child sexual abuse.⁴⁶

A number of survivors of child sexual abuse in various institutions told us that no records were created about the abuse, even where the abuse (or evidence or suspicions that it occurred) had been reported.⁴⁷

Several of our case studies provided examples of institutions failing to document matters relevant to sexual abuse of children under their care.⁴⁸

For example, in *Case Study 5: Response of The Salvation Army to child sexual abuse at its boys' homes in New South Wales and Queensland*, we examined how The Salvation Army responded to the sexual (and physical and psychological) abuse of boys in four residential out-of-home care facilities it operated between the 1950s and the early 1970s. In relation to multiple allegations of child sexual abuse made against two particular officers, we found:

Virtually no personnel records exist which record complaints or reviews of the officers' performance [and] ... [t]here were no written records of complaints against [two staff members] who were the subject of a considerable number of allegations of physical and sexual abuse.⁴⁹

Without an adverse finding on a personnel file, or a referral to the police, those who later oversaw these officers did not necessarily know of previous allegations of physical or sexual abuse.⁵⁰

Problems with recordkeeping are also illustrated by *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*.

Prior to the public hearing, the Christian Brothers produced a significant number of records in response to summons, some of which documented child sexual abuse in the four Western Australian institutions dating from as early as 1919.⁵¹

The summaries prepared by lawyers for the Christian Brothers stated:

It should be noted that following the last report in the Council minutes in 1959 there were approximately 150 pages left in that particular volume in the minutes in which there is no mention of any report of abuse of children or immorality involving children. This suggests that these cases are no longer reported in the Council minutes and there may well have been some decision made in the late 1950's not to record these matters.⁵²

In *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton (Marist Brothers)*, we examined allegations of sexual abuse of students in several Marist Brothers schools in the Australian Capital Territory, New South Wales and Queensland.

We found that, before 1983, 'there was no evidence that the [Marist Brothers] Provincials had a practice of keeping written records of allegations against Brothers or admissions by them of child sexual abuse'.⁵³ In relation to Brother Kostka Chute, who was a prolific abuser of children over three decades, we found: 'The Marist Brothers kept no written record of these accumulated allegations of Brother Chute's repeated offending conduct'.⁵⁴

Minimal, distressing and inaccurate content

Without any obligation or expectation to the contrary, where an older institution created records about children, their content often reflected the priorities and operational needs of the institution rather than the needs and individual experiences of the children. Often the sort of detail that was of relevance to the institution did not align with what would be of relevance and significance to the children concerned. For instance, a record might be made of the date a child entered or left the institution's care, a child's truancy or disobedience, or details about punishment.

The minimal content and paucity of detail contained in many older records have been the cause of anger, frustration and distress for some survivors of child sexual abuse in institutions.⁵⁵ Some survivors, particularly those who spent part or most of their childhoods in residential care facilities, orphanages and 'children's homes', have told us that they felt diminished by the lack of detail contained in institutional records created about them. For many, the absence of any discussion about heritage and ethnicity, personal development, friendships and experiences has been deeply hurtful and disappointing.⁵⁶

One survivor, 'Cody', told us that because he was never a ward of the state in Victoria he found it hard to find any record of his time in the orphanage in which he grew up.⁵⁷ When he got access to his record, it only contained the dates of his stay and nothing about him personally or that he was sexually abused, even though he had reported the abuse to the matron at the orphanage. He said, 'I just wanted to know someone had done something, that it had been recorded'.⁵⁸

We heard examples of files purportedly representing a decade or more in 'care' amounting to only a few pages or having no entries for years at a time, leaving the individuals discussed within those files feeling as though their childhoods were meaningless and insignificant. We also heard examples of care records lacking any detail about medical and dental care, including immunisations and hereditary conditions, with ongoing consequences for survivors' health and wellbeing and even intergenerational consequences.

One survivor, 'Selina', told us she tried for more than a decade to retrieve her records on her time in an orphanage.⁵⁹ She said she was frustrated that she received only a few notes. Her siblings received more detailed records. She said:

I've got some basic stuff but from the orphanage, but no state – you know, ward of the state records or anything. It's all gone. So that's one area that I feel like I need some, you know, justice on that.⁶⁰

Another survivor told us she was in Catholic care from the age of nine until she was 16. She said she received her care records, but they were very sparse:

The biggest problem for me is sequencing. I've tried ... and the little bit I have been able to get doesn't really help ...⁶¹

We also heard from survivors who were in care during the mid to late 20th century of their distress at the insensitive way they were described in institutional records.⁶² One survivor told us that reading such material had exacerbated or caused additional trauma:

I shut it and I didn't read it again ... I tried to forget it but I haven't been able to ... It just hasn't helped me at all. I wish I'd never got it. I really do ... It's like my life's just been flipped upside down and I don't know which way's up.⁶³

‘Terry Michael’ said years of lost memories came flooding back after he obtained a copy of his records as a state ward.⁶⁴ He said:

I sometimes lie awake at night and wish maybe I would’ve been better off not looking at that file ... Maybe it would’ve come out later in life anyway.⁶⁵

We heard examples of care-leavers making deliberate decisions not to seek access to records created about them because they expected that the content would be hurtful, distressing or insensitive, and did not want to see what others had written about them.⁶⁶

Inaccuracy was also a feature of historical records. A number of survivors have told us of their surprise and outrage at the purportedly ‘objective’ and ‘factual’ discussion of them as children.⁶⁷

For example, in *Case Study 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse (Youth detention centres, Victoria)*, witnesses told us that they felt seriously misrepresented by inaccuracies in records created about them and their time in two Victorian youth training centres during the 1970s.⁶⁸

Incomplete and inaccurate records may also have inhibited the ability of some older institutions to identify or take appropriate action against individuals who posed risks to, or were sexually abusing, children. We heard several examples of older institutions using euphemisms in their records – effectively concealing the extent and seriousness of sexual abuse that perpetrators committed and the extent of institutional knowledge about those perpetrators’ abuse of children.⁶⁹

Not all older institutions neglected to create records about children under their care or the sexual abuse of those children. In some cases, detailed records were kept, which have been of vital significance to the individuals discussed within them.

For example, ‘Native Welfare Client Files’ were created by the (then) Western Australian Department of Native Welfare and its predecessors from 1921 until 1969 and concerned Aboriginal and Torres Strait Islander children under its ‘care and protection’. The files often contained comprehensive details about individual children and their families. These typically included discussion of births, deaths and marriages; medical and other health care; and the employment and finances of children and their parents. Despite their history and limitations, these records can be of vital significance to individuals who were removed from their families, as well as the children and grandchildren of those individuals seeking to trace their own family histories.⁷⁰

2.6.2 Maintenance

The maintenance stage (Stage 2) and the disposal stage (Stage 3) of a record's lifecycle are often closely intertwined. Unless a record has been properly maintained and preserved, the question of its disposal (by way of archiving or authorised destruction) may never arise.

Until the later decades of the 20th century, many institutions did not have detailed policies or established practices for the maintenance and preservation of their records. We heard of instances of records being improperly maintained,⁷¹ disappearing or being destroyed after being stored in inappropriate facilities or locations. Some institutions have vast archives of records but, due to poor maintenance such as lack of indexing, their content is unknown.

There have been some initiatives to improve this. For example, Find & Connect indexing grants assist past and current non-government service providers to index records to improve access to records of Forgotten Australians and Former Child Migrants.⁷² MacKillop Family Services was able to index 115,000 records dating back from 1850 to 1997, at an estimated cost of \$1 per individual record, with grants from Find & Connect.⁷³

In Victoria, the Department of Human Services has undertaken a project focusing on the historical records of former wards of the state and care-leavers. More than one million historical paper-based records have been indexed and key data has been captured in the department's electronic records management system, giving the department the ability to undertake more accurate searches.⁷⁴

Issues with the maintenance and preservation of historical records have arisen in case studies, private sessions and consultations with institutions and other stakeholders. Among the problems raised with us about records maintenance were:

- loss of physical records
- potential loss of records during transitions between physical and digital systems
- lack of, or inconsistent, indexing
- multiple indexing systems being used concurrently, causing fragmentation of related records
- records being stored in insecure or inappropriate locations, including employees' homes.

Each of these represents an instance of poor maintenance and preservation that has potentially compromised the completeness and accessibility of institutions' record files.

The failure of older institutions to index their records, and the legacy this has in the modern day, was illustrated in the *Youth detention centres, Victoria* case study. That case study examined the experiences of residents and wards of the state who were housed in three state-run facilities in Victoria during the mid-20th century.

Mr Stephen Hodgkinson, Chief Information Officer of the Victorian Department of Health and Human Services, told us about the state of the department's archives. Mr Hodgkinson advised that the department holds some 80 linear kilometres of historical records, around 30 kilometres of which relate to former residents of state-run facilities.⁷⁵ Mr Varghese Pradeep Philip, then Secretary of the department, told us:

[Victoria has] documents that go back decades, and it isn't the case that they were all filed correctly, administratively, in categories and by order, and that is most unfortunate. It was not a deliberate act that I am aware of, of withholding documents; there is a practical reality of trying to locate documents, working in good faith to do so under FOI [freedom of information] ... we in fact discovered just recently a file we've been looking for since 1999 that sat inside of another file, completely unrelated to it, in a case that does not in any way relate to what that file was about. That is just the reality of what we are trying to deal with.⁷⁶

In his March 2012 report, *Investigation into the storage and management of ward records by the Department of Human Services*, Mr George Brouwer, the then Victorian Ombudsman, also discussed the state of the department's records. He noted that:

- the department's 80 linear kilometres of historical records were held in multiple locations
- the department was paying nearly \$1 million a year to rent a facility identified as being inadequate to store records, and that had been subject to flooding and rat infestation
- a considerable proportion of the department's historical records had not been inspected or indexed
- the department had only indexed and catalogued records for around 26 of its 150 years' worth of ward files.⁷⁷

Several of our case studies featured discussion of records being 'lost' or 'unavailable', with the implication that the institutions concerned did not have up-to-date knowledge about the state or location of their older records or, indeed, whether they had even survived.⁷⁸

In the *Marist Brothers* case study, we heard that a police file relating to complaints by two victims that they had been sexually abused by a Marist Brother had 'been lost or was not available'.⁷⁹ Similarly, in *Case Study 19: The response of the State of New South Wales to child sexual abuse at the Bethcar Children's Home in Brewarrina, New South Wales*, we heard that 'not all' records relevant to complaints of child sexual abuse at the Bethcar Children's Home in New South Wales 'are available'.⁸⁰

In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol (St Joseph's Orphanage, Neerkol)*, we heard that the institutions concerned had established practices for the creation of records about the treatment of children but not, it seemed, for their maintenance and preservation:

From 1966, every complaint received about a child and any punishment inflicted were required to be recorded in a punishment book, which the Mother Superior could produce to the Director or an officer of the Children's Services Department on demand. The Queensland Government could neither locate nor produce to the Royal Commission copies of the punishment books from the orphanage ... [and] the state could not locate any records which referred to or discussed any policies and/or procedures for the reporting of physical or sexual abuse of children up and until the closure of the orphanage in 1978.⁸¹

2.6.3 Disposal

The historical records of many of the institutions we examined were not subject to any clear or consistent disposal policies or processes. In a 2003 publication, Anglicare observed that even when records of its older out-of-home care institutions were maintained 'there has been no requirement or expectation that they be kept indefinitely'.⁸²

Some older institutions kept vast archives, with or without suitable indexing, or with indexing best described as incomplete. While archives with limited scope or without logical indexing were raised as problems during our inquiry, from what we heard, the destruction of historical records has been far more problematic and the cause of more distress for survivors. We encountered numerous examples of records being destroyed, sometimes inadvertently, but often in line with either institutional policy⁸³ or public records office authorisations that provide for the disposal of certain records ('records disposal schedules' or 'records disposal authorities', depending on the jurisdiction).

In Case Study 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales (Knox Grammar School), the principal of the school told us that files had gone missing. He was suspicious that 'someone who had an interest in those files not being located had either moved or destroyed them'.⁸⁴ In private sessions, survivors suggested records were deliberately destroyed to protect institutional staff or volunteers.⁸⁵

In Case Study 28: Catholic Church authorities in Ballarat (Catholic Church authorities in Ballarat), concerns were raised that clergy destroyed important records and documents relating to complaints and allegations of child sexual abuse. Counsel Assisting submitted that Bishop Ronald Mulkearns, the Bishop of Ballarat from 1971 to 1997, destroyed a document in the 1990s relating to child sexual abuse by Gerald Ridsdale some months before Ridsdale was charged in 1993. The document recorded Bishop O'Collins sending Ridsdale to a Catholic psychiatrist following a complaint of child sexual abuse.⁸⁶ The Church parties acknowledged that these records should not have been destroyed.

In the *Catholic Church authorities in Ballarat* case study we received evidence that, in 1981, a complaint was made to a Christian Brother Provincial in relation to an allegation of sexual abuse of a boy by a Christian Brother. The evidence was that the Christian Brother Provincial sent the Christian Brother to see a psychiatrist or psychologist and received a report following that counselling. The Christian Brother Provincial destroyed personnel records at the end of his term in office and verbally communicated relevant information to the next Provincial.⁸⁷ We found that the personnel records were likely to have contained important information about the Christian Brother's conduct and his suitability to be around children, including complaints about child sexual abuse. Such records should have been retained so that future Provincials were aware of his history and able to take necessary precautions.

In our view, it is clear that many historical records were destroyed with little consideration of their potential future relevance or use, or the significance of the records to the individuals discussed within them.

Our case studies also provided examples of inadvertent destruction of records in secure storage. In *Case Study 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home*, we were told that some of the files housed in the Retta Dixon Home in the Northern Territory were destroyed by Cyclone Tracy in 1974.⁸⁸

In the *St Joseph's Orphanage, Neerkol* case study we were told that a substantial number of archived records of the Queensland child protection department were destroyed when the basement of the Brisbane headquarters of the department, where the records were stored, was flooded in 1974. Ms Majella Ryan, Executive Director of Child Safety Queensland, observed that, due to these losses 'the [Queensland child protection] department's archived records are incomplete'.⁸⁹

Another case study featured destruction of records in accordance with disposal schedules or authorities. In *Case Study 20: The response of The Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*, the Solicitor-General of Tasmania informed the Royal Commission that Tasmania Police were unable to confirm whether there had been a police investigation of several teachers at the school who were accused of child sexual abuse in the 1960s and 1970s. This was because all documents relating to any investigations into those teachers during the 1960s and 1970s had been destroyed, after disposal authorisations, in keeping with the *Archives Act 1983* (Tas).⁹⁰

In the *Youth detention centres, Victoria* case study, we heard about files being destroyed, first, in accordance with institutional policies and, later, under records disposal authorities.

A former resident of the Turana Youth Training Centre said that she was notified by letter in 2001 that all client files for residents of Turana born before 1967 had been destroyed when the resident reached 21 years of age. A former youth officer recalled that while he was employed at Turana he witnessed a staff member tearing up files because they related to boys who had turned 21.⁹¹

Another former resident said that she was notified in 2014 that her file had been destroyed in 2003 under authority from the Public Record Office. A witness gave evidence that he was also informed that his records had been destroyed, only to be told many years later they had not been. We also heard evidence that some records that were meant to be retained could not be located, with the implication that they had been lost or destroyed.⁹²

Mr Hodgkinson, the Chief Information Officer of the Victorian Department of Health and Human Services, told us that before 1973 there was no legislation governing the destruction of records. Individual institutions made their own decisions about records disposal. He said that, since 1982, 'Record Disposal Authorities' created by the Public Record Office have set out rules for the destruction of some categories of records relevant to former wards of the department. However, since October 2012, as a result of the department's increased understanding of the significance of records to the health and wellbeing of survivors, a 'total destruction hold' prohibits destruction of any records relating to departmental care.⁹³

2.7 Contemporary records

Contemporary institutions that care for or provide services to children have a better understanding than their predecessors of the importance of documenting risks, allegations and incidents of sexual abuse of children in their care. They better understand what records should be made, what they should contain, how they should be maintained and how they should be disposed of.⁹⁴

There have been significant developments in records and recordkeeping law and policy over the past three decades, some of which (for example, in the out-of-home care sector) have come about in response to recommendations made in the reports of other major national inquiries, such as the *Bringing them home*, *Lost Innocents* and *Forgotten Australians* reports.⁹⁵

Each of these three inquiry reports made recommendations to improve recordkeeping practices and access to records. Nevertheless, the evidence before us makes it plain that problems with recordkeeping and access to records are not confined to the past, and that the practices and processes of contemporary institutions require improvement to better meet the needs of survivors.

Since the 1980s, much legislation has been enacted to govern the recordkeeping practices of various institutions. Most of these recordkeeping obligations apply generally and are not directed specifically to documenting risks, allegations or incidents concerning children. For example, the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) sets out recordkeeping obligations for registered entities under the Act, and the *Corporations Act 2001* (Cth) creates reporting obligations for the financial activities of all corporate entities.

Over the past three decades, every Australian jurisdiction has enacted laws for the creation, management and retention of records created by or for government agencies and public bodies (referred to collectively as ‘public records legislation’).⁹⁶

Public records legislation imposes obligations on a wide range of public bodies⁹⁷ to create ‘full and accurate’ records of their business and activities,⁹⁸ with potential penalties applying for noncompliance.⁹⁹ However, with limited exceptions, these obligations do not apply to the activities of non-government bodies, even where a non-government body is operating in the same sector as a government agency. The categories of government agencies whose activities are regulated under public records legislation include:

- departments responsible for child protection, families, health, education and community services
- public hospitals
- out-of-home care service providers and administrators
- government schools.

There are some legislative obligations specific to records relating to child safety and wellbeing. As discussed in Volume 6, *Making institutions child safe*, Victoria has legislated child safe standards for organisations that provide services for children to help protect them from abuse.¹⁰⁰ Standard 5 specifically deals with the processes for responding to and reporting suspected child abuse. It requires organisations to ensure that ‘allegations of abuse and safety concerns are appropriately recorded and stored securely to protect privacy’.¹⁰¹

Other recordkeeping obligations apply specifically to particular types of institution – for example, obligations outlined in state and territory school education legislation.

Most non-government institutions that provide services to and engage with children also have more stringent recordkeeping practices now than in the past. In some cases, non-government institutions will be under the same obligations as their public counterparts (for example, all schools must create records relevant to student enrolments and attendance). However, they are generally not subject to the records maintenance and disposal obligations their government counterparts have under public records legislation.¹⁰²

Some non-government institutions have established their own records and recordkeeping policies.¹⁰³ These may be specific to individual institutions or may apply to several institutions – for example, an association of independent schools in a state or territory may develop policies for use by all member schools. This promotes consistency and predictability in practices. We also understand that a number of non-government institutions have adopted or adapted existing recordkeeping standards developed by recordkeeping and archives experts to guide their conduct. For example, a number of non-government institutions use the *Australian standard: Records management*.¹⁰⁴

Current recordkeeping regulation and practices in out-of-home care institutions and schools are discussed in more detail in the following sections. These two institution types are highlighted because together they featured in around 70 per cent of the accounts of child sexual abuse we heard about in private sessions. In addition, many of the recordkeeping obligations that apply to public sector out-of-home care providers and government schools also apply to their private sector counterparts.

2.7.1 Out-of-home care

Many children are affected by records and recordkeeping in out-of-home care institutions. As at 30 June 2016, there were 46,448 Australian children living in statutory out-of-home care.¹⁰⁵

In the out-of-home care sector, recordkeeping obligations may vary between jurisdictions and care types – principally residential, foster, kinship or voluntary care. In voluntary out-of-home care¹⁰⁶ in particular, recordkeeping obligations may be less stringent than in other forms of out-of-home care, although some jurisdictions do have strict and detailed recordkeeping requirements.¹⁰⁷

Some states and territories have legislation and policy outlining specific recordkeeping obligations for government and non-government out-of-home care providers.¹⁰⁸ In addition, the records of non-government out-of-home care providers engaged by government will usually constitute public records, which have to be transferred to an appropriate government agency, such as the child protection department or public records authority, for retention once the contract ends or the particular child has left out-of-home care.¹⁰⁹

While some differences exist between jurisdictions, the following records must generally be kept about all children in contemporary statutory out-of-home care:

- the initial assessment of the child's need for care and protection
- the statutory order under which the child enters out-of-home care
- unique files for each individual child, with dates of file creation and closure, and (as required) sequentially numbered parts or volumes

- the date of entry into and exit from care
- an individualised plan detailing each child's health, education and other needs, as well as goals and objectives for their time in out-of-home care
- full personal details of the child and their family (including the full names and dates of birth, sex, gender, religion, ethnicity, spoken languages and any special needs)
- details of the service provider, carers and members of the carer household (such as a carer's partner, other children in the home and frequent visitors).¹¹⁰

Out-of-home care providers, child protection agencies, oversight bodies or others may also create records about the operations and monitoring or auditing of individual out-of-home care providers. These records might include:

- policies and procedures
- the qualifications, Working With Children Check clearances, dates of engagement and training modules completed by carers and employees
- suitability assessments of carer households
- details of other people living in or frequently visiting carer households
- complaints
- investigations of complaints and critical incidents.

Some out-of-home care providers may be entrusted with other records relevant to or about a child when they enter into care, such as birth certificates. Such records may properly be considered as being held by the out-of-home care provider 'on trust' for the child, to be returned to them (or their parent or other carer) when a placement ends.

The National Standards for Out-of-Home Care¹¹¹ have also provided a national benchmark for recordkeeping in the sector. Although non-binding, these standards, agreed by all Australian governments, focus on improving out-of-home care for children in all jurisdictions and provide some useful guidance on good recordkeeping in the sector. The guidance includes the following:

- Each child should have a detailed and individualised care plan directed at promoting their wellbeing while in out-of-home care and outlining their specific health, education and other needs.
- Children in out-of-home care should be supported to maintain and develop their own identities and to maintain contact with their families, culture, spirituality and community.

- Children should have their ‘life histories’ recorded as they grow up, to ensure their childhood memories and experiences are captured and recorded.¹¹² Life histories (sometimes referred to as ‘life story books’) are records that are made for and with the participation of the child, who is the ultimate owner.¹¹³ They contain tangible representations of childhood, such as art works, mementos and photographs, as well as accounts of friendships, outings, academic or other achievements and birthday celebrations.¹¹⁴

Legal advice service knowmore submitted to our *Consultation paper: Records and recordkeeping practices* (Records consultation paper) that all government and non-government services should be required to meet the National Standards for Out-of-Home Care and that consideration should be given to making these mandatory in relation to recordkeeping.¹¹⁵

In his submission in response to the *Records* consultation paper, Mr Frank Golding from the Care Leavers Australasia Network (CLAN) observed that admission files often do not contain basic details such as the age of the child (or a copy of their birth certificate), the names of parents or siblings and last-known address or contact details, date of admission and expected date of exit, and records tracking any transfers to other placements. He submitted that:

If there were changes in a child’s status, eg, being fostered out or adopted, there should be separate records for each status. There is some confusion — and variations in rules across the jurisdictions — in regard to the rights to records of people whose legal status changed while they were in OOH. A national approach is needed.¹¹⁶

At present, standards for the maintenance and disposal of out-of-home care records, and access to those records, vary across jurisdictions.

In New South Wales, the NSW Child Safe Standards for Permanent Care (NSW standards) require that records about children and their families be securely stored for as long as required under legislation and be treated confidentially.¹¹⁷ They specify that:

- children in care and care-leavers be given access, and support to access, information about themselves and their families¹¹⁸
- care-leavers be given original identity documents, life story materials and copies of other relevant documents when leaving care¹¹⁹
- records be maintained in a secure manner and confidential information protected from unintentional release.¹²⁰

While the NSW standards do not prescribe a specific manner in which the records must be kept or maintained, out-of-home care accredited agencies are expected to provide accurate accounts of children and young people’s experiences in care, and agencies’ decision-making processes; and sufficient information to ‘support appropriate case planning decision’.¹²¹

In Queensland, the *Child Protection Regulation 2011* (Qld) includes obligations on licensed care services to record specific details regarding the child. These include the start and end dates of the child's placement; written complaints about the provision of services to the child and any action taken; breaches of standards relating to the child's care and any action taken; and significant events in the child's life – for example, non-routine medical treatment, punishment, contact with their family and receipt of any awards.¹²²

Public records legislation and records disposal schedules require that out-of-home care records produced by government institutions (or non-government institutions engaged by government) must be kept either for lengthy periods after a child has left care or in perpetuity. For example:

- in New South Wales, section 14 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) requires that all departmental records relating to Aboriginal and Torres Strait Islander children in statutory or supported out-of-home care be kept permanently¹²³
- in Queensland, the Department of Communities, Child Safety and Disability Services retention and disposal schedule requires that out-of-home care records be retained for 120 years after a relevant child's birth¹²⁴
- in South Australia, current disposal schedules require that files about most children in out-of-home care be retained for 105 years, and the files about Aboriginal and Torres Strait Islander children retained permanently.¹²⁵

Some jurisdictions also require or recommend that out-of-home care providers' records about employees or carers be retained for lengthy periods. For example, in South Australia it is recommended that out-of-home care providers' employee records be retained until an employee reaches 85 years of age.¹²⁶

In Chapter 4, we make recommendations to improve out-of-home care information sharing in relation to carers registers.¹²⁷ As discussed in the following section, poor practice in creating and maintaining records prevents timely and effective information sharing and limits institutional responses to incidents and risk of child sexual abuse. Consistent records and recordkeeping practices based on our five recommended high-level principles will help to support the implementation of these recommendations concerning information sharing in out-of-home care.

2.7.2 Schools

Around 3.75 million students attend Australian schools: 2.45 million attend government schools and 1.3 million attend non-government schools.¹²⁸

In schools, recordkeeping obligations can vary between jurisdictions and between the government and non-government sectors. Government schools' records constitute public records and must be created, maintained and disposed of in accordance with relevant public records legislation and records disposal schedules. Both government and non-government schools (or, in some jurisdictions, the relevant authorities responsible for the regulation of schools and their staff) must generally keep records of:

- policy documents concerning matters such as financial management, complaint handling, health and safety of staff and students, and student welfare
- staff qualifications, completion of relevant training modules, current Working With Children Checks clearances and similar matters.¹²⁹

Schools, school and teacher registration authorities or education departments may also need to keep records of or about:

- student transfers between schools
- school council or board meetings (minutes)
- teachers registered to work or intending to work in the relevant jurisdiction (often including any changes of names or details of registered teachers, and any suspensions or cancellations of registration).¹³⁰

In Victoria, a Ministerial Order made under the *Education and Training Reform Act 2006* (Vic) contains the minimum actions that all schools must take to meet child safe standards.¹³¹ These include having procedures that clearly describe the actions the school will take to respond to an allegation of child abuse, including actions to 'make, secure, and retain records of the allegation of child abuse and the school's response to it'.¹³²

Education departments in each state and territory have developed policies for government schools to follow when documenting critical incidents such as the injury, physical or sexual abuse, or death of a child while in the care of a school.¹³³ These policies may also state who must authorise the record as an accurate and full account (for example, the school's principal)¹³⁴ and discuss how that record relates to the reporting obligations of the school or its staff. Most non-government schools have developed policies about documenting critical incidents.¹³⁵ In general, there is more variation in the practices of non-government schools than those of government schools in the same jurisdiction.¹³⁶ Further, the records of non-government schools

are not subject to public records legislation and associated disposal schedules. In the following section we recommend that non-government schools be required to comply, at a minimum, with standards applicable to government schools operating in the same state or territory in relation to the creation, maintenance and disposal of records relevant to child safety and wellbeing, including child sexual abuse.

In Chapter 4, we make recommendations to improve information sharing in relation to teacher registers and about students who are at risk, or pose a risk, of child sexual abuse.¹³⁷ Again, consistent records and recordkeeping practices, based on our recommended high-level principles, will help to support the implementation of these recommendations.

2.8 Contemporary understandings of records and recordkeeping

Despite developments in recordkeeping laws and policies in the past few decades, it is evident to us that there are still problems with the records and recordkeeping practices of contemporary institutions. Legislation prescribing recordkeeping obligations is not uniform across jurisdictions, and institutions' obligations can vary markedly between sectors and depending on whether they are public or private.¹³⁸ In a submission to the Royal Commission, the Monash University Centre for Organisational and Social Informatics stated:

In short, there is no single unified approach to recordkeeping and archiving embracing government and non-government sectors.¹³⁹

Even where the law and policy applicable to a particular jurisdiction, sector or type of institution (government or non-government) are clear and well-established, problems remain in practice. For example, we have seen:

- institutional leaders, staff and volunteers lacking understanding of the importance and significance of records and how to exercise good recordkeeping practices
- institutions failing to update and maintain their administrative and personnel records to reflect staff qualifications, completion of training or Working With Children Check clearances
- records only being created or maintained due to the foresight or fastidiousness of individual staff members.¹⁴⁰

Recommended Principle 1: Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture

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

This principle is consistent with the first of the 10 Child Safe Standards developed by the Royal Commission – Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture (see Recommendation 6.5).

Creating and keeping accurate records about children, and the care and services provided to them, promotes the best interests of the child by fostering accountability and transparency and recognising individuals' character and experience. Importantly, these records matter to individuals when they are adults – to satisfy their essential human needs in relation to identity and personal history and for practical reasons, including in relation to redress and civil or criminal proceedings.

Submissions in response to our *Records* consultation paper supported a principle along the lines recommended.¹⁴¹ Stakeholders observed that creating and keeping accurate records should be part of institutions' core business and instilled within their culture:¹⁴²

If good records and recordkeeping practices should be in the best interests of the child – and there can be little doubt about that – then these practices must be seen as part of the core business of institutions. What might once have been regarded as a desirable expectation should now be regarded as an essential requirement, not as a matter of choice or a desirable option when or if they have the time. Institutions must allow no exceptions.¹⁴³

One of the ways in which this is achieved is through building and fostering an institutional culture that promotes and recognises good records and recordkeeping practices. The Association of Heads of Independent Schools of Australia (AHISA) observed that policies and procedures 'are of themselves insufficient to ensure best practice; it is the depth of institutional culture that supports best practice'.¹⁴⁴ The State Records Office of Western Australia submitted that the value of recordkeeping in institutions must be 'promulgated from the Chief Executive Office to all other officers'.¹⁴⁵

Stakeholders recognised the roles that governments can play in promoting good institutional records and recordkeeping. These roles were said to include using both legislation and contractual means to ensure compliance and providing appropriate resources and funding.¹⁴⁶

Achieving best practice also depends on institutions and their staff having a clear understanding of the purpose and value of good recordkeeping, supported by adequate training and resources. It is imperative that institutions ensure their staff and volunteers have the knowledge, training and resources necessary to manage records about children appropriately. At the very least, to comply with this principle, institutions should ensure that staff and volunteers have access to guidance and related training about what they are required to record in relation to risks, allegations and instances of child sexual abuse.

2.9 Creation

Most institutions that care for or provide services to children are now aware that they have a responsibility, if not a legal obligation, to create records about their business operations and decision-making, their child protection policies and practices, and critical incidents affecting children under their care. Many institutions have prescribed duties under legislation to document and report risks, allegations and instances of child sexual abuse and how they are responded to, or to have policies outlining what needs to be recorded when such situations arise. Nevertheless, our inquiry demonstrated that the creation of full and accurate records is still a problem for at least some contemporary institutions.

2.9.1 Absence of records

The creation of records is now widely accepted as integral to helping an institution to conduct its business in an efficient and accountable manner. During our inquiry, however, we heard of many examples of contemporary institutions creating records that are incomplete or missing critical details of relevance to the children they concern and to child sexual abuse.

For example, in *Case Study 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse (Brisbane Grammar School and St Paul's School)*, we heard evidence of failure on the part of Brisbane Grammar School to keep adequate records of the attendance of students at counselling sessions and their absences from class. We found that, as a result of that failure, there was a missed opportunity by the school to discover the abuse that school counsellor Mr Kevin John Lynch was perpetrating against students.¹⁴⁷

In Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese, we heard initial 'rumours' and complaints of child sexual abuse by Mr John Gerard Nestor were raised in the early 1990s. In 1993, the Bishop of the Diocese of Wollongong, Bishop William Murray, asked a member of the Catholic Church's New South Wales Special Resources Group, Father Brian Lucas, to interview Father Nestor about those rumours and complaints.¹⁴⁸ We observed in our case study report that:

It is commonly accepted that making file notes at significant meetings is good administrative practice so that there is a contemporaneous record of what happened if an issue arises about what happened or who said what later on.¹⁴⁹

In his testimony in the public hearing, Father Lucas told us that, 'in accordance with his usual practice',¹⁵⁰ he did not take notes during or after this interview. Father Lucas accepted that an outcome of his 'usual practice' was that no written record of any admission of criminal conduct was made, which had the effect of protecting the priest or religious concerned as well as the church.¹⁵¹ In relation to this failure to document the interview, we made the following findings:

Finding 1

When Father Brian Lucas interviewed a cleric or religious about allegations of child sexual abuse before a formal Church process had commenced against that person, Father Lucas should have made a contemporaneous record of the details of what was said in the interview.

Finding 2

Failing to make and keep such a record had the consequence that:

1. the interviewer and the cleric or religious may be unable to recall what was said in the interview and what conclusions were arrived at if they were subsequently called upon to do so
2. written records that might otherwise have been available for use in a subsequent investigation, prosecution or other penal process are not available.

Finding 3

An outcome of Father Lucas's practice of not taking notes of interviews, such as his interview with Nestor, was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priest or religious concerned and the Church, which for the priest may have included criminal proceedings.¹⁵²

In *Case Study 24: Preventing and responding to allegations of child sexual abuse occurring in out-of-home care (Out-of-home care)*, several recent care-leavers told us that the questions they most wanted answered concerned why they had entered care in the first instance. They gave evidence that they were still searching for answers, despite having had access to the records about their care placements, raising the implication that this critical basic information is still not being recorded.¹⁵³

2.9.2 Misunderstood law and policy

Our case studies revealed contemporary examples of institutions failing to create records due to an apparent ignorance of legal obligations or unfamiliarity with proper policy. We have also seen examples of records being created in accordance with institutional policy but nevertheless containing inaccurate detail, or failing to properly communicate critical content.

In *Case Study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes*, we examined the responses of a principal and several other staff members within a Catholic primary school, and of officers of the Diocese of Toowoomba Catholic Education Office (TCEO), to allegations of child sexual abuse made against one of the school's teachers, Gerard Byrnes.

The school in question was one of 32 schools under the administration of the TCEO.¹⁵⁴ The TCEO had policies and procedures concerning child protection and the mandatory reporting of child sexual abuse for use in its member schools. A number of relevant policies and procedures were set out in the *Student protection and risk management kit* ('student protection kit'), which applied in the primary school during the relevant period (commencing in September 2007).¹⁵⁵

As at September 2007, the student protection kit included the obligation that, upon becoming aware of an allegation or suspicion of harm to a student, a staff member 'should document the allegation as soon as possible'.¹⁵⁶ It further required that:

In making a record the member of staff should observe the following:

- Record factual information as soon as possible ... [and]
- Write exactly what was observed or heard [...].

When making the record the staff member should take care to make sure they do not:

- Express an opinion about what was observed or heard.
- Interpret what was observed or heard.
- Use emotive terms.

When ... the staff member ... reasonably suspects the abuse [they] must report the matter in writing on the appropriate form immediately to the Principal ...¹⁵⁷

Three different members of staff – the principal, the deputy principal and one of the school’s two ‘student protection contacts’ (the second being Byrnes) – received allegations of child sexual abuse but did not make written records using the form required by the student protection kit.¹⁵⁸ The principal confirmed that ‘prior to September 2007, [he] had never sat down and read the student protection kit “word for word”, and that his understanding of its contents ‘came from his attendance at child protection training’.¹⁵⁹ Similarly, although the deputy principal had been told in ‘one or more’ training sessions to read the student protection kit, she had ‘never read it from cover to cover’.¹⁶⁰ In both cases, this affected their knowledge of their obligations and their capacity to comply with the existing policy.

After the child’s father advised the principal that his daughter had reported being inappropriately touched by Byrnes, the principal called a meeting with the father, the child and the other student protection contact. The principal did not consult the student protection kit prior to that meeting. During the meeting, either the principal or the student protection contact requested that the child ‘demonstrate’ how Byrnes had inappropriately touched her. The child complied, but neither staff member recorded what she demonstrated.¹⁶¹

2.9.3 Understanding the purpose of records

A lack of understanding about the purpose of records, what should be recorded and the potential consequences of inaccurate records was evident in *Case Study 1: The response of institutions to the conduct of Steven Larkins*. This case study discussed the significance of implementing and applying clear records protocols.

During the 1990s and 2000s, Scouts Australia NSW did not properly record several critical pieces of information about scout leader Larkins. In 1997, for example, Scouts Australia NSW issued Larkins with an ‘official warning’ about grooming, but this ‘was not effectively recorded or communicated to those who were responsible for appointing and supervising leaders within Scouts Australia NSW’.¹⁶² This meant that various supervising leaders were not equipped with information that might have assisted them to protect other children. Three years later, in 2000, when a young scout disclosed that Larkins had sexually abused him in the 1990s, Larkins was suspended from Scouts Australia NSW. However, Larkins’s ‘suspension was not permanently recorded on his member record’,¹⁶³ with the effect that critical information was not available to other senior Scouts leaders.¹⁶⁴

We also heard evidence about incomplete and inaccurate records made by the NSW Police as part of its investigation of Larkins. In the late 1990s, a case report about the police investigation was created on the police computer system, known as ‘COPS’, which was accessible by all officers involved with the case. That report did not include statements of three significant witnesses, including Larkins, a victim’s mother and the Scouts Regional Commander.¹⁶⁵ The police officer responsible for the case report told us that, in early 1998, ‘Although the system had been introduced some years earlier, police were still developing protocols about its use’.¹⁶⁶

This demonstrates that, while an institution might have a recordkeeping system in place, unless staff are properly trained in its purpose and use it can be of limited value.

In July 1998, an additional comment was added to the COPS case report, stating, 'Advice from DPP [Director of Public Prosecutions] that no prosecution will proceed'.¹⁶⁷ That update was incorrect, as the DPP had actually advised in the same month that Larkins should be charged. Members of NSW Police communicated the incorrect advice on the COPS record to the victim and his family in July 1998. Although the error was apparently rectified later, by September 1998 the victim told the New South Wales DPP Witness Liaison Officer that he 'did not wish ... to proceed due to delay and initial misinformation'.¹⁶⁸

2.9.4 Creation of out-of-home care records

As discussed, detailed legislative provisions and policy have been adopted in each state and territory relating to the creation of records about children in out-of-home care. However, in the *Out-of-home care* case study we heard that there are still considerable discrepancies in the quality of records created by different out-of-home care providers and even in those created by staff within the same institution. Ms Bev Orr, President of the Australian Foster Carers Association, told us:

It really depends on the worker ... who ever may be documenting what is happening, it depends on them. Some of them are very good at writing file notes and documenting things. Others, you will find a lot of information is subjective as opposed to absolutely critical evidence. Invariably, it's negative. It's very rare to see positive things. But I think there are a couple of other issues. One of them is there is not a mindset about understanding what this may do to a child or young person when they find the information out later and how destructive that is to them, because there is not one positive thing on their file.¹⁶⁹

We also heard that some out-of-home care providers and their staff perceive creating detailed records as time consuming, frustrating and a distraction from their 'real' work of providing or administering care placements.¹⁷⁰ Ms Caroline Carroll, Chairperson of the Alliance of Forgotten Australians, told us:

I still think that people who write records [about children in out-of-home care] don't really understand what these records are about ... [W]e did some training at an organisation a few years ago and we talked about the negative impact of records where it blamed the child, it blamed the parents of the child, it blamed everyone except the welfare department itself. I said how negative this was and how difficult people found reading their records. A woman came up to me afterwards and she said, 'I've never written anything positive on a child's record. I didn't think I had to. I was so busy writing all the negative things. But I will from now on'.¹⁷¹

Stakeholders emphasised the importance for care-leavers of appropriate records being created. Dr Margaret Kertesz and Professor Cathy Humphreys, for example, stated that, with the exception of 'life story books', records were seen as being created for professionals, and the child or young person's potential role as future reader or as co-creator of their records was not recognised. They stated that a rights-based framework is essential, and children and young people's interests at all points of their life should be taken into account – 'Recordkeeping and records accessibility issues need to be considered from the point of creation onwards'.¹⁷²

CLAN submitted that parents, foster parents and children should contribute to the creation of records. Among other things, it recommended that:

- biological parents should write a letter explaining why their child has been placed in care
- foster carers should be required to write a letter of explanation if they request that a child be removed from their care
- children should have all life story material documented and included in their file
- children should be given the opportunity to add something to their file.¹⁷³

2.9.5 Records created by and for children

In the *Out-of-home care* case study, we explored the issue of records created by and for children in care, such as life story books. There was a consensus that these are an important development, but we heard that the quality of life story books can vary depending on the jurisdiction or agency involved.¹⁷⁴ We also heard that constructing and maintaining life story books can be time consuming and difficult, particularly where children experience multiple placements. Ms Orr of the Australian Foster Carers Association told us:

The child has a right to have images stored, and good stories told about significant events in their life – their first day of school, their first tooth that fell out and whether the tooth fairy came or not. Even little things like that are very important and we need to keep those. If a child is moving through placements, that's the sort of stuff that is lost.¹⁷⁵

We heard that many life story books can be incomplete or lack content significant to individual children because materials meant to be placed within them are extracted or withheld by carers or others.¹⁷⁶ As Ms Jacqui Reed, Chief Executive Officer of CREATE Foundation, told us:

Often what happens is those types of records may be with one carer and the child moves placements and sometimes the carers want to keep them as part of their own history and whatever, which is understandable, or they may lose contact with the kids, or they may have left in acrimonious terms and it's the last thing a busy caseworker thinks of is picking up the photos that belong to little Freddy and taking them over to the next placement.

So that type of stuff, whilst incredibly important, especially for older people who have left care, it is part of who you are, become less important in the system, because they are not given that level of importance they need to.¹⁷⁷

More generally, The Setting the Record Straight: For the Rights of the Child Initiative highlighted the desirability of moving towards more ‘child-centred’ recordkeeping, which is able to ‘support lifelong identity, memory and accountability needs’ of children. Among other things, this may involve developing guidelines for a child’s age-appropriate participation in recordkeeping.¹⁷⁸

Recommended Principle 2: Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse

We recommend this principle because institutions should ensure that records are created to document any identified incidents of grooming, inappropriate behaviour (including breaches of institutional codes of conduct) and child sexual abuse; and all responses to such incidents.

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

This principle is consistent with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture, which includes ensuring that ‘staff and volunteers understand their obligations on information sharing and recordkeeping’ (see Recommendation 6.5). The creation of full and accurate records is critically important to compliance with reporting obligations and the conduct of disciplinary action, police investigation, criminal prosecution and civil litigation.

Whether accurate records are being created is a matter that can be evaluated, and processes should be put in place for periodic audit of records by institutions or external auditors.¹⁷⁹

In identifying what kind of records institutions should create, stakeholders told us they should:

- be clear, objective, thorough and created as close as possible to the time that incidents occur¹⁸⁰
- contain verbatim or direct quotes¹⁸¹
- contain both negative information and positive information, such as the substance of a child’s daily life, their experiences, joys and achievements¹⁸²
- avoid derogatory and offensive language that would cause distress to someone who applied for the records and use language that is non-judgmental, sensitive, respectful and culturally appropriate.¹⁸³

In records created about an individual child, or their experiences, the views of that child should be sought and reflected in the records wherever possible. Knowmore submitted that all case files should reflect ‘not only what the institution or organisation requires but also what the child might want to know as an adult’.¹⁸⁴

It was emphasised that feedback from children and parents is critical for the continual improvement and development of good records and recordkeeping practices.¹⁸⁵ Anglicare Victoria stated that, for feedback to be received, ‘clients need to feel confident that they are entitled to give it and also that feedback will be received in a spirit of receptiveness and good will’.¹⁸⁶

2.10 Maintenance

Since the adoption of public records legislation, and with growing understanding of the significance of records to the individuals concerned, most contemporary institutions that care for children have improved their practices for maintaining and retaining records. Institutions today have a better understanding than in the past of the importance of records in providing a ‘complete picture’ and allowing seemingly isolated incidents to be viewed holistically.

Since the 1980s, most public institutions have legislative obligations relating to indexing and managing their files. In some cases, certain non-government institutions also have legislative obligations. Nevertheless, contemporary records continue to be affected by poor maintenance practices.

Over the past two decades, many (if not most) of the institutions we examined have begun using digital technology to create and maintain their records. Digitising archival records can be expected to increase search ability and reduce risk of loss. The Tasmanian Government observed that the digital age provides the opportunity for vast improvement in records and recordkeeping policy, practice and procedure.

Greater reliance on digital technology, however, has also created new risks and challenges. The transfer of paper-based records into a digital format ‘is an extremely expensive, time-consuming and labour intensive task that cannot remediate issues in relation to the quality of the record or absence of records’.¹⁸⁷

Queensland State Archives acknowledged that ‘managing digital records long-term requires appropriate infrastructure, such as digital archives that can preserve these records for the time they are required’.¹⁸⁸ Similarly, Dr Kertesz and Professor Humphreys referred to an exploratory research project that investigated the potential for creating a digital storage space for a life story archive. While it was found that this was ‘achievable from a technological point of view’, it could not be an effective tool in the absence of a suitable organisation to manage the digital records over a very long time period.¹⁸⁹

Although secure sharing of digital information is beginning to occur to a limited extent, this long-term governance issue can only be solved by the Australian out-of-home care sector as a whole, with adequate resourcing.¹⁹⁰

2.10.1 Maintaining complete records

The importance of maintaining complete records in relation to concerns about child sexual abuse was illustrated in the *Knox Grammar School* case study. Mr Peter Crawley, the headmaster of Knox Grammar School from 1999 to 2003, observed that:

to keep a record of [grooming and other inappropriate behaviour] is to give you clarity about the context and the situation, to give you a sense of exactly what any ameliorating circumstances were, and also to give you clarity about exactly what you said to them in terms of the instructions you gave. If you are dealing with anyone who is, perhaps, you might call, stage 1 of grooming, then if you want to avoid them getting to stage 2, you had better have real clarity on what the instructions were at the previous stage. You can't leave that to memory.¹⁹¹

In the *Knox Grammar School* case study, we examined the response of Knox Grammar School, a Uniting Church of Australia primary and secondary school, and other institutions to many reports and instances of child sexual abuse by school staff members. Although some of the records at issue were historical records and others were contemporary, the inadequacy of the maintenance practices of the past two decades was stark.

Knox Grammar had both a preparatory campus and a senior campus, with the headmaster's office located on the senior campus. Over a period of several decades, Knox Grammar and its campuses ostensibly had a recordkeeping system in place to maintain records relevant to complaints, allegations and incidents of child sexual abuse and how they were responded to. We found that the system for recordkeeping at Knox Grammar between 1969 and 1998 failed in that relevant material about teachers' conduct with students was not systematically documented, securely kept and able to be made available to incoming headmasters and other relevant senior staff.¹⁹²

Inadequate recordkeeping and maintenance practices at Knox Grammar occurred under the tenure of headmaster Dr Ian Paterson, who held that position from 1969 to 1999. We found that Dr Paterson was a poor record keeper and did not maintain proper records of allegations of child sexual abuse.¹⁹³

His successor as headmaster, Mr Crawley, told us that Dr Paterson's system for maintaining records about anything 'awkward or embarrassing', including records relevant to child sexual abuse, amounted to a black folder of unindexed, mostly handwritten notes. The folder contained names, but it was not clear if they were names of staff or students and there was 'no information about incidents or the consequence'. Mr Crawley described the folder as 'nothing that he expected in terms of an appropriate file to record incidents of concern or significance'.¹⁹⁴

We also heard that the personnel files of several staff members alleged to have sexually abused students contained no mention of those allegations, even after some of those staff members were dismissed as a result. Mr Crawley's successor, Mr John Weeks, was unable to find records about any incident in a teacher's file in relation to allegations that he was showing a student pornographic videos.¹⁹⁵ In giving evidence, Dr Paterson agreed that student files and teacher files at Knox Grammar School did not contain records of allegations of child sexual abuse. He accepted that he provided the staff records to the inspector who was investigating the alleged perpetrators at Knox Grammar knowing that those records did not contain any information about these allegations.¹⁹⁶

In *Case Study 36: The response of the Church of England Boys' Society and the Anglican Dioceses of Tasmania, Adelaide, Brisbane and Sydney to allegations of child sexual abuse*, we were satisfied that there were no recordkeeping practices within the Church of England Boys' Society (CEBS) to monitor or keep track of CEBS leaders alleged to have perpetrated child sexual abuse.¹⁹⁷

Problems with incomplete records were also highlighted in *Case Study 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009 (Perth independent school)*. In this case study, we examined the responses of a non-government independent school to reports and instances of child sexual abuse by a member of its teaching staff.

This school also had two campuses: a preparatory campus and a secondary campus. Professor Stephen Smallbone, a psychologist and professor in the School of Criminology and Criminal Justice at Griffith University, concluded that there was 'a serious failure by the school to connect various pieces of information concerning the offending teacher's behaviour and to respond properly to concerns about his behaviour'.¹⁹⁸

We found that from 1999 until 2009 the school's system to record complaints or concerns about inappropriate behaviour by staff members was deficient to the extent that:

- there was no centralised database to
 - record concerns or complaints
 - facilitate a comprehensive review of the file when a complaint was made
- there were two personnel files – one in the preparatory school and one in the senior school – neither of which required reference to the other.¹⁹⁹

In *Case Study 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions (Yeshiva Bondi and Yeshivah Melbourne)*, we examined the response of two Jewish institutions – one in Sydney and the other in Melbourne – to allegations of child sexual abuse by their staff. We found that, from 1984 to 2007, Yeshivah College Melbourne did not have a practice of recording allegations of child sexual abuse.²⁰⁰

In 1992, parents made allegations of child sexual abuse against Rabbi David Kramer, a teacher at Yeshivah College Melbourne. We found no evidence of any contemporaneous records of complaints made by parents or actions taken by the college in response to these complaints. There was also no record of allegations being reported to Victoria Police.²⁰¹

In around 2009, when Victoria Police began investigating child sexual abuse allegations against Rabbi Kramer, Yeshivah College Melbourne provided police with an incomplete list of students taught by Rabbi David Kramer.²⁰²

Similarly, in response to allegations of child sexual abuse against Daniel Hayman, an active member of the Yeshiva Bondi community who assisted in camps as a chaperone or house parent, we found that Yeshiva Bondi did not possess written reports on allegations in relation to one of its staff members.²⁰³ Rabbi Pinchus Feldman, director of Yeshiva College Bondi Ltd, gave evidence that it was ‘very likely’ there were no formal policies between 1986 to 1987 requiring complaints to be recorded or setting out what should be done in response to complaints.²⁰⁴

2.10.2 Maintenance of out-of-home care records

In the out-of-home care sector, we heard that service providers continue to have trouble compiling an accurate understanding of individual children’s histories and care needs due to the poor indexing and maintenance of departmental records.

In the *Out-of-home care* case study, for example, Ms Reed of CREATE Foundation told us:

Each State government keeps data. For CREATE, we think part of the reason we have trouble accessing children and young people’s records is because often the departments, literally, their own systems are so poor that when we get the data we can have anything up to 30 per cent of the data being incorrect, the child may have moved, the names may be different, they may have been returned home. There are a thousand reasons, but the data is a real issue across every State and Territory.²⁰⁵

Ms Reed suggested that, although each jurisdiction now has ‘good’ legislation and policy applicable to records and recordkeeping in out-of-home care, issues with compliance remain. She said:

what the problem seems to be is in the actual practice of what we do. And the practice is a bit wobbly and I think part of that is due to the fact that there are no formal mechanisms for monitoring ... I think you’ve got rules in place and if no-one is checking if you’re following them, I think that is where the wobble is between practice and policy ...²⁰⁶

CLAN observed that poor indexing creates problems for care-leavers when they are required to provide ‘proof’ of being in care. It also prevents them from building identity, learning about their past and their family history, and pursuing criminal charges or civil claims.²⁰⁷ Stakeholders suggested that indexing of historical records relating to elderly care-leavers should be prioritised over other categories of historical records.²⁰⁸

2.10.3 Security of records

The security of records was raised in the *Knox Grammar School* case study. We heard evidence that one member of staff, Adrien Nisbett, against whom several complaints of child sexual abuse were made, had ‘total free rein’ to access any and all files on past students and staff members while he was conducting research for a book on the history of the school.²⁰⁹ The files Nisbett had access to included confidential documents, including a report detailing an investigation of allegations of child sexual abuse levelled against Nisbett himself.²¹⁰

Mr Jim Mein, a former moderator of the Synod of the Uniting Church, told us that when he and Mr Weeks sought out a number of the school’s files relevant to past allegations of child sexual abuse, they found several were missing or appeared to have been ‘sanitised’ or ‘destroyed’ to remove incriminating content.²¹¹ Among the absent records was the report on the allegation against Nisbett.²¹² When asked if he had a view as to who might have been responsible for ‘sanitising’ those records, Mr Mein told us that he feared that Nisbett had done it, noting Nisbett’s access to those files.²¹³

Reliance on digital records and new technology can pose risks for the maintenance of records. In the *Yeshiva Bondi and Yeshivah Melbourne* case study, we heard that failings in transfer of records between a manual (physical) recordkeeping system to an electronic database, as well as fragmentation of records, may have resulted in an incomplete list of potential victims and survivors of child sexual abuse being given to police.²¹⁴ Several stakeholders raised concerns about the security and longevity of digital records, which may be vulnerable to file corruption and tampering and will potentially become irretrievable over time as the technology with which they are made or stored becomes obsolete.²¹⁵

CLAN stated that some members had not been able to access any files due to records not being stored or maintained correctly or files being lost, or destroyed by fires, floods, or rats.²¹⁶ We also heard many similar accounts in our private sessions.²¹⁷

2.10.4 Institutional accountability

Poorly maintained records cause problems in relation to institutional accountability, including before this Royal Commission. This was apparent in many of our public hearings, where institutions experienced difficulties in producing records such as manuals, policy and procedure documents, codes of conduct and school board minutes relevant to our investigations.

In *Case Study 32: The response of Geelong Grammar School to allegations of child sexual abuse of former students (Geelong Grammar School)*, we found that the principal of the school, Mr Nicholas Sampson, did not record the reasons for a teacher's early retirement from the school as involving allegations that he had sexually abused a boy in the 1970s.²¹⁸ An entry in the minutes of the school council referred to potential allegations of past child sexual abuse, but Mr Sampson gave evidence that he found no documents that recorded or referred to any previous complaints or allegations about the teacher that involved students.²¹⁹

In *Case Study 33: The response of The Salvation Army (Southern Territory) to allegations of child sexual abuse at children's homes that it operated*, we found that records held by The Salvation Army on the operation of its homes between 1940 to 1980 for the purpose of establishing claims of child sexual abuse are incomplete. The Salvation Army also holds few or no records about employees who may have worked at the homes over the relevant period.²²⁰

In this case study, we heard that evidence concerning inspections carried out at various homes operated by The Salvation Army was incomplete. Historical documents relating to the South Australian Government's knowledge of allegations of physical and sexual abuse at its home at Eden Park, Adelaide Hills, were not contained in inspection records. Similarly, the Western Australian Government's inspection records were limited, and Victorian Government inspection records on the homes at Bayswater and Box Hill could not be located.²²¹

In *Case Study 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, we issued a summons to the Department of Family and Community Services, seeking records relating to policies and procedures of Parramatta Training School for Girls and the Institution for Girls in Hay between 1950 and 1974. The department told us that no records existed.²²²

In the *St Joseph's Orphanage, Neerkol* case study, the Queensland Children's Services Department could not locate any records on policies or procedures for reporting physical or sexual abuse of children before the closure of the St Joseph's Orphanage in 1978.²²³ In addition to the lack of written reports on suspected physical or sexual abuse of children and evidence of action taken, we found that the Queensland Government had issued no department policies or procedures on how orphanages and other institutions were to carry out their obligations to report abuse.²²⁴

Recommended Principle 3: Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately

We recommend this principle because records relevant to child sexual abuse should be maintained in an indexed, logical and secure manner. Associated records should be collocated or cross-referenced to ensure people using those records are aware of all relevant information.

At a minimum, institutions should ensure their records are:

- up to date
- indexed in a logical manner that facilitates easy location, retrieval and association of related information²²⁵
- preserved in a suitable physical or digital environment that ensures the records are not subject to degradation, loss, alteration or corruption.

Maintaining records is as important as creating them. Without good maintenance practices, critical information can be fragmented or overlooked, and records can be at serious risk of loss or inadvertent destruction. This potentially has serious consequences for institutions and the individuals with whom they interacted.

Maintaining records can be onerous for institutions that provide care and services to children and young people. Stakeholders referred to resourcing issues such as:

- the need for storage space (for hard copy or digital records)²²⁶
- the cost of archiving and retrieval services²²⁷
- the need for resources to handle significant volumes of unindexed documents²²⁸
- the lack of funding for recordkeeping by governments.²²⁹

Despite this, many stakeholders expressed the view that resource implications should not be allowed to undermine good recordkeeping practices and their benefit for future access to records.²³⁰

2.11 Disposal

Over the past few decades, government and non-government institutions have increasingly recognised the importance of establishing and following clear processes for the disposal of records about individuals.

Legislation and policies governing the archiving of public records with historical or personal value are more commonly applied by institutions today than in the past, and a practice of destroying records only in accordance with law or policy is observed more frequently.

Recognition of the importance of archiving records about children and their engagement with institutions, particularly where they have been under the care and protection of government, is much greater now than in the past. These sorts of records are now acknowledged as having not only historical value but also value as evidence of the experiences of the individuals documented within them.

In the context of those who have suffered child sexual abuse, they may:

- help to identify perpetrators, or those who failed to act to prevent child sexual abuse
- identify witnesses and other victims and survivors
- provide supporting material to corroborate victims' and survivors' accounts.²³¹

2.11.1 Conditions for disposal

The disposal of public records is usually governed by the relevant jurisdiction's public records legislation. Public records legislation generally stipulates that public records cannot be disposed of (whether archived or destroyed) until they are no longer needed to satisfy business and legal requirements.

Some records may be disposed of in accordance with 'normal administrative practice'. Normal administrative practice allows agencies to destroy certain types of records in the normal course of business, without the permission of a public records authority.²³²

Other records, such as those relating to critical business decisions or significant interactions between governments and individuals, usually have longer retention periods, and may need to be archived for permanent retention (for example, with the public records authority), or until their destruction is permitted under an applicable disposal schedule.

Records disposal schedules outline how long a public record must be kept before it can be destroyed or, alternatively, whether it must be archived permanently. They are issued or approved by public records authorities. Penalties can apply if disposal schedules are not complied with²³³ and where an institution destroys public records while aware they might be relevant to legal action.²³⁴

The retention periods for public records set out in disposal schedules can vary markedly between jurisdictions and sectors, and depending on the circumstances of individual children. In part as a response to the recommendations of previous inquiries,²³⁵ all jurisdictions now require that out-of-home care records be kept for many decades prior to destruction or be kept permanently. However, records relating to schools, including incident reports, may only need to be retained for a few years after their creation, or until the relevant student reaches the age of 21 or 25.²³⁶

Most non-government institutions do not have statutory obligations relating to the disposal of their records. However, other obligations may apply – for example, contractual obligations or professional codes of conduct or policies for records retention.

Guidance is also provided by the *Australian standard: Records management*. This standard provides that in deciding how long records should be maintained the ‘rights and interests of all stakeholders should be considered’ and ‘decisions should not be made intentionally to circumvent any rights of access’. Records retention should be managed to meet the current and future needs of internal and external stakeholders by ‘identifying the enforceable or legitimate interests that stakeholders may have in preserving the records for longer than they are required by the organization itself’.²³⁷

We heard that, in the absence of legal obligations, some non-government institutions would appreciate further guidance on their duties and best practice in records retention. For example, the Royal Australian and New Zealand College of Psychiatrists told us:

Of particular relevance to psychiatrists is the length of time psychiatrists are required to retain health records. For those in public practice, this is mandated by the service. For those in private practices, this should be for at least as long as the statute of limitations.²³⁸

Similarly, AHISA stated that ‘further guidance on best practice in records retention where there is no legal obligation or disposal schedule would be welcomed by Heads of independent schools’.²³⁹

2.11.2 Minimum records retention periods

The issue of records retention is critical to responding to delayed disclosures of child sexual abuse, which a number of studies have demonstrated are common.²⁴⁰ From what survivors told us, it took, on average, 23.9 years for them to disclose abuse.²⁴¹

In light of the frequency of delayed disclosure, we recommended in our *Redress and civil litigation* report that ‘state and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child’.²⁴² Some states and territories have abolished limitation periods for these civil actions.²⁴³

The abolition of limitation periods has implications for records retention laws and policies, as institutions may need to keep records of decisions and incidents concerning child sexual abuse for longer periods.²⁴⁴

The absence of minimum records retention periods for many non-government institutions and, for example, the limited retention periods applicable to government school records in some jurisdictions²⁴⁵ mean that some contemporary institutions are able to destroy records that may be highly relevant to potential civil claims.

Knowmore submitted that, if there is nationwide reform of limitation periods, consideration should be given to enacting legislation to ‘extend record retention periods and suspend or revoke destruction authorisations for certain classes of records relating to children in institutional care settings’.²⁴⁶ Similarly, the Truth, Justice and Healing Council stated that ‘statutory retention periods in relation to staff records should be extended to take into account’ the average delay in disclosing child sexual abuse.²⁴⁷

AHISA noted that some independent schools have policies requiring the ‘permanent retention of records relating to sexual and other forms of abuse (such as domestic violence), suspicion of abuse or suspicion of grooming behaviours’ and suggested that legislation may now be ‘unnecessary to initiate best practice’ in records retention.²⁴⁸

Other stakeholders also supported the idea that records of child sexual abuse should be retained permanently or indefinitely.²⁴⁹ The Victorian Aboriginal Child Care Agency submitted that no government or non-government records relating to Aboriginal and Torres Strait Islander families or communities or to any children should be destroyed.²⁵⁰

We were also told that all institutions that care for or provide services to children should be subject to mandatory retention periods for records to ensure consistency across government and non-government sectors.²⁵¹

The Council of Australasian Archives and Records Authorities (CAARA) observed that establishing retention periods raises complex questions and there ‘may be no one retention period suitable for records that potentially provide details of child sexual abuse or allegations of child sexual abuse’.²⁵²

Ideally, rather than individual institutions developing their own disposal policies, sector-wide policies should be established. These could be based on existing government retention and disposal schedules where there is sufficient functional cross-over. This would mean that there was a standardised approach across government and non-government organisations and may result in less confusion for the individuals who are trying to access records.²⁵³

National Archives of Australia observed that:

[The period of retention would be determined] by how long the agency needed them for its operational purposes and for how long the individuals described in those records needed them to be retained to prove their rights and entitlements. It would probably be at least for the expected lifetime of the child.²⁵⁴

In addition:

The abolition of statutory limitation periods for civil claims would be a factor that agencies and the Archives would take into consideration, when considering the duration period of rights and entitlements for affected individuals in Australian Government records.²⁵⁵

2.11.3 Different perspectives on records disposal

A small number of survivors, including care-leavers, have told us that they object to records about them being retained for lengthy periods or in perpetuity.²⁵⁶ As Ms Carroll, Chairperson of the Alliance of Forgotten Australians, told us in the *Out-of-home care* case study:

I want my records destroyed when I die. I don’t want anyone to read them, particularly my children and grandchildren, because they are so negative about me. But the department – and that’s the New South Wales government – say that they are their records, they are not my records.²⁵⁷

Knowmore also observed that some survivors of child sexual abuse do not want institutions to retain their records indefinitely – particularly in situations where they hold the institution responsible for the abuse they experienced and have no trust in the institution.²⁵⁸

In contrast, CLAN stated that, in its 16 years of existence, ‘no member has ever approached us advocating for the destruction of their records’. CLAN strongly recommended that all records regarding care-leavers should be subject to mandatory retention.²⁵⁹ Mr Golding observed in his personal submission to us that while some individuals ‘would like to see their records burned or otherwise destroyed, especially when they contain hurtful or damaging comments’, this was not a large number, and:

destruction is a drastic, irreversible course of action, and could be regretted in the future not only by the ‘subject’ of the file but also by descendants who might want to understand their family members after the death of their ancestor. Moreover, changes to redress schemes and civil litigation laws cannot be forecast with any certainty, and it could be a matter of considerable consequence to a person whose file has been destroyed acting under a set of suppositions that is later rendered unsound by change over time.²⁶⁰

Some stakeholders emphasised that the individuals most concerned should be consulted before records disposal.²⁶¹ Others discussed how views about disposal of records may be canvassed through records appraisal processes.²⁶² Appraisal was described by the Territory Records Office (ACT) as the process of evaluating business activities to determine which records need to be captured and how long those records need to be kept to meet business needs, the requirements of organisational accountability and community expectations.²⁶³

However, it may be impractical to seek the views of all relevant individuals prior to all records disposal because of the volume of records and the disparate views of individuals.²⁶⁴ Further, care should be taken to ensure that valuable information is not destroyed based solely on those views. It is the view of the State Records Office of Western Australia that ‘any decisions regarding the record retention period and disposal decision should be based on the social and evidential value of the records to the community in the future’.²⁶⁵

There was support in stakeholder submissions for the idea that registers of destroyed records should be maintained.²⁶⁶ It was suggested that, at a minimum, such registers should contain information about what documents were destroyed, by what authority and why.²⁶⁷ The Territory Records Office (ACT) stated that:

The retention of registers or other data about the existence of records and the circumstances of their destruction is a basic tenet of accountable records management practice. That organisations may not have kept such records is illustrative of the general lack of regard for good records management practice in many organisational cultures.²⁶⁸

Recommended Principle 4: Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy

We recommend this principle because records relevant to child safety and wellbeing, including child sexual abuse, should only be destroyed in accordance with records disposal schedules or published institutional policies.

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

We recognise that retaining large volumes of records for extended periods may be difficult for some institutions (for example, those with limited resources, small staff numbers or limited physical storage space). Not all records are, or should be, archived and retained in perpetuity, and it may be appropriate that certain records be destroyed. We also acknowledge that some survivors do not favour any extended retention of records about themselves.

However, the destruction of institutional records relevant to child sexual abuse (including complaints, investigation reports, employee records, and accounts of disciplinary action) can have serious consequences.

At present, there is a lack of consistency in the disposal of records about child safety and wellbeing and child sexual abuse in institutional contexts. Greater transparency in law and policy concerning records disposal would help to eliminate some of the confusion and complexity for survivors and would arguably assist institutions and their staff to better understand best practice and their obligations.

Institutions should have publicly available policies in place that outline:

- how long the institution retains different kinds of records
- what kinds of records the institution archives and where and how it archives them
- what kinds of records the institution destroys and under what circumstances.

Minimum records retention periods

Under recommended Principle 4, records relevant to child sexual abuse should be subject to minimum retention periods that allow for delayed disclosure of abuse by victims, and take account of limitation periods for civil actions for child sexual abuse.

Defining exactly what records are relevant, or may become relevant, to incidents or alleged incidents of child sexual abuse is not simple and will depend on the nature of the institution and the records it holds.

In our view, institutions should ensure that records relating to child sexual abuse that has occurred or is alleged to have occurred are retained for at least 45 years.²⁶⁹ These records include those relating to individual children and particular incidents or actions, such as:

- in the event of an allegation being made, records containing information about the whereabouts of workers – relevant information may establish the location of workers, when they are working either within the institution, on behalf of the institution, or outside the institution, for example when travelling. This information is likely to be found in, for example, attendance, leave and travel records; personnel files; and records showing terms of employment.
- records documenting actions taken to address allegations and cases of sexual abuse of children and related matters – this information is likely to be found, for example, in personnel, counselling or discipline records; and in records of referrals to and reviews of actions, cases or decisions by external authorities.
- records documenting support to and remedial action for individuals who have alleged child sexual abuse – these records may include, for example, records of claims, assessments, reviews and appeals for individuals; interventions, support or compensation and attempted or successful redress; and counselling, mediation and medical records.²⁷⁰

In relation to government institutions, public records authorities are responsible for determining records retention periods in accordance with legislation. Records disposal schedules often contain complex formulations of retention periods. For example, in New South Wales, specialist health services must retain records concerning the physical abuse and neglect of children for a minimum of 30 years after any legal action is completed and resolved (where known) or after last contact for legal access, or 30 years after the individual attains or would have attained the age of 18, whichever is the longer period.²⁷¹

The policies of government institutions have to align with public records authority requirements. In addition, where government functions and activities are outsourced to external service providers, these non-government institutions are commonly obliged to comply with recordkeeping obligations through the terms of funding agreements or other contracts.²⁷² CAARA policy states that:

Records that provide evidence of government functions and activities held by external service providers or transferred to a privatised entity must be disposed of in accordance with relevant archival legislation, or other instrument.²⁷³

Existing records disposal schedules may not always provide for retention periods and disposal practices appropriate for records relevant to child sexual abuse. For example:

- in New South Wales, school records of critical incidents must be retained for a minimum of 20 years after the incident and then may be destroyed²⁷⁴
- in Western Australia, some patient records of Sexual Assault Referral Clinics may be destroyed '25 years after action is completed' (provided the patient has attained the age of 25 years)²⁷⁵
- in Tasmania, some records documenting the investigation of complaints about actions, activities or facilities of child care services may be destroyed seven years after action is completed or when the child has reached 25 years of age.²⁷⁶

The National Archives of Australia has suggested that some records relevant to child sexual abuse should be retained at least for the expected lifetime of the relevant child.²⁷⁷ It is already the case that many public sector records likely to be relevant to allegations of child sexual abuse are required to be kept for considerable periods, often longer than 45 years. For example:

- in New South Wales, all public records relating to the management of instances or allegations of misconduct involving abuse or neglect of children must be retained for a minimum of 100 years after action is completed²⁷⁸
- in Victoria, child protection and youth services records involving category one incident reporting, investigation and review, including incidents of physical or sexual assault, must be permanently retained as state archives²⁷⁹
- in Queensland, corrective services records relating to investigations of significant incidents, including sexual assault in a corrective services facility, must be permanently retained by the relevant department²⁸⁰
- in Tasmania, health records relating to health and wellbeing services and support provided to young people aged 11 to 25 years where sexual assault counselling has been provided or allegations of sexual assault have been made must be retained for 110 years after the relevant young person's date of birth.²⁸¹

In addition, records disposal schedules may contain general caveats concerning records that may be required in legal proceedings. For example, in Victoria, some records disposal schedules state that disposal is not authorised 'if it is reasonably likely that the public record will be required in evidence in a current or future legal proceeding'.²⁸²

The precise categorisation of records and the determination of any new retention periods should be left for public records authorities – as the experts in this field – to determine. However, 45 years seems a sensible minimum retention period given what we know about delayed disclosure of child sexual abuse.

We recommend, therefore, that public records authorities should ensure that records disposal schedules provide that records relating to child sexual abuse that has occurred or is alleged to have occurred be retained for at least 45 years. This does not negate the need for some categories of record to be retained for longer, as many already are under existing records disposal schedules.

While we recommend 45 years as a minimum retention period for these records, any new retention periods for these records can be expected to vary. Some records relating to child sexual abuse may need to be subject to records disposal schedules that require retention of records relating to child sexual abuse for at least the expected lifetime of the child (or, for example, 75 years after the calendar year that the record came into existence) or archived permanently. In other cases, a shorter retention period (no less than 45 years) may be sufficient.

For non-government institutions, the retention periods and disposal practices of comparable public institutions should be taken as a model when developing policies and practices.²⁸³

There are other categories of records that relate to the general operations and procedures of institutions that are not necessarily relevant to child sexual abuse, but for which it might be reasonable to expect that they may become relevant to an actual or alleged incident of child sexual abuse. These records include:

- records related to the care and supervision of people under the age of 18 where workers (staff, contractors, volunteers and outsourced service providers) are in contact with children – examples include programs for school-age children such as holiday programs; educational, trainee and cadet programs; volunteer and work experience programs; any occasion when children are present in the workplace; school visits to cultural institutions; police youth clubs; or child-care services supported, funded or managed by institutions or located on their premises. Records of this type are likely to be found in, for example, trainee, student, cadet, volunteer and client case files, and child attendance or registration records
- records documenting the provision of community services and programs to clients under the age of 18 – examples of such services and programs include child protection and welfare; health; hearing testing; policing; crisis and emergency management; counselling; and migrant and refugee services (non-residential)
- records of information held by the institution that directs or sets requirements for protection of children from sexual abuse, including policies for programs involving children – this information may be needed to show how institutions should make decisions about programs involving children and respond to allegations. Examples of relevant information include policies, procedures and reporting mechanisms; and codes of conduct, standards and values

- records of children and their care where workers are in contact with children involved in residential programs – examples of residential programs include programs for athletes or other trainees; programs for cadets or junior recruits for the armed forces; hostels; detention centres; migrant and refugee resettlement programs; and university colleges and summer schools. Examples of relevant records include client registers; worker registers; client case files; inquiries, complaints, comments and reporting from parents, staff and public; reports received from medical practitioners, health professionals, psychologists, teachers, coaches, social workers, legal officers, counsellors, chaplains and case officers in relation to individuals or particular incidents; planning, policies and procedures and reports and reporting mechanisms; and evaluations of accommodation, institutional cultures and services.²⁸⁴

In our view, it would be problematic to suggest that institutions retain all such records for at least 45 years. In this regard, it is appropriate to distinguish between records relating to specific disclosures or complaints of child sexual abuse and other records, including administrative records, which may appropriately be subject to shorter retention periods.

However, where an administrative record (for example, a record of the whereabouts of an employee at a particular time) becomes relevant to an incident of child sexual abuse, it should become subject to the 45-year minimum retention period.

Another approach might be for records directly relevant to a person – for example, case files of both care receivers and carers – to be subject to longer retention periods than general administrative records. Public records authorities are well placed to provide guidance to government and non-government institutions on identifying records that it is reasonable to expect may become relevant to an actual or alleged incident of child sexual abuse and on the retention and disposal of such records.

As CAARA observed, basic recordkeeping principles should apply across all institutions – so guidance produced for government agencies is often equally applicable to non-government institutions and should be shared with those institutions. It stated that:

While the advice provided by CAARA members is freely available to be reused by private and not-for-profit sectors, CAARA acknowledges that there is an unrealised potential for providing recordkeeping awareness and training materials it develops for public sector employees to non-government institutions.²⁸⁵

Recommendation 8.1

To allow for delayed disclosure of abuse by victims and take account of limitation periods for civil actions for child sexual abuse, institutions that engage in child-related work should retain, for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred.

Recommendation 8.2

The National Archives of Australia and state and territory public records authorities should ensure that records disposal schedules require that records relating to child sexual abuse that has occurred or is alleged to have occurred be retained for at least 45 years.

Recommendation 8.3

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

2.12 Access to records

Survivors of all ages and from all institution types have told us how important it is to them to be able to access institutional records about their childhoods – including the sexual abuse they experienced – and about how relevant institutions responded to that abuse.²⁸⁶

Institutions have legal ownership of the records they create and hold. It is, however, also a fundamental privacy principle, reflected in many freedom of information, privacy and other laws, that people should have a right of access to personal information about themselves held by organisations and to seek correction of it. An institution's legal ownership of records and an individual's right to access records about them can cause tension when records held by institutions contain intimate and personal details about individuals. Individuals whose lives are documented in such records are often, understandably, very keen to see what is said about them, and want to amend any errors.

In the case of care-leavers in particular, accessing records created by out-of-home care institutions can be imperative, as these may contain the only surviving link to family and personal history or memorabilia of their childhoods.²⁸⁷

Each Australian jurisdiction has adopted legislation and policy over recent decades to facilitate greater access to records and easier processes to access them. However, several previous national inquiries, such as those resulting in the *Bringing them home*, *Lost Innocents* and *Forgotten Australians* reports, have highlighted the complexity of these laws and policies and the difficulty individuals have in navigating those systems.²⁸⁸

Each of these past inquiries made recommendations to simplify the processes by which people in Australia access records about themselves and make these processes less distressing and frustrating for individuals. However, we have heard numerous accounts of the enduring complexity and inconsistency of those processes and the frustration this causes for survivors.²⁸⁹ In addition to the obstacles to access that necessarily stem from records being lost, fragmented, incomplete or destroyed, survivors have also told us they had the following concerns about access:

- their own reluctance to re-engage with institutions in which they were abused²⁹⁰
- a lack of information about how to make access requests and interpret records once received, and a lack of support to do so²⁹¹
- the complexity and inconsistency of applicable law and policy²⁹²
- the costs of access (for example, application fees and processing charges)²⁹³
- rigid thresholds for verifying an applicant's identity
- previous experiences of delayed responses from institutions
- previous experiences of institutions refusing requests or providing incomplete or heavily redacted records.²⁹⁴

2.12.1 Current access and amendment processes

As with the stages of the records life cycle, processes for accessing records can differ between jurisdictions and between institutions in the public and private sectors.

Public records

Since the 1980s, every Australian jurisdiction has enacted legislation that, together with public records legislation, establishes a legally enforceable right of individuals of any age (including children) to access public records. This 'freedom of information legislation' applies to both public records about governmental business generally and public records containing an individual's own personal information.²⁹⁵

Most Australian jurisdictions have also enacted legislation to protect individuals' privacy. This 'privacy legislation' includes regulation of the use and disclosure of records that contain the personal information of individuals.²⁹⁶ Commonwealth, state and territory privacy legislation

provides individuals with a right to access public sector records that contain their personal information, and some states and territories also have privacy legislation that covers all health service providers (in both public and private sectors).²⁹⁷

At a federal level, the *Privacy Act 1988* (Cth) (Privacy Act) provides individuals with a right to access personal information about them held by government and non-government institutions that are 'APP entities' under the Privacy Act (these entities are discussed in detail at the end of this section).

State and territory freedom of information and privacy legislation (or the 2013 *Information Privacy Principles Instruction* in the case of South Australia)²⁹⁸ also allow individuals to request that public records containing their personal information be amended where it is inaccurate, misleading or out of date.²⁹⁹

To access public records, the state and territory freedom of information or privacy legislation usually provides that an individual must make a written application to the public institution that holds the relevant public records in order to access them.³⁰⁰ For recent records, this might be the child welfare department, or in the case of historical records (such as files concerning care-leavers or wards of the state, or 'Native Welfare Client Files'), it might be the jurisdiction's public records authority.³⁰¹

Valid access applications must generally be quite specific about what particular records are sought, rather than seeking access to a general class of documents, and they must include enough information to allow the public institution to identify the particular records requested.³⁰² If records are held in more than one place, multiple applications will need to be made.

To *amend* personal information in a public record, an application must also be made in writing to the public institution that holds the relevant record, and must typically:

- identify the record concerned and what information the applicant seeks to amend
- outline the reasons and factual basis upon which the application is made
- include sufficient evidence to satisfy the records holder that the applicant is the individual discussed in the record.³⁰³

In most jurisdictions, applications to access general public records are accompanied by a fee of up to around \$50 per application,³⁰⁴ while applications to access records containing an applicant's personal information are usually free.³⁰⁵ Where a fee is levied, an applicant can usually apply for fee waiver or reduction in some circumstances (such as where the applicant is a student or holds a certain concession card or where the fee would cause financial hardship).³⁰⁶ Most public institutions can impose charges for time spent processing access applications (whether or not a fee was already charged for the application itself) and for the physical provision of access (for example, an hourly rate for processing and photocopying charges).³⁰⁷ As with application fees, applicants can usually apply for processing charges to be waived or reduced.³⁰⁸ In some cases, there is an automatic waiver of some or all processing charges for applications for records containing the applicant's personal information only.³⁰⁹

In general, applications to access public records must be determined within a set period – for example, within 20, 30 or 45 days of receipt³¹⁰ – but the period is usually open to extension.³¹¹ In several jurisdictions, legislation specifically provides that if an applicant is not notified of a decision in writing within the legislated decision period the application should be taken as having been refused.³¹²

Public institutions can respond to access applications in several ways: granting access, refusing access, granting access subject to conditions, or granting access in part (either with some records withheld or some content redacted).³¹³ Like access applications, applications to amend personal information in records can also be granted, granted in part or refused (in which case, the applicant usually has a right to have the record annotated to represent their own view).³¹⁴

There are a number of reasons why access applications can result in refusal, partial release and redactions,³¹⁵ including because:

- processing the application would unreasonably divert resources from the public institution's core functions
- providing access would be contrary to public interest or affect relations with other jurisdictions, security or law enforcement proceedings
- the requested records are protected by legal professional privilege
- a materially identical application has previously been made
- release of the records would be a breach of the privacy of another person or persons.

Exemptions to release on third-party privacy grounds (that is, to avoid a breach of the privacy of another person or persons) usually apply even when the records requested are almost wholly concerned with the applicant only. In addition, exemptions may still apply where the third party is discussed in a professional capacity only (for example, a doctor who treated a child while in residential care or a supervisor or social worker in a youth detention facility).

In general, where a third party's privacy may be at issue, freedom of information or privacy legislation requires that the public institution take reasonable steps to contact and seek the third party's views on whether the record should be exempt from release³¹⁶ and take those views into account when reaching a decision.³¹⁷ If the public institution is minded to give access despite a third party's opposition, it must advise the third party of that intended decision and the third party's right of review.³¹⁸ Access cannot be granted until the period in which the third party can lodge a formal objection or request for review has expired and any resulting review is finalised.³¹⁹

Where an application to access or amend a record is refused or refused in part, the applicant usually has a right of review or appeal against the decision. The process and body to which a request for review or appeal must be made, and whether a fee is imposed, varies between jurisdictions (and may vary within the same jurisdiction depending on whether the original application was made under freedom of information or privacy legislation).³²⁰

For example, in the Australian Capital Territory, if an applicant wants a review of a decision on an application to access a record containing their personal information made under the *Information Privacy Act 2014* (ACT), they must first make a complaint to the Information Privacy Commissioner.³²¹ The Information Privacy Commissioner may investigate and, if reasonably satisfied that the applicant's privacy has been interfered with, may notify the parties of the determination and advise the applicant that they can seek a court order.³²² Within six months, the applicant may then apply to a court for an order to the effect that their privacy has been interfered with; the public institution must remedy any loss or damage suffered; and compensation must be paid.³²³ If the application is made under the *Freedom of Information Act 1989* (ACT), however, the applicant must first seek internal review by the public institution in question,³²⁴ following which the applicant can apply to the ACT Civil and Administrative Tribunal for review.³²⁵

Private sector records

Except in some limited circumstances,³²⁶ private sector institutions are not subject to public records or freedom of information legislation, or to state and territory privacy legislation. They are accordingly not obliged under those statutes to provide individuals with access to their records. Some non-government institutions have developed and implemented their own policies for access to records. For example, Canon 487(2) of the Catholic Church's *Catholic Code of Canon Law* provides:

Interested parties have the right to obtain personally or through a proxy an authentic written copy or photocopy of documents which by their nature are public and which pertain to their personal status.³²⁷

Individuals have a right to access personal information about them held by institutions that are 'APP entities' under the Privacy Act. APP entities include:

- most federal-level public institutions
- all non-government health service providers
- all private sector small businesses and not-for-profit organisations (including non-government organisations) with an annual turnover of more than \$3 million.³²⁸

The Australian Privacy Principles (APPs), set out in schedule 1 to the Privacy Act, apply to all APP entities. However, the APPs do not apply to private sector small businesses and not-for-profit organisations with annual turnovers of \$3 million or less unless they voluntarily 'opt in' to the APP scheme.³²⁹

Under the APPs (subject to limited exceptions)³³⁰ where requested, an APP entity (or opt-in APP entity) must give an individual access to any personal information that the APP entity holds about them.³³¹ An individual can also request that APP entities amend records they hold that contain the individual's personal information where that information is inaccurate, out of date, incomplete, irrelevant or misleading.³³² Access and amendment requests to an APP entity are to be free of charge, but APP entities can impose a charge that is 'not excessive' for processing access requests.³³³

Unlike state and territory freedom of information and privacy legislation, the Privacy Act does not outline a process for individuals to follow when requesting access to or amendment of APP entities' records. It also does not state a time period for processing applications, instead requiring simply that requests be responded to within a 'reasonable' time.³³⁴ In practice, we understand that many non-government APP entities require requests to be made in writing and for the identity of the applicant to be verified with photographic identification.³³⁵ Some APP entities have also imposed their own target response time frames – for example, Anglicare Central Queensland aims to respond to access requests within 14 days where possible and within 30 days at a maximum.³³⁶

Access requests to APP entities can be granted;³³⁷ granted in part (with only partial release, or with content redacted); or refused. Records can be withheld, redacted or exempt from release in a number of circumstances, including where:

- the request is frivolous or vexatious
- the information relates to existing or anticipated legal proceedings between the entity and the applicant, and would not be accessible by the process of discovery in those proceedings
- giving access would reveal the intentions of the entity in relation to negotiations with the applicant in a way that would prejudice those negotiations
- giving access would have an 'unreasonable impact' on the privacy of other individuals.³³⁸

Amendment applications can also be granted, granted in part or refused by APP entities. Refusals must be made in writing, include reasons for the refusal and advise the applicant of any complaint mechanisms available to them.³³⁹ If the applicant then requests that the APP entity associate a statement of their position with the contested record (that is, annotate the record to include such a statement), the APP entity must take reasonable steps to associate the statement with the record.³⁴⁰

Where an access request is refused by an APP entity, in whole or in part, an individual may complain to the Australian Information Commissioner on the basis that the refusal is an act or practice that may be an interference with the privacy of the individual.³⁴¹

2.12.2 Issues with current access, amendment and annotation processes

Freedom of information and privacy legislation is meant to provide a clear, transparent and consistent process for individuals to seek access to and request amendment or annotation of records about themselves. However, we have been told by many survivors and their advocates and by records holders that many people still find navigating the current systems complex, costly, adversarial and traumatising. These difficulties are magnified for those of limited literacy, as is the case with many care-leavers.³⁴²

Lack of guidance

Many survivors are not confident or are unsure of how to assert their rights as regards records about themselves. Some survivors feel ill-equipped to begin the process of requesting access to or amendment of records about themselves, especially where the institution that made the record has closed or no longer exists.³⁴³ Many survivors are also unsure about where and from whom to seek assistance. Knowing where to begin a search for records, or which institution or body to ask for advice or access, can be daunting and mystifying when the institution that created the records no longer exists or its name and function have changed in the intervening years.³⁴⁴ We have also heard that many survivors are unaware of their rights to apply for or request amendment or annotation of records and that records holders themselves are unsure about how to manage and respond to such requests.³⁴⁵

Support services exist to assist members of the Stolen Generations, Former Child Migrants and Forgotten Australians to locate, access and interpret records created about their time in institutions during childhood. Examples are the Find & Connect web resource and support services offered by the organisations funded under the Find & Connect program to Former Child Migrants and Forgotten Australians.³⁴⁶

We have been told that many Former Child Migrants and Forgotten Australians have found these initiatives to be beneficial. We also heard, however, that Former Child Migrants and Forgotten Australians who live in rural and remote areas can have difficulty accessing these services and that there appears to be a lack of knowledge among these care-leavers about how these services operate and what assistance they are able to provide.³⁴⁷ Similar services are not so readily available for more recent care-leavers³⁴⁸ or for the survivors of abuse in other institution types (that is, institutions other than out-of-home care service providers), who, we have heard, face many of the same obstacles as Former Child Migrants and Forgotten Australians. Survivors of child sexual abuse in a range of institution types have commented to us in private sessions that they should be able to access some assistance or support in the process of accessing their records.³⁴⁹

Power disparities

We have heard that survivors can be very reluctant to re-engage with institutions in which they were sexually abused. Survivors can feel disempowered by a system that, in their perception, effectively requires them to rely on the good graces of the institutions responsible for the abuse. Individuals are required to ask the institution, as the owner of the records, to access records; this can exacerbate and extend the power disparities between survivors on the one hand and institutions on the other.³⁵⁰

Some advocates have suggested that institutions are not always forthcoming in advising individuals of their right to seek amendment or annotation to records containing their personal information.³⁵¹ We have also been told that some institutions can be reluctant to accept that the content of their records is ‘incorrect’ and requires any amendment.³⁵² In addition, some jurisdictions’ legislation explicitly allows public records holders to refuse to amend records that are ‘historical only’.³⁵³

Inconsistent law and practice

Although the different jurisdictions’ legislation and processes for accessing, amending and annotating records are similar and use the same broad principles,³⁵⁴ we have heard from victims, survivors and their advocates that inconsistencies between jurisdictions – especially between processes for public and private sector institutions – create confusion and frustration.³⁵⁵

The variation in the processes that non-government institutions have adopted with respect to access requests was demonstrated by Anglicare Australia’s Provenance Project, which described the application processes applicable to 15 individual Anglican institutions or organisations across various Australian jurisdictions. The processes adopted by the 15 different organisations all varied slightly, with no two organisations having uniform practices. Some of the variations in the organisations’ processes included:³⁵⁶

- how applications are to be made
- to whom in the organisation applications should be addressed
- whether third parties can make access requests
- how long processing can be expected to take
- whether a processing fee can or will be imposed
- what identifying documents are required before a request is accepted.

The type of identification non-government institutions will accept can be particularly problematic for some applicants. As we have discussed, we have met several care-leavers who were not issued with birth certificates and, as a result, struggled with providing proof of identity throughout their lives.³⁵⁷

A further concern is that private sector small businesses, including not-for-profit organisations, with annual turnovers of less than \$3 million are exempt from obligations under the Privacy Act, including those regarding access to or amendment of their records.³⁵⁸

A significant number of institutions within our Terms of Reference may not be covered by legislation providing rights of access to records – for example, small dance schools or sporting clubs; or associations run predominantly by volunteers and as not-for-profit organisations. Individuals seeking access to or amendment of the records of such institutions may have no recourse. In a 2008 report, the Australian Law Reform Commission recommended that the Privacy Act be amended to remove the small business exemption.³⁵⁹

With respect to institutions that are subject to state and territory, or Commonwealth, freedom of information or privacy legislation, we were told that a disconnect remains between principle and practice. Most freedom of information and privacy legislation includes a clear statement of its objects and purpose and that the legislation should be interpreted and applied with the attainment of those objectives in mind. Generally, those objectives are, effectively, ‘to give the Australian community access to information held by the Government’, ‘increasing scrutiny, discussion, comment and review of the Government’s activities’³⁶⁰ and to ‘promote the protection of the privacy of individuals’.³⁶¹ Survivors told us that some institutions do not appear to act in a manner conducive to achieving these objectives when responding to access requests.³⁶² As Ms Carroll told us in *Case Study 25: Redress and civil litigation*:

Accessibility and transparency of records access remains, at best, patchy across Australia. Some states do it better than others, but we are still struggling to get a consistent and transparent response from all the jurisdictions. To roadblock record access perpetuates system abuse.³⁶³

We were told about institutions responding to access requests with suspicion and defensiveness. In the *Out-of-home care* case study, for instance, Tash, a recent care-leaver, stated that she was advised she had to give reasons for wanting to access the departmental case file created about her time in out-of-home care.³⁶⁴ This was despite the fact that section 10 of the *Freedom of Information Act 1992* (WA) states that an individual’s right to access documents is not affected by any reasons they may have for wanting access, or the public institution’s belief as to any such reason (a principle which is also reflected in the legislation of a number of other jurisdictions).³⁶⁵ Tash gave evidence that:

I had to give certain reasons for which part of my life I actually wanted. That I just wanted my whole case file wasn’t a good enough reason.³⁶⁶

Tash also told us that she and her siblings were instructed by the Western Australian child protection department to apply only for records pertaining to specific time periods or events. She said:

We had to give specific parts of our lives that we wanted ... just going from this year to that year wasn't enough. We had to go 'we want this specific date to this', and like 'this time in care to this time in care' ... for me it's going to be a long process if I keep going that way ... you can keep on applying until you eventually get your whole file ... I realise that it's going to take me a long time to get it.³⁶⁷

Fees and charges

A number of survivors have cited application fees and processing charges as obstacles to records access. Many survivors feel strongly that they should never have to pay to access records made about them – particularly in the case of records regarding a survivor's time in out-of-home care, where their engagement with the relevant institution was beyond their control.³⁶⁸ Although applications to access records with personal information may not be subject to fees or can be subject to waivers or reductions to fees, we have been told that many survivors are unaware of their rights to seek fee waivers or reductions and how to exercise them.

The different processes and fee structures between and within jurisdictions can also be confusing and discouraging, and fees and charges may not be imposed consistently. Tash told us in the *Out-of-home care* case study:

I didn't [have to pay to access out-of-home care records] ... but I only got a certain amount of [my file] ... Another few young people I know, they've been told different. Some people have to pay 20 cents a page, some people have to pay 70 cents, some people have to get a lawyer to get it. We're getting told all different kinds of things. It kind of made me feel like it was so that we in the end gave up and didn't keep pursuing to get our case files.³⁶⁹

Fee waivers and reductions generally apply only to records that contain an individual applicant's personal information; however, survivors often want more general records about the institutions they engaged with. Fee waivers and reductions may not apply to:

- applications for more general records about an institution (such as policies, annual reports or photographs) that might help contextualise a victim's or survivor's experience
- applications for records containing family members' personal information
- applications made by third parties on an individual's behalf (for example, by a care-leaver's child or by an advocacy group).³⁷⁰

Many institutions do not charge fees for access to records for their clients, and many institutions and other stakeholders expressed the view that fees should not be charged for care-leavers to access records about themselves.³⁷¹

It defies understanding that agencies and government departments would create and store personal records about children in their 'care'; and then, years later, charge fees for those children, as adults, to have access to them.³⁷²

Delays

Delays in processing and responding to access and amendment requests have been raised as a significant concern for many survivors. While public institutions are usually obliged to respond to access requests within a set period (for example, within 30 days of receipt), the lack of specificity around processing times for non-government institutions has caused frustration. Some advocates have told us that the requirement that requests be responded to within a 'reasonable' period is too imprecise and is open to misuse.³⁷³

For public institutions, even where legislation dictates decision periods for applications, delays are not uncommon. In her evidence in the *Out-of-home care* case study, for instance, Ms Leonie Sheedy, Executive Officer of CLAN, told us that in December 2013 CLAN had helped one care-leaver request access to records about him held by a government department in New South Wales, but he did not receive those records until May 2015.³⁷⁴

Provisions in some jurisdictions' legislation direct that applicants who do not receive a response to their applications within set decision times should take their applications as having been refused.³⁷⁵ This creates the possibility that an applicant might never receive a formal notification of whether public records about them actually exist.

Decisions: grants, redactions and refusals

Both granting and refusing applications for access to records can cause distress for survivors. As we have outlined throughout this chapter, the content of records, particularly historical records, can be very confronting, hurtful and insensitive, and reading such material can be difficult and traumatising. We have heard examples of survivors having flashbacks and breakdowns when reading records made about them,³⁷⁶ discovering abuse that they had repressed or blocked from their memories, and taking drastic action in the aftermath of reading their records, including burning records, self-harming and attempting suicide.³⁷⁷ Some of the most severe responses to released records have been experienced when the records holder provides no warning to the recipient, and the recipient has no access to suitable support to help them to read, interpret and digest the content.³⁷⁸

Although there are circumstances where access requests are justifiably refused in whole or part, refusals and redactions, particularly in the absence of clear explanations, have been a source of considerable frustration and disappointment for many survivors.³⁷⁹ For example, ‘Ellis Owen’ told us that he was sexually abused in a home for Aboriginal boys for two years.³⁸⁰ He said that when he obtained his records in the early 2000s, he found most of the information was redacted:

When I opened it up it was all blacked out. What are they hiding? They still hiding things ... If they want to get on in this world, make it a better country, they should open up and face the truth themselves. Start admitting what they did.³⁸¹

In some jurisdictions, applications for access to records can be refused where an applicant does not identify the requested record or records with sufficient specificity, or where the request is for a large volume of documents.³⁸² We have heard that, where an applicant is seeking records that may have been made many years or even decades ago, providing a sufficient level of specificity can be difficult. In some cases, institutions’ own classifications of their documents and even their functions can obstruct successful applications: an applicant might use one descriptor while an institution uses another, preventing the institution from recognising or identifying the records sought.

For example, ‘Angus’ was sent to a care facility for children with physical disabilities when he was 18 months old and was there for seven years.³⁸³ At the time of coming to the Royal Commission, he explained he was still trying to find records of his time in the home. He told us he had heard mixed messages about why they were not available, including that they had been destroyed. ‘Angus’ described the home’s classification as a ‘hospital-school’ as an added obstacle in finding who was responsible for the record’s archiving.³⁸⁴

Institutions’ own poor indexing and lack of knowledge about what records they hold has sometimes made even precise applications unsuccessful. On a number of occasions the Royal Commission received more complete records about individuals in response to our summonses than the individual received in response to their own access requests.

We heard that both government and non-government institutions often provide little or no explanation for their refusals and redactions, and that redaction decisions are not always logical or consistent.³⁸⁵

‘Deanna’ sought access to records about her time in care by way of a freedom of information application.³⁸⁶ In response to her application, she was advised that the ward file about her time in care amounted to 300 pages. ‘Deanna’ said she was granted access to only 17 of those pages, which were heavily redacted.³⁸⁷

‘Davina’ found it difficult to get records of her time in children’s homes managed by The Salvation Army.³⁸⁸ She said she was initially told she had not resided at the homes, but she then found school enrolment notes that corroborated her account. ‘Davina’ said that when she received her records they were heavily redacted, and little was known about the man who had sexually abused her.³⁸⁹

'Jasmine' told us that when she applied as an adult for her welfare records, it took a long time for them to be found.³⁹⁰ After some delay, the records were issued, but she said they were heavily redacted. 'Jasmine' said that these records were important because they pointed to the way in which her family had been separated and isolated from one another:

After 37 years, the file they released to me was, in a nutshell, an incomplete file where they've essentially blanked out personal details about myself ... details in relation to my birth mother, they've blanked those details out. Details in relation to any siblings of mine, they've blanked those details out.³⁹¹

Another survivor, 'Andro', sought to obtain his records in 2000 through a freedom of information request.³⁹² He told us he was disturbed to see his records heavily redacted with the fault for the child sexual abuse he said he experienced placed entirely on him:

They've really gone out of their way to systematically defame me and demonise me and what other adjectives you could use to describe it. But I was only a young kid ... Basically reading that I was just offended by that ...³⁹³

In the *Youth detention centres, Victoria* case study, we heard evidence about the importance of access to records during witnesses' time in the care of the state. Three witnesses told us that the redactions in the documents they received were inconsistent, as information that was disclosed in some documents was redacted in others.³⁹⁴ Further, there were often delays in receiving files and the files they received were incomplete.³⁹⁵

Similarly, in the *Out-of-home care* case study, 'Tash' told us that when she and her sister applied together to receive access to files created about their time in out-of-home care, identical information was redacted in the file about 'Tash's' time in out-of-home care but not where it appeared in the file relevant to her sister. No explanation was offered for this inconsistency.³⁹⁶

In 2015, the Australian Government 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).³⁹⁷

The DSS Access Principles, available on the DSS website, were developed by Recordkeeping Innovation Pty Ltd on behalf of DSS and in consultation with a Records Access Working Group and the Find & Connect Advisory Group. The DSS Access Principles aim to maximise the information available to care-leavers and Former Child Migrants and to promote greater consistency in the ways that institutions that hold records about care-leavers and Former Child Migrants respond to access requests.

In particular, these principles seek to address three recommendations of the *Lost Innocents* and *Forgotten Australians* reports, namely that:

- government and non-government agencies agree on how care-leavers, upon proof of identity only, can view all information relating to themselves and receive a full copy of such documents
- records be provided to care-leavers free of charge
- compassionate interpretation of legislation be practised to facilitate the widest possible release of information to care-leavers.³⁹⁸

In the *Records* consultation paper, we asked how the DSS Access Principles have been applied in practice, whether they have resulted in simplified and more open access processes, and whether and how these principles might be adapted to apply to access to the records of all institutions within our Terms of Reference.³⁹⁹

A number of stakeholders endorsed the content of the DSS Access Principles.⁴⁰⁰ Anglicare Victoria, for example, stated that:

[These principles] provide clear and concise advice for organisations, particularly in relation to how to interpret the Information Privacy Principles. The highly relevant and detailed examples seek to affirm past practices and train those who are less experienced in preparing records for release.⁴⁰¹

At the same time, other submissions highlighted the limitations of the DSS Access Principles. CAARA noted that the DSS Access Principles are stated as being aspirational and not always reflecting current practice.⁴⁰² CLAN stated that it had ‘not seen a marked difference in records access and release’ since the introduction of the principles.⁴⁰³ The Alliance for Forgotten Australians (AFA) observed that the principles have ‘persuasive power only’ and that it is ‘not clear what the take up’ by records holding agencies across Australia has been.⁴⁰⁴

Third-party privacy

Finally, a number of survivors have cited the protection of third-party privacy as an obstacle to gaining access to both government and non-government records.⁴⁰⁵ Private sector APP entities can refuse access applications where providing access would have ‘an unreasonable impact’ on the privacy of a third party.⁴⁰⁶ We have heard that some non-government institutions interpret this widely to justify refusing access.⁴⁰⁷

In the case of public bodies, care-leavers have told us that they have been incorrectly advised that it is *their* responsibility to seek the consent of third parties (including immediate family members, deceased persons and professionals) mentioned in records before those records can be released.⁴⁰⁸

The concept that even immediate family members are ‘third parties’ is baffling for many survivors. Some have expressed their disbelief that records about them might be withheld simply because they contain discussion of objective information about an immediate family member (for example, their name or date of birth). In the *Out-of-home care* case study, a recent care-leaver, Kate, told us:

[There is the] same problem with having to get permission from people who are in the file. You lose information because they wipe out information. It’s in your file, but it might pertain to your brothers and sisters. I don’t get that, because they are my family. If they are in my file and it’s something to do with me I don’t get that ... I’ve been told that I need to have permission from anyone who could possibly be mentioned in there who is over the age of 18. I’ve got a couple of dead relatives who are mentioned in there and I can’t get their permission ... I have to go through my entire family tree and get people to sign a list ...⁴⁰⁹

On the other hand, survivors themselves may be third parties affected by others’ access applications and they also have legitimate privacy interests that may need to be protected. We heard accounts of individuals being provided with access to records related to their survivor siblings or family members without consent.

For example, ‘Billy Albert’ became a ward of the state when he was 13 years old.⁴¹⁰ At a private session, he told the Royal Commission that one of his sisters, who was also put into state care, requested her welfare file. She later received her file as well as that of ‘Billy Albert’. He said that his sister and her children all read his file before he did, and that ‘everyone had read my files and I didn’t [even] know they were available to me ... I was very annoyed about that ... she shouldn’t have had my file’. ‘Billy Albert’ said he felt he had to tell his son about the sexual abuse he had experienced as a child before any rumours spread through his family.⁴¹¹

Granting access to third-party information will ‘always require balancing competing considerations’ and existing privacy and freedom of information legislation includes provisions to balance an individual’s right to access records about themselves with the privacy of third parties.⁴¹²

For example, Commonwealth privacy legislation, as noted, provides that private sector institutions are not required to provide an individual with access to personal information about themselves if ‘giving access would have an unreasonable impact on the privacy of other individuals’.⁴¹³ Victorian freedom of information legislation provides that access may be refused if release of the records would ‘involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person)’.⁴¹⁴

While not having the status of law, the DSS Access Principles sought to enable records holders to ‘use the discretion available to them in the legislative environment’.⁴¹⁵ In relation to balancing the competing considerations in access requests, the DSS Access Principles provide that:

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.⁴¹⁶

The problems that some survivors experience in obtaining access to records may derive from the way in which some institutions choose to apply laws, rather than from the laws themselves. The AFA suggested that Queensland departmental officers may understand and interpret the *Information Privacy Act 2009* (Qld) 'literally', so that any information that is 'shared' (that is, pertaining to more than one individual) is not released.⁴¹⁷ One consequence of this was said to be that:

It is almost impossible to find out the reason for being admitted to a 'home' because it may mean providing information about a parent eg. Alcoholism. This would be redacted as it is the parent's information.⁴¹⁸

Mr Golding of CLAN observed that care-leavers who make applications for personal information 'usually do so for the very purpose of finding out about their family from which they were arbitrarily separated in their childhood'. In this context, it may be asserted that releasing such information about close relatives would not be unreasonable, given the interests of applicants who have been in care.⁴¹⁹

In their submissions to us, stakeholders highlighted that child welfare practitioners have trouble understanding relevant law and policy.⁴²⁰ Barnardos Australia, for example, observed that the intersection between privacy principles and child welfare law is complex and difficult. Barnardos Australia's own privacy policy is complex because of the 'special provisions for information about children, when carer families are involved and when there are special laws in place for information exchange, especially when a child welfare agency operates across several jurisdictions'.⁴²¹

'Moral ownership'

Some stakeholders suggested that survivor access to records should be facilitated by recognising that individuals have 'moral ownership' of their records.⁴²² Open Place, a support service for Forgotten Australians, explained the background to this concept in the experiences of Forgotten Australians:

A recurrent theme for Forgotten Australians getting their records is bewilderment and anger at the fact that others have read their record and then have determined what should or should not be released. Forgotten Australians regard themselves as the 'owner' of their records.⁴²³

Open Place submitted that moral ownership should be recognised in the following terms:

1. Moral ownership of the records (as distinct from legal owner) belongs to the child/ adult who the record is about. This is their story, their history, their identity ...
2. Issues of privacy and exercising the responsibility of privacy sits with the moral owner of the record.
3. The moral owner of the record is no longer a child. The owner of the record is an adult and must be treated as an adult. Notions of protecting the vulnerable are patronizing and paternalistic. Support may be needed but lack of support is not an excuse to redact material.⁴²⁴

The AFA supported this position. It advised the Royal Commission in its submission to recommend that each state and territory establish units specifically for processing access to records for care-leavers, separate from generic access under privacy and freedom of information processes. Legislative change would be required to enable these units to 'provide a service that honours the Forgotten Australians "moral ownership" of records'.⁴²⁵

In our view, while moral ownership is not a recognised legal concept, there is value in these ideas. The concept of moral ownership highlights the importance for survivors of access to records about themselves – and how their interests will often outweigh lesser interests, including those of third parties, when decisions about access are being made. However, in legal policy terms, access rights may be best analysed in terms of control of personal information, rather than ownership.⁴²⁶

Recommended Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent

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

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

Survivors have raised concerns with us that existing law and policy regarding these rights:

- is complex and confusing for individuals and records holders
- is not nationally consistent
- does not apply equally to records held by government and non-government institutions
- does not apply to certain non-government institutions.

Many survivors find current processes for accessing, amending and annotating their records to be slow, disempowering and prohibitively expensive. They have also expressed the view that decisions about refusal and redaction continue to be poorly explained and justified. While it will often be inappropriate to amend historical records, it remains important to some survivors that they be able to annotate them.

To address concerns about existing access, amendment and annotation processes, in the *Records* consultation paper we proposed a principle that individuals' rights to access and amend or annotate records about themselves can only be restricted in accordance with law.⁴²⁷

In response to this proposed principle, some stakeholders advised us that existing laws may contribute to problems for survivors who are seeking access.⁴²⁸ The Find & Connect Web Resource Project stated that it did not believe that the principle we proposed would lead to 'any significant improvement of the situation for Care Leavers or survivors of abuse' because institutions already believe that they are providing access to records 'in accordance with law'. Rather, it was suggested that the principle should state that, notwithstanding the existence of various state and federal laws:

[institutions] must aim to provide as broad and complete access as possible, in accordance with a framework that recognises the rights of the child, the right to know, and the vital importance of these records to meet lifelong identity, memory and accountability needs.⁴²⁹

The National Archives of Australia submitted that the principle should 'focus more on supporting access to records, or alternatively, that an additional principle be included that promotes consistent access to records of care leavers'.⁴³⁰

In response to these concerns, and consistent with the approach taken by the DSS Access Principles, we recommend that the principles for records and recordkeeping provide that access rights 'should be recognised to the fullest extent'.

We also considered what further steps should be taken to encourage interpretation of existing laws and decision-making on access requests that facilitate access to records for survivors of child sexual abuse in institutional contexts.

There were suggestions that privacy and freedom of information legislation should be amended to recognise the importance of survivor access to out-of-home care records⁴³¹ or some broader category of institutional records. One way of doing this could be to amend legislative provisions that allow access to be refused or documents to be redacted.⁴³²

In our view, an individual's rights of access to personal information about themselves should not be considered absolute – even when the individual is a survivor of child sexual abuse. Information relating to child sexual abuse often includes sensitive personal information, including about adults who may pose a risk to children; and children who may be at risk or pose a risk to other children.⁴³³ As discussed earlier, information about other individuals, who may themselves be survivors, may be included in the same records.

Privacy and freedom of information legislation are laws of broad application to, respectively, essentially all personal information and all public records. It would be problematic to recommend amendments to these laws to apply tests for accessing records relevant to child sexual abuse that are different to tests for accessing other records.

Further, some restrictions on access to records protect broader societal interests, such as the interest in effective mandatory reporting systems. Some of the restrictions on access are located outside privacy and freedom of information legislation, and the relevant legislation dictating these restrictions would also require review, if different tests for accessing records relevant to child sexual abuse were to be applied.

For example, in Queensland, sections 186 and 187 of the *Child Protection Act 1999* (Qld) prevents institutions from providing access to information gained during the administration of the Act. The sections are intended to 'protect the free flow of information' to the Department of Communities, Child Safety and Disability Services from notifiers and to protect the 'privacy of individuals in relation to the sensitive information' that the department may hold about them.⁴³⁴

However, one way to ensure that survivors' access rights are recognised to the fullest extent would be to develop national guidelines on providing survivors with access to their records.

The DSS Access Principles are an example of such an approach. A number of stakeholders⁴³⁵ supported the idea of similar guidelines being developed to apply to, for example, 'records held by all government and non-government institutions with responsibility for care or supervision of children'.⁴³⁶ The Victorian Government stated that the DSS Access Principles 'outline a best practice approach to redaction, which could be used as a basis for a national agreement'.⁴³⁷

2.13 Records and recordkeeping principles

Institutions can face barriers to the creation of good records and the exercise of good recordkeeping practices. Creating and maintaining high quality records can be time consuming and resource intensive, particularly for institutions with limited resources and storage space, small staff numbers and high reliance on volunteers. Some of these limitations can be addressed in part by the shift to reliance on digital technology, which has offered positive opportunities for the creation and retention of records for many institutions. However, digital technology also presents new challenges and risks, including costs of upkeep and updating, corruption and security of files and technological obsolescence.

Some institutions cannot easily provide swift and full access to their records. Some institutions hold vast record files dating back over 100 years, with records from different decades organised and filed in different ways. Many institutions lack the staff and resources to index and search through vast archives of records, or to respond promptly to requests. In some cases, there can also be legitimate competing interests – such as legal professional privilege or the privacy of third parties – which need to be considered before records are released.

None of these factors alter our conclusion that the processes for creation and management of accurate institutional records relevant to child sexual abuse require further attention and improvement.

Our recommended records and recordkeeping principles are designed to assist all institutions to appropriately create and manage accurate records relevant to child sexual abuse. Responses to the *Records* consultation paper supported this general approach and the principles proposed.⁴³⁸ For example, the Centre for Excellence in Child and Family Welfare supported the principles as ‘reflecting current best practice’, and the New South Wales Department of Premier and Cabinet supported them as reflecting and affirming the obligations and responsibilities currently set out in New South Wales legislation and policy.⁴³⁹

Some stakeholders expressed reservations about our principles-based approach. The Setting the Record Straight: For the Rights of the Child Initiative was concerned that an intent to ‘complement existing law and practice’ would circumscribe the potential of the principles to lead to ‘transformation of recordkeeping and archiving infrastructure for out-of-home care’.⁴⁴⁰ The initiative recommended, among other things, that the Royal Commission ‘acknowledges the special childhood recordkeeping needs for those who experience out of home care, past, present and future’ and ‘enables access to records as a way to enact historical justice and assist in (financial and non-financial) redress’, as well as addressing the ‘systemic problems with existing recordkeeping and archiving infrastructure’.⁴⁴¹

A number of stakeholders stated that our proposed principles should not be limited in their application to records about child sexual abuse.⁴⁴² For example, PeakCare Queensland Inc observed that referring to ‘child sexual abuse’ needlessly limits the value and impact of the high-level principles. To address this concern, we have amended the recommended principles to refer to records relevant to child ‘safety and wellbeing, including child sexual abuse’.

AHISA suggested that, in addition to the proposed principles, sector-by-sector guidelines (for example, national guidelines that are directly appropriate for schools, including boarding schools) should be developed, as such guidelines were more likely to support best practice.⁴⁴³ The Royal Commission has not developed such guidelines, as it was impracticable for us to propose sectoral guidelines or to make more specific recommendations for each institution type (for example, concerning exactly how long non-government schools should keep psychologists’ reports).

However, the provision of sector specific guidelines by other bodies may play a role in contributing to better recordkeeping practices based on our findings and recommendations.

For example, Barnardos Australia suggested that ‘Privacy Commissioner guidelines regarding decisions about child welfare matters would be of great assistance for the sector’.⁴⁴⁴ Anglicare WA observed that few staff are ‘well educated about existing law, such as the Privacy Act, various State laws, agency and professional standards and all their applications to their daily work’. It submitted that government agency policies and procedures should ‘interpret laws and make them clear and succinct, easily referred to at critical times and constantly reinforced’.⁴⁴⁵

In taking the approach of recommending a set of high-level principles, we recognise the diversity of institutions and existing records and recordkeeping obligations. In recommending these principles, we have scrutinised existing law and policy, and have drawn on the experience and advice of survivors, institutions that create and hold records, and various other stakeholders. We have also kept the rights of children as the guiding concern in the development of these principles.

We recognise that the practices of some institutions (for example, in complying with existing legal obligations, or in line with their own policies) may already satisfy the spirit of these principles. We also recognise that institutions of different types vary considerably, as do the levels of risk they need to manage.

Reflecting this, we understand that what might be possible and appropriate for one type of institution may not be for another. For instance, it would not be appropriate to expect a small local sports club run predominantly by volunteers to create records with the same level of detail, and maintain them with the same degree of sophistication and for the same period of time, as a government out-of-home care provider.

Recommendation 8.4

All institutions that engage in child-related work should implement the following principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution.

Principle 1: Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.

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

Principle 2: Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.

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

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

Principle 3: Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.

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

Principle 4: Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.

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

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

Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.

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

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

2.14 Enforcing the records and recordkeeping principles

In our *Records* consultation paper, we asked whether a 'sixth principle' directed at enforcing the records and recordkeeping principles was required. We also asked whether it would be necessary or appropriate to adopt a two-tiered approach to the enforcement of recordkeeping practices, whereby certain institutions (such as out-of-home care service providers and schools) are held to a higher standard than others (such as local sports clubs).⁴⁴⁶

A number of stakeholders emphasised the importance of enforcing recordkeeping obligations.⁴⁴⁷ CAARA observed that, given 'the ongoing failure of many organisations to create and keep full and accurate records of matters as serious as the protection or abuse of children, it may be appropriate to seek an enforcement regime to support better practice'. CAARA cautioned, however, that 'given the range and complexity of the organisations involved, their circumstances, resources and business practices, it would be difficult to construct a workable enforcement regime'.⁴⁴⁸

CLAN submitted that legislation needs to be created nationally to ensure that all organisations associated with creating, maintaining and disposing of records meet legal responsibilities and obligations.⁴⁴⁹ Similarly, Children's Healthcare Australasia submitted that 'legislation needs to be passed to mandate national standards for record keeping that will apply to all human services organisations'.⁴⁵⁰

Another stakeholder suggested that, as part of funding agreements with agencies, 'all government funding ought to be conditional on meeting written requirements' in relation to records.⁴⁵¹ This is already the case in Victoria, where organisations that are funded and regulated by the Victorian Government enter into service agreements that include 'provisions and expectations for record keeping'.⁴⁵²

Victoria has also legislated child safe standards that contain some basic recordkeeping obligations. Organisations that receive minimal state government funding and regulation, but provide services and have contact with children, are covered by these child safe standards, which impose an obligation on all organisations that provide services to children to keep good records.⁴⁵³ The Centre for Excellence in Child and Family Welfare observed that an additional enforcement regime in Victoria may, therefore, be unnecessary. However, it may need to be considered in other states, as there should be ‘nationally consistent expectations of organisations that provide services or are in contact with children for all Australian children’.⁴⁵⁴

The Tasmanian Government highlighted the importance of acknowledging that ‘many smaller, less well-resourced entities’ may be affected by requirements to comply with records and recordkeeping principles and need to implement necessary training in relation to this. The Tasmanian Government would have to ‘carefully consider any policies that may affect the capacity of service providers to deliver necessary services for children’, particularly in out-of-home care, and referred to the need for ‘balance between the benefits of increased regulatory burden on the community sector and the risk of market reduction’.⁴⁵⁵

In Volume 6, *Making institutions child safe*, we outline the national Child Safe Standards we have identified as essential to making an institution safer for children. In our view, good records and recordkeeping practices are critical to building and maintaining a child safe institution. They are a core component of Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture. We believe all institutions that provide services or engage with children should be guided by our recommended records and recordkeeping principles when implementing that standard.

We also recommend in Volume 6, *Making institutions child safe* that the Child Safe Standards should be mandatory for all institutions that engage in child-related work. These standards should be monitored and enforced by an independent state or territory oversight body. This would include assisting institutions to build their capacity to implement the best-practice record and recordkeeping principles.

2.14.1 Enforcement for schools

We identified a range of problems with records and recordkeeping practices in schools. In particular, case studies raised systemic issues concerning recordkeeping in non-government schools.

In the *Perth independent school* case study we found that, from 1999 until 2009, the school had a system for recording complaints or concerns about inappropriate behaviour by staff members that was deficient, to the extent that there was no centralised database to record concerns or complaints and facilitate a comprehensive review of the file when a complaint was made.⁴⁵⁶

In the *Yeshiva Bondi and Yeshivah Melbourne* case study we found that, until 2007, Yeshivah College Melbourne did not have a practice of recording allegations of child sexual abuse.⁴⁵⁷

In the *Knox Grammar School* case study we found that the system for recordkeeping at Knox Grammar School between 1969 and 1998 failed in that relevant material about teachers' conduct with students was not systematically documented, securely kept and able to be made available to incoming headmasters and other relevant senior staff.⁴⁵⁸

We also found evidence of recordkeeping problems in the *Geelong Grammar School* case study and the *Brisbane Grammar School and St Paul's School* case study.⁴⁵⁹ For example, we found that, until about 2004 or 2005, Geelong Grammar School did not have any policy in place which required a written record of complaints of misconduct that may amount to child sexual abuse against staff at the school.⁴⁶⁰ Issues with recordkeeping were also apparent at Brisbane Grammar School, which failed to keep adequate records of students' attendance at counselling and absences from class.⁴⁶¹

From the information we obtained from case studies and other sources, it is not possible to generalise about the extent to which government or non-government schools comply, in practice, with our recommended high-level principles.

Nor is it possible to reach firm conclusions about the extent to which non-government schools comply with recordkeeping standards at least equivalent to those applicable in government schools, or whether the problems that we identified would be avoided if non-government schools were subject to equivalent standards.

AHISA observed that variation in policies and procedures between non-government schools and government schools 'should not be interpreted as an accountability deficit' because the 'common law duty of care and state and territory laws covering mandatory reporting apply across all school sectors'.⁴⁶²

School recordkeeping obligations vary between jurisdictions and between government and non-government schools. Overall, however, there are clear gaps in regulation relating to the records and recordkeeping of non-government schools. One New South Wales archivist has observed that:

Independent schools are not clearly nor comprehensively subject to comprehensive recordkeeping regulations or requirements, even at the state level. My perception is that there is huge variety in what, how and why records are kept by individual schools.⁴⁶³

Government and non-government schools both have mandatory recordkeeping obligations, including under school registration requirements applicable to both government and non-government schools. However, government schools are subject to additional regulation, including through ministerial or education department directions and policy statements. Importantly, public records legislation regarding records creation, maintenance and disposal applies to government schools and education departments, but not to non-government schools.

It is not apparent from existing laws and policies that non-government schools are subject to sufficiently clear or comprehensive obligations regarding records and recordkeeping. While some areas of recordkeeping, such as obligations to document ‘critical incidents’, are well developed, more attention may be needed to ensure that all schools make records of risks, suspicions, allegations and incidents of child sexual abuse, and ensure that records are up to date, retrievable and preserved from degradation, loss, alteration or corruption.

In our view, non-government schools should be required to comply, at a minimum, with standards applicable to government schools in relation to the creation, maintenance and disposal of records relevant to child safety and wellbeing, including child sexual abuse. Survivors of child sexual abuse in schools should not face any additional risks due to poor records and recordkeeping simply by virtue of attending a non-government school. Non-government schools receive substantial government funding and should be responsible for meeting recordkeeping standards equivalent to those of government schools.

One option for implementing the records and recordkeeping principles in all schools is to incorporate them into new school registration requirements, either as high-level principles or as more detailed requirements for schools. In this regard, school registration systems provide an example of how existing regulatory frameworks may be used to monitor and enforce the records and recordkeeping principles in some types of institutions.

As discussed in Volume 13, *Schools*, all jurisdictions require both government and non-government schools (including Catholic or independent schools) providing primary and secondary education to be registered with a statutory authority. A statutory authority ensures that minimum standards for curriculum and operations are met for all schools.

Incorporating the records and recordkeeping principles into school registration requirements would constitute a sensible extension to existing administrative and regulatory requirements that deal with standards of governance. For example, New South Wales school registration requirements include that ‘policies and procedures for the proper governance of the school are in place’.⁴⁶⁴ Similarly, the Victorian requirements include that the school comply with any standards relating to ‘governance of the school’.⁴⁶⁵ Arguably, such school registration requirements already imply that schools should have good records and recordkeeping practices, as this is fundamental to proper governance.

AHISA highlighted the positive role that registration requirements may play in promoting best practice. Registration requirements and registration inspections of non-government schools are ‘a stringent and practical means through which state and territory governments can set and monitor standards in child protection generally as well as in the creation, maintenance and disposal of records pertaining to child protection’. AHISA also noted that heads of independent schools ‘recognise that there is value in incorporating standards into the school registration regulatory framework in so far as school registration is a public endorsement that schools are meeting accepted community standards’.⁴⁶⁶

Recommendation 8.5

State and territory governments should ensure that non-government schools operating in the state or territory are required to comply, at a minimum, with standards applicable to government schools in relation to the creation, maintenance and disposal of records relevant to child safety and wellbeing, including child sexual abuse.

2.15 Records advocacy services

It may be desirable to establish records advocacy services to assist survivors of child sexual abuse in institutional contexts to obtain access to institutional records and, where appropriate, to seek amendment or annotation of them. For example, the Victorian Aboriginal Child Care Agency noted:

It is necessary that clients receive culturally safe support in accessing, reading and interpreting records that in all likelihood will have derogatory and offensive language, as well as distressing information that may well trigger a client's trauma.⁴⁶⁷

Existing records advocacy services include service providers funded under the Find & Connect program in each jurisdiction, which provide services for Former Child Migrants and Forgotten Australians. The program has developed a national Find & Connect web resource to help care-leavers to find records held by past providers and government agencies. It also offers specialised records search services and support services to provide practical assistance to care-leavers.⁴⁶⁸

Other related services are also available to survivors.⁴⁶⁹ Services provided by Link-Up assist Aboriginal and Torres Strait Islander people of the Stolen Generations, including in relation to locating and applying for records on their behalf.⁴⁷⁰ CLAN also advocates for care-leavers, including in relation to records.⁴⁷¹

Government agencies provide some support for survivors who wish to obtain access to records. For example, in Tasmania, the Department of Health and Human Services and the Department of Education provide online guidance, forms and contact points for people wishing to access and amend personal information.⁴⁷² Commonwealth, state and territory ombudsmen and information and privacy commissioners may also provide some assistance, at least in terms of explaining how applications for access may be made for public or other records.

In our *Records* consultation paper, we asked whether a records advocacy service for survivors would be useful; what powers, functions and responsibilities a records advocacy service should have; and whether there are existing bodies or agencies that may be suited to delivering records advocacy services.⁴⁷³

Many stakeholders stressed the importance of records advocacy for victims and survivors,⁴⁷⁴ especially in relation to access to records. The Centre for Excellence in Child and Family Welfare, for example, stated that an ‘important component of advocacy and support includes the ability for survivors to access unredacted personal records and files from Governments and institutions’.⁴⁷⁵ It referred specifically to the need for support to be provided to individuals accessing their files, including counselling services.⁴⁷⁶

Mr Golding of CLAN submitted that Find & Connect services are ‘excellent conceptually’ and should continue to be supported, but that these services ‘vary in quality and user take-up’. This variability was said to involve a range of factors, including problems relating to the sponsorship or hosting relationships; geographical location and ease of access for users; the way the services are promoted; rapid turnover of staff and inadequate training; differing values in service delivery; and lack of care-leaver engagement in decisions about the way services are delivered.⁴⁷⁷

The AFA noted that victims and survivors need assistance when amending or annotating files. This is, it said, a ‘gruelling task’:

Coming face to face with the reality of an institutional version of childhood is confronting and challenging. Many Forgotten Australians are simply not equipped with the emotional or literacy skills to undertake this task unsupported. AFA knows of no past provider of care who offers a service that can support a Forgotten Australian to amend and recreate their own history as an attachment to the official file. This task needs to be resourced by each past provider of care ...⁴⁷⁸

Dr Karen George, a historian with expertise in child welfare history, submitted that a records advocacy service should be able to locate and apply for records on behalf of clients, and assist and empower clients who wish to find and apply for records themselves. Such a service might develop memoranda of understanding with records holders to allow for easier access to records and waiving of fees.⁴⁷⁹ CAARA stated that a records advocacy service could potentially assist with the development of standards for better records creation and management practice, as well as assisting victims and survivors to have access and influence others’ access to records about their care.⁴⁸⁰

There was some support among stakeholders for the creation of a records advocacy service specifically for survivors of child sexual abuse.⁴⁸¹ One advantage of establishing a ‘specialist advocacy body’ for survivors of child sexual abuse in institutions was said to be the ‘potential to more fully understand the experiences of, and cater for, the particular needs of those individuals’.⁴⁸²

The Victorian Commissioner for Privacy and Data Protection stated that any such specialist records advocacy service should be ‘designed to provide independent, confidential advice to individuals about how to seek access to records about them (or their immediate family members), and to assist individuals to make applications for access’. The Commissioner also recommended that the mandate of any such service ‘be widened to include an awareness training and advice component for institutions that care for or provide services to children’.⁴⁸³

Institutions would greatly benefit from purpose-built training on record keeping, privacy and FOI [freedom of information] obligations, and also a range of tools to assist in compliance. A centralised records advocacy service could also provide guidance where there are gaps or inconsistencies in legislation, for example, in relation to retention periods for certain types of documents. Such a service would also be well placed to provide a coordinated response to cross-jurisdictional requests.⁴⁸⁴

Stakeholders cautioned, however, that any new records advocacy service should not ‘duplicate or interfere with the work of the existing services’.⁴⁸⁵ It was suggested that initiatives in this area might build on existing services, such as the services provided by Find & Connect.⁴⁸⁶ These services could be extended to all care-leavers.⁴⁸⁷

The Tasmanian Government submitted that the establishment of any separate records advocacy body may duplicate existing services and have unnecessary resource implications.⁴⁸⁸ State and territory public records offices suggested any new advocacy services might be best placed within these offices.⁴⁸⁹ The Territory Records Office (ACT) submitted that unmet needs indicate that:

archives and records holders themselves have not been capable of providing adequate advocacy services on behalf of a broad range of stakeholders who have an interest in the way both contemporary and historical records are managed. It may be preferable for archives and other relevant bodies to be resourced to better provide that advocacy, and to take advice from the various groups that require that assistance.⁴⁹⁰

Many survivors have a great need to gain access to personal records. These records may help them to understand and reclaim their identities and histories, and may be important to support claims for redress or in litigation. Records advocacy services can provide important assistance in obtaining records, and in providing support and guidance.

There are a range of existing records advocacy services, but their coverage and funding does not extend to all survivors of child sexual abuse in institutional contexts. Records advocacy services, such as those provided by Find & Connect, would be useful for survivors of child sexual abuse in other types of institution, not just those abused in out-of-home care and younger care-leavers.⁴⁹¹

Extending the availability and functions of records advocacy services might involve new government or non-government services or extending the coverage and funding of existing services. State and territory governments should also consider how additional assistance might be provided to survivors by public records offices and information and privacy commissioners. In addition, institutions themselves should offer and provide assistance to survivors in gaining access to their records, as part of a direct personal response to instances of past abuse.⁴⁹²

Records advocacy services should be an important component of improving service responses for children and adults who have experienced sexual abuse in childhood more generally.

We recommend in Volume 9, *Advocacy, support and therapeutic treatment services*, that the Australian Government and state and territory governments should fund dedicated community support services to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts.⁴⁹³ We also recommend, that the Australian Government should establish and fund a legal advice and referral service for victims and survivors of institutional child sexual abuse.⁴⁹⁴

Both the community support services and the legal advice and referral service should include records advocacy. The functions of the records advocacy component of the service should include:

- providing independent, confidential advice to individuals about how to seek access to records about them (or their immediate family members)
- assisting individuals to make applications for access, amendment or annotation of records about them, or acting as the individual's agent in such applications
- providing guidance on applicable law, reasons for redactions, and reasons for refusals to release, amend or annotate records
- referring individuals to other support services, such as counsellors or others offering more specialised care.

Endnotes

- 1 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 20: The response of the Hutchins Schools and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*, Sydney, 2015, p 73, in which it was noted that ‘every piece of information reported or gathered is important and the whole record, if accurately kept, may help others to assess whether complaints have credibility’.
- 2 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann’s Special School*, Sydney, 2015, p 49, in which historical school records and records of bus routes were used to identify students who may have been sexually abused by the school’s bus driver, Brian Perkins.
- 3 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 5: Response of The Salvation Army to child sexual abuse at its boys’ homes in New South Wales and Queensland*, 2015, p 43; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 11; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home*, Sydney, 2015, p 48; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 8–9.
- 4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 5: Response of The Salvation Army to child sexual abuse at its boys’ homes in New South Wales and Queensland*, 2015, pp 9, 43; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 20; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph’s Orphanage, Neerkol*, Sydney, 2016, p 39.
- 5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, p 70; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, Sydney, 2015, pp 9, 61–2.
- 6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph’s Orphanage, Neerkol*, Sydney, 2016, p 39; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home*, Sydney, 2015, p 33.
- 7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph’s Orphanage, Neerkol*, Sydney, 2016; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, pp 19, 86–9.
- 8 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 36: The response of the Church of England Boys’ Society and the Anglican Dioceses of Tasmania, Adelaide, Brisbane and Sydney to allegations of child sexual abuse*, Sydney, 2016, pp 29, 136; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney, 2015, p 40.
- 9 Standards Australia, Committee IT-021, Records Management, AS IOS 15489.1 – 2002 Australian Standard: Records Management Part 1: General, Standards Australia International, Sydney, 2002, p 3.
- 10 Physical records come in many different formats. They are usually in a non-digital format and range from paper records, artworks, photographs, maps and plans, samples and objects, CDs and DVDs, magnetic data and gramophone discs: see National Archives of Australia, *Types of information*, 2017, www.naa.gov.au/information-management/managing-information-and-records/types-information/index.aspx (viewed 10 March 2017).
- 11 A ‘digital record’ is a record on digital storage media, produced, communicated, maintained and/or accessed by means of digital equipment: see International Organization for Standardization, *ISO 16175-1 – Information and documentation – Principles and functional requirements for records in electronic office environments*, International Organization for Standardization, Geneva, 2010.
- 12 ‘Transactions’ should be read here as including and referring to ‘interactions’ or ‘activities’ rather than financial activity only.
- 13 National Archives of Australia, *Records management – Glossary*, 2016, www.naa.gov.au/records-management/publications/glossary.aspx#r (viewed 20 January 2016). Recordkeeping is increasingly referred to as ‘information and records management’: see National Archives of Australia, *A–Z of records management*, Australian Government, 2017, www.naa.gov.au/information-management/support/a-z/index.aspx (viewed 10 March 2017).
- 14 International Organization for Standardization, *ISO 30300 – Information and documentation – Management systems for records – Fundamentals and vocabulary*, International Organization for Standardization, Geneva, 2011. See also *Territory Records Act 2002 (ACT)* s 10.

- 15 There are other ways to conceptualise recordkeeping. An alternative to the records life cycle model is the ‘records continuum’. Within the records continuum model ‘the demarcations are blurred – between records creator and records user, between the various phases in a record’s “life”, between records managers and broader societal processes. The continuum consists of four dimensions, and all records exist in each of the dimensions simultaneously’: See Find & Connect Web Resource Project, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, Sydney, 2016. See also Records Continuum Research Group, Centre for Organisational and Social Informatics, Monash University, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, Sydney, 2016.
- 16 National Archives of Australia, *Creating records*, 2016, www.naa.gov.au/records-management/agency/create-capture-describe/creating/index.aspx (viewed 5 July 2016).
- 17 National Archives of Australia, *Create, capture, describe*, 2016, www.naa.gov.au/records-management/agency/create-capture-describe/index.aspx (viewed 5 July 2016).
- 18 See, for example, Name changed, private session, ‘Tammy’; Name changed, private session, ‘Angus’.
- 19 See, for example, Name changed, private session, ‘Archie’; Name changed, private session, ‘Jacinta’.
- 20 See, for example, Name changed, private session, ‘Elisa’.
- 21 Name changed, private session, ‘Bea’.
- 22 Name changed, private session, ‘Meggie’.
- 23 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015. See also, Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016.
- 24 See, for example, Name changed, private session, ‘Deanna’.
- 25 See, for example, Name changed, private session, ‘Ethel Joan’; Name changed, private session, ‘Clyde’.
- 26 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014.
- 27 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014.
- 28 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 7(1) 8(1).
- 29 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 19.
- 30 National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia, 1997, p 36.
- 31 National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia, 1997, pp 17, 299.
- 32 Senate Community Affairs References Committee, *Lost innocents: Righting the record – Report on child migration*, Commonwealth of Australia, 2001, pp 143–4.
- 33 See Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, 2004, ch 9.
- 34 See, for example, *Catholic Code of Canon Law* (1983 revision) Canons 486–491.
- 35 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, 2004, p 29.
- 36 Name changed, private session, ‘Angus Troy’; Name changed, private session, ‘Tammy’; Name changed, private session, ‘Beatrice’.
- 37 Name changed, private session, ‘Archie’.
- 38 Name changed, private session, ‘Archie’.
- 39 Name changed, private session, ‘Mac’; Name changed, private session, ‘Gabe’.
- 40 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015. See also F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016.
- 41 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015. See also, Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016. The *Privacy Act 1988* (Cth) s 16(4) allows the use or disclosure of genetic information about an individual by an organisation if (a) the organisation has obtained the information in the course of providing a health service to that individual; (b) the organisation reasonably believes the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of a second individual who is a genetic relative of the first individual; (c) the use or disclosure is in accordance with any guidelines issued by the Commissioner for Privacy under s 95AA; and (d) the recipient of any disclosure is a genetic relative of the first individual.
- 42 Name changed, private session, ‘Tui’.

43 Name changed, private session, 'Tui'.
 44 Name changed, private session, 'Deanna'.
 45 Name changed, private session, 'Deanna'.
 46 For example, in the *Parramatta Training School for Girls* case study, the New South Wales Department of Family and Community Services told us that no records existed of policies and procedures relating to the operations of the Parramatta Training School for Girls and the Institution for Girls in Hay between 1950 and 1974: *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 11. In the *St Joseph's Orphanage, Neerkol* case study, we found that there were no records held by the Sisters of Mercy or the Queensland child protection department which outlined the recruitment processes of staff or the training provided to staff: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, Sydney, 2016, p 8.
 47 See, for example, Name changed, private session, 'Cody'; Name changed, private session, 'Rowena'; Name changed, private session, 'Wesley'.
 48 See, for example, the *North Coast Children's Home* case study, in which two Anglican dioceses did not take appropriate disciplinary action against two clergy involved in alleged abuse, and did not record their conduct on the National Register of the Anglican Church, implemented to record information on sexual abuse and the misconduct of clergy and laity: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 3: Anglican Diocese of Grafton's response to child sexual abuse at the North Coast Children's Home*, Sydney, 2014, pp 4, 51. See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, Sydney, 2015, p 8.
 49 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 5: Response of The Salvation Army to child sexual abuse at its boys' homes in New South Wales and Queensland*, 2015, p 43.
 50 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 5: Response of The Salvation Army to child sexual abuse at its boys' homes in New South Wales and Queensland*, Sydney, 2015, p 71.
 51 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2014, p 31.
 52 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2014, p 36.
 53 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 5.
 54 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, pp 9, 58.
 55 Name changed, private session, 'Ethel Joan'; Name changed, private session, 'Leila'.
 56 Name changed, private session, 'Neville'; Name changed, private session, 'Myra'.
 57 Name changed, private session, 'Cody'.
 58 Name changed, private session, 'Cody'.
 59 Name changed, private session, 'Selina'.
 60 Name changed, private session, 'Selina'.
 61 Name changed, private session, 'Leila'.
 62 For example, Name changed, private session, 'Lawrence Paul'; Name changed, private session, 'Suzanne Mary'.
 63 Name changed, private session, 'Suzanne Mary'.
 64 Name changed, private session, 'Terry Michael'.
 65 Name changed, private session, 'Terry Michael'.
 66 See, for example, Name changed, private session, 'Ajdin'.
 67 See, for example, Name changed, private session, 'Leah'; Name changed, private session, 'Aster'.
 68 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 82; Exhibit 30-0004, Case Study 30, 'Statement of R J Cummings', STAT.0608.001.0001_R_M at 0007_R_M, 0008_R_M.
 69 See, for example, treatment of a Marist Brother for abusive behaviours being referred to as 'ongoing formation', despite the relevant Brother's admission that he had sexually abused children: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 19. See also the *Christian Brothers* case study, in which a 'scrutiny book' extract recorded that a Christian Brother was transferred between stations 'to live down gross accusations by evil boys': Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, Sydney, 2014, p 31.
 70 State Records Office (Western Australia), *Aboriginal records*, 2016, www.sro.wa.gov.au/archive-collection/collection/aboriginal-records (viewed 10 March 2017).

71 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, p 70.

72 Australian Government Department of Social Services, *Find and connect service and projects*, 2017, www.dss.gov.au/our-responsibilities/families-and-children/programs-services/find-and-connect-services-and-projects (viewed 10 March 2017).

73 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

74 Victorian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

75 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 86.

76 Transcript of V Philip, Case Study 30, 28 August 2015 at 9949:8–23.

77 Victorian Ombudsman, *Investigation into the storage and management of ward records by the Department of Human Services*, Victorian Government, 2012, pp 3, 12.

78 In the *Health care providers and regulators, New South Wales and Victoria* case study, we heard that the North Sydney Local Health District was not able to locate any records of the notification by a victim's father to the CJ Cummins Unit of the Royal North Shore Hospital or the Child Health Centre in Ryde that he had been sexually abused. We concluded that 'if any record was kept of the notification, it no longer exists and may have been destroyed'. We also heard that, while no record of destruction of employment records from 1967 and 1968 was found, they were presumed to have been destroyed given their age: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, Sydney, 2016, pp 9, 61. See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89, in which we heard evidence that certain records that were meant to have been retained, such as consent forms to use the contraceptive, Depo Provera, could not be located, with the implication that they had been lost or destroyed.

79 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, p 95.

80 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 19: The response of the State of New South Wales to child sexual abuse at the Bethcar Children's Home in Brewarrina, New South Wales*, Sydney, 2015, p 16.

81 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, Sydney, 2016, pp 6, 7.

82 J Boyce, *For the record: Background information on the work of the Anglican Church with Aboriginal children and directory of Anglican agencies providing residential care to children from 1830 to 1980*, Anglicare, Melbourne, 2003, p 18.

83 See, for example, the *Youth detention centres, Victoria* case study, in which one former resident of Turana told us that 'she was notified by letter in 2001 that all client files for residents of Turana born before 1967 had been destroyed when the resident reached 21 years of age', and a former employee recalled that 'while he was employed at Turana he witnessed a staff member tearing up files because they related to boys who had turned 21': Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89.

84 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, p 49.

85 Name changed, private session, 'Ignatius'; Name changed, private session, 'Bret'.

86 Exhibit 28-0001, 'Memorandum re Document on File of Gerald Ridsdale prepared by Bishop Mulkearns', 4 October 1996, Case Study 28, CTJH.120.01098.0060; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 28: Catholic Church authorities in Ballarat*, Sydney, 2017, sections 4.3, 4.6.

87 Exhibit 28-0151, 'Handwritten Note re Brother BWX', 16 September 1996, Case Study 28, CTJH.056.50046.0041_R; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 28: Catholic Church authorities in Ballarat*, Sydney, 2017, sections 3.4, 4.6.

88 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home*, Sydney, 2015, p 33.

89 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol*, Sydney, 2016, p 39.

- 90 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 20: The response of The Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*, Sydney, 2015, p 22.
- 91 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89.
- 92 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89.
- 93 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89.
- 94 See, for example, Western Australia Department of Community Development, in Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, 2004, pp 261–2.
- 95 National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia, 1997; Senate Community Affairs References Committee, *Lost innocents: Righting the record – Report on child migration*, Commonwealth of Australia, 2001; Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, Canberra, 2004.
- 96 *Archives Act 1983* (Cth); *Territory Records Act 1999* (ACT); *State Records Act 1998* (NSW); *Information Act* (NT); *Public Records Act 2002* (Qld); *State Records Act 1997* (SA); *Archives Act 1983* (Tas); *Public Records Act 1973* (Vic); *State Records Act 2000* (WA).
- 97 See, for example, *Territory Records Act 2002* (ACT) ss 3, 7; *State Records Act 1998* (NSW) s 3; *Information Act* (NT) s 5; *Public Records Act 2002* (Qld) ss 3, 6; *State Records Act 1997* (SA) s 3; *Archives Act 1983* (Tas) s 3; *State Records Act 1973* (Vic) ss 2, 13; *State Records Act 2000* (WA), s 7.
- 98 See, for example, *Territory Records Act 2002* (ACT) s 14; *State Records Act 1998* (NSW) ss 10–12; *Information Act* (NT) ss 131–131B, 133–134; *Public Records Act 2002* (Qld) s 7; *State Records Act 1997* (SA) s 13; *Archives Act 1983* (Tas) s 10.
- 99 See, for example, *Territory Records Act 2002* (ACT), s 24; *State Records Act 1998* (NSW) s 21; *Information Act* (NT) ss 145–147; *Public Records Act 2002* (Qld) ss 12–13; *State Records Act 1997* (SA) s 17; *Archives Act 1983* (Tas) s 20; *State Records Act 2000* (WA) s 78.
- 100 *Child Wellbeing and Safety Act 2005* (Vic).
- 101 Department of Health and Human Services (Vic), *An overview of the Victorian child safe standards*, Victorian Government, Melbourne, 2015.
- 102 However, the records created by some private bodies in certain circumstances may also constitute ‘public records’ and be subject to public records legislation. For example, where a public body outsources certain functions to a private body, or contracts a private body to undertake a particular piece of work on its behalf, the records the private body creates will generally constitute public records and be subject to the relevant jurisdiction’s public records legislation. In other cases, records created by private bodies in a private capacity may become public records where they are acquired by, transferred to or given to a public body or public records offices. For example, many records of private institutions that provided out-of-home care in the mid to late decades of the 20th century were passed to public records offices or child protection departments upon their closure.
- 103 See, for example, *Catholic Code of Canon Law* (1983 revision) Canons 486–491.
- 104 Standards Australia, Committee IT-021, Records Management, *AS IOS 15489.1 – 2002 Australian Standard: Records Management*, Part 1: General, Standards Australia International, Sydney, 2002.
- 105 See Volume 12, *Contemporary out-of-home care*.
- 106 Voluntary out-of-home care is care for a child that is voluntarily arranged between parents or carers and an organisation, where there is no court order for a child to live in out-of-home care. This type of care includes overnight, centre-based, respite, and host family care, as well as some residential placements.
- 107 See, for example, New South Wales, where a relevant agency and the Children’s Guardian must keep a case plan for each child in voluntary out-of-home care provided or supervised by that agency or the Children’s Guardian, as well as any reviews of the case plan, until the child reaches 18 years of age. The Children’s Guardian also maintains a list of all designated agencies that provide or arrange voluntary out-of-home care, as well as a register with details of each child who engages in voluntary out-of-home care with a relevant agency. For those children, the following information must be kept on the register: the name of the relevant agency; the full name of the child and any other names he or she has or had; the child’s gender, date and place of birth; the dates of the child’s placement in voluntary out-of-home care; whether the child is in a target group for the purposes of the *Disability Services Act 1993* (NSW); and any other information the Children’s Guardian and Privacy Commissioner agree is appropriate. See *Children and Young Persons (Care and Protection) Regulations 2012* (NSW) regs 75, 78, 79, 80, 82.
- 108 See, eg, *Children and Young Persons (Care and Protection) Act* (NSW) s 160; *Child Protection Regulation 2011* (Qld) s 7; *Children and Community Services Act 2004* (WA) s 128; *Children and Community Services Regulations 2006* (WA) reg 5.
- 109 See, for example, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 170.

110 See, for example, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 160; Department of Families, Housing, Community Services and Indigenous Affairs (NSW) and National Framework Implementation Working Group, *An outline of National Standards for Out-of-home Care*, Australian Government, 2011, Standard 4. See also, Department of Families and Community Services (NSW), *Out of home care case management policy*, December 2013, p 3; Department of Communities, Child Safety and Disability Services (Qld), *Recordkeeping guide for non-government organisations*, 2013, p 4, www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/ngo-recordkeeping-guide.pdf (viewed 13 March 2017).

111 Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *An outline of National Standards for Out-of-home Care*, Australian Government, Canberra, 2011.

112 Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *An outline of National Standards for Out-of-home Care*, Australian Government, Canberra, 2011, Standard 3, p 9; Standard 10, p 12.

113 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.

114 The Truth, Justice and Healing Council view 'life books' as 'one part of the child or young person's record' containing positive memories. They submitted that copies of 'life book' should 'travel with the child if they move placement and, also, be retained by the agency': Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

115 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

116 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

117 Office of the Children's Guardian (NSW), *NSW Child safe standards for permanent care – November 2015*, 2015, pp 12, 25.

118 Office of the Children's Guardian (NSW), *NSW Child safe standards for permanent care – November 2015*, 2015, Standard 4.

119 Office of the Children's Guardian (NSW), *NSW Child safe standards for permanent care – November 2015*, 2015, p 25.

120 Office of the Children's Guardian (NSW), *NSW Child safe standards for permanent care – November 2015*, 2015, Standard 7.

121 New South Wales Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

122 *Child Protection Regulation 2011* (Qld) s 7.

123 In addition, the New South Wales standards require designated agencies to maintain a permanent record of children and young people's history in out-of-home care: Office of the Children's Guardian (NSW), *NSW Child safe standards for permanent care – November 2015*, 2015, Standard 17.

124 Department of Communities, Child Safety and Disability Services (Qld), *Recordkeeping guide for funded non-government organisations*, 2013, p 6, www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/ngo-recordkeeping-guide.pdf (viewed 13 March 2017).

125 Children in State Care Commission of Inquiry, *Children in State Care Commission of Inquiry – Allegations of sexual abuse and deaths from criminal conduct*, State of South Australia, 2008, p 542, www.childprotection.sa.gov.au/sites/g/files/net691/f/cisc-complete.pdf (viewed 13 March 2017).

126 Children in State Care Commission of Inquiry, *Children in State Care Commission of Inquiry – Allegations of sexual abuse and deaths from criminal conduct*, State of South Australia, 2008, p 542, www.childprotection.sa.gov.au/sites/g/files/net691/f/cisc-complete.pdf (viewed 13 March 2017).

127 Recommendations 8.17 to 8.23.

128 Australian Bureau of Statistics, 4221.0 – Schools, Australia, 2015, www.abs.gov.au/ausstats/abs@.nsf/mf/4221.0 (viewed 13 March 2017).

129 See, for example, *Education Act 2004* (ACT) ss 32, 33, 99, 100; *Education Act 1990* (NSW) ss 20A, 24, 45, 47, 92, 94, 95, 98; *Education Act 2015* (NT) ss 34, 45, 130, 142–143; *Education Regulations 2015* (NT) r 11; *Education (General Provisions) Act 2006* (Qld) ss 370–371; *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld) ss 16, 48; *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld) r 10; *Education and Training Reform Act 2006* (Vic) ss 4.4.7, s 5.3A.7; *Education and Training Reform Regulations 2017* (Vic) sch 4; *School Education Act 1999* (WA) ss 19, 28; *School Education Regulations 2000* (WA) reg 6.

130 *ACT Teacher Quality Institute Act 2010* (ACT), ss 11, 42, 43, 45; *Education Act 2004* (ACT), ss 88, 146A; *Education Act 1990* (NSW) ss 20A, 38–39, 47; *Teacher Accreditation Act 2004* (NSW) ss 16, 17, 18; *Education Act 2015* (NT), ss 123–125; *Teacher Registration (Northern Territory) Act* (NT) ss 26, 26A, 27, 47, 69; *Education (General Provisions) Act 2006* (Qld) ss 113, 378, 384, 386, 388; *Education (Accreditation of Non-State Schools) Act 2001* (Qld) ss 106, 164; *Education (Queensland College of Teachers) Act 2005* (Qld) ss 160–161, 166, 170, 230, 288; *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA) ss 41, 42, 56; *Teachers Registration and Standards Act 2004* (SA) ss 20, 28; *Education Act 1994* (Tas) ss 51, 54; *Teachers Registration Act 2000* (Tas) ss 6A, 34; *Education and Training Reform Act 2006* (Vic) ss 2.6.9, 2.6.24, 2.6.25, 2.6.54C, 4.3.8; *School Education Act 1999* (WA) s 161.

131 *Education and Training Reform Act 2006* (Vic) s 4.3.1(6)(d); Minister for Education (Vic), 'Education and Training Reform Act 2006 (Vic) – Child Safe Standards – Managing the risk of child abuse in schools, Ministerial Order No. 870 dated 22 December 2015', *Victoria Government Gazette*, No S 2, 2 January 2016.

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- 133 See, for example, Education and Training Directorate (ACT), *Student accidents/incidents*, 2008, www.det.act.gov.au/_data/assets/pdf_file/0006/35709/Student_Accidents_Incidents_updated.pdf (viewed 13 March 2017); Department of Education and Training (Vic), *Participation and engagement – Response and recovery*, 2016, www.education.vic.gov.au/school/principals/participation/Pages/responserecovery.aspx (viewed 13 March 2017); Department of Education (WA), *Recording of child abuse*, 2016, www.det.wa.edu.au/childprotection/detcms/navigation/recording-of-child-abuse/ (viewed 13 March 2017).
- 134 See, for example, Education and Training Directorate (ACT), *Student accidents/incidents*, 2008, www.det.act.gov.au/_data/assets/pdf_file/0006/35709/Student_Accidents_Incidents_updated.pdf (viewed 13 March 2017); Department of Education and Training (Vic), *Participation and engagement – Response and recovery*, 2016, www.education.vic.gov.au/school/principals/participation/Pages/responserecovery.aspx (viewed 13 March 2017); Department of Education (WA), *Recording of child abuse*, 2016, www.det.wa.edu.au/childprotection/detcms/navigation/recording-of-child-abuse/ (viewed 13 March 2017).
- 135 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.
- 136 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, Schools private roundtable, Sydney, 2015.
- 137 Recommendations 8.9 to 8.16.
- 138 Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016.
- 139 Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, 2016.
- 140 For example, in the YMCA NSW case study, the YMCA NSW failed to comply with its own policy requiring a written record to be made of oral references received during recruitment exercises, and did not record staff attendance at mandatory training or one staff member’s attainment of a Working With Children Check clearance: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW’s response to the conduct of Jonathan Lord*, Sydney, 2014, pp 5, 24. In *Case Study 37: The response of the Australian Institute of Music and RG Dance to allegations of child sexual abuse*, Mr John Barnier agreed that it was his ‘idea’ that he create and retain records of incidents and complaints because he considered that this ‘kind of thing should be done’: Transcript of J Barnier, Case Study 37, 10 March 2016 at 17189:34–17191:23. See also Transcript of C Carroll, Case Study 24, 30 June 2015 at 14769:42–14770:8; Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.
- 141 See, for example, the following submissions to Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: F Golding; Council of Australasian Archives and Records Authorities; Victorian Government; State Records Office of Western Australia. The addition of the word ‘full’ reflects a commonly understood principle of recordkeeping practice and legislation – see the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Council of Australasian Archives and Records Authorities; Victorian Government.
- 142 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: State Records Office (WA); Anglicare WA; F Golding; Centre for Excellence in Child and Family Welfare Inc.
- 143 F Golding, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 144 Association of Heads of Independent Schools of Australia, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 145 State Records Office (WA), Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 146 See, for example, the following submissions to Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: knowmore, Alliance for Forgotten Australians; K George; Care Leavers Australasia Network.
- 147 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul’s School to allegations of child sexual abuse*, Sydney, 2017, p 12.
- 148 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 10.
- 149 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 11.
- 150 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 11.
- 151 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, p 11.

152 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the*
Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against
John Gerard Nestor, a priest of the Diocese, Sydney, 2014, p 12.

153 See, for example, Transcripts of Jono and Tash, Case Study 24, 29 June 2015 at 14647:41–14648:32.

154 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, p 4.

155 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, p 11.

156 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, p 11.

157 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, p 12.

158 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, pp 13,
 14, 18, 19, 28, 30. One of the three members of staff did take a written note that included the substance of what was
 required of the form (see p 6).

159 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, p 19.

160 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, p 28.

161 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of*
a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes, Sydney, 2015, pp 16, 17.

162 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, p 16.

163 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, pp 5, 20.

164 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, p 20. Similarly, in the *Australian Christian Churches* case
 study, we heard from Pastor Brian Houston that, after suspending Mr Frank Houston from preaching with the church
 due to allegations of serious child sexual abuse and Mr Houston's admission to a 'lesser incident', Pastor Huston 'failed'
 to record or formalise that suspension in a written notice: Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Report of Case Study No 18: The response of the Australian Christian Churches and affiliated Pentecostal churches*
to allegations of child sexual abuse, Sydney, 2015, p 28.

165 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, p 22. A similar omission occurred in the *Health care*
providers and regulators, New South Wales and Victoria case study, in which we found that the New South Wales Health
 Care Complaints Commission Investigation Report concerning a victim's complaint recommended the investigation
 be terminated for lack of corroborative evidence. The investigation report did not record the existence of the two
 other complaints. The Health Care Complaints Commission incorrectly failed to consider the improved likelihood of
 proving the first victim's complaint based on the evidence of other similar reports against the alleged perpetrator:
 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 27: The response of health*
care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse, Sydney, 2016,
 pp 8, 52.

166 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, p 22.

167 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, p 22.

168 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of*
institutions to the conduct of Steven Larkins, Sydney, 2014, pp 22–3.

169 Transcript of B Orr, Case Study 24, 30 June 2015 at 14776:38–14777:7.

170 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.

171 Transcript of C Carroll, Case Study 24, 30 June 2015 at 14769:42–14770:8.

172 M Kertesz and C Humphreys, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016.

173 Care Leavers Australasia Network, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016.

174 Transcript of J Reed, Case Study 24, 29 June 2015 at 14721:14–33. On the differences in quality of practices between
 agencies, see also, Transcript of B Orr, 30 June 2015 at 14778:15–20.

175 Transcript of B Orr, Case Study 24, 30 June 2015 at 14778:2–9.

176 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015;
 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.

177 Transcript of J Reed, Case Study 24, 29 June 2015 at 14721:14–33. On the differences in quality of practices between
 agencies, see also, Transcript of B Orr, Case Study 24, 30 June 2015 at 14778:15–37.

178 The Setting the Record Straight: For the Rights of the Child Initiative, Submission (No. 2) to Royal Commission into
 Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

- 179 The conduct of records audits was supported by stakeholders – see the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Barnardos Australia; Anglicare WA; Northcott. See also, in relation to audit practice, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Anglicare Victoria; Victorian Government; State Records Office (WA); Centre for Excellence in Child and Family Welfare Inc; knowmore; K George; The Royal Children’s Hospital Melbourne; Wesley Australia; Truth, Justice and Healing Council; Anglican Church of Australia.
- 180 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: F Golding; Australasian Heads of Independent Schools of Australia; Council of Australasian Archives and Records Authorities.
- 181 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Northcott; Anglicare Victoria.
- 182 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Centre for Excellence in Child and Family Welfare Inc; PeakCare Queensland Inc.
- 183 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: knowmore; Centre for Excellence; Anglican Church of Australia.
- 184 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 185 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Anglicare Victoria; Northcott; Victorian Government; Royal Children’s Hospital Melbourne; Anglicare Western Australia.
- 186 Anglicare Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 187 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 188 Queensland Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 189 M Kertesz and C Humphreys, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 190 M Kertesz and C Humphreys, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. The Truth, Justice and Healing Council submitted that the significant costs associated with maintaining, indexing and storing records and transitioning records to digital formats should be ‘appropriately reflected in funding agreements’: Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 191 Transcript of P Crawley, Case Study 23, 26 February 2015 at 12143:12-21.
- 192 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, p 70.
- 193 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, pp 23, 70.
- 194 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, p 23.
- 195 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, p 42.
- 196 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, pp 8, 23, 59-60.
- 197 Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 36: The response of the Church of England Boys’ Society and the Anglican Dioceses of Tasmania, Adelaide, Sydney and Brisbane to allegations of child sexual abuse*, Sydney, 2016, pp 29, 136.
- 198 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, Sydney, 2015, p 40.
- 199 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, Sydney, 2015, p 40.
- 200 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney, 2015, p 55.
- 201 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney, 2015, p 42-43.

202 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney, 2015, p 44.

203 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney 2015, p 66.

204 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney, 2015, p 66.

205 Transcript of J Reed, Case Study 24, 29 June 2015 at 14720:38–46.

206 Transcript of J Reed, Case Study 24, 29 June 2015 at 14720:14–36.

207 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

208 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: MICAH Projects; Victorian Government; Centre for Excellence in Child and Family Welfare Inc; knowmore; F Golding.

209 Transcript of J Weeks, Case Study 23, 27 February 2015 at 12192:47–12193:29.

210 Transcript of J Weeks, Case Study 23, 27 February 2015 at 12192:47–12193:29. In comparison, we heard that Geelong Grammar keeps what are known as ‘K files’, which contain information of a sensitive and confidential nature about staff or students and are stored separately from the general files to ensure that staff who have access to the general files do not read the sensitive files: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 32: The response of Geelong Grammar School to allegations of child sexual abuse of former students*, Sydney, 2016, p 60.

211 Transcript of J Mein, Case Study 23, 2 March 2015 at 12351:28–12352:10.

212 Transcript of J Mein, Case Study 23, 2 March 2015 at T12352:45–T12353:3; Transcript of I Paterson, Case Study 23, 3 March 2015 at 12527:9–20.

213 Transcript of J Mein, Case Study 23, 2 March 2015 at T12353:5–28. See also Transcript of I Paterson, Case Study 23, 3 March 2015 at 12527:9–20.

214 Transcript of N Bendet, Case Study 22, 11 February 2015 at 6752:16–6754:28; Transcript of N Bendet, Case Study 22, 10 February 2015 at 6742:16–6743:18.

215 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.

216 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

217 One survivor told us that she tried to obtain records from school and hospitals she attended while growing up, but she was told that all records were destroyed in a fire. Records she received from her time in care were heavily redacted: Name changed, private session, ‘Jacinta’. Another survivor told us that his scout records had been lost in floods: Name changed, private session, ‘Kelvin’.

218 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 32: The response of Geelong Grammar School to allegations of child sexual abuse of former students*, Sydney, 2016, pp 13, 49.

219 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 32: The response of Geelong Grammar School to allegations of child sexual abuse of former students*, Sydney, 2016, pp 44–45.

220 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 33: The response of The Salvation Army (Southern Territory) to allegations of child sexual abuse at children’s homes that it operated*, Sydney, 2015, p 23.

221 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 33: The response of The Salvation Army (Southern Territory) to allegations of child sexual abuse at children’s homes that it operated*, Sydney, 2015, pp 9, 10, 12.

222 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 11.

223 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph’s Orphanage, Neerkol*, Sydney, 2015, p 6.

224 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph’s Orphanage, Neerkol*, Sydney, 2015, p 7.

225 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Northcott; Anglicare Victoria; State Records Office (WA); knowmore.

226 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Barnardos Australia; Anglicare Western Australia; T Kemp.

227 See, for example, Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

228 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Wesley Australia; Victorian Government.

- 229 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Anglicare Victoria; Council of Australasian Archives and Records Authorities.
- 230 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Care Leavers Australasia Network; knowmore; CREATE; K George.
- 231 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*, Sydney, 2015, p 49, where historical school records and records of bus routes were examined to identify other students who may have suffered sexual abuse by the relevant perpetrator, Brian Perkins.
- 232 See, for example, *Archives Act 1983* (Cth) s 24; *Territory Records Act 2002* (ACT) ss 16, 24; *State Records Act 1998* (NSW) ss 21, 22, 23; *State Records Regulations 2015* (NSW) sch 2. The National Archives of Australia website states that records that can be considered for destruction using normal administrative practice 'fall into five broad categories'. These are: 'facilitative, transitory or short-term items including appointment diaries, calendars, "with compliments" slips, personal emails, listserv messages and emails in personal or shared drives, emails that have been captured into a corporate records management system; rough working papers and/or calculations; drafts not intended for further use or reference – whether in paper or electronic form – including reports, correspondence, addresses, speeches and planning documents that have minor edits for grammar and spelling and do not contain significant or substantial changes or annotations; copies of material retained for reference purposes only; published material not included as part of an agency's records': see National Archives of Australia, *Normal administrative practice*, Australian Government, 2017, www.naa.gov.au/information-management/managing-information-and-records/disposal/compliant/NAP/index.aspx (viewed 9 March 2017).
- 233 See, for example, *Territory Records Act 2002* (ACT) s 24; *State Records Act 1998* (NSW) s 21; *Information Act* (NT) ss 145–147; *Public Records Act 2002* (Qld) ss 12–13; *State Records Act 1997* (SA) s 17; *Archives Act 1983* (Tas) s 20; *State Records Act 2000* (WA) s 78.
- 234 See, for example, *Crimes Act 1914* (Cth) s 39; *Crimes Act 1900* (NSW) s 317; *Crimes Act 1958* (Vic) s 254.
- 235 See, for example, Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, 2004, recommendation 13: 'That all government and non-government agencies immediately cease the practice of destroying records relating to those who have been in care.' See also National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia, 1997, recommendation 21: 'That no records relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed.' See also *Children and Young People (Care and Protection) Act 1998* (NSW) s 14.
- 236 See, for example, Department of Education (NT), *General disposal schedule for school records and storage procedural guidelines*, Northern Territory Government, October 1997, p 18, cl 7.2.2, 7.3, www.artsandmuseums.nt.gov.au/__data/assets/pdf_file/0009/267804/School_Records_Disposal_Schedule.pdf (viewed 13 March 2017); Public Record Office (Vic), *Public Record Office Standard PROS 01/01 Authority – General retention & disposal authority for school records, Version 2013*, Victorian Government, 2013, www.prov.vic.gov.au/wp-content/uploads/2014/02/PROS01-01SchoolRecordsGRDAVar5-WebsiteVersion20140226.pdf (viewed 13 March 2017).
- 237 Standards Australia, Committee IT-021, Records Management, *AS IOS 15489.1 – 2002 Australian Standards Records Management, Part 1: General*, Standards Australia International, Sydney, 2002, p 11–12.
- 238 The Royal Australian and New Zealand College of Psychiatrists, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016.
- 239 Association of Heads of Independent Schools of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 240 See, for example, Catherine Esposito, Department of Family and Community Services (NSW), *Child sexual abuse and disclosure*, pp 1, 5, 14, www.facs.nsw.gov.au/__data/assets/file/0003/306426/Literature_Review_How_Children_Disclose_Sexual_Abuse.pdf (viewed 13 March 2017).
- 241 See Volume 4, *Identifying and disclosing child sexual abuse*.
- 242 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and civil litigation* report, Sydney, 2015, pp 52–53, Recommendation 85.
- 243 *Limitation Act 1985* (ACT) s 21C; *Limitation Act 1969* (NSW) s 6A; *Limitation of Actions Act 1974* (Qld) s 11A; *Limitation of Actions Act 1958* (Vic) s 27P. The New South Wales and Victorian provisions relate to claims founded on any form of child abuse, and in Queensland any form of child sexual abuse. The ACT provision is limited to claims founded on 'institutional sexual abuse' of a child.
- 244 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: knowmore; The Gatehouse Centre; Truth, Justice and Healing Council.
- 245 See, for example, Department of Education (NT), *General disposal schedule for school records and storage procedural guidelines*, Northern Territory Government, October 1997, p 18, cl 7.2.2, 7.3, www.artsandmuseums.nt.gov.au/__data/assets/pdf_file/0009/267804/School_Records_Disposal_Schedule.pdf (viewed 10 March 2016); Public Record Office (Vic), *Public Record Office Standard PROS 01/01 Authority – General retention & disposal authority for school records, Version 2013*, Victorian Government, 2013, www.prov.vic.gov.au/wp-content/uploads/2014/02/PROS01-01SchoolRecordsGRDAVar5-WebsiteVersion20140226.pdf (viewed 7 July 2016).

246 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

247 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

248 Association of Heads of Independent Schools of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: 'This is due to the fact that principals are now well aware, among legislative changes, that survivors of child sexual abuse may not be ready to disclose or report the abuse they suffered until many years after the abuse occurred.'

249 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Barnardos Australia; Northcott; Anglicare Victoria; K George; Centre for Excellence in Child and Family Welfare; Gatehouse Centre.

250 Victorian Aboriginal Child Care Agency, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

251 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Anglicare WA; Council of Australasian Archives and Records Authorities; State Records Office (WA); Northcott; K George; Anglican Church of Australia.

252 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. See also National Archives of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

253 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

254 National Archives of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

255 National Archives of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

256 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, July to December 2015. See also Monash University Centre for Organisational and Social Informatics, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 3–4.

257 Transcript of C Carroll, Case Study 24, 30 June 2015 at 14770:23–29, 14771:21–25.

258 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

259 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: 'CLAN does not condone the disposal of records pertaining to child welfare in any circumstance. We are suspicious of the motives of those who want to destroy.'

260 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

261 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Northcott; F Golding; Micah Projects.

262 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Territory Records Office (ACT); Council of Australasian Archives and Records Authorities.

263 Territory Records Office (ACT), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

264 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: National Archives of Australia; Council of Australasian Archives and Records Authorities; Anglicare Victoria.

265 State Records Office (WA), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

266 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: CREATE; Micah Projects; K George; The Gatehouse Centre; F Golding; Tasmanian Health Service.

267 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Micah Projects; Council of Australasian Archives and Records Authorities; K George; CREATE; Territory Records Office (ACT).

268 Territory Records Office (ACT), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

269 The phrase 'records relating to child sexual abuse which has occurred or is alleged to have occurred' adopts wording used by the National Archives of Australia in a disposal freeze on Commonwealth records that relate to child sexual abuse for the purposes of the Royal Commission: National Archives of Australia, *Notice of disposal freeze: Records related to institutional responses to child sexual abuse*, NAA 2012/4206, 31 January 2013, p 2.

- 270 These descriptions of records are based on wording used by the National Archives of Australia: National Archives of Australia, *Notice of disposal freeze: Records related to institutional responses to child sexual abuse*, NAA 2012/4206, 31 January 2013, sch 1.
- 271 State Records Authority (NSW), *Retention and disposal authority: Health services, public: patient/client records (GDA17)*, 2004, Class 1.9.0.
- 272 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 273 Council of Australasian Archives and Records Authorities, *CAARA Policy 13 – Recordkeeping Issues associated with outsourcing and privatisation of government functions*, 2007, www.caara.org.au/index.php/policy-statements/recordkeeping-issues-associated-with-outsourcing-and-privatisation-of-government-functions/ (viewed 10 March 2017).
- 274 State Records Authority (NSW), *Disposal authority: Department of Education and Training (DA60)*, 2000, Class 8.6.1.
- 275 Department of Health (WA), *Patient information retention and disposal schedule, disposal authority RD 2014001*, Western Australian Government, Perth, 2014, 5.4.
- 276 Archive and Heritage Office (Tas), *Retention and disposal schedule for functional records of the Department of Education (Disposal authorisation No 2281)*, 2015, Class 03.12.05, p 37.
- 277 National Archives of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 278 State Archives and Records Authority (NSW), *General retention and disposal authority (GA28)*, New South Wales Government, Sydney, 2012, Class 15.8.1.
- 279 Public Record Office (Vic), *Retention and disposal authority for records of child protection and family services functions – (PROS 08/12)*, 2013, Class 1.5.1; Public Record Office Victoria, *Standard retention & disposal authority for records of the Youth Services and Youth Justice functions (PROS 08/16)*, 2009, Class 4.4.1.
- 280 Queensland State Archives, *Department of Community Safety (Queensland Corrective Services) retention and disposal schedule (QDAN 638)*, 2012, Class 1.5.2.
- 281 Archive and Heritage Office (Tas), *Disposal schedule for client health records (Disposal authorisation No 2426)*, Class 2.7.2, Tasmanian Government, p 32.
- 282 See, for example, Public Record Office (Vic), *General retention and disposal authority for school records (PROS 01/01)*, Victorian Government, 2017, p 13.
- 283 PeakCare Qld expressed concern that private sector institutions should not be allowed to operationalise policies that are ‘contrary to what should be overarching, consistent legislative provisions across Australian jurisdictions’: PeakCare Qld, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 284 These descriptions of records are based on wording used by the National Archives of Australia: National Archives of Australia, *Notice of disposal freeze: Records related to institutional responses to child sexual abuse*, NAA 2012/4206, 31 January 2013, sch 1.
- 285 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 286 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victorian Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, pp 19, 86.
- 287 Transcripts of Jono and Tash, Case Study 24, 29 June 2015 at 14648:16–20; Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14702:37–42.
- 288 See National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia, Canberra, 1997; Senate Community Affairs References Committee, *Lost innocents: Righting the record – Report on child migration*, Commonwealth of Australia, Canberra, 2001; Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, Canberra, 2004.
- 289 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.
- 290 Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14697:47–14698:6.
- 291 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89.
- 292 Relationships Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016; Transcript of Tash, Case Study 24, 29 June 2015 at 14648:32–34, 14649:1–11.
- 293 Transcript of C Carroll, Case Study 24, 30 June 2015 at 14770:11–21.
- 294 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 18; Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14704:28–31.
- 295 *Freedom of Information Act 1982 (Cth)*; *Freedom of Information Act 1983 (ACT)*; *Government Information (Public Access) Act 2009 (NSW)*; *Information Act (NT)*; *Right to Information Act 2009 (Qld)*; *Freedom of Information Act 1991 (SA)*; *Right to Information Act 2009 (Tas)*; *Freedom of Information Act 1982 (Vic)*; *Freedom of Information Act 1992 (WA)*.
- 296 *Privacy Act 1988 (Cth)*; *Information Privacy Act 2014 (ACT)*; *Privacy and Personal Information Protection Act 1998 (NSW)*; *Information Privacy Act 2009 (Qld)*; *Privacy and Data Protection Act 2014 (Vic)*.

297 *Health Records (Privacy and Access) Act 1997* (ACT); *Health Records and Information Privacy Act 2002* (NSW); *Health Records Act 2001* (Vic).

298 Information Privacy Principles Instruction, Premier and Cabinet Circular No 12 (SA).

299 See, for example, *Privacy and Personal Information Protection Act 1998* (NSW) ss 14–15; *Privacy and Data Protection Act 2014* (Vic) sch 1, Principle 6.

300 See, for example, *Freedom of Information Act 1983* (ACT) s 14; *Government Information (Public Access) Act 2009* (NSW) s 41; *Information Act* (NT) ss 15, 16, 18; *Information Privacy Act 2009* (Qld) s 43; *Right to Information Act 2009* (Qld) s 24; *Freedom of Information Act 1991* (SA) ss 12, 13; *Right to Information Act 2009* (Tas) ss 7, 8; *State Records Act 2000* (WA) s 50; *Freedom of Information Act 1992* (WA) ss 11, 12.

301 Native Welfare Client Files are now held by the State Records Office of Western Australia. Some Native Welfare Client Files are considered ‘general files’ and can be accessed like other public records. Others are classified as ‘access restricted records’ and must be accessed using a more stringent process. For information on how to access restricted documents in Western Australia, see State Records Office (WA), *Accessing restricted records*, www.sro.wa.gov.au/archive-collection/accessing-restricted-records (viewed 13 March 2017).

302 See, for example, *Freedom of Information Act 1989* (ACT) s 23.

303 See, for example, *Freedom of Information Act 1989* (ACT) s 14; *Information Act* (NT) s 31; *Information Privacy Act 2009* (Qld) s 44, IPP 7; *Right to Information Regulation 2009* (Qld) reg 3; *Information Privacy Regulation 2009* (Qld) reg 3; *Freedom of Information Act 1991* (SA) ss 30, 31; *Freedom of Information Act 1982* (Vic) s 40; *Freedom of Information Act 1992* (WA) s 46.

304 Application fees for access to public records range from \$27.50 in Victoria to \$46.60 in Queensland. There is no fee in the ACT. See *Freedom of Information Act 1989* (ACT); *Government Information (Public Access) Act 2009* (NSW) s 41; *Information Regulations* (NT) reg 5; *Information Privacy Act 2009* (Qld) s 43; *Right to Information Regulation 2009* (Qld) reg 4; *Freedom of Information Act 1991* (SA) s 13; *Freedom of Information (Fees and Charges) Regulations 2003* (SA) sch 1; *Right to Information Act 2009* (Tas) s 16, sch 1; *Freedom of Information (Access Charges) Regulations 2014* (Vic); *Freedom of Information Act 1993* (WA) s 12; *Freedom of Information Regulations 1993* (WA);

305 Application fees for access to public records which contain personal information range from \$27.20 in Victoria (and can be waived or reduced) to \$37 in Tasmania. There is no fee in Queensland, Western Australia, the ACT or the Northern Territory. See *Freedom of Information Act 1989* (ACT); *Government Information (Public Access) Act 2009* (NSW) s 41; *Information Regulations* (NT) reg 5; *Right to Information Regulation 2009* (Qld) reg 6; *Freedom of Information (Fees and Charges) Regulations 2003* (SA) sch 1; *Right to Information Act 2009* (Tas) s 16; *Right to Information Act 2009* (Tas) s 16; *Freedom of Information (Access Charges) Regulations 2014* (Vic); *Freedom of Information (Access Charges) Regulations 2014* (Vic); *Freedom of Information Act 1993* (WA) s 12; *Freedom of Information Regulations 1993* (WA) sch 1.

306 See, for example, *Freedom of Information Act 1989* (ACT) ss 29, 30; *Government Information (Public Access) Act 2009* (NSW) ss 42, 65; *Right to Information Act 2009* (Qld) s 66; *Freedom of Information (Fees and Charges) Regulations 2003* (SA) reg 5; *Freedom of Information Act 1982* (Vic) s 17.

307 See, for example, *Territory Records Act 2002* (ACT) s 55; *Government Information (Public Access) Act 2009* (NSW) s 64; *Information Act* (NT) ss 18, 21, 156; *Information Regulations* (NT) reg 6; *Public Records Act 2002* (Qld) s 17; *State Records Act 1997* (SA) s 26; *Archives Act 1983* (Tas) s 18; *Archives Regulations 2014* (Tas) reg 5; *Public Records Act 1973* (Vic) s 23; *Freedom of Information Act 1993* (WA) s 12; *Freedom of Information Regulations 1993* (WA) sch 1.

308 *Territory Records Act 2002* (ACT) s 55; *Government Information (Public Access) Act 2009* (NSW) s 127; *Government Information (Public Access) Regulations 2009* (NSW) reg 9; *Information Act* (NT) ss 18, 21; *Information Act* (NT) reg 7; *Public Records Act 2002* (Qld) s 17; *State Records Act 1997* (SA) s 26; *State Records Regulations 1997* (SA) reg 7; *Archives Act 1983* (Tas) s 18; *Archives Regulations 2014* (Tas) reg 5; *Right to Information Act 2009* (Tas) s 16; *Public Records Act 1973* (Vic) s 23; *Freedom of Information Act 1993* (WA) s 12; *Freedom of Information Act 1992* (WA) s 16; *Freedom of Information Regulations 1993* (WA) sch 1.

309 See, for example, *Information Privacy Act 2014* (ACT) sch 1 (no fee for processing requests for personal information); *Government Information (Public Access) Act 2009* (NSW) s 67 (no fee for the first 20 hours of processing requests for personal information and processing charged at \$30.00 per hour thereafter).

310 See, for example, *Information Privacy Act 2014* (ACT) sch 1, TPP 12.4(a); *Government Information (Public Access) Act 2009* (NSW) s 57; *Freedom of Information Act 1982* (Vic) s 21.

311 *Freedom of Information Act 1982* (Cth) ss 15, 15AA; *Information Privacy Act 2014* (ACT) sch 1, TPP 12; *Freedom of Information Act 1989* (ACT) s 18; *Government Information (Public Access) Act 2009* (NSW) s 57; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) reg 14; *Information Act* (NT) s 19; *Information Privacy Act 2009* (Qld) s 22; *Right to Information Act 2009* (Qld) s 18; *Freedom of Information Act 1991* (SA) s 14; *Right to Information Act 2009* (Tas) s 15; *Freedom of Information Act 1982* (Vic) s 21; *Privacy and Data Protection Act 2014* (Vic) sch 1, IPP 6; *Freedom of Information Act 1992* (WA) s 13.

312 See, for example, *Government Information (Public Access) Act 2009* (NSW) ss 51, 63; *Information Act* (NT) ss 19, 32; *Information Privacy Act 2009* (Qld) s 66.

313 See, for example, *Territory Records Act 2002* (ACT) s 29; *State Records Act 1998* (NSW) s 60; *Information Act* (NT) s 21; *Public Records Act 2002* (Qld) s 20; *Archives Act 1983* (Tas) s 18; *Freedom of Information Act 1982* (Vic) s 23.

314 See, for example, *Freedom of Information Act 1982* (Cth) ss 48, 50–51; *Privacy Act 1988* (Cth) sch 1, APP 13.4; *Freedom of Information Act 1989* (ACT) s 51; *Freedom of Information Act 1991* (SA) s 37; *Freedom of Information Act 1982* (Vic) ss 41–42; *Freedom of Information Act 1992* (WA) ss 45–46, 50–51.

- 315 See, for example, *Archives Act 1983* (Cth) ss 29, 33; *Freedom of Information Act 1982* (Cth) ss 33, 35, 42; *Freedom of Information Act 1989* (ACT) ss 27A, 37, 37A, 42; *Territory Records Act 2002* (ACT) s 28; *Government Information (Public Access) Act 2009* (NSW) ss 53, 60; *Information Act* (NT) ss 3, 25, 30, 45–46, 49–49AA, 56, sch 1 IPP 6; *Information Privacy Act 2009* (Qld) ss 3, 56, 60; *Public Records Act 2002* (Qld) s 18; *Right to Information Act 2009* (Qld) ss 3, 37, 41–42, 48, 75; *Freedom of Information Act 1991* (SA) ss 25–26, 81; *Right to Information Act 2009* (Tas) ss 10, 19, 20, 33, 36; *Freedom of Information Act 1982* (Vic) ss 24A, 25A, 29, 31, 33; *Freedom of Information Act 1992* (WA) ss 20–21, 32.
- 316 *Freedom of Information Act 1982* (Cth) s 27A; *Freedom of Information Act 1989* (ACT) s 27A; *Government Information (Public Access) Act 2009* (NSW) s 54; *Information Act* (NT) s 30; *Information Privacy Act 2009* (Qld) s 56; *Right to Information Act 2009* (Qld) s 37; *Freedom of Information Act 1991* (SA) s 26; *Right to Information Act 2009* (Tas) s 36; *Freedom of Information Act 1992* (WA) s 32.
- 317 See, for example, *Freedom of Information Act 1989* (ACT) s 27A; *Information Act* (NT) s 30; *Information Privacy Act 2009* (Qld) s 56; *Right to Information Act 2009* (Qld) s 37; *Freedom of Information Act 1991* (SA) ss 25, 26; *Right to Information Act 2009* (Tas) s 36.
- 318 See, for example, *Freedom of Information Act 1982* (Cth) s 27A; *Freedom of Information Act 1989* (ACT) s 27A; *Government Information (Public Access) Act 2009* (NSW) s 54; *Information Act* (NT) s 30; *Information Privacy Act 2009* (Qld) s 56; *Right to Information Act 2009* (Qld) s 37; *Freedom of Information Act 1991* (SA) s 26; *Right to Information Act 2009* (Tas) s 36; *Freedom of Information Act 1992* (WA) s 32.
- 319 *Freedom of Information Act 1982* (Cth) s 27A; *Freedom of Information Act 1989* (ACT) s 27A; *Government Information (Public Access) Act 2009* (NSW) s 54; *Information Act* (NT) s 30; *Information Privacy Act 2009* (Qld) s 56; *Right to Information Act 2009* (Qld) s 37; *Freedom of Information Act 1991* (SA) s 26; *Right to Information Act 2009* (Tas) s 36; *Freedom of Information Act 1992* (WA) s 32.
- 320 See, for example, *Freedom of Information Act 1982* (Cth) ss 54, 54B, 54F, 54L, 55, 55K, 56, 56A, 57, 57A, 58, 58AA; *Privacy Act 1988* (Cth) ss 36, 52, 55, 62; *Freedom of Information Act 1989* (ACT) ss 59–60; *Information Privacy Act* (ACT) ss 33–34, 45–47; *Government Information (Public Access) Act 2009* (NSW) ss 17, 80, 82, 89, 92, 99–100; *Privacy and Personal Information Protection Act 1998* (NSW) ss 45, 53, 55; *Information Act* (NT) ss 38, 39A, 87, 103–104, 112A, 113A, 129; *Information Privacy Act 2009* (Qld) ss 93–94, 98–99, 164, 176, 178; *Right to Information Act 2009* (Qld), ss 80–81, 84–85, 118–119; *Freedom of Information Act 1991* (SA) s 29, 38–40; *Right to Information Act 2009* (Tas) ss 43–45; *Freedom of Information Act 1982* (Vic) ss 6C, 49A, 49L–49M, 50, 61A, 61K; *Privacy and Data Protection Act 2014* (Vic) ss 57, 59, 65, 72–73, 77, 83; *Freedom of Information Act 1992* (WA) ss 39, 43, 54, 63–64, 78, 85.
- 321 *Information Privacy Act 2014* (ACT) ss 33–34.
- 322 *Information Privacy Act 2014* (ACT) s 45.
- 323 *Information Privacy Act 2014* (ACT) ss 46–47.
- 324 *Freedom of Information Act 1989* (ACT) s 59.
- 325 *Freedom of Information Act 1989* (ACT) s 60.
- 326 Excluding situations in which records created or held by a private institution constitute ‘public records’ and where a private organisation is engaged by government to deliver services on behalf of government. As discussed elsewhere in this report, the records of private institutions engaged to deliver governmental functions generally belong to the government agency responsible for engaging the private institution, and those records become public records.
- 327 *Catholic Code of Canon Law* (1983 revision) Canon 487(2).
- 328 For the purposes of the *Privacy Act 1988* (Cth), an ‘organisation’ is an individual, a body corporate, a partnership, any other unincorporated association, or a trust, but not a small business operator (being the individual, body corporate, partnership, unincorporated association or trust that carries on a small business which has an annual turnover of less than \$3 million): *Privacy Act 1988* (Cth) ss 6, 6C, 6D.
- 329 *Privacy Act 1988* (Cth) s 6EA.
- 330 *Privacy Act 1988* (Cth) sch 1, APP 12.1.
- 331 *Privacy Act 1988* (Cth) sch 1, APP 12.
- 332 *Privacy Act 1988* (Cth) sch 1, APP 13.1.
- 333 *Privacy Act 1988* (Cth) sch 1, APP 12.8, 13.5.
- 334 *Privacy Act 1988* (Cth) sch 1, APP 12.4(a)(ii), 13.5.
- 335 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015. See also, Anglicare Australia, *Provenance Project*, Anglicare Australia, 2014, p 3.
- 336 Anglicare Australia, *Provenance Project*, Anglicare Australia, 2014, p 3.
- 337 *Privacy Act 1988* (Cth) sch 1, APP 12.4(b).
- 338 *Privacy Act 1988* (Cth) sch 1, APP 12.3.
- 339 *Privacy Act 1988* (Cth) sch 1, APP 13.3.
- 340 *Privacy Act 1988* (Cth) sch 1, APP 13.4.
- 341 *Privacy Act 1988* (Cth) s 36(1), ss 13–13F, sch 1, APP 12–13.
- 342 Name changed, private session, ‘Rachel Jennifer’.
- 343 Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14710:10–18; Transcript of Tash, Case Study 24, 29 June 2015 at 14651:6–12; Transcript of C Carroll, Case Study 24, 30 June 2015 at 14770:13–18. See also Anglicare Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 8.
- 344 Anglicare Australia, *Provenance Project*, Anglicare Australia, 2014, p II.

345 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015. See also
 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
 Institutional responses to child sexual abuse in out-of-home care*, 2016. The *Freedom of Information Act 1982* (Cth)
 s 50 and *Freedom of Information Act 1992* (WA) s 48 require that any amendment or annotation be made in a way that
 preserves the original record so comparison can be made.

346 These organisations are: Relationships Australia Wattle Place (NSW and ACT); Relationships Australia Northern
 Territory Brolga Place; Micah Projects Inc; Lotus Place (Qld); Relationships Australia Elm Place (SA); Relationships
 Australia Tasmania Inc; Berry Street Open Place (Vic); Relationships Australia Lanterns House (WA); The University of
 Melbourne (national); Care Leavers Australasia Network (national); The Alliance of Forgotten Australians (national); The
 International Association of Former Child Migrants and their Families (national).

347 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.

348 In several jurisdictions, younger and more recent care leavers have access to support services in the lead up to, and
 after, transition from out-of-home care, including in relation to accessing and interpreting records as part of their
 transition out of care.

349 The Victorian Aboriginal Child Care Agency submitted that clients should have ‘culturally safe supports when reading
 their files and processing the information contained therein’: Victorian Aboriginal Child Care Agency, Submission to the
 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping
 practices*, 2016.

350 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable,
 Sydney, 2015. See also F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.

351 Royal Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, 2015. See also
 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
 Institutional responses to child sexual abuse in out-of-home care*, March 2016, p 5. As above, the *Freedom of Information
 Act 1982* (Cth) s 50 and *Freedom of Information Act 1992* (WA) s 48 require that any amendment or annotation be made
 in a way that preserves the original record so comparison can be made.

352 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.

353 *Information Act* (NT) ss 34, 35.

354 *Privacy Act 1988* (Cth) s 2A.

355 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.

356 Anglicare Australia, *Provenance Project*, Anglicare Australia, 2014, pp 2–18.

357 Name changed, private session, ‘Beatrice’; Name Changed, private session, ‘Deanna’.

358 *Privacy Act 1988* (Cth) s 6D.

359 Australian Law Reform Commission, *For your information – Australian privacy law and practice report*, Australian
 Government, 2008, Recommendation 39-1, p 53. The Anglican Church of Australia stated that it did not support
 amendments to apply the *Privacy Act 1988* (Cth) to all institutions that provide care or services to children ‘because
 of the resourcing and compliance burden this could impose’: Anglican Church of Australia, Submission to the Royal
 Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Records and recordkeeping
 practices*, 2016.

360 *Freedom of Information Act 1982* (Cth) s 3.

361 See, for example, *Privacy Act 1988* (Cth) s 2A. See also, *Freedom of Information Act 1982* (Cth) s 3.

362 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.

363 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and civil litigation*, 2016, p 157.

364 Transcript of Tash, Case Study 24, 29 June 2015 at 14649:3–5.

365 See, for example, *Freedom of Information Act 1982* (Cth) s 11; *Information Act* (NT) s 17.

366 Transcript of Tash, Case Study 24, 29 June 2015 at 14649:3–5.

367 Transcript of Tash, Case Study 24, 29 June 2015 at 14649:17–43.

368 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.

369 Transcript of Tash, Case Study 24, 29 June 2015 at 14649:1–11.

370 See, for example, Find & Connect, *What to expect when accessing records about you*, 2011, [www.findandconnect.
 gov.au/resources/what-to-expect-when-accessing-records/](http://www.findandconnect.gov.au/resources/what-to-expect-when-accessing-records/) (viewed 13 March 2017). See also Royal Commission into
 Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.

371 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation
 paper: Records and recordkeeping practices*, 2016: Barnardos Australia; Anglicare WA; Anglicare Victoria; F Golding;
 S Murray; Open Place; Micah Projects; Victorian Government; Centre for Excellence in Child and Family Welfare; CREATE;
 K George; Truth, Justice and Healing Council; Relationships Australia.

372 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
 Records and recordkeeping practices*, 2016.

373 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015;

374 Royal Commission into Institutional Responses to Child Sexual Abuse, consultation with stakeholders, 2015.

374 Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14704:28–32. We note that the New South Wales Department
 of Family and Community Services has committed additional resources to help process a backlog of applications for
 access to ward files in response to the findings of the Royal Commission to date. See Department of Justice (NSW),
NSW Government interim response to institutional child sexual abuse – Frequently asked questions, New South Wales
 Government, 2015, pp 1, 3, www.justice.nsw.gov.au/legal-services-coordination/Documents (viewed 13 March 2017).

375 See, for example, *Government Information (Public Access) Act 2009* (NSW) ss 51, 63; *Information Act* (NT) ss 19, 32; *Information Privacy Act 2009* (Qld) s 66.

376 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 89; See Exhibit 30-0015, 'Statement of BHE', Case Study 30, STAT.0613.001.0001_M_R at [65].

377 See Exhibit 30-0022, 'Statement of BDF', Case Study 30, STAT.0616.001.0001_M_R at [84].

378 For example, Name changed, private session, 'Skye'. One survivor suggested that people should be better supported when they embark on the process of accessing their state ward files as it can be a very emotional journey: Name changed, private session, 'Deanna'. See also Exhibit 30-0003, 'Statement of BDB', Case Study 30, STAT.0609.001.0001_R at [93]; Exhibit 30-0036, 'Statement of BDA', Case Study 30, STAT.0617.001.0001_M_R at [106].

379 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015; Name changed, private session, 'Elisa'; Name changed, private session, 'Angus'; Name changed, private session, 'Pearlie'; Name changed, private session, 'Leila'.

380 Name changed, private session, 'Ellis Owen'.

381 Name changed, private session, 'Ellis Owen'.

382 See, for example, *Freedom of Information Act 1989* (ACT) s 23.

383 Name changed, private session, 'Angus'.

384 Name changed, private session, 'Angus'.

385 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 87; Name changed, private session, 'Emma Leanne'.

386 Name changed, private session, 'Deanna'.

387 Name changed, private session, 'Deanna'.

388 Name changed, private session, 'Davina'.

389 Name changed, private session, 'Davina'.

390 Name changed, private session, 'Jasmine'.

391 Name changed, private session, 'Jasmine'.

392 Name changed, private session, 'Andro'.

393 Name changed, private session, 'Andro'.

394 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 87.

395 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 86.

396 Transcript of Tash, Case Study 24, 29 June 2015 at 14649:47–14650:3.

397 Department of Social Services (Cth), *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders and best practice guidelines in providing access to records*, Australian Government, Canberra, 2015.

398 Department of Social Services (Cth), *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders and best practice guidelines in providing access to records*, Australian Government, Canberra, 2015.

399 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016, Questions 19–21.

400 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Alliance for Forgotten Australians; Anglicare Victoria; Centre for Excellence in Child and Family Welfare; F Golding; Micah Projects; knowmore; Council of Australasian Archives and Records Authorities; Open Place.

401 Anglicare Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

402 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. In particular, some of the principles 'may conflict with local archives and records legislation'.

403 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

404 Alliance for Forgotten Australians, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

405 See, for example, Transcript of Tash, Case Study 24, 29 June 2015 at 14649:47–14650:8, 14651:40–44; Transcript of Kate, Case Study 24, 29 June 2015 at 14650:24–45; Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14703:46–14704:23. See also Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015.

406 *Privacy Act 1983* (Cth) sch 1, APP 12.3(b).

407 Royal Commission into Institutional Responses to Child Sexual Abuse, Records public roundtable, Sydney, 2015; Royal
 Commission into Institutional Responses to Child Sexual Abuse, stakeholder consultations, 2015.

408 See, for example, Transcript of Kate, Case Study 24, 29 June 2015 at 14650:24–T14651:4; Transcript of Tash, Case Study
 24, 29 June 2015 at 14651:40–44, 14649:47–14650:8; Transcript of L Sheedy, Case Study 24, 29 June 2015 at 14703:
 46–14704:23.

409 Transcript of Kate, Case Study 24, 29 June 2015 at 14650:24–14651:4.

410 Name changed, private session, ‘Billy Albert’.

411 Name changed, private session, ‘Billy Albert’.

412 Commissioner for Privacy and Data Protection (Vic), Submission to the Royal Commission into Institutional Responses
 to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. AHISA stated that it would be
 concerned if schools did not have the option to treat parents or other family members as third parties with interests
 that should be taken into account: Association of Heads of Independent Schools of Australia, Submission to the
 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping
 practices*, 2016.

413 *Privacy Act 1988* (Cth) sch 1, APP 12.3(b).

414 *Freedom of Information Act 1982* (Vic) s 33(1).

415 Department of Social Services (Cth), *Access to records by Forgotten Australians and Former Child Migrants: Access
 principles for records holders and best practice guidelines in providing access to records*, Australian Government, 2015, p 6.

416 Department of Social Services (Cth), *Access to records by Forgotten Australians and Former Child Migrants: Access
 principles for records holders and best practice guidelines in providing access to records*, Australian Government,
 Canberra, 2015, Principle 2: ‘All information about themselves, and core identifying information about close family’.
 ‘Sensitive personal information about others’ is described as information, the release of which may potentially cause
 distress to others, for example, psychiatric evaluations of family members; beliefs in relation to religion; political
 affiliations; personal habits; and information about other family members divulged by one person: Department of Social
 Services (Cth), *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records
 holders and best practice guidelines in providing access to records*, Australian Government, Canberra, 2015, pp 21–22.

417 Alliance for Forgotten Australians, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. AFA stated that there have been examples of
 a record being released that ‘not only redacted the parents’ names but those of the client’s siblings’ and of a child’s
 birth certificate that had the mother’s name redacted on the grounds that this is ‘shared’ information. However, in
 Queensland, access rights are subject to ss 187–188 of the *Child Protection Act 1999* (Qld). Section 187(4)(a) of that
 Act allows access only ‘to the extent’ that the information is ‘about’ the applicant. The Office of the Information
 Commissioner (Qld) has interpreted this provision to apply only if the information is *solely* about the applicant:
 Queensland Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016 (emphasis added).

418 Alliance for Forgotten Australians, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

419 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
 Records and recordkeeping practices*, 2016.

420 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation
 paper: Records and recordkeeping practices*, 2016: Barnardos Australia; Anglicare WA.

421 Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016.

422 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016: Open Place; Alliance for Forgotten Australians.

423 Open Place, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
 Records and recordkeeping practices*, 2016.

424 Open Place, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
 Records and recordkeeping practices*, 2016.

425 Alliance for Forgotten Australians, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

426 The Australian Society of Archivists observed that there is an important distinction between records kept by institutions
 for their administrative and management purposes and records ‘deliberately constructed on behalf of the child and,
 where possible, with the participation of the child’, such as ‘life stories, genograms or history boxes’. It stated that
 making clear ‘the distinction between the records of the institution (to which the individual presently has rights
 of access) and the records made for the child will potentially clarify some confusion over ownership of records’:
 Australian Society of Archivists, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016.

427 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping
 practices*, 2016, Principle 5.

428 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation
 paper: Records and recordkeeping practices*, 2016: Alliance for Forgotten Australians; Open Place; knowmore;
 Find & Connect Web Resource Project.

429 Find & Connect Web Resource Project, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

- 430 National Archives of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 431 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Alliance for Forgotten Australians; Care Leavers Australasia Network; Micah Projects.
- 432 For example, laws might provide that access may be refused only where the record holder ‘forms a reasonable belief that the release of information about a third party could lead to serious harm to that third party’: F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 433 C Adams and K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 1.
- 434 Queensland Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 435 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: knowmore; Victorian Government; Anglicare Victoria.
- 436 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. The Victorian Aboriginal Child Care Agency submitted that governments should establish a ‘Records Taskforce’, including representatives from Indigenous user services, to develop common access guidelines to Indigenous personal, family and community records: Victorian Aboriginal Child Care Agency, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 437 Victorian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 438 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Association of Heads of Independent Schools of Australia; Centre for Excellence in Child and Family Welfare; Department of Premier and Cabinet (NSW); Council of Australasian Archives and Records Authorities; Tasmanian Government; Territory Records Office (ACT).
- 439 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Centre for Excellence in Child and Family Welfare; Department of Premier and Cabinet (NSW).
- 440 The ‘transformation agenda’, it said, must ‘incorporate ensuring adequate recordkeeping and archiving to meet the lifelong identity, memory and accountability needs for every child who experiences out-of-home care’: The Setting the Record Straight: For the Rights of the Child Initiative, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 441 The Setting the Record Straight: For the Rights of the Child Initiative, Submission (No.2) to Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 442 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Care Leavers Australasia Network; F Golding; PeakCare Qld.
- 443 Association of Heads of Independent Schools of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. AHISA also stated that to ‘support the embedding of best practice recordkeeping in school cultures’, the Royal Commission should consider producing a document that sets out a high-level case for ‘raising recordkeeping from the basement to management agendas’ for presentation to school boards.
- 444 Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 445 Anglicare WA, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 446 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016, Questions 28–29.
- 447 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016: Council of Australasian Archives and Records Authorities; Northcott; Care Leavers Australasia Network; People with Disability Australia; F Golding.
- 448 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 449 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 450 Children’s Healthcare Australasia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 451 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 452 Centre for Excellence in Child and Family Welfare, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.
- 453 Centre for Excellence in Child and Family Welfare, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

454 Centre for Excellence in Child and Family Welfare, Submission to the Royal Commission into Institutional Responses
to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

455 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016.

456 Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study No 12: The response of an independent
school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, Sydney, 2015, pp 12, 40.

457 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of
Yeshiva Bondi and Yeshiva Melbourne to allegations of child sexual abuse made against people associated with those
institutions*, Sydney, 2015, p 55.

458 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox
Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in
Wahroonga, New South Wales*, Sydney, 2016, p 70.

459 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 32: The response of
Geelong Grammar School to allegations of child sexual abuse of former students*, Sydney, 2016; Royal Commission into
Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School
and St Paul's School to allegations of child sexual abuse*, Sydney, 2017.

460 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 32: The response of
Geelong Grammar School to allegations of child sexual abuse of former students*, Sydney, 2016, p 60.

461 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of
Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2017, p 73.

462 Association of Heads of Independent Schools of Australia, Submission to the Royal Commission into Institutional
Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

463 J Howse, 'Managing non-government and private records in a national framework', *Archives – The Future*, Australian
Society of Archivists Conference, Canberra, 2013, p 2. See also Royal Commission into Institutional Responses to
Child Sexual Abuse, consultation with stakeholders, 2015.

464 *Education Act 1990* (NSW) s 47(b1).

465 *Education and Training Reform Act 2006* (Vic) s 4.3.1(6)(g).

466 Association of Heads of Independent Schools of Australia, Submission to the Royal Commission into Institutional
Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

467 Victorian Aboriginal Child Care Agency, Submission to the Royal Commission into Institutional Responses to Child Sexual
Abuse, *Consultation Paper: Records and recordkeeping practices*, 2016.

468 Department of Social Services (Cth), *Find and Connect service and projects*, Australian Government, 2017, [www.dss.gov.
au/our-responsibilities/families-and-children/programs-services/find-and-connect-services-and-projects](http://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/find-and-connect-services-and-projects) (viewed
13 March 2017).

469 During the life of the Royal Commission, knowmore, a program of the National Association of Community Legal
Centres, provided a national legal service to assist people engaging with the Royal Commission. It made many requests
for records on behalf of survivors and supported records access and review applications: See knowmore, Submission to
the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping
practices*, 2016.

470 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Link-Up services*, 2017, [www.aiatsis.gov.au/research/
finding-your-family/where-get-help/link-up-services](http://www.aiatsis.gov.au/research/finding-your-family/where-get-help/link-up-services) (viewed accessed 13 March 2017). See also Victorian Aboriginal
Child Care Agency, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation
paper: Records and recordkeeping practices*, 2016.

471 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016. See also F Golding, Submission to the Royal Commission
into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

472 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Consultation paper: Records and recordkeeping practices, 2016. In Victoria, the Family Information Networks and
Discovery (FIND) assists care leavers who left care before 1989: Victorian Government, Submission to the Royal
Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 10: Advocacy and support and
therapeutic treatment services*, 2015.

473 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping
practices*, 2016, Questions 30–32.

474 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation
paper: Records and recordkeeping practices*, 2016: Council of Australasian Archives and Records Authorities; Alliance for
Forgotten Australians; Anglicare Victoria; Centre for Excellence in Child and Family Welfare; K George; Micah Projects;
Privacy Commission Victoria; PeakCare Qld; S Murray; National Archives of Australia.

475 Centre for Excellence, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues
paper No 10: Advocacy and support and therapeutic treatment services*, 2015.

476 Centre for Excellence in Child and Family Welfare, Submission to the Royal Commission into Institutional Responses
to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. See also Alliance for Forgotten
Australians, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
Records and recordkeeping practices*, 2016.

477 F Golding, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper:
Records and recordkeeping practices*, 2016.

478 Alliance for Forgotten Australians, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

479 K George, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

480 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

481 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Consultation paper: Records and recordkeeping practices*, 2016: Commissioner for Privacy and Data Protection (Vic); Council of Australasian Archives and Records Authorities; PeakCare Qld; Anglicare Victoria.

482 Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. See also Territory Records Office (ACT), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

483 Commissioner for Privacy and Data Protection (Vic), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

484 Commissioner for Privacy and Data Protection (Vic), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

485 K George, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

486 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Consultation paper: Records and recordkeeping practices*, 2016: K George; Micah Projects; S Murray.

487 Micah Projects, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. The CREATE Foundation provides services for contemporary out-of-home care leavers but is not funded to do case work in relation to records access.

488 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

489 Territory Records Office (ACT), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. See also, Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

490 Territory Records Office (ACT), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016. See also, Council of Australasian Archives and Records Authorities, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Records and recordkeeping practices*, 2016.

491 See, for example, CREATE Foundation, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 10: Advocacy and support and therapeutic treatment services*, 2015. CREATE stated that 'children and young people in out-of-home care must be supported to have information about their experiences and lives before and while in out-of-home care, in an age appropriate way that has sensitivity to feelings and situation of the child or young person'.

492 See Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and civil litigation*, Sydney, 2015, p 157.

493 Recommendation 9.1.

494 Recommendation 9.4.

3 Improving information sharing across sectors

3.1 Overview

We heard in our case studies, consultations and private sessions about the importance of sharing information to protect children. Information sharing between institutions with responsibilities for children's safety and wellbeing, and between those institutions and relevant professionals, is necessary to identify, prevent and respond to incidents and risks of child sexual abuse.¹

Care Leavers Australasia Network (CLAN) has stated that:

there is not enough, and has never been enough information sharing that is in the best interests of the child. While organisations and workers debate whether to share information and whether or not it may be in breach of privacy or confidentiality, the consideration should be and needs to be: Is this in the best interests of the child?²

The importance of information sharing for children's safety in institutional and other contexts (and the limitations of current information sharing arrangements) has been highlighted by a number of previous inquiries and reviews, and in the commitments and initiatives of the Australian Government and state and territory governments ('Australian governments') under the National Framework for Protecting Australia's Children 2009–2020 ('National Framework').³

In our case studies, we heard examples of relevant information regarding child sexual abuse that was occurring or may have been occurring either not being shared, or not being shared in a timely and effective manner.⁴ This can have serious consequences – one of the most significant being that it can enable perpetrators to continue their involvement in an institution where they have access to children or to move between institutions and jurisdictions and pose ongoing risks to children.⁵ Inadequate information sharing within and between institutions, such as schools, about the harmful sexual behaviour of children can also compromise the safety of other children in those institutional settings.⁶

Inadequate information sharing is not only an historical problem. The evidence and information before us indicates that there are still a number of barriers to timely and appropriate information sharing to protect children in institutional contexts.

The sharing of personal and sensitive information is restricted by obligations under privacy legislation,⁷ confidentiality or secrecy provisions in legislation governing the provision of services for children,⁸ and other laws.⁹ While all jurisdictions have some form of legislative or administrative arrangements to enable information sharing to protect children, these arrangements are limited in a number of ways, especially with respect to information exchange across state and territory borders.

Even where information sharing is legally permitted or required, there may be reluctance to share. Concerns about privacy, confidentiality and defamation, and confusion about the application of complex and inconsistent laws, can create anxiety and inhibit information sharing.¹⁰ Institutional culture, poor leadership and weak or unclear governance arrangements may also inhibit information sharing and, as a result, undermine the safety of children.¹¹

This chapter considers the need for reforms to improve information sharing and better protect children from child sexual abuse in institutional contexts. We recommend a nationally consistent scheme for sharing information related to the safety and wellbeing of children between key agencies and institutions to improve information exchange within and across different sectors and jurisdictions. In Chapter 4, we consider additional reforms to improve information sharing in two key sectors – schools and out-of-home care.

Our recommendations are informed by evidence from our case studies and information gathered from consultations with stakeholders. Our consultations included our *Discussion paper: Strengthening information sharing arrangements (Information sharing)*, which outlined our proposed reforms in relation to information sharing.¹² This was distributed to stakeholders, including the Australian Government and state and territory governments, regulatory and oversight bodies, and privacy and children’s commissioners. We also addressed information sharing issues in our *Consultation paper: Institutional responses to child sexual abuse in out-of-home care (Out-of-home care)* and *Issues paper 9: Addressing the risk of child sexual abuse in primary and secondary schools (Schools)*.¹³ Our work has been informed by research we commissioned into the legislative and related key policy and operational frameworks for sharing information relating to child sexual abuse in institutional contexts.¹⁴

The recommendations set out in this chapter are underpinned by the principle that children’s rights to safety and wellbeing, and specifically to protection from sexual abuse,¹⁵ should be prioritised over other rights and concerns. In some cases, these other rights and concerns may include privacy, confidentiality and the laws of defamation. This position is consistent with Australia’s obligations under the United Nations Convention on the Rights of the Child, the existing approach in child protection legislation in Australia, and the views of many stakeholders.¹⁶

We recognise the importance of privacy as a fundamental human right of all children and adults,¹⁷ and that international law requires us to consider the reasonableness of proposed limits on privacy. Specifically, we have considered whether the limits we have recommended are a necessary and proportionate means of achieving the legitimate aims of protecting children from sexual abuse, and promoting their best interests in that respect.¹⁸ We also recognise the importance of fairness in the way that information is used.

In implementing an information exchange scheme, Australian governments must consider wider issues of child protection and child wellbeing, including issues of familial abuse that are beyond the scope of this Royal Commission. The evidence and information before us about information sharing and the limitations of current arrangements supports the need – so far as institutional responses to child sexual abuse are concerned – for a nationally consistent information sharing scheme. In this chapter we outline some limitations and safeguards to which governments would need to have regard in designing and implementing such a scheme.

We recognise that information sharing does not of itself necessarily produce the cultural change necessary to create an environment protective of child wellbeing. Information exchange schemes are best understood as one tool in a suite of approaches to facilitate better collaboration between disparate institutions in promoting the wellbeing and safety of children.¹⁹

It is important to note that access to a larger volume of undifferentiated information will not necessarily improve risk assessment in a particular case, in the absence of well-designed risk assessment instruments and appropriately skilled and trained staff.²⁰

The recommendations in this chapter are part of a suite of recommendations in this Final Report to make institutions child safe, including by improving institutional reporting of, and responses to, child sexual abuse. These recommendations complement and support our recommendations regarding:

- Working With Children Checks (see our *Working With Children Checks* report)²¹
- national Child Safe Standards (see Volume 6, *Making institutions child safe*)
- reportable conduct schemes (see Volume 7, *Improving institutional responding and reporting*)
- child-focused complaint policies and procedures (see Volume 7, *Improving institutional responding and reporting*).

In particular, information sharing is an important aspect of the proper functioning of reportable conduct and Working With Children Check schemes. The effectiveness of information exchange schemes and mechanisms similarly relies on institutions having adequate recordkeeping policies and practices and a ‘child safe information sharing culture’.²²

In our *Criminal justice* report, we considered the information and assistance police can provide to institutions where an allegation of institutional child sexual abuse is made, and the information and assistance police can provide to children and parents and the broader community in these circumstances.²³

We also discuss information sharing specifically in other volumes of this Final Report. In particular, Volume 7, *Improving institutional responding and reporting* discusses communication with the parents of children in an institution who may have been affected by child sexual abuse in that institution, and communication with the broader community after an allegation of child sexual abuse has been made. Volume 10, *Children with harmful sexual behaviours* considers these issues in the particular context of children who have displayed harmful sexual behaviours. Volume 12, *Contemporary out-of-home care* considers the need to share information related to child sexual abuse with carers in out-of-home care.

3.2 Current information sharing arrangements and the need for reform

There is a strong case for information exchange between a range of institutions and professionals with responsibilities related to children's safety and wellbeing. With appropriate safeguards, these may include service providers, government and non-government agencies, law enforcement agencies and regulator or oversight bodies.

Often the potentially relevant information to be shared between these institutions and professionals may be personal and sensitive information, which presents particular challenges in relation to privacy. This may include information about children, such as information about a child's harmful sexual behaviours, and health or counselling information. It may also include information about adults who pose a potential risk to children, such as criminal history information or employment history information. It has been argued that in some cases information about untested and unsubstantiated allegations may assist in identifying the risk of child sexual abuse.

This section provides a brief overview of current laws and arrangements for sharing information relating to child sexual abuse in institutional contexts, including the arguments in favour of reform and, in particular, the need for a nationally consistent approach to sharing information within and across sectors and jurisdictions.

3.2.1 Current arrangements for sharing information

In general terms, personal information that has been collected by an agency or organisation for certain purposes, as required or permitted by law, may be disclosed for those (and related) purposes.²⁴ Disclosure of personal information related to child sexual abuse is also restricted by privacy legislation,²⁵ child protection legislation,²⁶ and other laws such as defamation, obligations of confidentiality,²⁷ ethical codes, and in some cases under contract.²⁸

Restrictions on the disclosure of personal information may be overcome by consent²⁹ or specified exemptions and arrangements under privacy legislation.³⁰ Across Australia there are also numerous laws that operate to require or permit the exchange of information related to institutional child sexual abuse, including personal and sensitive information. Such laws overcome privacy and confidentiality restrictions on the disclosure of personal information by authorising or requiring information sharing contrary to those restrictions. In addition, a number of administrative arrangements support information sharing either consistent with these laws or with privacy laws.

This section briefly discusses existing laws and arrangements that are most relevant to the sharing of information related to child sexual abuse in institutional contexts. These laws and arrangements differ between jurisdictions and have significant limitations. The following section (Section 3.2.2) draws on this discussion to outline the case for reform as a means of ensuring that information is shared as required to prevent, identify and respond to risks of child sexual abuse in institutional contexts.

Privacy laws

Privacy laws regulate the collection, use and disclosure of information, including personal and sensitive information. The Commonwealth and most states and territories have privacy legislation.³¹ State and territory privacy legislation generally governs the collection, use and disclosure of personal information by government agencies.³² In some jurisdictions, health privacy legislation governs the collection, use and disclosure of personal information related to health by both public sector agencies and private sector organisations.³³

Commonwealth privacy law generally regulates private sector organisations with an annual turnover of more than \$3 million and health service providers.³⁴ In some circumstances, private sector organisations contracted or funded by government may have to comply with relevant state and territory privacy legislation.³⁵ It has been suggested that, where non-government organisations receive joint funding from both Australian Government agencies and state or territory agencies, they are uncertain as to whether the information they hold is subject to state or territory and/or Commonwealth privacy law.³⁶

Privacy laws permit the disclosure of personal information in a number of circumstances, including: with consent; for the purposes of collection; for other purposes specified in privacy laws; or by arrangements authorised by privacy commissioners.

Sharing information with consent

Generally, information may be disclosed with the consent of the person who has provided it and to whom it relates. Consent may be express or implied. The Office of the Australian Privacy Commissioner states that the four key elements of consent are:³⁷

- the individual is adequately informed before giving consent
- the individual gives consent voluntarily
- the consent is current and specific
- the individual has the capacity to understand and communicate their consent.

A clear limitation on information sharing with consent is that some individuals may not consent to the disclosure of information that relates to the risk that they pose or may pose to children. In some cases, it may not be appropriate to seek the consent of an individual before their personal information is shared because of concerns about the safety and wellbeing of children.

Sharing information for the purpose for which it was collected

In general terms, personal information that has been collected by an agency or organisation for certain purposes, as required or permitted by law, may be disclosed for those purposes.³⁸

It is therefore good practice for agencies and organisations to be clear about the purposes for which they collect information and, where possible, to inform individuals of these purposes.³⁹ Expressly communicating these purposes – for example, in collection notices – facilitates limited information sharing. While collection notices are important and useful information gathering mechanisms, it is important to recognise that no single institution collects all the necessary information or has all the appropriate tools to adequately protect children. As a result, information collected by one institution must be shared with others for an effective response to incidents and risks of child sexual abuse.⁴⁰

Chapter 4 discusses how collection notices can facilitate a student's information transferring with them from their previous school to their new school – with and without consent. We also discuss in Chapter 4 how such collection notices may complement or work alongside our recommended information exchange scheme.

Sharing information for other specified purposes

Privacy laws allow personal information to be disclosed for a purpose other than the purpose for which it was collected in certain circumstances. In the context of our inquiry, these circumstances include:⁴¹

- where disclosure of personal information is necessary to lessen or prevent significant threats to life, health or safety
- for the purposes of employment referee checks
- for the purposes of investigating or reporting concerns about serious misconduct and unlawful activities, and for law enforcement purposes.

However, these arrangements are limited in their capacity to facilitate the exchange of information related to institutional child sexual abuse. For instance, jurisdictions vary as to whether threats to life, health or safety must be ‘serious’,⁴² ‘serious or imminent’,⁴³ or both ‘serious and imminent’.⁴⁴ Requirements that threats be identified as serious and/or imminent before information can be shared may be highly problematic in the context of child sexual abuse.⁴⁵ Threats of child sexual abuse are not always imminent, and opportunities to identify risk may be missed if information cannot be shared unless it indicates a serious threat.⁴⁶

As the Special Commission of Inquiry into Child Protection Services in New South Wales commented in 2008:

The ‘serious or imminent threat to life or health’ criterion in s.18 of the PPIP Act [*Privacy and Personal Information Protection Act 1998* (NSW)], and in Clause 11 of the Health Privacy Principles [which support the *Health Records and Information Privacy Act 2002* (NSW)], is unduly narrow and does not cater for the kind of case where there is progressive abuse and neglect; and its application is complicated by the differences in terminology used and by the subjective test involved.⁴⁷

Sharing personal information on the basis of serious and/or imminent threats may be further complicated where the personal information is classified as ‘sensitive information’ (for example, because it relates to a person’s sexual activities). Under New South Wales privacy legislation, disclosure of ‘sensitive information’ on the basis of a serious and imminent threat must be to prevent (rather than to simply lessen) that threat.⁴⁸

The *Privacy Act 1988* (Cth) allows private sector employers to disclose personal information directly related to their relationship with a person who is a past or current employee to a prospective employer of that person. This includes conduct (within the course of employment) relating to children.⁴⁹ While these provisions support prospective employer referee checks, the scope for sharing information under these provisions is limited, as they do not apply to Commonwealth, state or territory public sector agency employers.⁵⁰ National Disability Services told us:

Member feedback from services providers in Victoria shows that there is confusion about what employers can cover whilst conducting reference checks. However information sharing between organisations is taking place regardless, and, though well intentioned, risks removing natural justice for (prospective) employees.⁵¹

Similarly, while provisions permitting the disclosure of personal information for misconduct and law enforcement purposes may assist institutions in their complaint handling and other investigations, it is not clear that they support collaborative cross-institutional responses to incidents and risks of child sexual abuse.

Finally, even where one of these exceptions to privacy laws applies to allow for information sharing, other laws – such as defamation or secrecy laws – may continue to restrict the disclosure of that information.

Sharing information covered by authorised arrangements

Arrangements authorised by privacy commissioners, such as public interest directions, codes of practice and approved information usage arrangements, may be used to modify privacy restrictions in particular circumstances.⁵² These mechanisms may be used, for example, to assist the implementation of child protection programs where multiple agencies hold information.⁵³ However, they will be limited to particular organisations and circumstances, and limited in their duration. Such arrangements are authorised following individual applications, which may also limit their capacity to provide consistency and certainty to the wide range of agencies and organisations that have responsibilities related to children's safety and wellbeing.

In the following sections we discuss legislation that is designed to override laws that otherwise restrict the disclosure of information, including privacy laws, as well as arrangements that are designed to facilitate information sharing consistent with privacy laws.

Arrangements for sharing information within jurisdictions

Each Australian jurisdiction currently has different arrangements for sharing information within that jurisdiction for the purpose of protecting children.

These arrangements include information sharing regimes that are designed to facilitate information sharing among a range of agencies or institutions. Other arrangements are more specific and limited, such as: laws for information sharing between regulatory and oversight bodies for purposes related to the exercise of regulatory and oversight functions; between police and child protection agencies for investigation purposes; within care teams in out-of-home care to manage the needs of a child in care; and between schools to manage risks to students.⁵⁴ In many jurisdictions, information may also be shared within interagency investigation and response teams (including teams managed by child protection agencies and police, and sometimes others).⁵⁵ The following discussion does not address all such arrangements.⁵⁶ Rather, it focuses on some of the key arrangements for sharing information within jurisdictions.

Information exchange schemes

The most significant information sharing arrangements, for the purposes of this chapter, are those that permit or require specified classes of agencies, organisations and individuals to exchange information relevant to children's safety and wellbeing, with each other and/or with their jurisdictional child protection agency.⁵⁷ The specified agencies, organisations and individuals permitted or required to exchange information under these schemes are not uniformly described across all jurisdictions; we refer to them collectively as 'prescribed bodies'.⁵⁸

Information shared under these schemes can generally be characterised as information related to the safety and wellbeing of children, which includes information relevant to identifying, preventing and responding to child sexual abuse. Most information exchange schemes are established by state and territory child protection legislation. Where they are established by legislation, the schemes explicitly or implicitly overcome privacy and confidentiality restrictions to enable personal information to be shared, in accordance with the scheme, without consent.⁵⁹

Information exchange schemes vary across jurisdictions,⁶⁰ including in terms of:

- the range of organisations that are able to disclose or receive information under the scheme⁶¹
- whether information can be shared proactively, without a request⁶²
- whether requested information *may* or *must* be provided on request⁶³
- whether prescribed bodies can seek and obtain information directly from each other, or only from the jurisdictional child protection agency⁶⁴
- whether the scheme captures information related to the safety of any child in that jurisdiction, or only those children who are, or have been, the subject of concerns reported to the child protection agency.⁶⁵

As discussed in more detail in Section 3.2.2, the scheme established under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the New South Wales scheme) provides the greatest scope for sharing information to prevent and respond to child sexual abuse in institutional contexts. The scheme established by Part 5A of the *Care and Protection of Children Act* (NT) (the Northern Territory scheme) has many similar features.

Under the New South Wales and Northern Territory schemes, all prescribed bodies – including the jurisdictional child protection agency – are able to share information without a request (proactive sharing), and must share information (subject to certain limitations) following an appropriate request. Proactive sharing of information under these schemes requires a belief on the part of the provider that the information would assist the recipient in a range of functions related to the safety and wellbeing of children (including service provision, planning, decision-making, assessments, investigations and risk management).⁶⁶

Where the New South Wales or Northern Territory child protection agency receives a request for relevant information it must, like any other prescribed body under the scheme,⁶⁷ provide that information if it reasonably believes that the information may (in New South Wales) or would (in the Northern Territory) assist the recipient in functions related to the safety and wellbeing of children.⁶⁸ The limited exceptions to this obligation apply equally to the child protection agency and other prescribed bodies under the scheme.⁶⁹

In other jurisdictions, the child protection agency occupies a more privileged position. In some jurisdictions, for example, the child protection agency can require relevant information from prescribed bodies without being similarly required to provide such information to those bodies.⁷⁰ In other jurisdictions, there are different categories of prescribed bodies that have been given different capacities to share and request information under the legislation (tiered arrangements).⁷¹

In South Australia, the main arrangements for intra-jurisdictional exchange (exchange occurring within a jurisdiction) of safety and wellbeing information were, until recently, established administratively rather than legislatively. The South Australian *Information Sharing Guidelines for Promoting Safety and Wellbeing* (2013) (Information Sharing Guidelines) apply to a wide range of public agencies and state-contracted private sector agencies, including those providing services for children.

Non-legislative frameworks can only operate subject to applicable laws. Accordingly, the Information Sharing Guidelines support disclosure of personal information without consent to prevent or lessen a serious threat to life, health or safety,⁷² consistent with the *Privacy Act 1988* (Cth) as well as the *Information Privacy Principles Instruction 2016* (SA).⁷³ As we have discussed earlier, requiring that a serious threat to life, health or safety is established places limits on how and what information related to child sexual abuse can be shared.

Following its review of information sharing to protect children in South Australia, the recent South Australian Child Protection Systems Royal Commission observed in its report *The life they deserve: Child Protection Systems Royal Commission report (The life they deserve)*:

It may be that the [Information Sharing Guidelines], as a policy framework, do nothing to ease legislative restrictions on information sharing. The first step for decision making under the [Information Sharing Guidelines] is to follow specific legislative requirements and the guidance of the practitioner's agency.⁷⁴

The life they deserve report referred to the arrangements under Chapter 16A in New South Wales, and recommended that South Australia's *Children's Protection Act 1993* (SA) be similarly amended to permit and, in appropriate cases, require the sharing of information between prescribed government and non-government agencies with responsibilities for the health, safety or wellbeing of children, where it would promote those responsibilities.⁷⁵

South Australia subsequently introduced the *Children and Young People (Safety) Act 2017* (SA) to establish a safety and wellbeing information sharing scheme.⁷⁶ This legislation is intended to implement the recommendations of the *The life they deserve* report regarding information gathering and sharing.⁷⁷ Similar to the information exchange schemes in other jurisdictions, the Act provides for the sharing of 'information or documents relating to the health, safety, welfare or wellbeing of a particular child or young person, or class of children or young people'.⁷⁸ However, it does not require information to be shared as recommended by the *The life they deserve* report.

The South Australian legislation includes as prescribed bodies various government agencies, including the child protection department, the Commissioner for Children and Young People, the Guardian for Children and Young People and South Australia Police.⁷⁹ It is unclear how broad the range of prescribed bodies is intended to be, however, as the Act also provides for other persons or bodies to be prescribed by regulation.⁸⁰

Unlike the New South Wales and Northern Territory schemes, the South Australian scheme does not require prescribed bodies to share information upon receiving an appropriate request; it merely permits them to share prescribed information whether or not a request has been received.⁸¹ In this respect, it does not implement the recommendation of the *The life they deserve* report that the *Children's Protection Act 1993* (SA) be amended to require information sharing 'in appropriate cases'.⁸²

Other arrangements

All jurisdictions have numerous other arrangements (besides information exchange schemes) that support information exchange to protect children. Some of these arrangements focus on children's participation in a particular sector or service system. Consequently, the scope of these arrangements are generally narrower than that of the scheme we have recommended – for example, in relation to the range of information that can be shared and which agencies may provide or seek that information.

We commissioned research on the legislative and related policy and operational frameworks for sharing information related to child sexual abuse in institutional contexts between institutions and across jurisdictions in Australia.⁸³ This research examined information sharing arrangements in a range of institutional contexts.⁸⁴

Education laws in New South Wales, which specifically address information sharing in the school sector, are an example of these sector-specific arrangements. Part 5A of the *Education Act 1990* (NSW) enables schools to obtain information from other agencies, including other schools, about whether a student's enrolment 'is likely to constitute a risk ... to the health and safety of any person (including the student)' and to 'develop and maintain strategies to eliminate or minimise any such risk'.⁸⁵

While Part 5A of the *Education Act 1990* (NSW) may provide a sound legislative basis for information sharing, it has a much narrower application and focus than information exchange schemes such as Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). The parameters of Part 5A provide for information about a limited cohort of students – students whose enrolment constitute a risk to others in the school setting – to be shared with schools, non-government schools authorities and the NSW Department of Education only. Chapter 16A complements the operation of Part 5A to enable sharing of a broader range of information relevant to children's safety and wellbeing. This may include information about the support or educational needs of students, not limited to those students whose enrolment may constitute a risk. It may also include information about risks of child sexual abuse posed by teachers and other school staff. Additionally, Chapter 16A operates in a broader context, enabling information sharing about children's safety and wellbeing in a range of settings outside school contexts. The operation of these legislative provisions in school contexts is discussed in Chapter 4.

Some other arrangements are confined to children's involvement in a particular sector or service system, but provide for information sharing that promotes multidisciplinary responses. Victoria and the Australian Capital Territory have legislation that permits the exchange of information about children in out-of-home care within care teams, which includes professionals from a range of disciplines as well as the carer.⁸⁶ However membership of such care teams remains limited to a small group of people, and requires specific nomination.⁸⁷ Arrangements for information sharing within such limited groups are not equivalent to standing arrangements for direct information exchange between a wider range of prescribed bodies.

Stakeholders told us that non-legislative arrangements can be effective in facilitating cross-disciplinary information sharing related to children in out-of-home care. The Royal Australian and New Zealand College of Psychiatrists told us about Evolve Interagency Services in Queensland, which provides therapeutic and behaviour support services responsive to emotional and behavioural problems of children in out-of-home care. Evolve Interagency Services supports collaboration between services, including information sharing between professionals involved in the care of children, to enable early identification of at-risk children and promote awareness of their needs amongst relevant parties.⁸⁸

Similarly, in its written response to information we released regarding the areas to be examined in *Case Study 24: Preventing and responding to allegations of child sexual abuse occurring in out-of-home care (Out-of-home care)*, Anglicare Victoria told us that its out-of-home care staff exchange information with the Victorian child protection agency and other children, youth and family services funded by the child protection agency through a common assessment framework called the Best Interests Framework. This in turn incorporates the Looking After Children (LAC) framework. Anglicare Victoria commented that ‘these frameworks are typically not in use within other service sectors with which our staff liaise concerning children’s needs (such as mental health and other healthcare services, educational institutions, and so on)’.⁸⁹

Non-legislative information sharing arrangements can promote children’s safety by promoting good practice and more open organisational and professional cultures. However, they may also be subject to significant limitations, including in the range of participants and their application to particular sectors. These arrangements will also be limited by privacy and confidentiality restrictions on disclosure of personal information, unless they are made under laws that overcome these restrictions. We discuss non-legislative arrangements for inter-jurisdictional information sharing (that is, information sharing across different jurisdictions) in the next section.

In our view, a legislated information exchange scheme has the potential to complement existing legislative and administrative information sharing arrangements that are sector-based or that facilitate information sharing about a particular cohort of children (such as children in out-of-home care). Such a scheme may also provide a stronger legislative platform for administrative arrangements. For example, in Chapter 4 we discuss how such a scheme may underpin improvements to the existing Interstate Student Data Transfer Note and Protocols arrangements for information sharing about students when they move to a school in a different jurisdiction.

Information sharing arrangements that operate across jurisdictions

All jurisdictions, including the Commonwealth, have established arrangements to facilitate information sharing across jurisdictions. These arrangements can, for the purposes of this chapter, be categorised as follows:

- jurisdictional information exchange schemes that prescribe Commonwealth bodies or bodies in other jurisdictions
- sector-specific information sharing regimes that operate across jurisdictions
- protocols that facilitate inter-jurisdictional information sharing between specified institutions for child protection-related purposes.

Under the first category, some jurisdictions include interstate bodies in their information exchange schemes established under child protection legislation.⁹⁰ This means that prescribed bodies in that jurisdiction can share information relating to the safety and wellbeing of children with prescribed bodies in another state or territory, or with prescribed Australian Government agencies.

In the second category, there are legislated information sharing regimes that apply to specific sectors and operate across jurisdictions. For instance, the Education and Care Services National Law (National Law) and the Education and Care Services National Regulations (National Regulations) have established a national regulatory scheme (the National Quality Framework) for early childhood services. This National Quality Framework, implemented through corresponding state and territory legislation, applies Commonwealth privacy legislation to the education and care sector, replacing the operation of state and territory privacy legislation.

These arrangements authorise and require disclosure of information in certain circumstances, between particular agencies and across jurisdictions. They also provide for national and jurisdiction-based registers of approved providers, approved services and certified supervisors. As part of a national regulatory framework, the National Quality Framework's information sharing arrangements may provide greater clarity and certainty for those in the sector. However, the exclusion of a number of early childhood service types from the scheme will result in some inconsistent approaches to information sharing across the sector.⁹¹

In the education context, the Interstate Student Data Transfer Note and Protocols provide a national system for information transfer between schools when students move from one state or territory to another. We have been told, however, that there are limits on the inter-jurisdictional transfer of personal information that is particularly sensitive – for example, related to child sexual abuse.⁹²

As for the third category, there are protocols that facilitate inter-jurisdictional information sharing between specified institutions for child protection-related purposes.⁹³ The Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance provides for jurisdictional child protection agencies to exchange information with each other related to fulfilling child protection obligations, such as assessing carer suitability and the safety of children across Australia and New Zealand.

One of the limitations of this protocol is that it provides for information exchange subject to confidentiality and privacy restrictions in a jurisdiction's legislation.⁹⁴ In addition, the protocol excludes relevant government agencies (apart from jurisdictional child protection agencies) and all non-government organisations.⁹⁵ As the South Australian child protection agency told us, child protection history information released under the protocol to its interstate counterparts is for the use of the interstate child protection agencies only.⁹⁶

In written evidence in *Case Study 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales (Knox Grammar School)*, the NSW Ombudsman noted that this protocol is the ‘vehicle for obtaining information from other jurisdictions’ and is intended to ‘provide for cooperation between jurisdictions to facilitate the care and protection of children and young people’ and ‘information sharing between state child protection authorities’.⁹⁷ The NSW Ombudsman stated that, ‘consistent with this Protocol, [the NSW child protection agency] has taken the view that it should not make a request to its counterpart in another state unless it is acting pursuant to its own legislative responsibilities (this requires it to first form an opinion that the relevant issue has already met, or may meet, the risk of significant harm threshold)’.⁹⁸ The NSW Ombudsman observed that this may not be effective in cases where the critical information being sought is not actually ‘held’ by the statutory child protection agency in the state where the information is located.⁹⁹

The Information Sharing Protocol between the Commonwealth and Child Protection Agencies provides for information sharing within and across jurisdictions to facilitate investigations and assessments of vulnerable and at-risk children and promote their care, safety, welfare, wellbeing and health.¹⁰⁰ However, as with the Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance, it applies to a limited group of government entities and excludes all non-government organisations. Those covered are jurisdictional child protection agencies and specified Commonwealth entities including Centrelink, Medicare, and the Child Support Agency.¹⁰¹

Evidence in the *Out-of-home care* case study and submissions in relation to Working With Children Checks noted the limitations of these arrangements and highlighted the need for improvement in and clarification of interstate information exchange processes, with the aim of better protecting children from sexual abuse.¹⁰² Given that a number of jurisdictions already contract out out-of-home care services to non-government organisations, or are in the process of doing so, protocols which do not allow for the timely and necessary sharing of information with appropriately accredited non-government organisations will be of limited utility in the protection of children.

Outside of the three categories discussed, some jurisdictions have legislation that is designed to improve data sharing between government agencies, which effectively overrides legislative or policy barriers that operate to prevent data sharing within government.¹⁰³

Information sharing under Working With Children Check arrangements

Each state and territory has a scheme for conducting background checks for people seeking to engage in child-related work. These schemes are commonly known as Working With Children Checks (WWCCs). State and territory WWCC schemes include provisions for intra-jurisdictional as well as inter-jurisdictional information sharing to support their operation.

In our *Working With Children Checks* report we recommended that the only possible outcomes for WWCCs across all jurisdictions should be that a clearance is issued or not, following appropriate risk assessment by the body administering the WWCC scheme. We recognised that this may result in less information being provided to employers about information considered in WWCC determinations. It has been argued that, in some cases, risk management by employers may be assisted by access to information that indicates potential risk, but is insufficient to refuse a clearance to work with children.

The capacity for inter-jurisdictional information sharing is particularly important for the effective operation of WWCC schemes. In all Australian jurisdictions, arrangements under the *Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working With Children* (ECHIPWC arrangements) introduced in 2009 facilitate the inter-jurisdictional sharing of criminal history information for WWCC purposes.¹⁰⁴ These ECHIPWC arrangements enable WWCC screening agencies to exchange a greater range of information across jurisdictions than was previously possible.¹⁰⁵

However, stakeholders have expressed concerns that ECHIPWC arrangements do not encompass all types of information that might be needed to identify risks to children.¹⁰⁶ Relevant information not currently captured by ECHIPWC arrangements includes information which is not held by jurisdictional police services (such as relevant misconduct and disciplinary information; information about child protection notifications; and information about allegations that do not lead to a criminal charge) and, in Victoria, information about ‘non-conviction charges’.¹⁰⁷

Another significant limitation of ECHIPWC arrangements identified by stakeholders is that information exchange under ECHIPWC arrangements occurs only at the time when the WWCCs are undertaken.¹⁰⁸

Early on in our inquiry it became apparent that WWCC schemes may not be as effective as they could be at contributing to children’s safety in organisations. In particular, we found that the existence of eight separate WWCC schemes and the differences between them creates barriers to the effective sharing of information across jurisdictions.¹⁰⁹

Our *Working With Children Checks* report sets out recommendations to strengthen the WWCC regime in Australia. We recommended a national model for WWCCs to be implemented by introducing consistent standards and establishing a centralised WWCC database to facilitate cross-border information sharing.¹¹⁰ This should improve information sharing by ensuring there is continuous monitoring of WWCC cardholders’ national criminal history records, and that there is visibility of WWCC decisions across all jurisdictions. Once this national centralised database is in place, a WWCC refusal based on a disciplinary record in one jurisdiction would be recorded in the shared database and could trigger the assessing jurisdiction to obtain and examine this information.¹¹¹

We also recommended that state and territory governments should amend their WWCC laws to require bodies responsible for relevant disciplinary and/or misconduct information (including reportable conduct information) to notify their respective WWCC screening agencies of that information.¹¹²

Implementation of the recommendations of our *Working With Children Checks* report will significantly improve the screening of child-related employees and volunteers. However, even with such enhanced screening, gaps will remain in the information available to institutions. We know, for example, that many perpetrators do not have criminal convictions and, as a result, may pass WWCC recruitment and screening assessments.¹¹³ In addition, WWCCs do not apply to all persons who may pose risks to children in institutional contexts.¹¹⁴ For example, WWCCs arrangements cannot facilitate the sharing of information about children who may display harmful sexual behaviours.

We acknowledged in our *Working With Children Checks* report that WWCCs are one of a range of strategies needed to make organisations child safe. They are one part of an organisation's recruitment, selection and screening practices. We also recognised that an over-reliance on WWCCs can be detrimental to children's safety. Such over-reliance can provide a false sense of comfort to parents and to communities, and may cause organisations to become complacent due to the belief that people who have undergone WWCCs do not pose any risks to children, when this is not necessarily the case.

Finally, we recommended that, once continuous monitoring of national criminal history records is in place, WWCCs in all states and territories should be valid for five years before cardholders are required to lodge an application for renewal.¹¹⁵

Our recommended national centralised WWCC database will alert jurisdictions to adverse disciplinary records that have led to a WWCC refusal in another jurisdiction. However, the recommended database will not capture information about disciplinary, reportable conduct, and other institutional investigations that are unfinalised, or that are finalised without resulting in a WWCC bar. We are aware that only a small number of WWCC applications are refused on disciplinary or misconduct information alone.¹¹⁶ It may therefore be likely that only a small number of disciplinary records will be recorded on our recommended centralised WWCC database.

In Section 3.3.2 we discuss the arguments for and against sharing untested or unsubstantiated allegations, such as those that have not resulted in a WWCC bar, to augment the operation of our recommended WWCC reforms.

Information sharing through reportable conduct schemes

Reportable conduct schemes oblige heads of certain institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. Conduct that is reportable generally includes abuse or neglect of a child, including sexual abuse, physical abuse or psychological abuse.¹¹⁷ In this chapter, we refer to the institutions subject to a reportable conduct scheme generally as 'reportable conduct bodies'.

The only reportable conduct scheme in full operation during the period of this inquiry was the New South Wales scheme. It was implemented in May 1999 under Part 3A of the *Ombudsman Act 1974* (NSW).¹¹⁸ In July 2017, reportable conduct schemes commenced in Victoria and the Australian Capital Territory.¹¹⁹

In Volume 7, *Improving institutional responding and reporting* we make recommendations for the implementation of nationally consistent legislative reportable conduct schemes, based on the approach adopted in New South Wales (see Recommendation 7.9).

Reportable conduct schemes include provisions relating to information sharing. For example, the New South Wales scheme includes provisions for disclosure of information by the Ombudsman and by institutions subject to the scheme.¹²⁰ These disclosure provisions override privacy, secrecy and any other laws that prevent or restrict disclosure.¹²¹ Information sharing under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) has an important role in complementing and facilitating the operation of the state's reportable conduct scheme.¹²²

Information sharing provisions under the Australian Capital Territory and Victorian reportable conduct schemes permit the sharing of information relevant to certain regulatory purposes, including reportable conduct, WWCCs and out-of-home care carer assessment.¹²³ The reportable conduct scheme in the Australian Capital Territory draws on New South Wales reportable conduct legislation and Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to create one hybrid reportable conduct and information exchange scheme (the ACT hybrid scheme). This ACT hybrid scheme:

- is limited to reportable conduct bodies¹²⁴ rather than covering a wider range of agencies and institutions with responsibilities related to the safety and wellbeing of children
- confines the scope of information that can be shared between reportable conduct bodies to 'reportable conduct information'¹²⁵ rather than a wider range of information related to children's safety and wellbeing.

This provides a narrower scope for information sharing than currently provided for by the New South Wales scheme. Additional provisions under Australian Capital Territory legislation do allow the ACT Ombudsman to share a wider range of information (related to children's safety and wellbeing), gathered through oversight of the scheme, with a small group of specified agencies.¹²⁶

Jurisdictional differences in the threshold for reporting reportable conduct allegations under each scheme may also affect their information sharing potential. In summary:

- the Victorian reportable conduct scheme captures allegations only where the person reporting has formed a reasonable belief that an employee has committed reportable conduct or misconduct that involves reportable conduct¹²⁷
- the ACT hybrid scheme captures allegations where there is ‘an express assertion that reportable conduct has happened’¹²⁸
- the New South Wales reportable conduct scheme captures ‘an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct’.¹²⁹

Such threshold differences affect the potential for relevant information to be gathered and made available for sharing under each scheme. In our view, given their different thresholds for reporting allegations, Victoria’s scheme is likely to be more limited than New South Wales’ reportable conduct scheme in this respect.

The New South Wales, Victoria and Australian Capital Territory reportable conduct schemes do not provide for inter-jurisdictional information exchange. The New South Wales information sharing scheme supports the operation of the state’s reportable conduct scheme only in relation to intra-jurisdictional information exchange. As we discuss later in this chapter, we have been told that the effectiveness of the New South Wales reportable conduct scheme is affected by difficulties in accessing relevant information from other jurisdictions.¹³⁰

Limited avenues for inter-jurisdictional information exchange may restrict the potential for state and territory reportable conduct schemes to complement and support each other in achieving their objectives.

Information sharing through registers

Registers (such as teacher registers or sex offender registers) provide platforms for collecting information and facilitating information exchange in a number of sectors across Australia. Some registers are principally in place to capture information that is relevant to child sexual abuse. Other registers have a different primary focus, but may also capture information potentially relevant to child sexual abuse. The efficacy of registers as information sharing mechanisms depends on a number of factors, including:

- who maintains the register – this may be the legal responsibility of a regulator or other authority
- what information is captured

- whether information on the register is correct and current
- who may access the register
- the level of access that is available to the information on the register.

Registers may be provided for by legislation or they can be organisation-specific and governed by an organisation's internal policies. Registers established pursuant to legislation include teacher registers, out-of-home care carer registers (although in some jurisdictions these are based on administrative arrangements) and sex offender registers. Some institutions also maintain their own registers of employees or personnel, notably those in the faith-based and sporting sectors. These registers are discussed briefly below.

Teacher registers

State and territory teacher registers are a key mechanism for sharing information about teachers. These registers primarily capture information about teachers' registration with the teacher registration authority as well as limited personal information. The registers may include information relevant to child sexual abuse – in particular, as it relates to disciplinary information about teachers. Requirements as to what information is collected through teacher registers varies across jurisdictions.

In Chapter 4, we make recommendations to improve the capacity of teacher registers to act as platforms to capture and share information about teachers relevant to risks of child sexual abuse, and to move towards a minimum level of national consistency.

Out-of-home care carers registers

Carers registers have been implemented in some jurisdictions to record information about persons who have applied to or are authorised to care for children in out-of-home care. The types of information recorded on these registers, and the authority responsible for the register, varies across jurisdictions.

In Chapter 4, we make recommendations to improve carers registers as information sharing platforms and to implement a minimum level of national consistency.

Sex offender registers

State and territory legislation establishes sex offender registers (variously named) in all jurisdictions. These registers are a mechanism to oblige individuals who have been convicted of certain sexual offences to report certain personal information to the police, rather than a mechanism for broader information sharing. Sex offender registers are discussed in detail in our *Criminal justice* report.

Registers in other sectors

A number of organisations maintain their own registers, including sporting and religious organisations. For example, Football Federation Australia maintains a national database of persons suspended from football activities and the Anglican Church maintains a national register for recording allegations against bishops, clergy and other church workers. In Volume 16, *Religious institutions* we examine existing national registers for information sharing in both the Catholic Church and the Anglican Church in Australia.

3.2.2 Reforming information sharing arrangements

We heard, in case studies and in consultations, about barriers to information sharing and the need for reforms – in law, policy and practice – to improve information sharing so as to better identify, prevent and respond to child sexual abuse. The Truth, Justice and Healing Council, the organisation coordinating the Catholic Church’s response to our inquiry, told us:

Throughout the Council’s period of engagement with the Royal Commission information sharing has consistently been identified by our stakeholders as an issue impacting on the safety of children in institutional contexts.¹³¹

Information sharing reforms are needed across a range of sectors. In this section we explain the need for reform and outline the approaches underpinning our recommendations.

The need for reform

The Australian information sharing landscape has been described as complex, confusing and fragmented.¹³²

As we noted earlier, institutions involved in providing services to or for children may be subject to both Commonwealth and state or territory privacy laws.¹³³ For these institutions, legislated limits on their capacity to share information may be exacerbated by confusion and uncertainty about the application of variable laws, especially in the context of inter-jurisdictional information exchange. As the Truth, Justice and Healing Council submitted:

Currently, the operation of state and federal privacy laws is not well understood and this uncertainty inhibits information sharing. It is very difficult for institutions to navigate the privacy environment. Clarification is needed.¹³⁴

Similarly, Wesley Mission Victoria told us that they believe the complexity of privacy legislation ‘still creates some confusion in the sector, even where legislation exists that allows for information sharing to protect children’. The organisation submitted that this needs to be considered along with ‘the complexities in balancing a child’s right to privacy and confidentiality

and their right to safety'.¹³⁵ Previous inquiries have also found that the complexity of 'inconsistent, fragmented and multi-layered privacy regulation' within and across Australian jurisdictions can be particularly problematic in the context of child protection.¹³⁶

The Australian Law Reform Commission (ALRC) considered the issues of inconsistent and fragmented privacy regulation, and the consequent negative effects on information sharing, in its 2008 report *For your information: Australian privacy law and practice*. The ALRC recommended that the *Privacy Act 1988* (Cth) be amended to exclude the application of state and territory laws dealing specifically with the handling of personal information by non-government organisations.¹³⁷ The ALRC also recommended that the Australian Government and state and territory governments develop and adopt an intergovernmental agreement in relation to consistent rules for the handling of personal information in their public sectors.¹³⁸ These recommendations have not been implemented.

Greater consistency in Australian privacy regulation, as recommended by the ALRC, may help institutions to better understand their information handling obligations and encourage them to take a less risk-averse approach to sharing information.¹³⁹ However, the implementation of reforms of such wide-ranging application raises a number of issues beyond our Terms of Reference.

Even where legislative arrangements for information sharing are established to overcome both privacy and confidentiality restrictions, the range of persons or institutions who may participate is generally limited. Such arrangements may also be limited to a particular sector or for a particular purpose (such as investigation or assessment). Often, these information sharing arrangements apply only in a particular jurisdiction.¹⁴⁰

Where arrangements do provide for inter-jurisdictional sharing, there are limits on the parties with whom the information can be shared and the purposes for sharing.¹⁴¹ Life Without Barriers, a major national provider of out-of-home care and other services, told us that 'One of the biggest issues facing designated [out-of-home care] agencies in NSW and elsewhere is the inability to exchange information with interstate child protection agencies'.¹⁴² They noted that many families with whom they work 'regularly move between states and jurisdictions'.¹⁴³ Similarly, the Northern NSW Local Health District told us they experience 'unrelenting difficulties with cross border child protection information exchange as we share a border with the state of Queensland'.¹⁴⁴

In summary, overlapping and inconsistent Commonwealth, state and territory privacy laws, combined with numerous and varying information sharing arrangements for different sectors, purposes and jurisdictions, have created a complex regulatory landscape. Research we commissioned observed:

The information sharing arrangements, legislation and terminology in the child protection context differ markedly across jurisdictions. This is likely to create impediments to information sharing due to lack of clarity and understanding among those with responsibilities in this area.¹⁴⁵

Information from our case studies, stakeholder consultations and commissioned research indicates that these complexities, and the difficulties for institutions in navigating through them, can heighten risks for children, as perpetrators move between institutions, sectors and jurisdictions, with relevant information about their history lagging behind, or never following them.

Our inquiry has highlighted the need for a clear statutory framework to overcome the limitations and complexity of current laws relating to information sharing. Clear laws that can be more easily understood and applied may increase confidence in information sharing and drive cultural change to overcome individual and organisational resistance to information sharing.¹⁴⁶ Harmonising inter-jurisdictional arrangements with intra-jurisdictional arrangements for information sharing will assist institutions operating in more than one jurisdiction and will generally provide greater clarity through consistency. This is likely to result in improved understanding and practice to better protect children.

Recent reform initiatives to improve information sharing

The need to improve laws and arrangements that govern information sharing in order to better protect children has been recognised by Australian governments and in a number of recent Australian inquiries.

At the national level, the National Framework for Protecting Australia's Children 2009–2020 (National Framework) includes commitments and initiatives by Australian governments for improving information sharing.¹⁴⁷ In particular, the Third Action Plan (2015–2018) for the National Framework includes a commitment to:

Address barriers to information sharing to allow easier information exchange within and across jurisdictions for government and non-government agencies where there are concerns about child wellbeing.¹⁴⁸

This includes sharing information about jurisdictional approaches to develop a best practice model of information exchange.¹⁴⁹ Work is currently underway at a national, state and territory level to improve inter-jurisdictional information sharing.¹⁵⁰ The Third Action Plan states that information sharing work under the National Framework will be informed by the recommendations of the Royal Commission.¹⁵¹

We also understand that the Third Action Plan has identified the need for a digital solution that supports jurisdictional child protection agencies to share information across borders and that the Australian Government has taken steps towards finding such a solution.¹⁵² We discuss this further in Section 3.4.3.

Separately, the Australian Government submitted to us that together with state and territory governments it has reviewed the National Quality Framework, which regulates early childhood

education and care services in each jurisdiction. The purpose of this review was to ‘assess the extent to which [the framework’s] objectives and outcomes are being achieved and whether the goal of improving quality in child care and early learning services is being met in the most efficient and effective way’.¹⁵³ As a result of the review, ‘information sharing provisions in the National Law [Education and Care Services National Law] will be strengthened’.¹⁵⁴

There have also been a number of recent developments in information sharing arrangements at the state and territory level, which we describe briefly in the following sections. These initiatives are a positive development, and reflect the importance of information sharing in keeping children safe in a variety of contexts. However, as jurisdictions develop and implement reforms separately, there is the potential for further complicating the legislative and administrative arrangements that govern information sharing. In addition to other limitations noted earlier, these jurisdiction-based initiatives do not, in the main, facilitate inter-jurisdictional information exchange.

New South Wales

New South Wales has recently passed legislation to facilitate inter-jurisdictional sharing of information about carers. This enables government and non-government out-of-home care service providers in that jurisdiction, as well as the New South Wales child protection agency and the NSW Children’s Guardian, to share carer assessment information directly with child protection agencies and out-of-home care service providers in other jurisdictions. However these legislative provisions apply in a limited context and enable one-way exchange only.¹⁵⁵

Victoria

The 2016 Victorian Royal Commission into Family Violence considered the importance of information sharing in the context of its inquiry. It noted that effective and appropriate sharing of personal information collected by organisations within the service system that responds to family violence, or that otherwise provide services to victims or perpetrators of family violence, is ‘crucial’ and plays ‘a significant role in keeping victims safe and holding perpetrators to account’.¹⁵⁶ It found that ‘improving information-sharing practices is a vital next step in the development of Victoria’s family violence system’.¹⁵⁷

In 2017, Victoria enacted the *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic) as part of a package of reforms to implement the recommendations of Victoria’s Royal Commission into Family Violence.¹⁵⁸ Pursuant to these recommendations, the legislation was intended to create ‘a purpose-built family violence information-sharing regime, removing legislative barriers to sharing relevant information and authorising a “trusted circle” of agencies to share information relevant to family violence risk assessment and management’.¹⁵⁹ The Royal Commission into Family Violence modelled their recommendations for an information sharing regime partly on Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).¹⁶⁰

As discussed earlier, Victoria has also introduced legislation to establish a reportable conduct scheme, which commenced on 1 July 2017.¹⁶¹ This legislation includes some limited provisions for information sharing.¹⁶²

Queensland

The 2013 Queensland Child Protection Commission of Inquiry's report, *Taking responsibility: A roadmap for Queensland child protection*, discussed the need for 'clear information-sharing procedures'.¹⁶³ The 2016 report of the Queensland Family and Child Commission, *When a child is missing: Remembering Tiahleigh – A report into Queensland's children missing from out-of-home care*, examined information sharing cultures.¹⁶⁴ It recommended a review of legislation, policies and practices relating to information sharing between the agencies responsible for 'undertaking internal risk assessments and decision making about the safety of all children in regulated service environments'.¹⁶⁵

In September 2016, the Queensland Department for Community Services released an options paper for consultation on changes to the *Child Protection Act 1999* (Qld), including an option for reforming the current tiered approach to information sharing under its safety and wellbeing information exchange scheme. This options paper proposed broadening Queensland's current information exchange provisions 'to enable information sharing between service providers, as well as an exchange of information between services and prescribed entities'.¹⁶⁶ The Queensland Child and Family Commission told us that, after considering the responses to this options paper, they supported this proposal.¹⁶⁷ We understand the Queensland Government has also updated protocols to improve information sharing between various government agencies.¹⁶⁸

Western Australia

In 2015, the Western Australian Government passed the *Children and Community Services Legislation Amendment and Repeal Act 2015* (WA). Section 30 of this Act amended the *Children and Community Services Act 2004* (WA) to establish an information exchange scheme, which commenced in January 2016. This scheme permits public authorities to share information related to the wellbeing of a child or class of children.¹⁶⁹ It also permits 'authorised entities' (prescribed non-government providers and the governing body of registered schools) to share such information with a public authority (but not with another authorised entity).¹⁷⁰ Public authorities may request such information from other public authorities and authorised entities, and authorised entities may request information from a prescribed authority (but not another authorised entity).¹⁷¹ However, there is no requirement that either public authorities or authorised entities provide information following an appropriate request.

South Australia

As discussed earlier in this chapter, following the South Australian Child Protection Systems Royal Commission (resulting in the report *The life they deserve*),¹⁷² South Australia enacted the *Children and Young People (Safety) Act 2017* (SA) to establish a safety and wellbeing information sharing scheme.¹⁷³ This scheme will provide for more limited information sharing than that under the New South Wales and Northern Territory schemes.

The *Public Sector (Data Sharing) Act 2016* (SA) facilitates the sharing of data by South Australian public sector agencies. 'Data' is defined in the Act as 'any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means)'. This legislation aims to 'extend the reach of data sharing by enabling the Government to work with the Commonwealth, other states or territories, local councils and the non-Government sector' and 'addresses concerns raised' in the Child Protection Systems Royal Commission about the failure on the part of agencies to share information despite the existence of the Information Sharing Guidelines.¹⁷⁴

Tasmania

The Tasmanian Government told us:

In Tasmania, intra-jurisdictional information sharing barriers are beginning to be addressed through initiatives such as the *Strong Families – Safe Kids* Common Statement, which is looking to establish an up-front, in-principle agreement between Tasmanian State Government agencies and State funded non-government organisations with respect to child safety information sharing ... the Common Statement is focused on information sharing for the direct protection of individual children.¹⁷⁵

However the Tasmanian Government also noted that its key legislation relating to information sharing for the safety and wellbeing of children, the *Children, Young Persons and their Families Act 1997* (Tas) and the *Personal Information Protection Act 2004* (Tas), 'have only broad references to information sharing and may, actively or passively, act as a barrier to contemporary information sharing needs'.¹⁷⁶

Australian Capital Territory

As noted earlier, the Australian Capital Territory has passed legislation to establish a hybrid reportable conduct and information exchange scheme, which commenced on 1 July 2017.¹⁷⁷ The information sharing provisions under this hybrid scheme are more limited than those under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

Northern Territory

The Royal Commission into the Protection and Detention of Children in the Northern Territory (Northern Territory Royal Commission) released an issues paper in April 2017 on child protection. The issues paper noted that the needs of children and their families can be multiple and complex, and that 'Consequently, it is essential that government agencies and service providers co-operate and co-ordinate their support and services to clients and promote information sharing between each other'.¹⁷⁸ The issues paper posed a number of questions, including:

- Is there sufficient information sharing between child protection authorities and youth justice authorities to provide adequate information, support and services to children and their families?

- What are the barriers to information sharing and how could information sharing be improved?
- What improvements or changes need to be made to the way information is shared between government agencies about the needs and circumstances of children and their families to ensure effective delivery of appropriate services and support the best possible outcomes for children?
- What improvements or changes need to be made to the way information is shared between government and community service providers about the needs and circumstances of children and their families to ensure effective delivery of appropriate services and support the best possible outcomes for children?¹⁷⁹

At the time of writing the Northern Territory Royal Commission was scheduled to publish its final report in November 2017.

The need for a national approach

Given the ease with which persons who pose a risk to children can travel across jurisdictions, any weakness in the regime for exchanging information between states and territories can pose significant risks to children.¹⁸⁰

A nationally consistent approach to sharing information about the safety and wellbeing of children, which applies within and across sectors and jurisdictions, may better protect all children, including children in institutional contexts, by:

- reducing complexity and promoting certainty and confidence in information sharing, particularly for organisations that operate in multiple states and territories¹⁸¹
- enabling and supporting consistency in information exchange within and across jurisdictions¹⁸²
- reducing the compliance burden on organisations providing services, which are currently subject to different and complex rules for information sharing
- contributing to the achievement of equal protection for children across Australia.

Our consultations have indicated there is strong support for reform to put in place nationally consistent arrangements for information sharing.¹⁸³ As the New South Wales Government submitted, ‘Considerable benefits could be realised from an improved national approach to child protection information sharing’.¹⁸⁴ Similarly, Anglicare Australia told us, ‘It would be beneficial for all jurisdictions to have consistent arrangements that govern the sharing of information between agencies and across jurisdictions’.¹⁸⁵

The Truth, Justice and Healing Council submitted that without a national approach to information exchange, ‘children may remain at risk given a person’s current ability to easily move across jurisdictions’.¹⁸⁶ As noted in our *Working With Children Checks* report, in Australia more than 300,000 people move across jurisdictional borders each year, and this figure does not include temporary movements to other states or territories.¹⁸⁷ The Tasmanian Government told us:

The children who need protecting, the perpetrators and the institutions, organisations and government agencies dealing with the issues are not confined by jurisdictional boundaries. It is desirable that any response should also be able to function across these boundaries.¹⁸⁸

Responding to our *Information sharing* discussion paper, National Disability Services (NDS) expressed strong support for the ‘development of a set of principles that will give practical effect to sharing information across agency and organisational boundaries’ and advocated for national consistency in approaches to prevention of and response to abuse for people with disability.¹⁸⁹ According to NDS, nationally consistent approaches will achieve reduced complexity for organisations and workers when interacting with systems; reduced cost and red tape for organisations; and increased public understanding and confidence in safeguarding systems.¹⁹⁰

Achieving a national approach

The success of any information sharing regime will in part rely on uniform/complementary legislative provisions across states and territories.¹⁹¹

In our view, nationally consistent arrangements should be established in each jurisdiction for the exchange of information about children’s safety and wellbeing, including information relevant to child sexual abuse in institutional contexts. The scope of information that should be included is considered later. The national scheme should apply to nominated institutions and agencies with responsibilities for children’s safety and wellbeing and operate both intra-jurisdictionally and inter-jurisdictionally.

We consider that this national scheme would be best achieved through consistent corresponding legislation in each jurisdiction, supported by administrative arrangements.¹⁹² The inter-jurisdictional operation of the scheme could be achieved by laws, in each jurisdiction, that provide for prescribed bodies to share relevant information with bodies prescribed under corresponding legislation in other jurisdictions.

Comprehensive recommendations outlining all the features of such a scheme are beyond the scope of the Royal Commission’s inquiry. Our focus on child sexual abuse in institutional contexts is a limited lens through which to design information sharing arrangements that would operate to address broader concerns about children’s safety and wellbeing. In our view, the Australian Government and state and territory governments should work together to refine the components of a nationally consistent information exchange scheme. The considerations that governments should take into account in the design of such a scheme are set out later in this chapter.

As discussed earlier, some of the existing schemes for the exchange of safety and wellbeing information under state and territory child protection legislation schemes – for example, the New South Wales and the Northern Territory schemes – operate more widely than others in relation to the types of information that can be shared and the range of institutions that can share, request and receive information under the schemes. We do not suggest that existing intra-jurisdictional arrangements for sharing information should, through the implementation of the national scheme we recommend, be narrowed. Rather, implementation of a national information exchange scheme should ensure a minimum level of consistency in arrangements for intra-jurisdictional and inter-jurisdictional information exchange.

An intergovernmental agreement to establish equivalent arrangements in all jurisdictions would be required to ensure national consistency in the elements of the scheme. On this issue, the Australian Government commented, in its response to our *Information sharing* discussion paper, that it ‘would need to consult and collaborate with the states and territories in order to implement any reforms recommended by the Royal Commission which cross jurisdictions’.¹⁹³ We note also the Australian Government’s concern that ‘reform can be a very long and complex process’.¹⁹⁴ However, the benefits of a scheme that facilitates the exchange of information related to the safety and wellbeing of children throughout Australia far outweighs the potential challenges involved in reaching an intergovernmental agreement on the elements of the scheme.

In particular, the potential benefits of a nationally consistent information exchange scheme could include:

- clear authority for organisations with responsibilities for children’s safety and wellbeing to share information with a relevant body, irrespective of where that body operates
- a single point of reference for the law relating to information sharing, cutting through the complexity of current legislation and policy
- a basis for workforce training and the development of protocols and procedures for information sharing
- a basis for professionals to confidently share information with relevant bodies with responsibilities related to the safety and wellbeing of children.

A model for an information exchange scheme

Of the existing information exchange schemes, the New South Wales scheme appears to offer the most promise as a model for a nationally consistent scheme for intra- and inter-jurisdictional information sharing to protect children.

The Northern Territory scheme, under Part 5.1A of the *Care and Protection of Children Act* (NT), has a number of similar features.

Purpose of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) was introduced in New South Wales in 2009 in response to the Special Commission of Inquiry into Child Protection Services in New South Wales (the Special Commission). The Special Commission noted many barriers to ‘effective interagency cooperation’¹⁹⁵ in protecting vulnerable children in New South Wales. Such barriers were legislative, administrative, procedural and geographic in nature.

In addition to a number of recommendations aimed at increasing interagency cooperation, the Special Commission recommended that the *Children and Young Persons (Care and Protection) Act 1998* (NSW) be amended to enable direct exchange between relevant agencies, including non-government organisations, of information related to children’s safety, welfare and wellbeing.¹⁹⁶

Chapter 16A was introduced to resolve the ‘complex relationship between privacy legislation, agency privacy codes of practice and access to information under the *Children and Young Persons (Care and Protection) Act 1998*’, which was identified by the Special Commission as an impediment to information sharing.¹⁹⁷

The object of Chapter 16A is to facilitate the provision of services to children by agencies that have responsibilities relating to the safety, welfare or wellbeing of children and young persons, by:

- authorising and, in some circumstances, requiring them to exchange information relevant to their provision of those services with each other
- requiring them to take reasonable steps to coordinate the provision of those services with each other.

The strength of Chapter 16A is that it facilitates information sharing in and across numerous sectors to support institutions and others exercising functions related to the safety and wellbeing of children, including service provision, planning, decision-making, assessments, investigations and risk management. In particular, the New South Wales scheme:

- applies to a wide range of government and non-government agencies and organisations, as well as some individual service providers ('prescribed bodies')
- requires prescribed bodies to provide relevant information on request from other prescribed bodies, subject to limited exceptions
- allows prescribed bodies to provide relevant information to other prescribed bodies without a request for that information ('proactive information sharing')
- explicitly prioritises the safety, welfare and wellbeing of children over confidentiality and an individual's right to privacy
- aims to promote interagency communication and collaborative practice.

Chapter 16A was enacted to facilitate exchange of information related to children's 'safety, welfare and wellbeing' in a broader child protection context than that under consideration by the Royal Commission. However, as we discuss later (see Section 3.3.2), we consider a similarly wide formulation of 'information related to safety and wellbeing' to be useful for capturing information relevant to child sexual abuse in institutional contexts.

Stakeholders with experience in the operation of Chapter 16A have told us about the effectiveness of the New South Wales scheme.¹⁹⁸ The Truth, Justice and Healing Council, for instance, said that the information sharing provisions 'have been a welcome and extremely positive initiative'.¹⁹⁹ The benefits of the New South Wales scheme, described by stakeholders, include that it:

- has helped to 'set aside the privacy debate'²⁰⁰
- enables information from a variety of sources to be easily gathered to better inform assessments of and responses to children at risk²⁰¹
- results in the sharing of significantly more information than was the case prior to its introduction²⁰²
- provides significant scope for prescribed bodies to 'proactively share risk-related information to promote the safety, welfare and wellbeing of children'.²⁰³

These comments are consistent with a 2015 review of information sharing arrangements in New South Wales that found 'information sharing in child welfare has improved considerably across the board as a result of the change of legislation [the enactment of Chapter 16A] and the training and organisational support for these changes'.²⁰⁴ Similarly, reviews in 2013 and 2014 of *Keep them safe: A shared approach to child wellbeing (Keep them safe)* – the New South Wales Government's action plan implemented in response to the recommendations of the Special Commission of Inquiry into Child Protection Services in New South Wales – reported that the

introduction of Chapter 16A had been a positive development.²⁰⁵ In particular, the 2014 review stated, 'This change is widely seen as enabling information sharing between agencies' and 'Stakeholders confirmed that this has been a real "game changer"'.²⁰⁶

Other inquiries have considered Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) as a model for information exchange schemes. The South Australian Child Protection Systems Royal Commission considered Chapter 16A before recommending that South Australian *Children's Protection Act 1993* (SA) 'be amended to permit and, in appropriate cases, require the sharing of information between prescribed government and non-government agencies with responsibilities for the health, safety or wellbeing of children, where it would promote those responsibilities'.²⁰⁷ The South Australian Royal Commission stated that the 'overriding consideration for these proposed arrangements should be the three principles ... from the NSW Act'.²⁰⁸ These three principles are discussed in detail in the next section.

As noted earlier, the 2016 Victorian Royal Commission into Family Violence recommended that a specific family violence information sharing regime be established, 'partly modelled' on Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).²⁰⁹ However, we also note the Western Australian Government's submission in response to our *Out-of-home care* consultation paper stated that a 2012 statutory review of the *Children and Community Services Act 2004* (WA) favoured a 'broader, less prescriptive legislative model than that of NSW'. The Western Australian Government adopted an approach of enabling, rather than requiring information sharing, in its 2016 amendments to this Act. In its submission, the Western Australian Government noted that, given experience of other (now repealed) legislation, its child protection agency may not be 'inclined to adopt more prescriptive legislation, which may introduce requirements that present barriers to information sharing rather than removing them'.²¹⁰ Contrary to this approach, however, there are research findings that 'Laws, regulations or policies that mandate information sharing have been identified as efficient enablers of information'.²¹¹

Other submissions in response to our *Out-of-home care* consultation paper and *Information sharing* discussion paper indicated strong support for a nationally consistent information exchange scheme based on the features of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), adapted to enable information sharing between jurisdictions.²¹² However, some stakeholders also told us about the need for improvement in information sharing practice under Chapter 16A. MacKillop Family Services told us that while they support an enhanced information sharing mechanism in line with Chapter 16A:

we note there have been some difficulties with implementation which should be considered prior to implementation in other jurisdictions. In MacKillop's experience, some agencies still do not understand their role and responsibilities in information sharing under Chapter 16A.²¹³

The Law Society of New South Wales told us that it has been informed by Aboriginal community controlled service providers that in practice in New South Wales it can sometimes be difficult to obtain information from the Department of Family and Community Services.²¹⁴ Some stakeholders

also expressed concerns about delays in receiving information requested under the New South Wales scheme. Uniting Church Australia told us that in New South Wales they have experienced ‘considerable delays (several months) in receiving information after we have requested it from the department under Chapter 16A’.²¹⁵ We discuss these concerns in further detail in Section 3.4.

In its submission to our *Out-of-home care* consultation paper, the New South Wales Government suggested particular features of the New South Wales scheme warranted further consideration in an inter-jurisdictional context. In particular the New South Wales Government noted that, for inter-jurisdictional information sharing, consideration should be given to whether other exceptions to information sharing obligations should be available.²¹⁶ It submitted, ‘Consideration should also be given to whether the list of prescribed bodies that may request relevant information under [Chapter] 16A is appropriate for a national framework’.²¹⁷ We consider the range of prescribed bodies and exceptions to information sharing obligations under our recommended information exchange scheme in Section 3.3.1.

Finally, we note concerns expressed by stakeholders about ‘the limitations of relying on one broad legislative provision to promote information sharing’.²¹⁸ The Australian Capital Territory’s Public Advocate, Children and Young People Commissioner and Victims of Crime Commissioner noted the possibility that different regulatory mechanisms may be needed to support information sharing about children who need protection or support, compared to the regulatory mechanisms needed to support information sharing to properly respond to allegations or suspicions of abuse and ensure perpetrators are identified and removed from contact with children.²¹⁹ We discuss the different types of information that may be shared under an information exchange scheme in Section 3.3.2 and the need for guidelines to support appropriate information exchange in Section 3.4.1.

Achieving effective legislative reform

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) begins by setting out the object and principles of the chapter. These include the following principles:²²⁰

- Agencies with responsibilities relating to the safety, welfare or wellbeing of children should be able to provide and receive information that promotes the safety, welfare or wellbeing of children.
- Those agencies should work collaboratively in a way that respects each other’s functions and expertise, and should be able to communicate with each other so as to facilitate the provision of services to children and young persons and their families.
- Because the safety and wellbeing of children is paramount, the need to provide services relating to the care and protection of children and the needs and interests of children and their families in receiving those services take precedence over protection of confidentiality or of an individual’s privacy.

The South Australian Child Protection Systems Royal Commission considered these principles and recommended that the overriding consideration of its proposed information exchange scheme should be these three principles from the New South Wales legislation.²²¹ However, these principles were not explicitly set out in the *Children and Young People (Safety) Act 2017* (SA), which was enacted in response to this recommendation.

These three principles may usefully inform the development of intergovernmental agreements to establish a nationally consistent information exchange scheme. We also believe there would be benefit in explicitly stating these, or similar, principles in the legislation and accompanying guidelines for the scheme.

In our view, the following high-level principles should guide the legislative reform processes required to implement our recommended information exchange scheme:

- The legislation should be clear and succinct, so that it can be easily understood and effectively applied by front-line workers.
- Although the legislation should clearly prioritise the safety and wellbeing of children over privacy and confidentiality, information exchange schemes should displace existing privacy protections only to the extent necessary.
- The potential for any unintended consequences – for example, reduced willingness of victims to disclose child sexual abuse – should be given careful consideration.
- The Australian Government and state and territory governments should work together to ensure that there is consistency in relation to the key features of the regime (discussed in the following section) to facilitate inter-jurisdictional information exchange.
- The legislation should allow for a staggered approach to including institution types in the scheme, which could entail phased application of the legislation to different institution types based on need and expected sector readiness, and/or later implementation rounds could prescribe new institution types for inclusion based on evaluation of the scheme's operation.
- A broad range of relevant parties – including government agencies, and other institutions with responsibilities related to children's safety and wellbeing, and privacy and information commissioners – should be consulted during development and implementation of the new regime to ensure the regime is balanced, workable and effective.

Guidelines will be required to underpin legislation to support those who need to make decisions about sharing information under the scheme, to promote timely and appropriate information sharing and to minimise any unintended adverse consequences as a result of sharing. We discuss these guidelines in Section 3.4.

The need for change in culture and practice

Legislative reform for clear and robust information sharing arrangements will potentially go a long way to overcoming barriers to information sharing. However, legislative reforms and the implementation of such arrangements alone are unlikely to be sufficient.

As discussed earlier, stakeholders have told us that even after the introduction of the New South Wales scheme, institutions prescribed under it sometimes have difficulties obtaining the information they need from other prescribed bodies, and encounter individual, institutional, and cultural resistance to information sharing.²²²

Previous inquiries and reviews have noted aspects of professional and organisational cultures that impede information sharing to protect children.²²³ Cultural divides (between child protection-focused and privacy-focused professional and organisational cultures) have been identified as barriers to collaborative work to protect children.²²⁴ A 2015 review of information sharing arrangements in New South Wales, prepared for the NSW Department of Premier and Cabinet, found that ‘The primary barrier to information sharing was ... risk-averse organisational cultures in which the protection of the agency was viewed as the overriding consideration in working with clients’.²²⁵ It is significant that this finding refers to information sharing practice in New South Wales following the introduction of a strong statutory framework for information sharing under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

More recently, the South Australian Child Protection Systems Royal Commission observed that:

A consistent theme in evidence before the Commission was that, in spite of the [South Australian Information Sharing Guidelines], many agencies fail to share information. The Commission was told of a persistent culture that privileges privacy and confidentiality over the need to share information relevant to the health, safety and wellbeing of children.²²⁶

Our case studies, particularly those considering religious institutions, demonstrate the role of poor governance and leadership in creating and maintaining cultures of secrecy that pose greater risk for children. In some cases, imperatives to uphold the reputation of the institution, and often a pastoral approach that prioritised the needs of the alleged perpetrators over the safety of children, have resulted in inadequate information sharing.²²⁷ We discuss this in greater detail in Volume 16, *Religious institutions*.

Our commissioned research on organisational culture has identified that certain institutional features, including the promotion of secrecy and withholding of information about the institution’s operation from clients, staff and others, are ‘particularly conducive to the perpetration of child sexual abuse and particularly resistant to its speedy detection and an effective response’.²²⁸ While, as our case studies demonstrate, these features are evident in some religious institutions, they are not confined to this sector. It has been suggested, for

example, that schools, hospitals, sports clubs and scouts clubs may also often operate as ‘closed systems’ resistant to influence from outside the institution.²²⁹ Such institutions would require a significant change in their culture and practice if they were to participate effectively in any future information exchange scheme.

In Section 3.4.2, we discuss ways of bringing about cultural change to overcome individual and organisational resistance to information sharing. In particular, education and training for all institutions and institutional staff with responsibilities for children’s safety will be necessary to promote understanding of and confidence in legislative and administrative arrangements for information exchange. Similarly, clear guidelines that can be easily applied by front-line workers will be necessary.

3.3 Elements of a national information exchange scheme

In this chapter, we outline the reasons for our recommendation that nationally consistent legislative and administrative information exchange arrangements be established in each jurisdiction. These arrangements should:

- provide for prescribed bodies to share information related to children’s safety and wellbeing, including information relevant to child sexual abuse
- establish an information exchange scheme to operate within and across Australian jurisdictions.

The establishment of this scheme will require consideration of a number of elements. In this chapter we outline the key elements that Australian governments will need to consider in establishing the scheme.

In doing so, we have drawn on the useful features of existing legislated information exchange schemes, particularly those of the New South Wales and Northern Territory schemes, established by Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and Part 5.1A of the *Care and Protection of Children Act* (NT). We have also considered the valuable features of existing non-legislative arrangements, such as the Information Sharing Guidelines in South Australia.

The key elements of our recommended information exchange scheme that should be consistent across jurisdictions are that the scheme:

- enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies and regulatory and oversight bodies, which have responsibilities related to children’s safety and wellbeing

- permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts
- require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions
- explicitly prioritise children’s safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts
- provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme
- require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such a person, except where to do so could place another person at risk of harm.

We recommend that Australian governments develop a minimum of nationally consistent provisions that address these elements. In the following section, we discuss the factors governments should take into account in determining the parameters of these elements. There are a number of complex issues that will require further consideration by governments, in consultation with relevant stakeholders. We also identify some issues which should be addressed in guidelines, rather than legislation.

3.3.1 Direct information sharing between prescribed bodies

We heard from many stakeholders about the importance of direct information exchange between a range of bodies (including government agencies, other institutions and service providers) with responsibilities related to the safety and wellbeing of children.²³⁰ As set out in this section, we consider on balance that ‘tiered’ information sharing arrangements, and arrangements where the child protection agency operates as an information sharing ‘hub’, are likely to create unnecessary complexity and may impede effective and efficient information sharing. Optimally, all bodies prescribed under the scheme should have equal capacity (and obligations) to share information with other prescribed bodies. However, we recognise that there are countervailing arguments to support the view that particularly sensitive material, including unsubstantiated or untested material regarding allegations, could or should be shared only through a tiered or ‘hub’ approach.

The range of institutions that fall within our Terms of Reference is very broad.²³¹ We do not recommend that all institutions that provide services or activities to or for children should be able to share information under our recommended information exchange scheme. Existing legislated information exchange schemes differ from one another in the range of bodies that are prescribed.

In our consultations, we sought comment on the adequacy of the range of prescribed bodies covered by the New South Wales scheme, whether this range should be aligned with other regulatory schemes and on the inclusion of specific types of institutions as prescribed bodies. The responses we received to these questions have informed our views on this issue.

In this section we discuss the appropriate range of prescribed bodies for the purposes of our recommended information exchange scheme, noting this will need to be the subject of an intergovernmental agreement.

Equal capacity and obligations for direct exchange of information

Before the introduction of the New South Wales scheme in 2009, the main arrangement for sharing information related to the safety and wellbeing of children in that jurisdiction was through the New South Wales child protection agency under section 248 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). This provision empowered the child protection agency to direct prescribed bodies to provide it with information related to the safety, welfare and wellbeing of children. It also empowered the child protection agency to provide prescribed bodies with safety, welfare and wellbeing information.

This allowed for indirect information sharing, with the child protection agency having the discretion to pass information it received on to others. However, it meant that the child protection agency had to be relied on as the ‘clearing house’ for this information.²³² While the New South Wales child protection agency has retained its information sharing power under section 248, the introduction of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) has overcome the need for such reliance on the child protection agency, at least within New South Wales.

Some safety, welfare and wellbeing information sharing arrangements continue to rely on jurisdictional child protection agencies to collect relevant information and pass it on to those who need it. As evidence and information before us, and other inquiries, have shown, reliance on jurisdictional child protection agencies to direct information where it needs to go may be misplaced.²³³ Without capacity for relevant bodies to seek and require information from the relevant child protection agency, as well as from other bodies, information may not be disseminated as widely or as quickly as it needs to be. According to our commissioned research, regimes that provide for lateral information sharing between front-line professionals in government agencies and non-government organisations offer a more effective approach.

There are risks in such an approach, as will be discussed. However, on balance, we consider that all prescribed bodies should have equal capacity and obligations for direct exchange of information with others under the scheme. Stakeholder consultations were generally supportive of this view.²³⁴ We were also told of the particular need for such arrangements to support information sharing with Aboriginal and Torres Strait Islander community-controlled agencies involved in child protection. The New South Wales Law Society submitted:

It is vital that there are effective information flows between the relevant child protection authority and the various agencies involved in child protection. This is particularly true in respect of information sharing between the child protection authority and Aboriginal community controlled agencies, given the overrepresentation of Aboriginal children and families in this jurisdiction. Given that the child protection authorities and the various service providers are all concerned with achieving outcomes that are in the best interests of the child, such information flows should be multi-directional and reciprocal.²³⁵

There may be exceptions to reciprocal information sharing obligations. For example, the New South Wales scheme allows prescribed bodies to share information with some federal courts. However these federal courts are not compelled to share information with prescribed bodies.²³⁶

In some jurisdictions, child protection legislation distinguishes between different classes of prescribed bodies in terms of what information can and must be shared.²³⁷ This appears to create complex tiered systems, as organisations in different tiers have different information sharing rights and obligations.²³⁸

The *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (also known as the 'Wood report') considered a proposal for a three-tier system for information sharing, with agencies at different tiers having different information sharing rights and obligations. The Special Commission concluded that such a three-tiered system 'may become unduly complex in its administration and require an elaborate ongoing process for classification of agencies falling within tiers two or three'.²³⁹

Research suggests that 'sharing information is often perceived to be complex by front-line workers and agency managers'²⁴⁰ and emphasises the importance of a clear statutory framework in promoting information sharing for child welfare.²⁴¹ In some cases, the additional complexity of a tiered system may undermine the effectiveness of such an information exchange scheme.

Relevant considerations for determining the range of prescribed bodies

In our view, the following principles should guide consideration of the range of bodies to be prescribed for the purposes of an information exchange scheme:

- Government agencies, other institutions and service providers that can share information under the scheme should be easily identifiable.²⁴²
- All jurisdictions should meet a minimum standard of consistency in the organisations that can share information under the scheme.
- The legislation or protocols supporting the scheme should allow for governments to add or remove prescribed bodies when and as agreed by all governments.

In order to effectively support institutional responses to incidents and risks of child sexual abuse, the legislative and administrative arrangements for an information exchange scheme should identify the range of prescribed bodies as clearly as possible.

There is currently some uncertainty about the breadth of organisations prescribed under the New South Wales information exchange scheme.²⁴³ The definition of prescribed bodies in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) includes, among others, ‘organisation[s] the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children’.²⁴⁴ Key terms identifying the range of prescribed bodies, such as ‘welfare’, ‘education’, and ‘children’s services’, are not defined.²⁴⁵ It is unclear how widely these terms have been interpreted in practice.

As discussed earlier, we heard that complex legal and administrative arrangements act as a barrier to information sharing. It is important that institutions that need to exchange information can do so confidently and promptly, without the delay and expense of complex legal advice as to whether they or the other party to the exchange are covered by the scheme.

In the following sections we outline factors we consider relevant to determining whether particular institution types should be prescribed for the purposes of an information exchange scheme. We have taken these factors into account in our consideration of particular institution types (and relevant individuals) to identify a core group that we consider should be included in our recommended information exchange scheme. We also identify other bodies whose inclusion, in our view, requires further consideration.

We anticipate that some jurisdictions may wish to include a wider range of bodies than may be agreed between all jurisdictions. For example, the Northern Territory currently includes lawyers and out-of-home care carers under its scheme.²⁴⁶ Other jurisdictions may not wish to include such groups for intra-jurisdictional information sharing, and may also be opposed to their inclusion for inter-jurisdictional sharing purposes.

Where inclusion of certain groups has not been generally agreed between all jurisdictions, the relevant jurisdiction may legislate to limit the participation of groups in the scheme to intra-jurisdictional information sharing only. We appreciate that this may add another layer of complexity, which we have generally cautioned against. However, such an approach may be necessary to avoid disagreement about the inclusion of particular groups derailing progress in implementing a scheme that can operate across all jurisdictions. Phased implementation and ongoing review of the scheme may also be needed to allow the inclusion (and exclusion) of other groups to be considered over time, as discussed later in the chapter.

The need for certain institution types to share information

In determining which institution types should – at a minimum – be included in an information exchange scheme, consideration should be given to the extent to which it may be necessary for a particular institution type to share information related to the safety and wellbeing of children beyond their ability to do so under current laws. We have identified a number of factors we consider relevant to the need for different institution types to share information under the scheme. These factors include:

- the nature and extent of children’s engagement with the institution type
- the level of risk of child sexual abuse in that institutional setting
- the nature and extent of the institution’s responsibility (compared with, for example, parental responsibility) for children’s safety and wellbeing
- the likelihood that the institution would hold relevant information that could assist other institutions in the scheme to respond to incidents and risks of child sexual abuse
- whether (and the degree to which) the institution’s response to incidents and risks of child sexual abuse could be assisted by the type of information shared under the scheme
- the capacity of the institution to make useful or valid risk assessments based on the information shared under the scheme.

The feasibility of including particular institution types

The powers and obligations of prescribed bodies under our recommended information exchange scheme are an important consideration. As well as considering the potential benefits of including particular institution types, it is also necessary to consider the feasibility of these institution types participating in the scheme. In this respect, the following factors are particularly relevant:

- the structure and governance, resources and workforce of the institution type
- the capacity of the institution type to appropriately disclose, use and safeguard personal and sensitive information exchanged under the scheme²⁴⁷
- the existence of, or potential for, regulatory and oversight arrangements to monitor and support appropriate handling and use of personal and sensitive information by the institution type

- the risk that the compliance burden of participating in the scheme would compromise the capacity of institutions of this type to function or provide services in the best interests of all children they serve.

Alignment with bodies included under other regulatory schemes

Our recommendations concerning information exchange schemes are part of a suite of recommendations to make institutions child safe. The scope of information exchange schemes need to be considered in the context of other regulatory schemes that contribute to making institutions child safe, particularly, reportable conduct schemes, WWCCs and child safe standards.

Volume 7, *Improving institutional responding and reporting* contains our recommendation that state and territory governments implement nationally consistent reportable conduct schemes.²⁴⁸ There are good arguments for aligning the range of bodies captured by reportable conduct schemes with those prescribed under our recommended information exchange scheme. A strong information exchange scheme should complement reportable conduct schemes in supporting institutional responses to abuse and risk. Information gathered through reportable conduct investigations should be shared by the reportable conduct oversight body with other regulators or oversight bodies to inform the exercise of their child protection functions. In addition, institutions with similar obligations (to identify and respond to ‘reportable conduct’) should be able to exchange information that would assist one another to meet reportable conduct obligations and, more generally, obligations for children’s safety.²⁴⁹

Stakeholders have told us about the benefits of the New South Wales scheme operating together with the New South Wales reportable conduct scheme. The alignment of reportable conduct bodies with those covered by Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) is an important aspect of this. However, different terminology is used to describe the bodies subject to reportable conduct obligations and those subject to information sharing obligations under Chapter 16A. This may create uncertainty as to whether all reportable conduct bodies are captured by Chapter 16A.²⁵⁰

The NSW Ombudsman has indicated that, along with clarification (and possible expansion) of the reportable conduct jurisdiction in New South Wales, consideration should be given to legislative amendments to clarify the reach of the prescribed body definition in Chapter 16A.²⁵¹

While consistency in the range of bodies subject to reportable conduct and information exchange schemes is desirable, complete alignment may not be feasible. There are compelling reasons for including small, unregulated institutions in a reportable conduct scheme, but including these same institutions in an information exchange scheme may raise some concerns. Such institutions may not be subject to privacy laws and may not have adequate governance arrangements or the capacity to manage sensitive personal information shared under the scheme. This is discussed later in Section 3.3.1, in relation to religious institutions and sport and recreation institutions.

In our *Working With Children Checks* report, we recommended that all people engaged in ‘child-related work’ should be required to hold a Working With Children Check.²⁵² Similarly, in Volume 6, *Making institutions child safe* we recommend that institutions that engage in child-related work should be required to meet 10 national Child Safe Standards. We have defined child-related work broadly.²⁵³ These recommendations mean that a wide range of institutions that provide services to or engage with children would be required to ensure their personnel have Working With Children Checks and comply with Child Safe Standards.

The range of prescribed bodies that come under our recommended information exchange scheme should not be as broad as the range of institutions that come under our definition of child-related work. This is because:

- the scope of institutions that engage in child-related work is much broader than the range of institutions prescribed under existing information exchange schemes
- there is variation in the extent to which some institutions that engage in child-related work provide services or activities that involve direct and unaccompanied contact with children, and therefore variation in the potential risk posed to children by these institutions
- small, unregulated institutions that engage in child-related work may not be subject to privacy laws, and may not have adequate governance arrangements or the capacity to manage sensitive and complex information shared under the scheme
- information exchange schemes impose a regulatory and cost burden on governments and institutions. If the scope of the scheme is too broad, it might impose a disproportionate cost and resource burden.

The core group of institutions that should be considered for inclusion

Having regard to our recommendations on the scope of reportable conduct schemes, and other considerations, Australian governments should consider including, as prescribed bodies under our recommended information exchange scheme, government and non-government agencies responsible for the provision or supervision of the following services:

- accommodation and residential services for children²⁵⁴
- childcare services²⁵⁵
- child protection services and out-of-home care services²⁵⁶
- disability services and supports for children with disability²⁵⁷
- education services for children²⁵⁸
- health services for children²⁵⁹
- justice and detention services for children.²⁶⁰

This list potentially embraces a very wide range of institutions, of different sizes and with varying governance arrangements and capacity to meet the safeguards we recommend. In developing an information exchange scheme, it will be important for governments to take a careful and phased approach in extending the scheme to particular institutions or categories of institution. Without such a phased approach, there is a high risk of administrative breakdown, the application of poor risk assessment processes, and unwarranted distribution of unsubstantiated information.

In addition to institutions that provide or supervise the services listed above, the following institutions should be considered for inclusion:

- state and territory government agencies and public authorities, law enforcement agencies, WWCC screening agencies and regulatory and oversight agencies (including, for example, teacher registration authorities)
- Australian Government agencies that may hold information relating to the safety and wellbeing of children²⁶¹
- professionals that provide key services and supports to children as individual service providers, rather than through agencies or organisations (such as medical practitioners and psychologists)²⁶²
- professional and disciplinary bodies that oversee professional practice in the institution types in the previous list.

Consideration may need to be given to the inclusion of some of these groups over time, rather than in the initial round of implementation. We consider the inclusion of other government and non-government institutions, including religious institutions and sporting organisations, later in this chapter.

Finally, we note that the New South Wales scheme is unique among current information exchange regimes in that it specifically provides for *parts* of organisations to be treated as ‘prescribed bodies’ for information sharing.²⁶³ It is unclear how this provision has been applied in practice and, in particular, whether it could apply beyond amalgamated public sector agencies²⁶⁴ to institutions where complex structures and governance arrangements may inhibit or interrupt the flow of information.

State and territory government agencies and public authorities

Different jurisdictions have adopted different approaches to including government agencies and public authorities as prescribed bodies in existing information exchange schemes. Some jurisdictions have adopted the approach of prescribing departments and authorities responsible for particular services or for administering particular Acts.²⁶⁵ In contrast, other jurisdictions have prescribed all public service agencies or public authorities within that jurisdiction.²⁶⁶

There are benefits to including all state and territory government agencies and public authorities in our recommended information exchange scheme. Many of these agencies or authorities have significant involvement in the provision of services to or for children, including direct provision of services, and funding and oversight of services contracted out to non-government organisations. The existing oversight and accountability mechanisms that apply to government agencies and public authorities mean that there are fewer concerns about the capacity of these bodies to participate in the scheme than there may be for some non-government organisations.

Including all of these authorities and agencies also simplifies the application of the scheme both within a jurisdiction, and between jurisdictions. The New South Wales Government did not advise us of any difficulties arising from the inclusion of all government agencies and public authorities under the New South Wales scheme. However, there may be some concerns that this approach unnecessarily widens the range of prescribed bodies.

Australian governments should give consideration to adopting the New South Wales approach of including all government agencies and public authorities as prescribed bodies and, at a minimum, those with responsibility for providing key child-related services such as childcare, education and health.

In the following sections we discuss the other state or territory authorities that we believe should be considered for first round implementation of the scheme: WWCC screening agencies, National Disability Insurance Scheme screening agencies, other regulatory and oversight agencies, police, and interagency investigation and response teams.

WWCC screening agencies: The entity that administers a jurisdiction's WWCC scheme (or equivalent) varies in each state and territory.²⁶⁷ In many jurisdictions, the WWCC scheme is administered by the government department responsible for justice or child protection matters. In New South Wales, the Children's Guardian acts as the out-of-home care and WWCC regulator.

In our *Working With Children Checks* report we recommended that WWCC screening agencies consider relevant criminal, disciplinary and misconduct information when assessing a person's suitability for a WWCC.²⁶⁸ It follows that WWCC screening agencies will hold information relevant to the safety and wellbeing of children. We also recommended that the only possible outcomes for WWCCs across all jurisdictions should be that a clearance is issued or not; rather than a system where a WWCC clearance can be granted limited to specific roles or subject to conditions.²⁶⁹ The NSW Ombudsman has noted:

we have concerns that – because the new WWCC scheme is based on issuing either a blanket 'bar' or 'clearance' to work with children – an employer cannot be confident that a person who has been cleared to work with children does not have any past known conduct issues which indicate that they 'may pose a risk to the safety of children'.²⁷⁰

Inclusion of WWCC screening agencies as prescribed bodies under the recommended information exchange scheme would allow those employers to request risk-related information for the purposes of their own screening processes, or to assist them in a reportable conduct investigation.

It would also enable information sharing between WWCC screening agencies and other relevant bodies in different jurisdictions. As we noted in our *Working With Children Checks* report, there is currently no system to facilitate the sharing of disciplinary or misconduct information across borders. This means a person could have adverse disciplinary records from one jurisdiction that may preclude them from working with children, but move to another jurisdiction where this information is not available and be cleared for a WWCC.²⁷¹

In her response to our *Information sharing* discussion paper, Ms Kerry Boland, the then NSW Children's Guardian, noted consultation undertaken by her office 'regarding the merits or otherwise of providing to organisations information relied upon in determining whether to grant a person a WWCC clearance'. Ms Boland told us that:

In practice, this would provide for the Children's Guardian to share with organisations information indicating potential risk, but insufficient to refuse a person a clearance to work with children. Agencies involved in the consultation were overwhelmingly of the view that this would undermine the purpose of the WWCC and provide a disincentive to organisations undertaking their own probity checks. Organisations indicated that providing this information would be of limited value to employers.²⁷²

We recognise the value of WWCCs that provide a clear result that a person may or may not engage in child-related work, rather than a risk assessment result that leaves the final decision to the employer.²⁷³ However, submissions from other stakeholders, such as the NSW Ombudsman, argue that in some cases an information exchange scheme can supplement WWCCs that provide little or no information beyond a clearance or bar.²⁷⁴ The Centre for Excellence in Child and Family Welfare, the peak body for nearly 100 child and family services in Victoria, told us that in its consultation with its members it had identified that:

There is a problem in Victoria with sharing of information in relation to a negative interim or confirmed Working with Children Check. No information is provided to the kinship care agency when these negative checks are returned. Foster care agency staff therefore find it very difficult to support the carers not to have contact with the person who has received the negative check (because no reasons can be given). This can jeopardise the safety of children.²⁷⁵

We do not recommend that legislation establishing our recommended information exchange scheme should oblige prescribed bodies to seek information, or that it should impose a blanket obligation to provide information on request. In Section 3.3.2, we discuss the circumstances in which we believe prescribed bodies should be able to seek and provide information. In these circumstances, the WWCC screening agency would only be obliged to share information if it was

satisfied that such information might assist the recipient to meet its responsibilities related to children's safety and wellbeing. A number of exceptions could also apply to relieve the WWCC screening agency of the obligation to share all or part of the information sought by another prescribed body.

National Disability Insurance Scheme screening agencies: In their response to our *Information sharing* discussion paper, National Disability Services, the national peak body for non-government disability service providers, commented on the need for information sharing reform in the disability service context. National Disability Services told us the National Disability Insurance Scheme (NDIS) will require 'new collaborative forms of information sharing between entities that fund supports, regulate the service system and provide supports'.²⁷⁶

The 2017 NDIS Quality and Safeguarding Framework states that a nationally consistent screening process will be developed for all workers engaged by NDIS providers and the National Disability Insurance Agency that have significant contact with people with disability as part of their work or role.²⁷⁷ Under that framework, state and territory governments will maintain operational responsibility for worker screening.²⁷⁸ Given the potential for workers to move between child-related and disability sectors, consideration should also be given to including state and territory screening agencies under the NDIS as prescribed bodies in each jurisdiction. We discuss the need for the NDIS registrar to be included in our recommended information exchange scheme later in the chapter.

Oversight and regulatory authorities: We heard from stakeholders how a strong information exchange scheme may complement regulation and oversight schemes in supporting institutional responses to incidents and risks of child sexual abuse.

We have been told that in New South Wales the WWCC scheme, the reportable conduct scheme, and the regulation of key sectors like out-of-home care are supported by a robust interagency information exchange scheme under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).²⁷⁹ In particular, we heard that the NSW Ombudsman's monitoring and oversight powers under the New South Wales reportable conduct scheme,²⁸⁰ combined with the broad scope for information exchange provided by Chapter 16A, facilitates effective collaboration between the Ombudsman's office and a wide range of government and non-government agencies to address child sexual abuse in institutional contexts.²⁸¹ As discussed later in this section, this collaboration was illustrated in evidence in *Case Study 41: Institutional responses to allegations of the sexual abuse of children with disability (Disability service providers)*.²⁸²

Similarly, we heard that, in the Australian Capital Territory, 'strong communication and referral systems between ACT Policing, Children and Youth Protection Services, Access Canberra (which operates the Working with Vulnerable People Scheme), and the Ombudsman (which administers the reportable conduct scheme), could achieve significant additional protection for children, by ensuring allegations of abuse in children's services are properly dealt with'.²⁸³

Regulation and oversight agencies often have legislative powers to share information in the exercise of their specific functions. However, we heard that there are various limits on their ability to share information relevant to child protection.²⁸⁴ *Case Study 15: Response of swimming institutions, the Queensland and NSW Offices of the DPP and the Queensland Commission for Children and Young People and Child Guardian to allegations of child sexual abuse by swimming coaches (Swimming Australia and the DPP)* demonstrated that regulators may be reluctant to share personal information they have gathered with other relevant entities beyond their specifically legislated power to do so in the exercise of their functions.²⁸⁵

In the *Swimming Australia and the DPP* case study, Ms Michelle Miller, the former Director of Employment Screening Services at the Queensland Commission for Children and Young People and Child Guardian (CCYPCG) gave evidence that, although the CCYPCG had serious concerns and accepted that Mr Scott Volkens was an inappropriate person to be involved with organisations that work with children, confidentiality provisions prevented the CCYPCG from sharing this information with Mr Volkens's employer.²⁸⁶

Inclusion in an information exchange scheme would allow regulators to work collaboratively and to share information with other bodies in order to assist them to fulfil their responsibilities for children's safety and wellbeing.²⁸⁷ It would also allow regulatory and oversight agencies to share information with their counterparts in other jurisdictions.

We heard that weaknesses in inter-jurisdictional information sharing arrangements can frustrate or limit the operation of regulatory and oversight schemes to protect children. The NSW Ombudsman has told us, for example, that where alleged reportable conduct has occurred outside New South Wales, difficulties can arise in relation to obtaining relevant information held by employers from other jurisdictions.²⁸⁸

For these reasons, bodies with oversight of a reportable conduct scheme and other regulation and oversight agencies with responsibilities for the safety and wellbeing of children should be prescribed bodies under an information exchange scheme.

In Chapter 4, we give further consideration to the application of an information exchange scheme to regulatory and other authorities in the schools and out-of-home care sectors – in particular, how the scheme would operate to support and complement the registers (for teachers and carers) that they manage.

Police: Jurisdictions generally include the police as a prescribed body under their information exchange schemes.²⁸⁹ We agree with this approach. Police often hold information that may assist other institutions or agencies to assess and manage risk, and undertake investigations into incidents of child sexual abuse. However, there are also risks that inappropriate information sharing may compromise police investigations and other criminal justice processes. In Section 3.3.2, we discuss a number of exceptions to information sharing obligations that we believe governments should consider – including where sharing information would prejudice the investigation of a possible contravention of a law in any particular case.

As well as assisting other prescribed bodies, inclusion of police in an information exchange scheme would also assist police to obtain relevant information. In response to our consultation paper on criminal justice, ACT Policing submitted that privacy laws complicate information sharing with other agencies in the Australian Capital Territory. ACT Policing recommended that an agreement should be developed that allows agencies to freely share information when it relates to an allegation of criminal behaviour. They argued that such an agreement would not only assist police, but also relieve stress on victims, as they would no longer need to assist police to gather evidence from other agencies.²⁹⁰

We have also been told that in some cases institutions have found it difficult to obtain information from police where an allegation of child sexual abuse has been made against a member of that institution. In *Case Study 50: Institutional review of Catholic Church authorities (Institutional review of Catholic Church authorities)*, we heard evidence that even where police decided not to investigate a matter, a Catholic institution found it difficult to get information from police to enable that institution to undertake a risk assessment ‘to look at where we go from here and for our own internal investigation’.²⁹¹

In our *Criminal justice* report, we concluded that police and institutions conducting their own investigations should try to avoid the institution duplicating steps already taken by the police, particularly in relation to interviewing victims and other affected parties.²⁹² Information sharing is a critical part of achieving this. We discuss circumstances where police may share information related to untested and unsubstantiated allegations, subject to appropriate safeguards, further in Section 3.3.2.

Interagency investigation and response teams: In many jurisdictions, information related to the safety and wellbeing of children may be shared within interagency investigation and response teams. These teams (established either by legislation or policy) generally include representatives from the child protection agency, the police force, and other agencies such as a relevant health agency.²⁹³

Interagency investigation and response team arrangements facilitate information sharing among the team members to protect children in institutional and other contexts. We heard about the important role these teams play in identifying, preventing and responding to child sexual abuse. For example, we were told about the implementation in New South Wales of Joint Investigation Response Team (JIRT) Local Contact Point Protocols, which enable JIRTs to support institutions in a number of ways, including by advising on information sharing in the context of current allegations.

The operation of these teams has many benefits for the protection of children. Effective and appropriate information exchange is only one of a number of tools necessary for such interagency teams to operate well.²⁹⁴ However, if these teams are not clearly included in an information exchange scheme this may limit their capacity to share the important information they gather – especially inter-jurisdictionally – with those who need it.

The members of these interagency teams (police, the jurisdictional child protection agency and others) are already included as separate entities in existing information exchange schemes. However, as we learned in the *Disability service providers* case study, the New South Wales scheme also operates to capture information held by JIRTs by prescribing them as entities in themselves. In our view, provisions for our recommended information exchange scheme should ensure that each of these jurisdictional interagency joint response teams is captured as a specific body. That may be achieved most simply by including all public authorities as prescribed bodies, as is the current approach under the New South Wales scheme.

Australian Government agencies

We heard from a number of stakeholders that state and territory agencies, and other institutions, should be able to share information with some Australian Government agencies that hold information about children.²⁹⁵

Some federal courts, and the Australian Government Department of Human Services and the Department of Immigration and Citizenship (now known as the Department of Immigration and Border Protection), are covered by the New South Wales scheme.²⁹⁶ This allows or requires (depending on the circumstances) prescribed bodies in New South Wales to share information with these Australian Government agencies. However, these Australian Government agencies are not compelled to share information with other prescribed bodies under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).²⁹⁷

Options to improve information sharing with relevant Australian Government agencies include:

- permitting and requiring (depending on the circumstances) state and territory prescribed bodies to share information with relevant Australian Government agencies by prescribing those Australian Government agencies in state and territory legislation. Such state or territory legislation would not authorise or require Australian Government agencies to share information with other prescribed bodies
- permitting and requiring information sharing by and with relevant Australian Government agencies by:
 - prescribing relevant Australian Government agencies in state and territory legislation to permit or require (depending on the circumstances) other bodies prescribed under that state/territory legislation to share information with the prescribed Australian Government agencies
 - prescribing relevant Australian Government agencies in equivalent Commonwealth legislation to permit or require (depending on the circumstances) those agencies to share information with each other and with other bodies prescribed under state and territory legislation

- expanding an existing protocol that facilitates information sharing between Australian Government and state and territory agencies, such as the Information Sharing Protocol Between the Commonwealth and Child Protection Agencies (Information Sharing Protocol). This protocol currently provides for information sharing between jurisdictional child protection agencies across Australia and key Australian Government agencies (Centrelink, Medicare, and the Child Support Agency) which hold information that may be necessary to promote the ‘care, safety, welfare, wellbeing and health’ of children in Australia.²⁹⁸

As regards this final option of expanding the Information Sharing Protocol, a 2011 operational review of the Information Sharing Protocol observed that ‘consultations with state and territory child protection agencies indicated an overwhelmingly positive view of the Protocol as a useful tool in obtaining relevant information that well complemented other information sources’. It found that, with a few exceptions, the Information Sharing Protocol processes were generally adhered to by parties to the protocol.²⁹⁹

That review also noted that stakeholders identified the Department of Immigration and Citizenship (now the Department of Immigration and Border Protection) as ‘another entity holding information that is potentially useful for child protection processes’.³⁰⁰ However, the secrecy and confidentiality provisions administered by the Department of Immigration and Border Protection may limit the amount of information sharing that agency could engage in.³⁰¹

In its submission to our *Information sharing* discussion paper, the Australian Government stated that some Australian Government agencies have ‘expressed the view that relevant [Australian Government] agencies should be included in the range of prescribed bodies [under the proposed scheme] and that all [these] agencies should have equal capacity and obligations to share information’.³⁰² In particular, the Australian Government told us:

[The Department of Immigration and Border Protection] would like the [Information Sharing Protocol] to be expanded to include [that department], but notes that such an extension may not resolve issues regarding the ability to collect information from state and territory agencies where [the department] is not a prescribed body for the purposes of their legislation. [The department] is often not an agency that is ‘specified or prescribed’, which can present difficulties when it has children for whom the Minister [for Immigration and Border Protection] is responsible, and the information is required to plan, and provide services to support those children.³⁰³

The Tasmanian and New South Wales governments submitted that relevant Australian Government agencies that hold information relating to the safety and wellbeing of children should be included as prescribed bodies.³⁰⁴ This would allow agencies or institutions prescribed under state and territory legislation to make requests for information directly to the relevant Australian Government agency. This position was supported by some non-government agencies.³⁰⁵ The Truth, Justice and Healing Council told us:

The Commonwealth should be part of the information sharing scheme and relevant Commonwealth agencies which hold relevant information relating to the safety and wellbeing of children, including for example health, social services and immigration and perhaps also bodies such as the Family Court, should be subject to legislation requiring appropriate information sharing with prescribed bodies.³⁰⁶

State and territory governments should consider prescribing relevant Australian Government agencies in their legislation to enable other prescribed bodies in that state or territory to directly share information with those agencies. The Australian Government and state and territory governments should work together to determine which agencies should be prescribed. Relevant Australian Government agencies may include Centrelink, Medicare, the Department of Health and Human Services, the Department of Immigration and Border Protection, and the Australian Federal Police. Consideration should also be given to including the NDIS registrar, or other relevant agencies that may hold relevant information gathered through the NDIS scheme.³⁰⁷

The Australian Government should consider enacting corresponding legislation that gives relevant Australian Government agencies the same capacity and obligations to share information as bodies prescribed under state and territory legislation. This would enable those agencies to share information related to the safety and wellbeing of children with other bodies prescribed under Commonwealth legislation, as well as bodies prescribed in each state and territory.

The Australian Government and state and territory governments could also consider whether expanding the Information Sharing Protocol to include the Department of Immigration and Border Protection, and any other relevant Australian Government agency, would facilitate information sharing with state and territory child protection agencies, irrespective of whether those agencies are included in the recommended information exchange scheme.

The 2016 report of the Child Protection Panel, *Making children safer: The wellbeing and protection of children in immigration detention and regional processing centres*, recommended that the Department of Immigration and Border Protection ensure that all relevant information on the history and background of a child victim and a person of interest³⁰⁸ is communicated to all relevant stakeholders (including state and territory authorities) when the child or person of interest is moved within or outside the immigration detention network.³⁰⁹ In *Case Study 51: Institutional review of Commonwealth, state and territory governments*, a representative from the Department of Immigration and Border Protection indicated the department accepted this recommendation.³¹⁰ Including the Department of Immigration and Border Protection as a prescribed body, able to share information with bodies prescribed under state and territory legislation, would enable the implementation of this recommendation.

Non-government organisations that provide particular services to children

A significant proportion of activities and services for children are provided by non-government organisations, including services provided under contract from government. However, the evidence and information before us indicates that non-government organisations sometimes experience difficulty obtaining access to the information they need to prevent and respond to child sexual abuse. In particular, non-government service providers (such as out-of-home care providers) may not have access to relevant information held by or available to government agencies providing the same services or operating in the same sector (such as child protection agencies and government out-of-home care providers).³¹¹

As more government services are contracted out, additional challenges for information sharing may be created. For example, as out-of-home care placements are transferred from government to non-government providers, relevant records about carers and children in care may be dispersed and become fragmented.³¹² Limited access to relevant information may create greater risk for children participating in services provided by non-government organisations.

The extent to which non-government organisations are captured by existing information exchange schemes under child protection legislation varies. Some institution types, such as non-government out-of-home care providers and non-government schools, are covered in most jurisdictions.³¹³

The capacity of non-government organisations to disclose and obtain relevant information under existing information exchange schemes also varies.³¹⁴ In some jurisdictions, non-government organisations have the same capacity and obligation for sharing information as other prescribed bodies.³¹⁵ In others, the information exchange regime permits non-government providers to share information with a public authority, but not with another prescribed non-government body.³¹⁶ As discussed earlier, we consider that all bodies prescribed under our recommended information exchange scheme should have the same capacity and obligations to share information.

Consideration should be given to progressively including, as a minimum, non-government institutions that have direct responsibility for providing or supervising accommodation and residential services for children; childcare services; child protection services and out-of-home care services; disability services and supports for children with disability; education services for children; health services for children; and justice and detention services for children.

These categories of service provision potentially embrace a wide range of non-government organisations. Some will be large, sophisticated and well-resourced organisations that operate nationally or even internationally. Others will be small, locally based organisations with low revenue streams and a reliance on volunteers to provide services to children. The challenges for government in negotiating and regulating an information exchange scheme that appropriately recognises the needs and interests of the diverse non-government sector in this context should not be underestimated.

Non-government organisations involved in the provision of services to or for children are not always funded or contracted by government. Unlike other jurisdictional information exchange schemes, which refer specifically to government contracted or funded organisations, the New South Wales scheme captures relevant organisations regardless of contractual arrangements or funding sources.³¹⁷ At least initially, governments should consider restricting the range of non-government organisations prescribed under our recommended scheme to those contracted or funded by government. Service providers contracted or funded by government are subject to some level of oversight in their delivery of agreed services. They are often subjected, by the terms of their agreement or legislation, to the same privacy obligations that would ordinarily apply to the contracting or funding government agency. Oversight on this basis may help to address concerns and risks relating to the capacity of these organisations to properly handle information exchanged under the scheme.

Health professionals

We have considered the need for professionals who may provide key services and supports to children as individual service providers, rather than through agencies or organisations, to be included in an information exchange scheme. Information held by some professionals, particularly medical practitioners and psychologists, may be of great significance for identifying, preventing and responding to child sexual abuse in institutional contexts.

Health privacy laws do allow disclosure of health information in certain circumstances, including significant risks to life, health or safety.³¹⁸ However, these avenues for information sharing are not always sufficient in the context of child sexual abuse.

Some jurisdictions recognise this by including health professionals as prescribed bodies in their safety and wellbeing information exchange schemes.³¹⁹ The need for medical and counselling information to be shared, by individuals as well as institutional health service providers, was also recently recognised in New South Wales by legislative amendments extending the definition of prescribed bodies under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to health professionals.³²⁰ These include nurses, registered medical practitioners, registered midwives, registered psychologists, registered occupational therapists and speech pathologists.³²¹

In our *Information sharing* discussion paper, we proposed that health professionals be included in information exchange schemes in each jurisdiction. The Tasmanian Government submitted in response that consideration should be given to the ethical obligations of health professionals, and noted that it ‘may be undesirable to compel such professionals to share information in a way that undermines trust and is counterproductive to protecting the child’.³²² The Tasmanian Government also submitted that the scheme should maintain some flexibility to allow health professionals to use ‘their expert judgement as to the appropriateness of sharing information, on a case-by-case basis’.³²³

We acknowledge the need for expert judgment in this regard, particularly in circumstances where there are risks that sharing information may in fact undermine a child's safety and wellbeing. However, there is a risk that a focus on client confidentiality rather than child protection can affect such judgments to the detriment of children. In their 2011 position statement and issues paper on privacy, confidentiality and information sharing, the National Mental Health Consumer and Carer Forum noted research indicating 'mental health professionals place more weight on ethical responsibilities to confidentiality than the law requires'.³²⁴ This is consistent with what we heard from stakeholders about the reluctance of health providers to override client confidentiality and disclose information related to children's safety and wellbeing.³²⁵

Reluctance to share health information may be due, in part, to confusion or uncertainty about legal requirements. As we have noted, the complexity of privacy laws, including health privacy laws, may create uncertainty and inhibit information sharing even where it is permitted. According to the National Mental Health Consumer and Carer Forum, 'Resolving the raft of tricky legal matters is made more difficult as there is no statute (legislative) or common law (judicial) body specifically covering medical confidentiality'.³²⁶ Including health professionals in an information exchange scheme has the potential to assist in overcoming uncertainty and reluctance to share information in these circumstances.

Other institutions that could be considered for inclusion

There is a wide range of other non-government organisations that provide services to, or run activities for children, in addition to those already discussed. These institutions have responsibilities for the safety and wellbeing of children, although there is variation in the extent to which their services or activities involve direct and unaccompanied contact with children, and therefore variation in the potential risk posed to children by these institutions.

We have considered whether the following institution types should be prescribed bodies under an information exchange scheme:

- religious institutions
- sport and recreation institutions
- non-government organisations that provide particular services to adults (such as drug, alcohol and mental health services).

Based on the evidence and information before us, we consider that, while it may be beneficial to include some or all of the institutions in these categories, further consultation is needed to determine this.³²⁷

These institution types are generally not specifically prescribed in existing information exchange schemes. However, some may be covered under the Northern Territory scheme, which prescribes organisations ‘that receive funding from the Commonwealth or Territory to provide a service, or perform a function for or in connection with children’.³²⁸

Some of these institutions may also be covered under the New South Wales scheme, which includes, ‘organisation[s] the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children’.³²⁹ Key terms such as ‘welfare’, ‘education’, and ‘children’s services’, are not defined in the *Children and Young Persons (Care and Protection) Act 1998* (NSW).³³⁰ It is unclear how widely these terms have been interpreted in practice and, in particular, the extent to which they have been interpreted to include sport and recreation, and religious institutions.³³¹ The Truth, Justice and Healing Council confirmed that there has been some confusion in New South Wales regarding the meaning of these terms under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and suggested that clarification of these terms would be beneficial.³³²

Religious institutions

For the purposes of this discussion, a ‘religious institution’ is an entity which operates or previously operated under the auspices of a particular religious denomination or faith and provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children. This includes, for example, dioceses, religious institutes, parishes, schools and residential facilities. Separately, a ‘religious organisation’ refers to a group of religious institutions from a particular religious denomination or faith that coordinate and/or organise together. For example, the Catholic Church is a religious organisation that is made up of different dioceses and religious institutes.

We heard, in our cases studies and our consultations, about the need for and challenges of information exchange within and between different religious institutions, including between different affiliated institutions within larger religious organisations. For example, we heard evidence in a number of our case studies of poor information sharing between Catholic dioceses, religious orders, the Catholic Church in Australia’s employing or administrative authorities, and Catholic service providers such as schools.³³³ In *Case Study 46: Criminal justice*, we heard the Anglican Church had concerns about defamation when it considered informing other institutions, including other churches, about allegations against clergy and lay church workers who had moved from the Anglican Church to another institution.³³⁴

Some religious institutions may be captured under existing information sharing schemes in New South Wales and the Northern Territory on the basis that they provide particular services for children, such as education or out-of-home care. The Bishop of the Catholic Diocese of Maitland-Newcastle, Bishop William Wright, has observed that while the Catholic schools and out-of-home care services in his diocese are included under the New South Wales reportable

conduct scheme, it has been an anomaly that the core of their churches, parishes and faith communities have been excluded ‘with consequent potential risk implications for children’.³³⁵ It may, similarly, be considered an anomaly that the New South Wales scheme captures religious institutions providing or supervising services like education and out-of-home care, but appears to otherwise exclude churches, parishes, and faith communities.

In our *Institutional review of Catholic Church authorities* case study, Archbishop Anthony Fisher of the Catholic Archdiocese of Sydney gave evidence that Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) has been helpful to the Archdiocese. However, the operation of Chapter 16A is necessarily restricted to the state of New South Wales. As Archbishop Fisher commented in the public hearing:

It is the case, for instance, that some of the religious orders that work in our diocese, their headquarters might be in another state, religious coming to us might be coming from another state. Again, I think that kind of [information] exchange, if it were a national expectation, would certainly assist me here in Sydney.³³⁶

Catholic Archbishops Mark Coleridge, Denis Hart, Timothy Costelloe and Philip Wilson, who also gave evidence in that public hearing, supported the creation of arrangements in their jurisdictions that would make it easier to exchange information of a child protection nature.³³⁷ The Truth, Justice and Healing Council told us that it considers it ‘imperative that the [Catholic] Church, its schools, social welfare organisations and parishes be prescribed bodies for the purposes of the information sharing scheme’.³³⁸

Similarly, we heard from stakeholders about the importance of entities in the Anglican Church being able to share information, including information about clergy contained on their national registers. There may be some concerns that sharing this information potentially breaches privacy or other laws.³³⁹ In Volume 16, *Religious institutions* we consider how information sharing within religious organisations could be improved through national registers.

Clergy and other religious personnel are not the only adults who may pose a risk to children in religious institutional settings.³⁴⁰ We heard about the importance of religious institutions being able to share information about volunteers and others involved in their activities. Research undertaken for the Royal Commission noted, ‘Non-clergy church members have a wide range of opportunities to abuse children, with common locations including residential events, the offender’s home, church premises, cars and at outing locations’.³⁴¹

In *Case Study 52: Institutional review of Anglican Church institutions*, we heard evidence from Reverend Peter Sandeman, the CEO of Anglicare South Australia, about the lessons that came out of *Case Study 36: The response of the Church of England Boys' Society and the Anglican Dioceses of Tasmania, Adelaide, Brisbane and Sydney to allegations of child sexual abuse*. One of these was the importance of working with the dioceses, parishes and schools to share information about volunteers in school and parish communities and Anglicare programs. He said:

It would be information sharing about suspicion of grooming. So, really, the earliest information is when you have a suspicion that somebody is behaving in a way that rings some alarm bells. So at the red-flags level, not necessarily wait for a formal investigation, and at that level it is really saying, 'There's this behaviour we've noticed in X; is he exhibiting similar behaviour in your school or in your parish?', because often the red flags will be showing in all three locations, but because at that moment, we don't have a way of collating that information, it may not get to the level where you would then institute a formal investigation.³⁴²

We have also heard about the importance that professional standards bodies in Catholic and Anglican dioceses, and their equivalent in other faiths, place in being able to share information about adults who may pose a risk to children. These bodies have been established to advise and assist with matters relating to child sexual abuse in religious settings, including complaint handling.

In our *Institutional review of Catholic Church authorities* case study, we heard evidence about the importance of Catholic professional standards offices in New South Wales being enabled to share information under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). The manager of Zimmerman Services, which oversees child protection for the Catholic Diocese of Maitland-Newcastle, Sean Tynan, told the Royal Commission that he thinks his organisation is a prescribed body under the welfare and education provisions 'because we work on behalf of the schools office and the systemic schools and CatholicCare'. However, he did not think that the professional standards office of that diocese was technically covered. He noted that his organisation sometimes shares information about clergy with the professional standards office, but 'there are obviously some limitations there and uncertainties':

So whenever you have a system where people feel uncertain that they are able to do something, there is a human tendency to be cautious and not to do it. And we know very clearly that the exchange of information is absolutely vital to protecting children.³⁴³

We have also considered the risks and challenges associated with including religious institutions as prescribed bodies under our recommended information exchange scheme.

While some religious denominations operate under a single legal entity, other denominations are structured so that each local church or diocese is its own legal entity.³⁴⁴ The Catholic Church in Australia, for instance, is not a single or discrete entity. There are 34 dioceses and over 180 religious institutions and societies within the Catholic Church in Australia, each of which is substantially independent and autonomous.³⁴⁵

Similarly, Australian Christian Churches comprises Pentecostal churches that voluntarily choose to affiliate and cooperate as a movement.³⁴⁶ A National Executive oversees the Australian Christian Churches at a national level, and each state has its own State Executive. The national and state executives are responsible primarily for issuing credentials to religious ministers, but they have limited oversight of affiliated churches, which are considered autonomous.³⁴⁷ At the time of the public hearing for *Case Study 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, Australian Christian Churches had over 1,070 affiliated churches.³⁴⁸ There are big differences in the size and resources of these affiliated churches. Some churches are small, rely heavily on volunteers, and face language or cultural barriers to information exchange.

We recognise that including religious institutions in our recommended information exchange scheme could contribute to the protection of children in religious institutional contexts – including by helping to address the risks of perpetrator mobility between religious institutions within a larger religious organisation. However, including religious institutions in the scheme may also raise a number of concerns, particularly given such institutions are generally subject to limited external regulation and oversight. These include concerns about:

- information security, accountability and potential risks – including to children’s safety and wellbeing – from inappropriate handling and sharing of information due to potentially weak or limited governance and infrastructure among these institutions
- institutions having insufficient expertise and resources to undertake risk assessment based on sensitive and complex information obtained under the scheme
- the administrative burden associated with information sharing obligations under the scheme, which could become prohibitive for an institution with limited resources, and compromise its general capacity to provide services or activities for children.³⁴⁹

These concerns will not apply to all religious institutions. For example, capacity to participate in the scheme will be different for religious institutions that are smaller, less structured, and more heavily volunteer based compared to those that are professionally staffed, well-resourced and have stronger governance arrangements. These concerns are also likely to be more significant where religious institutions are not required to comply with information privacy principles under privacy laws.

There are arguments for including at least some religious institutions in our recommended information exchange scheme, given their responsibilities for children’s safety and wellbeing, and their likely capacity to participate in the scheme.

In our consultations, stakeholders representing religious institutions indicated strong support for their inclusion in an information exchange scheme. For example, the Truth, Justice and Healing Council argued that it was imperative that the Catholic Church in Australia, its schools, social welfare organisations and parishes be included in such a scheme, and submitted:

If a nationally consistent information exchange scheme is developed properly, with explicit parameters and extensive communication, education and training of prescribed bodies, there is a high likelihood that prescribed bodies will be compliant with its implementation and operation.³⁵⁰

Some religious institutions would be covered under our recommended information exchange scheme by other categories of prescribed body. For example, non-government institutions, including religious institutions, which provide certain types of services for children, such as childcare, education and health services, should be included in our recommended information exchange scheme.

We recommend in Volume 7, *Improving institutional responding and reporting* that reportable conduct schemes cover all activities or services of religious institutions through which adults have contact with children (Recommendation 7.12). It may be argued that, given such broad coverage of religious institutions' activities for reportable conduct purposes, the inclusion of religious institutions as a generic group under our recommended information exchange scheme is also warranted. However, as noted earlier, while consistency in the range of bodies subject to reportable conduct and information exchange schemes is desirable, such regulatory alignment will raise challenges where institutions do not have adequate governance arrangements or the capacity to manage sensitive personal information shared under the information exchange scheme.

In some cases, such capacity may develop over time. For example, religious institutions' participation in a reportable conduct scheme may, over time, enhance their capacity to participate in the information exchange scheme. As we noted earlier, legislation to establish our recommended information exchange scheme should allow for the staged inclusion of some institution types. This approach could be applied to include certain religious institution types, depending on their need and readiness to participate.

Consideration could also be given to including religious institutions in the information exchange scheme, over time, where they are captured under the *Privacy Act 1998* (Cth) – either because they have an annual turnover of more than \$3 million or have chosen to be treated as an organisation for the purposes of the *Privacy Act 1998* (Cth).³⁵¹ Governments should consider more broadly whether institutions have sufficient resources, as well as oversight and governance arrangements, to protect personal information and respond to requests for information under the scheme. In particular, we note the need for governments

to consider institutional capacity to appropriately manage and use highly sensitive and complex information. This may potentially include any information related to untested and unsubstantiated allegations that may be shared under the scheme. We discuss the risks and challenges for institutions sharing untested and unsubstantiated allegations in Section 3.3.2.

In considering whether, and which, religious institutions should be prescribed under our recommended information exchange scheme, governments should also give particular consideration to the need for religious institutions' professional standards or equivalent bodies to be covered.

We discuss information sharing in religious institutional contexts further in Chapter 4, where we look at the use of registers in different sectors. In Volume 16, *Religious institutions* we look more specifically at information sharing in religious institutional contexts and consider the need for registers to address perpetrator mobility in that sector.

Sport and recreation institutions

We heard evidence about the challenges with, and inadequate processes for, sharing information between the affiliated parts of some sport and recreation organisations, and between national federations and member organisations or associated local groups in the sport and recreation sector.³⁵² We have also heard that the challenges faced by sport and recreation institutions in relation to information sharing may be mitigated by their inclusion in an information exchange scheme.

In *Case Study 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse (Sporting clubs and institutions)* we considered child sexual abuse in sporting contexts, and the challenges for information management and sharing in this sector. We heard evidence of the difficulties that Tennis Australia had in obtaining information on volunteers or other people associated with the institution for inclusion in their database, and that such information was commonly obtained 'through the rumour mill, the newspapers, or somebody just comes to us with some information'.³⁵³

In her submission responding to our *Information sharing* discussion paper, Ms Kerry Boland, the then New South Wales Children's Guardian noted the limited application of current information sharing arrangements in the sport and recreation sector. She stated that:

current information sharing arrangements [in New South Wales] include the majority of child-related sectors in NSW, however they do not extend to smaller, unaffiliated institutions in the 'clubs and other bodies' sector. This is the second largest employer of paid and unpaid workers in NSW and 64% of people engaged in child related work in this sector are volunteers.³⁵⁴

We have been told that strengthening the information sharing capacity of sport and recreation institutions will help them to better respond to risks of child sexual abuse in sport and recreation institutional contexts. For example, in its submission responding to our *Consultation*

paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts, Scouts Australia reflected on its own experience and commented on the need for information exchange to address risks where individuals with unresolved allegations against them move from one youth development organisation to another.³⁵⁵

We recognise the potential benefits of including sport and recreation institutions in our recommended information exchange scheme. However, as Ms Boland observed, sport and recreation institutions ‘have not been established for the purpose of providing child protection or child welfare services and are therefore unlikely to have the necessary skills or expertise to analyse information of a child protection nature’.³⁵⁶

In Volume 14, *Sport, recreation, arts, culture, community and hobby groups* we describe the scope of activities and institutions that fall within the sport and recreation sector. This is extremely wide ranging – including local club sports, exercise groups, dance groups, martial arts groups, outdoor adventure groups, Scouts and Girl Guides, hobby groups, community groups, arts groups, crafts groups, cultural pursuits, musical pursuits, and tuition groups. The challenges of including sport and recreation institutions in an information exchange scheme are, in some respects, similar to those raised by the prospect of including religious institutions.

Like institutions in the religious sector, institutions in the sport and recreation sector vary markedly in size, structure, and governance.³⁵⁷ In both sectors, institutions range from those that are small, unaffiliated, poorly resourced or run predominantly by volunteers, to those that are part of complex national or federated structures and governance arrangements. For example, Scouts Australia and its affiliated branches have a complex organisational structure.³⁵⁸

Many institutions in the sport and recreation sector are subject to limited external regulation and oversight. They may not be subject to privacy legislation. As with religious institutions, including sporting and recreation institutions in an information exchange scheme raises concerns, including about:

- information security, accountability and potential risks – including to children’s safety and wellbeing – from inappropriate handling and sharing of information due to potentially weak or limited governance and infrastructure among these institutions³⁵⁹
- institutions having insufficient expertise and resources to undertake risk assessment based on sensitive and complex information obtained under the scheme
- the administrative burden associated with information sharing obligations under the scheme, which could become prohibitive for an institution with limited resources, and compromise its general capacity to provide services or activities for children.³⁶⁰

These concerns do not apply equally to all sport and recreation institutions. Institutions such as Scouts and the YMCA have a more highly developed infrastructure and governance arrangements than other sport and recreation institutions, such as local hobby groups. Larger and well-resourced sport and recreation organisations are likely to be better placed than others to participate in a nationally consistent information exchange scheme.

For example, we heard evidence about information sharing through national registers operating in large, federated sport and recreation institutions. In *Case Study 48: Institutional review of Scouts and Hunter Aboriginal Children's Service*, we heard that Scouts Australia has established a 'National Flag Database' which provides information on individuals who are considered not suitable for membership in the organisation. We heard that all branches of Scouts Australia have access to and contribute to this database.³⁶¹

In the *Sporting clubs and institutions* case study, we heard that Soccer NSW (now Football NSW) maintains a 'Suspended Persons Register'³⁶² and that Football Federation Australia has a national database, which all state bodies in the federation can access, to prevent persons suspended in one state being registered with the institution in another.³⁶³ This reflects the greater level of resourcing and support for information sharing in these types of institutions and suggests they may be in a better position than others to participate in a nationally consistent information exchange scheme.

While concerns about the participation of sport and recreation institutions in an information exchange scheme may not be significant at the higher levels of such federated institutions, they may be more significant at the local level and in relation to other smaller sport and recreation institutions. Local clubs and other small sport and recreation institutions are predominantly staffed by volunteers who may be rotated through the organisation, taking on different positions of responsibility and being replaced by others after short stints. In our view, such an operating environment presents greater risks for information security and accountability, and for misuse of information.

The core group of institutions that should be considered for inclusion in our recommended information exchange scheme includes institutions providing accommodation and residential services to children. This category may capture sport and recreation institutions that provide overnight camps. Our recommendations for reportable conduct schemes in Volume 7, *Improving institutional responding and reporting* also cover some institutions that provide overnight camps (see Recommendation 7.12).

Arguably, including sport and recreation institutions that provide overnight camps in our recommended information exchange scheme may be supported where these institutions are subject to a sufficient level of oversight due, for example, to government funding arrangements³⁶⁴ and privacy law coverage. However, concerns about the implications of including sport and recreation institutions more generally need to be taken into account when considering including sport and recreation institutions that provide overnight camps in an information exchange scheme.

Given the nature of the institutions in this sector, we agree with the New South Wales Government's submission (in relation to institutions in both the sport and recreation and religious sectors) that 'Consideration should be given to whether these bodies have sufficient regulatory and oversight systems in place and are adequately supported to participate in an inter-jurisdictional scheme'.³⁶⁵

As with religious institutions, consideration could be given to including in the information exchange scheme those sporting and recreation institutions that are covered by the *Privacy Act 1988* (Cth). Sport and recreation institutions may be covered by the Act because they have an annual turnover of more than \$3 million or have chosen to be treated as an organisation for the purposes of the *Privacy Act 1998* (Cth),³⁶⁶ or because they hold health information. Coverage under privacy law should serve as one important factor in considering whether sport and recreation institutions should be prescribed under our recommended scheme. Governments should consider, more broadly, whether institutions have sufficient resources, as well as oversight and governance arrangements, to protect personal information and respond to requests for information under the scheme.

Ms Boland commented on the complexities involved in identifying risks to children, and the limited capacity of institutions in the ‘clubs and other bodies’ sector to properly utilise information to assess risk. We accept her submission that long-term investment in education and training would be required to support implementation of a broad information exchange scheme in this context.³⁶⁷

We consider that a significant amount of further consultation is required on the question of whether the range of prescribed bodies under our recommended information exchange scheme should include some or all institutions in the sport and recreation sector.³⁶⁸ In our view, at least in the initial stages of establishing a nationally consistent information exchange scheme, the risks of including all sport and recreation institutions as a generic group are likely to outweigh the benefits. Any consideration by Australian governments of including sport and recreation institutions over time should be based on an assessment of the capacity of particular sport and recreation institution types to properly manage information shared under the scheme, and to appropriately use highly sensitive and complex information. This may potentially include any information related to untested and unsubstantiated allegations that may be shared under the scheme.

Organisations that provide particular services to adults

Some organisations that provide services to adults, but not to children, hold information about adults who may pose a risk to the safety and wellbeing of children. Such organisations include, for example, those providing adult mental health and drug and alcohol-related services.³⁶⁹

Information exchange schemes in some jurisdictions include adult mental health and drug and alcohol services as prescribed bodies.³⁷⁰ In Victoria, some mental health and drug and alcohol services may be asked to provide information to, and may receive information from, certain other entities. However, those mental health and drug and alcohol services cannot initiate information exchange.³⁷¹

Other adult service providers may also be relevant. The 2015 report of the Victorian Commissioner for Children and Young People noted the potential for individuals to move between sectors that provide services for different vulnerable groups, such as aged care,

disability and children-related sectors.³⁷² This suggests that, in some cases, employers in the disability and aged care sectors will hold information that indicates an employee, contractor or volunteer could pose a risk to children, as well as to other vulnerable groups.

Under the New South Wales scheme, the inclusion of all government agencies and public authorities means that government agencies or public authorities that provide services solely for adults can share information.³⁷³ However, the New South Wales scheme does not capture non-government organisations that provide such services exclusively to or for adults.³⁷⁴ The New South Wales Government commented that it is ‘worth further considering whether prescribed bodies should have capacity to obtain information from particular organisations that provide services to adults’.³⁷⁵ Similarly, the Truth, Justice and Healing Council submitted:

It would be beneficial for organisations providing services to vulnerable adults to also be included as prescribed bodies. This is from the perspective of improving both the range of information available to prescribed bodies providing services to children and information sharing among institutions providing services to vulnerable people generally.³⁷⁶

There are potential benefits that flow from including organisations that provide services solely to or for adults as prescribed bodies under an information exchange scheme. These organisations may hold information relevant to the exercise of other prescribed bodies’ responsibilities for children’s safety and wellbeing. Such organisations would not need to seek information under the scheme if they did not, themselves, exercise any functions related to children’s safety and wellbeing. Consideration could be given to whether and how this should be reflected in legislation, or in guidelines, in the event these organisations are included. However, there may be significant concerns about such an expanded operation of the scheme. For this reason, further consultation with relevant stakeholders would be required to determine this issue.

3.3.2 Scope of information sharing

In order to facilitate information sharing between institutions (and relevant individuals) in different jurisdictions, it is important that governments adopt a consistent approach to the types of information that can be shared, and the circumstances in which that information may or must be shared. As the Truth, Justice and Healing Council submitted:

The scope of information that should be shared with all prescribed bodies needs to be consistent, to remove confusion stemming from different rules being applied to different bodies, as this is where barriers to exchanging information may arise.³⁷⁷

A scheme that captures a broad scope of information related to children’s safety and wellbeing is likely to support earlier intervention and response to incidents and risks of child sexual abuse. The evidence and information before us indicates that such a broad scope has been beneficial in existing schemes in New South Wales and the Northern Territory.

At the same time, we acknowledge concerns expressed by some stakeholders that an information exchange scheme that permits a broad scope of information to be shared may result in unnecessary or inappropriate information sharing. In the sections that follow we discuss some of the circumstances in which this risk may be particularly significant, and measures that could assist to address or mitigate this risk.

When information may or must be shared

For information sharing to be both appropriate and effective in identifying, preventing and responding to child sexual abuse, it should be purpose-driven. In other words, information should not be shared unless the purpose for doing so – to assist the recipients of information to undertake functions relevant to their responsibilities for children’s safety and wellbeing – is clear and identified.

Our inquiry has also highlighted the importance of institutions having the capacity to share relevant information proactively with other institutions (that is, without a request to do so), as well as the benefits of a legal requirement that institutions share relevant information following an appropriate request.

Sharing information without a request

Some jurisdictions authorise prescribed bodies to share information proactively with other prescribed bodies where it would assist the recipient to address the safety, welfare or wellbeing of a child or children.³⁷⁸

Such provisions are more likely to promote timely and appropriate information sharing than provisions that only provide for information sharing following an appropriate request.³⁷⁹ The capacity to share information with other prescribed bodies proactively contributes to prevention and risk management. This is particularly so where the body receiving the information is unaware of the risk, or of the existence of the information.

The schemes in both New South Wales and the Northern Territory require a prescribed body to hold a reasonable belief that the information *would* assist the receiving body to perform a particular function in order to proactively share that information.³⁸⁰

For the Northern Territory scheme, this is the same threshold as is required for sharing information on request. However, in New South Wales this threshold for sharing information without a request is higher than that for sharing information in response to a request, in that it requires that the information ‘would’ rather than ‘may’ assist. The New South Wales Government observed that this higher threshold ‘could be considered by some to discourage proactive information sharing’, and that ‘the ability of an organisation to assess whether information would assist another organisation may be limited and could restrict the information shared’.³⁸¹

The New South Wales scheme does not appear to be supported by any statement of policy that actively encourages proactive information sharing where appropriate.³⁸² This could be addressed through the creation of guidelines to support the implementation of the scheme.

Sharing information on request

Existing information exchange schemes in New South Wales and the Northern Territory compel a prescribed body to share information with another prescribed body following an appropriate request for relevant information. This obligation is subject to the requesting body providing sufficient information for the receiving body to make an assessment about whether the information may assist or not.³⁸³

Information exchange schemes in other jurisdictions do not include a requirement that prescribed bodies share information following an appropriate request.³⁸⁴ This may result in information needed to prevent and respond to child sexual abuse potentially not being directed to where it is needed, as quickly as it is needed. An express requirement that prescribed bodies share information following an appropriate request may more effectively overcome cultural and other barriers that operate to delay, limit or prevent information sharing to protect children.³⁸⁵ For these reasons, in many cases a requirement to share information following an appropriate request may be more effective than simply providing permission to share.

The threshold for sharing information in response to a request varies under existing information sharing schemes. In New South Wales, where a prescribed body receives a request for information under the scheme, it must provide that information if it reasonably believes that the information *may* assist the recipient in functions related to the safety and wellbeing of children (the limited exceptions to this obligation are discussed later).³⁸⁶

In contrast, the Northern Territory scheme has a higher threshold, in that prescribed bodies are only obliged to share in response to a request if they reasonably believe doing so *would* assist the receiving body for specified purposes.³⁸⁷ As noted earlier, the Northern Territory has adopted the same threshold for prescribed bodies sharing information with and without a request.

Arguably, a uniform threshold for proactive and reactive sharing, like that in the Northern Territory, could simplify the operation of an information exchange scheme. However, prescribed bodies receiving a request for information may not be in a position to reach such a definitive conclusion about the value of information to a requesting body. In such cases, the lower threshold in New South Wales is likely to better facilitate appropriate information sharing. This is an issue that jurisdictions will need to give further consideration to. While jurisdictions such as the Northern Territory may prefer to retain the uniformly higher threshold for intra-jurisdictional sharing, a consistent approach to this threshold issue is particularly important in the context of the arrangements for inter-jurisdictional information exchange.

Both New South Wales and the Northern Territory require the requesting body to provide sufficient information to enable the requested body to form the requisite belief.³⁸⁸ Unlike under the New South Wales scheme, the Northern Territory scheme specifically provides that a body may only request information under the scheme if it reasonably believes the information would assist it to perform functions related to the safety or wellbeing of a child.³⁸⁹

Governments should also consider whether to explicitly require a prescribed body requesting information under our recommended information exchange scheme to have a reasonable belief that the information would assist them with specific functions before making that request.

Relevant considerations in forming a ‘reasonable belief’ about the need for information

Both the Northern Territory and the New South Wales schemes require a prescribed body to hold a ‘reasonable belief’ about the assistance the information may provide before it can share information. The Northern Territory Information Sharing Guidelines provide guidance on what constitutes a reasonable belief by a prescribed body that the information would assist the recipient to perform a specified function relating to the safety and wellbeing of a child or children.

These guidelines state that a ‘reasonable belief can be summarised as an honest belief which is well-founded’ and having a reasonable belief ‘does not mean that a person has to be certain, however it is more than a suspicion’. Further, ‘In forming a reasonable belief ... an authorised information sharer may consider anything that they may think relevant’.³⁹⁰ The guidelines set out a non-comprehensive list of factors that may be relevant. These include:

- the possible impacts of not sharing the information, including the risk that harm may not be identified by another person or organisation due to an incomplete appreciation of a child’s situation
- the risk that sharing the information will have a negative impact on a child’s safety or wellbeing
- the likely or expressed wishes of the child and the child’s capacity to make decisions for themselves based on the maturity, worldliness and independence of the child
- whether the information is comprised of facts or opinion
- the currency of the information.³⁹¹

Another consideration, noted by the New South Wales Government, could be the ‘need to protect the identities of children where appropriate’.³⁹²

The Northern Territory’s guidance on what constitutes a reasonable belief seems useful to assist prescribed bodies to properly balance competing considerations when reaching a decision about whether to share information – either proactively or upon request.

Australian governments should consider providing similar guidance to support institutions to share information appropriately under our recommended information exchange scheme by balancing relevant considerations.³⁹³ As we discuss later in this section, such guidelines may address concerns about sharing certain types of information, such as untested or unreliable information that may be damaging to a person's reputation, or sharing a child's personal information without their consent.

Exceptions to information sharing obligations

The inclusion of adequate exceptions under the proposed scheme is essential as this helps to balance its overall objectives with the right to privacy and other legitimate rights and interests.³⁹⁴

In some cases institutions may have well-founded objections to sharing information related to child sexual abuse. Such objections may be based on some of the concerns considered throughout this chapter, including, for example, that information related to current allegations of child sexual abuse may be particularly sensitive due to ongoing criminal investigations.

The exceptions to information sharing obligations under the New South Wales scheme, the Northern Territory scheme and Queensland's child protection legislation are broadly similar. A prescribed body is not required to provide information requested if it reasonably believes that to do so would:³⁹⁵

- prejudice the investigation of a (possible) contravention of a law in any particular case
- prejudice a coronial inquest or inquiry
- prejudice any care proceedings
- contravene any legal professional or client legal privilege
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- endanger a person's life or physical safety
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a (possible) contravention of a law
- not be in the public interest.

In some cases information sharing may undermine a child's safety and wellbeing.³⁹⁶ In such circumstances, a prescribed body could rely on exceptions relating to endangerment of life or physical safety or the public interest to refuse a request for such information.

The Tasmanian Government observed that a more explicit exception where information sharing may be to the detriment of a child's safety or wellbeing could also be considered.³⁹⁷ However, this kind of risk needs to be weighed against other risks that may arise if the information is not shared (including risks to children other than those immediately concerned).

Adequate exceptions to information sharing obligations under an information exchange scheme are essential. In our view, exceptions such as those listed above would assist to balance the recommended scheme's overall objectives with other legitimate rights and interests.

Information related to the safety and wellbeing of children

Most jurisdictional information sharing schemes are defined broadly around sharing information related to the safety and wellbeing of children. We describe these schemes in Section 3.2.1. We consider this relatively broad scope of information is also appropriate for an inter-jurisdictional information exchange scheme. The types of information that may be related to the safety and wellbeing of children, and that may therefore be shared under our recommended scheme, are discussed later.

What is 'information related to the safety and wellbeing of children'?

Generally, the phrase 'safety and wellbeing' (or 'safety, welfare and wellbeing') is not defined in child protection legislation. The Northern Territory Information Sharing Guidelines define 'safety' as 'the condition of being and feeling safe' and add that 'Safety is freedom from the occurrence or risk of physical or psychological injury, danger or loss'. The guidelines define 'wellbeing' as including 'a child's physical, psychological and emotional wellbeing'.³⁹⁸ Australian Capital Territory legislation illustrates the scope of safety and wellbeing information with a non-exhaustive list of examples.³⁹⁹

In our view, legislative definition of the terms 'safety' and 'wellbeing' is unnecessary and may be unhelpful. In particular, it may unnecessarily limit the scope of information sharing. The objective of the scheme may be better promoted by common sense interpretation of the terms 'safety' and 'wellbeing', based on the ordinary meaning of these words and allowing for the exercise of professional judgment in particular cases. Setting out a non-exhaustive list of examples in guidelines of matters relevant to safety and wellbeing may also be helpful. This is consistent with a principles-based approach to regulation, which supports the exercise of professional judgement over adherence to prescriptive definitions. The principles-based approach of the New South Wales scheme has been identified as one of its strengths.⁴⁰⁰

This approach will allow our recommended scheme to capture, as other safety and wellbeing information exchange schemes do, information that is related to child sexual abuse in institutional contexts. This information can assist relevant bodies to identify and respond to risks to children's physical safety and their emotional and psychological health. We recognise that this will also capture a wider range of information than that related to child sexual abuse in institutional contexts.

Importantly, this formulation will capture information about:

- adults who pose or may pose a risk to children in institutional contexts
- the suitability of adults to have contact with children in institutional contexts
- children who may pose a risk to other children in institutional contexts
- children who have been sexually abused, or may be at risk of sexual abuse in institutional contexts.

This approach may also capture highly sensitive personal information about adults and children, such as:

- medical, counselling and therapeutic information
- untested or unsubstantiated allegations of child sexual abuse
- information about children's problematic or harmful sexual behaviours.

The sharing of these latter categories of information raises particular concerns and challenges.

The need to include a broad scope of information

While our inquiry was focused on sexual abuse of children in institutional contexts, many of the legislative and administrative arrangements for sharing information relevant to child sexual abuse in institutional contexts address a wider range of harm and risks to children in both institutional and non-institutional contexts. Existing state and territory information exchange schemes capture information related to the safety and wellbeing (or safety, welfare and wellbeing) of a child (or group of children).⁴⁰¹ In our view, an information exchange scheme should, as far as possible, build upon these existing frameworks.

We consider that improving and extending existing arrangements is preferable to creating entirely new legal or administrative arrangements for the exchange of information related to child sexual abuse in institutional contexts. We also consider that the arrangements under our recommended scheme should cover all children, and not be restricted to particular classes of children. The reasons for our conclusions on this matter are as follows.

First, a new information exchange model that focuses solely on child sexual abuse and operates parallel to, but separately from, existing information exchange schemes would duplicate those arrangements. It would also likely have the effect of complicating the legal and administrative arrangements for sharing information.

Second, evidence and information before us indicates that including a broad scope of information within our recommended information exchange scheme has the potential to assist staff within institutions, where appropriately skilled and trained, to identify, prevent and respond to child sexual abuse. Our inquiry has highlighted the ambiguous nature of much grooming behaviour and

the difficulties associated with identifying signs that a child is being sexually abused. *Case Study 2: YMCA NSW's response to the conduct of Jonathan Lord* showed how information about seemingly isolated or insignificant incidents can, when considered cumulatively, paint a more complete and concerning picture.⁴⁰² Sometimes, it may only become clear that a child has been harmed, or is at risk, when information from different sources and points in time are pieced together. This may include information that is not obviously related to sexual abuse and information which, in isolation, appears to have little, if any, probative value. However, the ability to collate, analyse and assess safety and risk based on such diffuse material is a complex skill. Even where such skills exist within an institution, the results obtained will need to be treated with caution.⁴⁰³

Third, research on the prevalence of child sexual abuse as part of polyvictimisation (that is, children's experience of multiple forms of abuse) supports the approach of sharing a broader range of information to assist in identifying and responding to child sexual abuse. Analysis of a national longitudinal probability sample of children in the United States noted the limitations of focusing on 'separate, fairly narrow categories of experience such as sexual abuse, physical abuse, bullying'.⁴⁰⁴ This research observed that children who have experienced polyvictimisation are more likely to have been sexually abused:

Children with certain kinds of victimization were particularly likely to have additional kinds of victimization ... Thus, of those reporting a sexual victimization during the present year, 94% had other different kinds of victimization in the same year and 73% were in the polyvictim category, meaning they had four or more [forms of victimization].⁴⁰⁵

This is consistent with the accounts of many survivors of child sexual abuse in institutions in Australia who have told us that they also experienced physical abuse, psychological maltreatment and neglect.⁴⁰⁶

This may suggest, in some cases, a connection between sexual abuse and other forms of abuse. In this context, an information sharing scheme that can be applied to information about multiple types of abuse is more likely to be helpful in identifying, preventing and responding to child sexual abuse. This will also avoid the need for those exchanging information to engage in a difficult, and possibly artificial, identification of whether information is related to child sexual abuse. Importantly, it may also support more holistic and integrated responses for those who have experienced, or are at risk of, multiple forms of abuse.

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides for the sharing of information relating to the safety, welfare or wellbeing of any child or class of children. This captures information relevant to all children, whether or not a child protection risk for that child has been reported, identified or assessed. Similarly, the Northern Territory's arrangements under Part 5.1A of the *Care and Protection of Children Act* (NT) enable the sharing of information relating to the 'safety or wellbeing' of any child or group of children specified by the information seeker or provider.

In their response to our *Information sharing* discussion paper, the Tasmanian Government submitted:

Tasmania considers that the scope of the cohort of children for whom information may be shared should be carefully considered. In considering the balance between privacy and protecting children, a scope of all children who have been the subject of abuse and neglect concerns is considered appropriate as defined by key criteria for identifying children affected by cumulative harm.⁴⁰⁷

Unlike under the arrangements in New South Wales and the Northern Territory, the arrangements for information exchange in Tasmania, and under Victoria's child protection legislation, are confined to sharing information related to children who have come to the attention of, or are involved in, the child protection system.⁴⁰⁸ Information sharing in these circumstances may be helpful in confirming whether or not those particular children have been abused, but it will not assist the identification of abuse, or risk of abuse, in relation to other children. In our view, the information sharing arrangements in New South Wales and the Northern Territory are preferable because they are not limited in this way.

We also note that our recommended information exchange scheme is not confined to institutional contexts. We have preferred an approach that builds on and extends existing schemes. Existing information exchange schemes in New South Wales, Western Australia, South Australia and the Northern Territory do not distinguish between children's safety in different contexts – for example, institutional or familial.⁴⁰⁹ We believe there may be significant advantages, including efficiency and simplicity, in this approach.

Information about adults who pose, or may pose, risks to children

Information related to the safety and wellbeing of children includes information about adults who work in or are otherwise involved with institutions that provide services or activities for and to children. This may include prospective, current, and past work or involvement. Information about these adults may include:

- information about criminal convictions and charges for child sexual abuse offences
- findings from reportable conduct investigations or other disciplinary proceedings
- unsubstantiated or untested allegations that an adult may have sexually abused a child or children.

Sharing information about adults that pose, or may pose, risk to children can assist institutions to manage that risk and make protective decisions. This may include decisions about whether and to what extent such persons should be allowed to be involved with or work in the institution, and whether to place conditions or restrictions on their responsibilities or activities in the institution. It may also assist institutions to identify children who may have been harmed following contact with a particular adult in their organisation, and to determine whether they need to notify others, or report (potential) abuse.

Sharing information that relates to untested or unsubstantiated allegations of child sexual abuse has potentially serious implications for individuals. Robust measures would be required to address or mitigate the risks attached to sharing this type of information. It is important to note that WWCCs are in place across Australia to assist institutions by assessing risk-related information. However, as discussed earlier in this chapter, and in our *Working With Children Checks* report, WWCCs cannot be relied upon as the sole indicator of suitability to work or participate in activities with children.⁴¹⁰

We also note that information that relates to untested or unsubstantiated allegations of child sexual abuse may be shared in limited circumstances under other laws, such as privacy law.⁴¹¹ However, the information sharing landscape in Australia can be difficult to navigate, particularly for organisations that may be subject to multiple privacy regimes. Given the limited scope for information sharing under privacy laws, the complexity of these laws, and reluctance and anxiety about information sharing, it is important to consider in some detail the arguments for and against the inclusion of risk-related information, including untested and unsubstantiated allegations, in an information sharing scheme.

Sharing untested or unsubstantiated allegations related to child sexual abuse: A number of stakeholders have argued that institutions need some capacity to both provide and obtain information about unsubstantiated or untested allegations of child sexual abuse, where this information may be relevant to their, or others', responsibilities for children's safety.⁴¹² We have also heard about the difficulties of sharing this information across jurisdictions.⁴¹³

At the outset it is important to note that inappropriate sharing of information about untested allegations may compromise criminal justice processes. As we stated in our *Criminal justice* report, police responses to child sexual abuse allegations should take priority over other institutional responses. Institutions should not take any steps regarding such allegations – including sharing information – without consulting police. Where institutions have immediate risk management concerns, they should discuss with police how these can best be addressed without interfering with any police investigations. The importance of this is reflected in our earlier discussion of appropriate exceptions to information sharing obligations.

We also acknowledge other serious concerns raised by the sharing of information about untested and unsubstantiated allegations. These include concerns that sharing such information may impinge upon an individual's right to privacy, perhaps damaging their reputation irrevocably, without giving the individual an opportunity to comment on the substance of the allegation or object to it being shared. We consider the need for safeguards for sharing information of this kind later in this section and outline the basis on which we consider our recommended information exchange scheme would operate as a necessary and proportionate limit on privacy in Section 3.3.3.

Police sharing information about allegations with institutions: In Volume 7, *Improving institutional responding and reporting* we discuss institutions' obligations to respond to complaints related to child sexual abuse. Apart from reporting possible offences and notifying child protection authorities, institutions need to undertake their own risk management in response to possible child sexual abuse. Institutions subject to a reportable conduct scheme will be obliged to investigate reportable conduct allegations.

In our *Criminal justice* report, we considered the need for police to share information about current allegations with an institution where the alleged perpetrator is or has recently been working or volunteering. Where a police investigation is active, appropriate sharing of information by the police about untested allegations may be important to assist institutions to address any immediate or ongoing risks to children and to respond to the needs of affected children. Police sharing information about untested or unsubstantiated allegations can potentially assist institutions to pursue their own investigation of allegations once the police response is concluded. As we noted in our *Criminal justice* report, in some cases police may not proceed with a matter because of issues that do not necessarily cast doubt on the likelihood that the alleged conduct occurred, and the perpetrator may still be involved with the institution after a police investigation concludes. For example, charges might not be laid because children or their families may choose not to participate in a prosecution, or because very young children were unable to give sufficiently clear disclosures. Police sharing information will be particularly important where the police response has not resulted in the laying of charges, because in these circumstances responsibility for responding to the allegations reverts entirely to the institution.

At our public roundtable about criminal justice, Ms Trish Ladogna, Director of the Child Wellbeing Unit of the New South Wales Department of Education, told us about the importance of police providing the department with information regarding allegations of reportable conduct, including when police form the view that a prosecution will not occur. Ms Ladogna noted that, while a matter may not result in a prosecution, in the case of a reportable conduct allegation the Employee Performance and Conduct Unit within the Department of Education would conduct an investigation, and information that became available during the criminal investigation would be of considerable use for the department's investigation.⁴¹⁴

In New South Wales, the Ombudsman and the NSW Police Force have developed the Standard Operating Procedures for Employment Related Child Abuse Allegations (NSW SOPs). The NSW SOPs guide the police and institutions on the information and assistance police can provide to institutions in the context of a current allegation of child sexual abuse. The NSW SOPs refer to institutions' obligations under the reportable conduct scheme and rely on the authority of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to provide that police should:⁴¹⁵

- keep the (employing) institution informed of the police investigation and any action that can be undertaken while police are undertaking their own investigation
- inform the institution, within 48 hours, if the investigation is discontinued without laying charges, and provide the institution with any information to assist it in its own investigation, as permitted by Chapter 16A.

In our *Criminal justice* report we recommended that the NSW SOPs should serve as useful precedents for other Australian governments to consider.⁴¹⁶ An information exchange scheme that draws on the features of the New South Wales scheme could, and should, provide legislative authorisation for the implementation in all Australian jurisdictions of procedures modelled on the NSW SOPs.

Institutions sharing information about allegations with each other: We have been told by stakeholders, in consultations and in public hearings, that there may be a need for institutions, other than police, to share information about untested and unsubstantiated allegations with each other.

Some stakeholders have argued that there may be a need to share such allegations when a person who is the subject of a complaint leaves their employment or organisation before an investigation into the complaint has been finalised. It has been argued that, in such cases, people who pose a potential risk to children may be able to move between jurisdictions and organisations and continue working or engaging with children. For example, Scouts Australia told us of cases where individuals who had unresolved allegations against them in one organisation moved to another youth development organisation and continued working with vulnerable children.⁴¹⁷

Commenting on this issue in response to our *Information sharing* discussion paper, the Truth, Justice and Healing Council submitted that:

where an organisation has received information, particularly information indicating a potential risk and warranting investigation, and the person who is the subject of the information leaves the organisation before that investigation is complete, an ability to share such information, including the fact that the individual left before the investigation was complete, is necessary. This will reduce the risk which currently exists of individuals continually shifting between employers to avoid repercussions of inappropriate conduct with children.⁴¹⁸

In our *Knox Grammar School* case study the New South Wales Ombudsman told us that Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) has been used to share relevant information where a person of concern has left employment with unresolved concerns about their conduct and fresh concerns arise in their subsequent employment with a different institution.

It may also be argued that sharing information about untested or unsubstantiated allegations is important where children face barriers to reporting abuse⁴¹⁹ and where victims of child sexual abuse face additional challenges as complainants in criminal processes. For example, in their response to our *Schools* issues paper, People With Disability Australia (PWDA) told us that a key concern in the disability sector is that perpetrators of violence against people with disability are rarely convicted and allegations may not be recorded against these perpetrators. As a result, perpetrators are able to move between jurisdictions and sectors, targeting the vulnerable.⁴²⁰ In their response to our consultation paper on criminal justice, PWDA explained further:

Few cases involving people with disability are recommended for prosecution. Some data suggests that this is because police believe that in court, a witness with disability will not be understood to be credible.⁴²¹

This suggests that, in some cases, allegations involving victims with disability may not be picked up through WWCCs or other screening because those allegations have not resulted in a conviction, or even a charge. An information exchange scheme with a broad scope could assist institutions to better protect children by enabling information about such allegations to be exchanged. For our recommendations addressing police responses to victims and survivors with disabilities, see our *Criminal justice* report.

Mere suspicions and rumours will be of limited, if any, value in evidencing harm or risk. However, in some cases where suspicions and rumours are ongoing and persistent, they may become relevant. In *Case Study 1: The response of institutions to the conduct of Steven Larkins*, we found that the Hunter Aboriginal Children's Service Chairperson, Ms Jacqueline Henderson, should have informed relevant agencies of the persistent rumours about Steven Larkins's past conduct with boys.⁴²²

Allegations that have been investigated and found to be unsubstantiated may acquire greater significance in the context of a pattern of similar allegations. The cumulative weight of a number of similar allegations, over an extended period of time and in different contexts, may warrant preventative or risk management action, if not a positive finding of abuse. As evidence demonstrated in *Case Study 20: The response of the Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*:

an assessment of the veracity of historical reports of sexual abuse is often made in increments. For this reason every piece of information reported or gathered is important and the whole record, if accurately kept, may help others to assess whether later complaints have credibility.⁴²³

The Northern Territory Government submitted that the capacity to share suspicions and unsubstantiated allegations 'is important to be able to pick up patterns of behaviour, but only if the information is effectively collected and analysed'.⁴²⁴

Research shows that without training and a careful approach to decision-making, the accumulation of such information may not produce assessments that reduce risk of harm to children. As noted earlier, effective analysis and risk assessment of information, particularly of unsubstantiated allegations or untested suspicions, requires a high degree of skill, including the use of well-designed risk assessment tools.⁴²⁵

Safeguards for sharing untested and unsubstantiated allegations related to child sexual abuse: As noted by the NSW/ACT Branch of the Independent Education Union, ‘all persons are entitled to the presumption of innocence and to be provided with an opportunity to respond to an allegation’.⁴²⁶ Information sharing under our recommended scheme will not affect individuals’ rights to defend themselves in criminal justice processes, or other investigative and disciplinary processes. The purpose of the scheme is to facilitate institutional decision-making to protect children.

At the same time, we agree with the comments of some stakeholders that sharing untested and unsubstantiated allegations related to child sexual abuse raises some serious concerns and challenges.⁴²⁷ These include concerns that:

- inaccurate information, including vexatious allegations, may be shared
- information may be shared for an improper purpose
- procedural fairness may be compromised
- undue weight may be given to such information by those who receive it
- the potential adverse consequences for those the subject of unreliable and inaccurate information may be significant, including reputational damage, victimisation and discrimination
- sharing this information may adversely affect other parties, including victims, and may compromise police investigations or criminal justice processes.

In its response to our *Information sharing* discussion paper, the New South Wales Government did not point to any particular difficulties flowing from the sharing of untested or unsubstantiated allegations under the New South Wales scheme. However, it did recommend that a cautious and considered approach be adopted to sharing such information and noted the need for guidelines to address concerns.⁴²⁸

The Northern Territory scheme also appears to provide capacity for sharing untested and unsubstantiated allegations, although it is not clear whether this is occurring in practice. The Northern Territory Government told us that it ‘is not currently seeking to consider sharing of suspicions and untested or unsubstantiated allegations in an Information Sharing Scheme’. Noting the risk of misuse of information, the Northern Territory Government submitted that including such information under the proposed information sharing scheme would require careful consideration.⁴²⁹

We also note the Northern Territory Government's suggestion that 'perhaps sharing lower threshold information [that is, information including untested and unsubstantiated allegations] more widely, should not be considered until jurisdictions are able to effectively implement higher level information sharing'.⁴³⁰

We note the appeal of this staged approach, which governments may wish to consider. At a minimum, however, any such scheme must be constructed with due regard to a range of safeguards to reduce the risk of inappropriate sharing or use of information, particularly untested or unsubstantiated allegations. In this respect we agree with the ACT Teacher Quality Institute that 'As long as the status of the allegation is clear and safeguards are built into the system (establishing a clear reason to know), this information should be shared'.⁴³¹

Elements of an information exchange scheme may be able to safeguard against the risk of inappropriate information sharing, including by:

- restricting the range of institutions eligible to participate in the scheme – any scheme involving the sharing of untested and unverified information would need to be restricted to institutions that have demonstrated capacity to implement identified procedural fairness safeguards and have appropriate sanctions against unauthorised or inappropriate use or distribution of personal information. They would further need to demonstrate an appropriate level of skill and staff training to show that they had a capability to utilise highly sensitive information in making a risk assessment
- ensuring information is only shared in circumstances where there is a need to know – the scheme could include provisions that the prescribed body disclosing the information must reasonably believe that it would or may assist the receiving prescribed body to perform specified functions relating to the safety and wellbeing of children
- providing for appropriate exceptions to the obligation to share information under the scheme – these exceptions could be invoked to relieve prescribed bodies of the obligation to share untested or unsubstantiated allegations in certain cases, such as where it may compromise investigations
- preserving liability for improper sharing of information – that is, if information is shared improperly or vexatiously in order to damage a person's reputation the exclusion of liability for information shared in good faith will not apply
- appointing a designated officer in each agency responsible for the receipt and provision of relevant information – this would restrict access to those trained in the proper use of this type of information. The designated officer would be responsible for disseminating information received, and do so only to those within the agency who need to know
- restricting further use of information shared under the scheme – further use or disclosure of information could be prevented where it is for purposes unrelated to children's safety and wellbeing

- operating alongside privacy laws – privacy protections should continue to apply to information shared under the scheme, including untested and unsubstantiated allegations, insofar as these do not subvert the purpose of the scheme in promoting children’s safety and wellbeing.

We recognise that there may be a need for specific safeguards, in addition to those listed above, to address concerns about fairness and reliability with respect to untested and unsubstantiated allegations. There are a number of options for achieving this that could be considered, set out below.

Obligations could be imposed on information provider to check the accuracy of the information, and to advise the subject of the information and provide them with an opportunity to respond before sharing information. This option is arguably unduly onerous and may undermine the objective of the scheme by complicating the process of information sharing and delaying institutional responses to risk. Effectively, such obligations would require the body holding the information to test to some degree the information, even though it may never be used in a way adverse to an individual. It may be more efficient to require those providing information about allegations to clearly identify the status of allegations in order to alert the recipient of the need to properly assess the information before using it.

Consent from the subject of the information would not be required to share personal information where information sharing is authorised or required under a legislated information exchange scheme (see Section 3.3.3). However, as we will discuss, there are benefits from informing a person, where possible and appropriate, of an intention to share their personal information, and considering their views before sharing it. It may not be reasonable or appropriate to do this in the context of allegations, where there may be concerns about increasing risk or delaying a response to a risk or incident.

Obligations could be imposed on the recipient, including to assess any adverse information in relation to a person where the information is to be relied upon to make a decision that would be adverse to that person’s interest. This would also include providing the person who is the subject of the allegations with information about allegations, and an opportunity to respond, before relying on that information to make an adverse decision.

This is likely to better balance the need to share information to protect children with the need to address concerns about fairness and the reliability of the information. There are likely to be concerns about the practicality of implementing any such procedural fairness processes in relation to untested/unsubstantiated allegations. However, as the New South Wales Government observed, ‘Prescribed bodies that do not check information before relying on it to make an adverse decision may expose themselves to possible legal action’.⁴³²

The purpose of the information exchange scheme – to promote children’s safety and wellbeing – requires the scope of information covered by the scheme to be sufficient to identify and address risks and harm to children. However, there is also clearly a need to put in place robust safeguards to deal with potential unfairness to individuals subject to such adverse information.

On balance, we do not favour entirely excluding untested and unsubstantiated allegations from our recommended information exchange scheme. Nor do we favour imposing obligations on the information provider that could unduly inhibit the sharing of potentially significant information. In our view, a combination of the other safeguards listed earlier, including imposing obligations on information recipients, would be the most appropriate way to meet the concerns raised, minimise unfairness and ensure a high level of integrity in the scheme.

As the New South Wales and Northern Territory governments have suggested, prescribed bodies under an information exchange scheme would need guidance on sharing and using untested and unsubstantiated allegations.⁴³³ The New South Wales Government submitted that guidelines to support information exchange under the scheme 'should require the receiving body to assess the accuracy and currency of information provided before using it'.⁴³⁴ The Northern Territory Government also cautioned that institutions may not be sufficiently resourced to defend decisions based on ad hoc collection and inadequate analysis of information relating to untested or unsubstantiated allegations.⁴³⁵ Guidelines supporting the information exchange scheme could provide direction in this regard. For example, the guidelines could advise that, in forming the requisite reasonable belief to share untested and unsubstantiated allegations, information sharers should consider whether the information is based merely on unfounded rumours or suspicions.

We give further consideration to the general need for safeguards in Section 3.3.3 and to the need for guidelines in Section 3.4.1.

Information about children

Information related to the safety and wellbeing of a child or group of children includes a child's personal information where it relates to their, or another child's safety and wellbeing. This may include information about harmful sexual behaviours that a child has displayed or information about the support needs of a child who has been sexually abused. In these contexts, there may be a strong case for sharing information from a child's counselling, medical or therapeutic records.⁴³⁶

Inappropriate sharing of a child's personal information may have serious consequences for the child, including undermining their safety and wellbeing.⁴³⁷ It may have the unintended consequence of inhibiting the child's willingness to disclose abuse. We heard evidence in the *Out-of-home care* case study that lack of confidentiality is a barrier for children in out-of-home care disclosing sexual abuse.⁴³⁸ Lack of confidentiality may raise particular concerns for certain groups of children, for example Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds.⁴³⁹

Information about particularly vulnerable children may be more sensitive, as it may, for example, cause them to be subject to discrimination. PWDA told us:

Children with disability still experience significant discrimination in relation to their disability, and should be permitted to withhold information regarding their impairments.

This should not be considered problematic; nor should disclosure of their disability be the condition for access to supports including communication supports, psychological supports and so on. The necessity of disclosing impairments should be explicitly considered, as in many circumstances, their disclosure will be unnecessary, and support arrangements can be made without sharing this information. This should be a key consideration of any information-sharing protocols.⁴⁴⁰

We also heard about the need for, and challenges of, sharing information related to the safety and wellbeing of children in small or remote communities, particularly information concerning Aboriginal and Torres Strait Islander children. We heard that in some small or remote communities, people may play multiple roles in that community and work across multiple agencies. The Victorian Aboriginal Child Care Agency, the lead Aboriginal child and family welfare organisation in Victoria, told us:

The expectation placed to share intimate details whenever engaging with a new service, institution, and or authority remains a major barrier for Aboriginal people and at times can impede the healing journey. Information sharing that ensures the safety and wellbeing needs of Aboriginal children are addressed is critical. It is often in the ‘how’ information is shared, rather than ‘what’ information is shared that is the issue. To this end, being culturally sensitive and informed will enhance the outcomes for Aboriginal children and provide the best chance for healing from both sexual abuse and cultural trauma.⁴⁴¹

We heard that children have been re-victimised, bullied, discriminated against or stigmatised as a result of inappropriate sharing and misuse of their personal information. These concerns are heightened by the potential for information to spread widely and quickly through social media and other online platforms. At the same time, we heard a great deal, in our case studies and our consultations, about the need for institutions and relevant professionals to share sensitive information about children in order to effectively prevent and respond to child sexual abuse.

In Chapter 4 we discuss issues regarding the exchange of information about students between schools when a student transfers to a new school.

Information about children with harmful sexual behaviours: The impacts of a child’s harmful sexual behaviours can be as serious as the impacts of adult-perpetrated sexual abuse. Volume 10, *Children with harmful sexual behaviours* sets out what we learned about children who have displayed harmful sexual behaviours and how to improve responses to these children.

As outlined in Volume 10, we heard about the importance of a multi-agency collaborative approach to interventions for children who have displayed harmful sexual behaviours. We heard that Australian practitioners and policy makers generally agree that children who have displayed harmful sexual behaviours often have complex needs that cannot be addressed by a single agency. For this reason, agencies including child protection, police, health, therapeutic treatment services and juvenile justice should work together to respond to these children. To be effective, that collaboration needs to be supported by appropriate information exchange.

In *Case Study 45: Problematic and harmful sexual behaviours of children in schools (Harmful sexual behaviours of children in schools)* we heard that children who have displayed harmful sexual behaviours have, in some cases, been sent back to their families or communities without having their therapeutic needs met and without adequate information exchange.⁴⁴² This can place the wellbeing of these children at serious risk, as well as potentially jeopardising the safety of the other children they subsequently meet in different institutional contexts.

In consultations, as well as in the *Harmful sexual behaviours of children in schools* case study, stakeholders emphasised that it is imperative that information about a child's harmful sexual behaviours is shared when they transfer to a new school.⁴⁴³

In our *Out-of-home care* case study and in our consultations, stakeholders emphasised the particular need for appropriate information sharing with carers about a child's harmful sexual behaviours when placing or transferring children in out-of-home care. We were told that carers are not always given timely and adequate information to meet their care responsibilities and to manage risks. We learned that, especially where a child has displayed sexualised behaviours, inadequate sharing of information with carers may undermine placement stability and the safety of children in care and other children in carer households.⁴⁴⁴ In jurisdictions where non-government out-of-home care providers arrange and supervise placements, the capacity of these providers to share information with carers may be affected by their own limited access to relevant information held by the child protection agency.⁴⁴⁵ We consider the need for sharing information with carers in more detail in Volume 12, *Contemporary out-of-home care*.

Information related to harmful sexual behaviours displayed by a child can be extremely sensitive and has the potential to result in long-term stigmatisation and discrimination for the child. In response to our *Out-of-home care* consultation paper, PWDA submitted:

Sharing information regarding a history of harmful sexual behaviour (or the suspicion of this) should be managed very carefully as this information can stigmatise and isolate children and render them at risk of inappropriate repercussions. This is especially the case for children with disability, particularly intellectual disability, who may be assumed to either be asexual or hypersexual.⁴⁴⁶

Information sharing regarding the harmful sexual behaviours displayed by a child can include disclosing information about sexual behaviours that have reached the threshold for a criminal offence. In *Case Study 57: Nature, cause and impact of child sexual abuse in institutional contexts*, we heard that disclosing a child's history of sexual offences – including to a child's school – can place them at risk of predatory behaviour by adults.⁴⁴⁷

The sensitivity of this type of information is reflected in existing state and territory legislation prohibiting or restricting publication of the name of a child charged with an offence, including sexual offences.⁴⁴⁸ In some cases prohibition on publication extends to other identifying information, for example, information identifying the child's school.⁴⁴⁹ In their response to our consultation paper on criminal justice, the Law Society of New South Wales submitted:

The Law Society considers that special consideration must be given to juvenile offenders to ensure their privacy is respected. We note that s 15A of the *Children (Criminal Proceedings) Act 1987* (NSW) (CCPA) prohibits publication or broadcast where it might lead to the identification of a child who has been charged. We also note that children in conflict with the law, including those who are alleged as having committed an offence, must have their privacy fully respected at all stages of the proceedings, in accordance with article 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child (CRC). We submit that those children who have not been charged deserve even greater protection.⁴⁵⁰

While the provision of information by one prescribed body directly to another prescribed body under an information exchange scheme would not constitute publication or broadcast, we are mindful of the need for great care to be taken when sharing information related to a child who has displayed harmful sexual behaviours. The need for safeguards and guidelines to apply to the sharing of this type of information is considered further in Sections 3.3.3 and 3.4.1. We also consider the sharing of this type of information in the schools context in Chapter 4.

Information about children's therapeutic needs and wellbeing: We heard significant evidence about the impact of child sexual abuse on children's health and emotional, social and physical wellbeing. Volume 3, *Impacts* sets out what we have learned about the impacts of child sexual abuse.

While not all victims are affected by child sexual abuse in the same way, many children surviving traumatic events experience characteristics of post-traumatic stress disorder (PTSD) and other effects of trauma. Children who have been traumatised may experience hyper-vigilance or hyper-arousal (heightened anxiety and alertness), which can severely limit their ability to concentrate and learn in the classroom. At school, children who have been abused may externalise their distress in disruptive, angry or aggressive behaviour. Eating problems, fear and anxiety, and non-participation in school, learning and social activities may emerge.

As children who have been victims of sexual abuse transition into adolescence they may be vulnerable to depression, anxiety, stress disorders, self-injury and suicidal ideation. Children at this age may resort to defence mechanisms including the abuse of alcohol or other drugs, using food for comfort or punishment, social withdrawal, isolation and impulsivity, as well as having sex early or having multiple sexual partners.

Children of all ages traumatised by sexual abuse can exhibit developmentally-inappropriate sexualised behaviours. These manifest differently, depending on the age of the victims.

As a child develops, these behaviours may manifest as aggressive, exploitative sexualised engagement with other children, including younger children.

These potential impacts of child sexual abuse underscore the importance of institutions with responsibilities for children's safety and wellbeing having sufficient information to enable them to support children and respond to challenging behaviours appropriately. Medical, counselling and therapeutic information falls within the scope of existing schemes for the exchange of information related to the safety and wellbeing of children. Legislative amendments extending the range of prescribed bodies under the New South Wales scheme to health professionals reflect the need for such information to be shared.⁴⁵¹

From the evidence and information considered in our inquiry, it is clear that no single service or service system has the capacity to respond to all needs a victim may have. Collaboration between services, service sectors and relevant professionals is necessary to support victims, particularly those with complex needs. It is also important to note that sharing sensitive information about children's therapeutic needs can support more integrated and targeted therapeutic interventions without requiring children to relive their trauma by re-telling their stories to multiple professionals.⁴⁵²

At the same time, sharing medical and counselling information without consent, for example, with custodial staff in a youth detention setting, may detrimentally affect therapeutic relationships⁴⁵³ and inhibit children's disclosure of sexual abuse.⁴⁵⁴ We heard that because of feelings of shame and the stigma that victims can experience, assuring victims of privacy and confidentiality when they are seeking assistance can be extremely important. Both recordkeeping and information sharing can cause concerns for some victims, who may be reluctant to access therapeutic support because of concerns about who could gain access to their records. Many survivors have told us that they went to great lengths to ensure that accessing support did not mean that their history of abuse became known in the broader community.⁴⁵⁵ This may be a particular concern for victims living in small or remote communities or those from culturally and linguistically diverse backgrounds.

This reinforces the importance of safeguards to ensure that medical, counselling and therapeutic information is shared in an appropriate and supportive manner. As discussed earlier, the guidelines to the Northern Territory information sharing scheme provide that in forming a reasonable belief about the need to share information, the information sharer may consider anything they think is relevant.⁴⁵⁶ This could include:

- the likely or expressed wishes of the child
- the potential negative impact on the child if the information is shared, including discouraging the child from accessing services that facilitate their safety or wellbeing, or undermining a child's support network
- the child's particular safety or wellbeing needs and whether these are likely to be assisted by the service or institution requesting or receiving the information.

Guidelines supporting an information exchange scheme could address additional safeguards for sharing a child's personal information. These additional safeguards could include sharing only the amount of information necessary to support the child – for instance disclosing that a child has a trauma history, rather than the fact or details of the sexual abuse they experienced. It may also include giving consideration to the nature of the receiving institution. As the New South Wales Government told us:

While it is of fundamental importance that schools have access to a child's medical or counselling information in circumstances where that information impacts on the child's educational or wellbeing needs, not all information meets this test, and not all prescribed bodies have the same need for this information as schools do.⁴⁵⁷

Similarly, institutions who receive such information should be careful to restrict it to those within the institution who need to know that information. In the school setting, this may mean specifying the member of staff who may transfer or receive information when students move schools, such as the principal or a school counsellor. Relevant information should be made available to other school staff only on a 'need-to-know' basis.

The need for safeguards and guidelines to apply to the sharing of this type of information is discussed further in Section 3.3.3. We also consider the sharing of this type of information in the schools context in Chapter 4.

Information about reporter identity

We have considered whether the identity of confidential reporters should be excluded from the scope of information exchanged under our recommended scheme. Disclosure of reporter identity to police, other law enforcement or statutory child protection agencies may sometimes be necessary to investigate an alleged serious offence against a child or to prevent the commission of such an offence. However, disclosure of confidential reporter identity more broadly is unlikely to be warranted in almost any circumstance.

There is a strong public interest in preserving existing protections for the identity of reporters, such as those protections under state and territory child protection legislation for confidential risk of harm reports.⁴⁵⁸ Stakeholders have highlighted, more generally, the need to protect and encourage whistleblowers, such as employees or volunteers in an organisation, who report child sexual abuse within their organisation.⁴⁵⁹ Without protection of their identity, reporters may be discouraged from reporting concerns about harm or risk to children, and children's safety may be compromised.⁴⁶⁰ For individuals subject to mandatory reporting provisions, the protection of their identity may be an important counterbalance to the imposition of a reporting obligation.

We consider, in Section 3.3.3, the need for an information exchange scheme to explicitly override any inconsistent laws that restrict disclosure of information. However, we recognise that one consequence of this may be to undermine existing protections, including protections for reporters under mandatory reporting laws, and protections for whistleblowers under protected disclosure legislation.⁴⁶¹

This may be mitigated, to some extent, through exceptions to information sharing obligations – for example, information must be excluded if it would enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained. A prescribed body responding to a request for information could also have the option of refusing to provide information if it would be against the public interest to do so. Such exceptions would allow, but not require, prescribed bodies to refuse to provide such information on request. Confidential reporter identity could, however, also be disclosed by prescribed bodies exercising their discretionary power to proactively share information without a request.

In our *Information sharing* discussion paper, we sought comment on the need to exclude disclosure of confidential reporter identity under an information exchange scheme. Stakeholders indicated their strong support for reporter protections, and noted they are a critical component of an effective child protection system.⁴⁶²

We consider that disclosure of reporter identity under an information exchange scheme should be restricted consistent with existing reporter identity protections,⁴⁶³ having regard to our recommendation in the *Criminal justice* report that state and territory governments should introduce legislation to implement recommendations by the Australian Law Reform Commission and the New South Wales Law Reform Commission in relation to disclosing or revealing the identity of a mandatory reporter to a law enforcement agency.⁴⁶⁴

3.3.3 The safety and wellbeing of children is paramount

Australian laws regulating the handling of personal information are based on recognition of the general principle that, in the absence of an overriding interest, the right to privacy⁴⁶⁵ should be protected. One of the consistent themes of child protection legislation across Australia is that the welfare and best interests of the child are paramount.⁴⁶⁶ This is generally stated in provisions setting out the objects and principles for the administration of the legislation. In some jurisdictions, child protection laws also set out the object and principles guiding provisions for schemes for the exchange of information relating to children's safety and wellbeing.⁴⁶⁷ These clearly set out the underpinning principle that children's safety and wellbeing is paramount (the paramountcy principle), and takes precedence over the protection of confidentiality and an individual's privacy.⁴⁶⁸

The paramountcy principle is consistent with the United Nations Convention on the Rights of the Child, to which Australia is a signatory. This convention requires that a child's best interests be taken into account as a primary consideration in all actions concerning the child, including in those actions undertaken by public or private social welfare institutions. In addition, governments are required under the convention to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of violence, abuse and neglect, including exploitation and sexual abuse.⁴⁶⁹

In our view it is necessary to limit privacy to protect children. However, international law also requires us to consider the reasonableness of proposed limits on privacy.⁴⁷⁰ In this section, we set out in more detail measures governments should consider implementing to ensure that our recommended information exchange scheme effectively facilitates information sharing to protect children, without disproportionately affecting privacy.

We also recognise that privacy and a child's safety and wellbeing are not necessarily mutually exclusive. In some cases, information sharing may undermine a child's safety and wellbeing. Privacy regulation can offer important protections to victims.⁴⁷¹ We also recognise the challenges that may be faced by information sharers where there are competing interests that are difficult to balance – for example, those of a child whose wellbeing may be undermined by information about abuse being shared, against those of another child or children whose safety may be compromised if the information is not shared. Guidelines supporting legislation for an information exchange scheme should include some guidance for decision-making where the relative weight of competing concerns may be difficult to evaluate.

Prioritising children's safety and wellbeing

In our consultations we proposed that a nationally consistent information exchange scheme should, like the New South Wales scheme, explicitly prioritise children's safety and wellbeing (which includes protection from sexual abuse)⁴⁷² over the protection of privacy and confidentiality.⁴⁷³ Many stakeholders agreed with this approach.⁴⁷⁴

Apart from explicit legislative statements establishing the priority of children's safety and wellbeing, there are two primary, but related, ways in which existing schemes prioritise children's safety and wellbeing. The first is by overriding inconsistent laws, including privacy laws, which may otherwise restrict the sharing of information. The second is by permitting an individual's personal information to be shared without that individual's consent. As we discuss in this section, however, we consider that this second should not preclude consideration of a child's views about the exchange of their personal information.

Overriding inconsistent laws

Existing information exchange schemes often contain provisions that explicitly override laws that might otherwise prohibit or restrict disclosure of information.⁴⁷⁵

Privacy restrictions do not prevent disclosures that are required or authorised by law.⁴⁷⁶ This means that information sharing arrangements established by law do not need to explicitly state that they override privacy laws. However, given confusion around the application of privacy laws, such explicit provisions may be helpful in promoting certainty and confidence for institutions with responsibilities for children's safety and wellbeing.⁴⁷⁷

We note, however, that the findings of a 2015 report by the Social Policy Research Centre of the University of New South Wales suggest that even where information sharing laws explicitly override privacy laws, there is still some anxiety and reluctance to share information.⁴⁷⁸ This points to the importance of non-legislative measures to improve information sharing, which are discussed in more detail later in Section 3.4.

Protection from liability

Laws that impose civil or criminal liability for improper disclosure of information may add to anxiety and reluctance to share personal or confidential information related to the safety and wellbeing of children.⁴⁷⁹ Broad protection from liability for sharing information in good faith may help to counter this reluctance and encourage appropriate proactive sharing.

In our view, in establishing our recommended information exchange scheme, Australian governments should include provisions providing protection from liability for sharing information in good faith. In particular, protection should be provided against any civil or criminal liability, including liability for a breach of any duty of confidentiality or secrecy imposed by law. This should extend to protection against disciplinary action for professional misconduct, breaches of professional ethics or standards, or breaches of other rules relating to conduct in employment or as a volunteer.

Not requiring consent to share information

Generally, an individual's personal information may be shared where that individual has consented to that disclosure. Existing legislative information exchange schemes enable personal information to be shared without consent.⁴⁸⁰ However, guidelines issued to support these legislative schemes, including guidelines under the New South Wales scheme and the Northern Territory scheme, encourage consent seeking (in appropriate circumstances) as best practice.⁴⁸¹ In some cases, following these guidelines under these schemes will mean that where consent is sought and an individual does not consent to their personal information being shared, it may nevertheless be shared.

Stakeholder views about the importance of seeking consent: In our consultations, we proposed that consent should not be required for sharing information under a nationally consistent information exchange scheme. In response, some stakeholders emphasised the importance of seeking consent, especially where the personal information is that of a child.

The NSW Privacy Commissioner strongly advocated that 'consent seeking be highlighted as a key obligation of organisations as it is in Family and Community Services NSW best practice guidelines'.⁴⁸² The Queensland Family and Child Commission told us that:

While information sharing without consent is a complex matter, a strong child-safe information sharing culture should encourage staff to work with children and families, to seek their consent to share information where appropriate.⁴⁸³

The Information Sharing Guidelines in South Australia, which operate as a non-legislative scheme consistent with privacy restrictions, set out a comprehensive process for seeking consent before sharing information.⁴⁸⁴

Seeking consent is clearly best practice and efforts should be made to advise children and their parents about the sharing of the child's personal information. In providing this advice the legislative basis for sharing information without consent should be explained. This may assist children and their parents to hold decision-makers accountable. For example, where students transfer to new schools, parents who have been advised about the information sharing arrangements will be better placed to complain if the new school does not respond appropriately to the information it received.

Seeking consent from an individual to share their personal information in the context of child sexual abuse may not be possible, reasonable or appropriate. It may unduly delay institutional responses to risk, expose a child to greater risk, or otherwise compromise prevention, investigation or prosecution of child sexual abuse. The Australian Privacy Commissioner and Australian Information Commissioner, Mr Timothy Pilgrim, commented (with respect to disclosure of information under privacy law) that:

it may be unreasonable to seek consent from the individual posing the threat where that individual could reasonably be anticipated to withhold consent, or where the act of seeking the individual's consent could increase the threat.⁴⁸⁵

As Mr Pilgrim observed, it is less likely to be unreasonable or impracticable to seek consent from a victim.⁴⁸⁶

We agree that seeking consent from victims may be less problematic than seeking consent from alleged perpetrators. However, we also recognise that children may not be in a position to properly consider appropriate use of their information for their own and other children's safety. Seeking a child's consent may be particularly problematic given perpetrator grooming and the reluctance of many children to disclose sexual abuse. In addition, some children may lack the capacity to consent.⁴⁸⁷ While the views of parents (or a child's authorised representative) will be relevant in this context, they may not be well-informed about the need to share information, particularly where the information needs to be shared for the benefit of children other than their own.

The importance of seeking a child's views on the disclosure of their personal information:

Information sharing may, in some cases, undermine children's safety and wellbeing. In particular, sharing information about children without their consent may sometimes be detrimental to their wellbeing. As the Northern Territory's Information Sharing Guidelines note, 'Control over one's personal information is a central aspect of dignity and therefore wellbeing'.⁴⁸⁸

We acknowledge that concerns about sharing a child's personal information without their consent are particularly significant for victims⁴⁸⁹ and more generally for older children who have the capacity to understand and be concerned about disclosure of their personal information.

However, using the term ‘consent seeking’ in the context of information exchange schemes where it is not legally required is misleading and may even be disempowering. Seeking an individual’s consent, particularly where that individual is a child, and then overriding her or his refusal to consent by sharing personal information anyway, may be traumatic, disempowering and otherwise detrimental to that child’s wellbeing.

Instead, it is important that where an institution proposes to share personal information, particularly where that individual is a child, the institution should clearly inform the individual that their personal information may be shared. Where a child expresses views about the sharing of their personal information, those views should be given due weight.

Under the Northern Territory Information Sharing Guidelines, a child’s views on disclosure of their personal information is one factor that information holders can take into account when determining whether they have the requisite belief that the information would assist the recipient to meet its responsibilities related to the safety and wellbeing of children.⁴⁹⁰

A principle underpinning child protection legislation in a number of jurisdictions is that where a child is able to form their own views on a matter concerning their safety or wellbeing, they are to be given the opportunity to freely express those views and those views should be given due weight in accordance with the circumstances.⁴⁹¹ This principle is consistent with the right of children – set out in the United Nations Convention on the Rights of the Child – to express their views and participate in decisions that affect their lives.⁴⁹² In our recommended Child Safe Standards we have identified children’s participation and empowerment as one of the elements of a child safe institution (see Volume 6, *Making institutions child safe*).

Informing an individual – especially where that individual is a child and/or a victim of child sexual abuse – of an intention to share their personal information, explaining the reasons and legal basis for sharing that information, and seeking and considering their views before doing so, can contribute to better decision-making in the best interests of children. Importantly, it may assist in identifying whether any of the exceptions to information sharing obligations, discussed earlier, should be invoked to refuse a request for information. Taking these steps also promotes transparency, accountability and fairness.

In Section 3.3.2, we note that it may not be reasonable or practical to inform a person of an intention to share untested or unsubstantiated allegations about them, or to consider their views before sharing such information. Where such allegations have been made against a child, it may also not be appropriate to do this. Sharing personal information, without consent, about children who have, or may have, displayed harmful sexual behaviours will require the balancing of difficult and competing considerations. Similar considerations may apply in relation to sharing such information without informing the child concerned.

Consistent with our views in relation to untested and unsubstantiated allegations against adults and school students (see Chapter 4), obligations could be imposed under our recommended information exchange scheme on those receiving information about untested or unsubstantiated allegations of harmful sexual behaviour to help address concerns about sharing such information. In particular, those receiving the information could be required to provide the child (or their parent or authorised representative) with an opportunity to respond, before taking adverse action against the child on the basis of the information (for example, declining to enrol the student in a school).

Informing an individual and considering their views before sharing their information:

Complexity in information sharing arrangements can cause confusion and uncertainty, and may inhibit information sharing. Lack of clarity about the role of or need for consent can undermine the effectiveness of legislated information exchange schemes that do not require consent for information to be shared.

In our view, rather than an explicit focus on seeking consent, guidelines supporting decision-making under our recommended information exchange scheme should advise that those intending to share an individual's personal information should first inform the individual of that intention and seek their views. At the same time, we acknowledge that this will not always be appropriate or possible, for the same reasons that seeking consent is not always appropriate.

In our view, guidance on this issue should include the following principles:

- Before sharing personal information, information sharers should, where appropriate and possible, notify a person (and/or their parents or authorised representative in the case of a child) of an intention to share their personal information and the basis for doing so.
- Persons who are the subject of the information (and/or their parent or authorised representative) should be clearly informed that their consent to disclose their personal information is not required under the law, and should be given the opportunity to express their views, including objections to or concerns about the disclosure.
- A person's views should be taken into account in deciding to share or not share their personal information. Where a child is able to form their own views on the sharing of their personal information, they should be given the opportunity to freely express those views and their views should be given due weight in accordance with their capacity and other relevant circumstances.
- Circumstances in which it will not be appropriate or possible to inform a person or seek their views before sharing information include where doing so may compromise a child or children's safety and wellbeing. In some circumstances notification may be more appropriate, or possible, after the information has been shared (in the case of untested/unsubstantiated allegations, the recipient of the information should be required to provide the person with an opportunity to respond, before taking adverse action against them based on that information).

- Consideration should be given to measures that may allow sufficient relevant information to be shared while addressing concerns raised by the person whose personal information is being shared. Such measures may include de-identification (for example, where the recipient of the information does not need to know the identity of the victim in order to take action) and redaction of unnecessary information.

The need for guidelines and measures to support and promote appropriate information sharing is discussed further in Section 3.4.1. In Chapter 4 we consider this issue in the context of sharing information about school students.

The need for safeguards

The protection of sensitive personal information exchanged under an information exchange scheme will be important for all persons who are the subject of such information – including those who have been sexually abused, those who are (or may be) at risk of sexual abuse, and those who pose (or may pose) risk. It is important that the prioritisation of children’s safety and wellbeing under such a scheme is accompanied by safeguards against inappropriate information sharing.

To minimise unnecessary infringements of privacy and harm as a result of information sharing, institutions will need to identify and address valid concerns relating to transmission, use, storage, further disclosure and disposal of information exchanged under the scheme. Institutions’ development and implementation of strong information governance arrangements can assist to address these concerns. These may, for example, include institutional policies, processes, mechanisms and resources to:

- foster appropriate assessments of safety and wellbeing – including adequate considerations of children’s privacy concerns
- ensure information sharing is appropriate – that is, relevant and limited to the identified need for information
- protect personal information from misuse – including through appropriate privacy protections and accountability for exchanging information under the scheme.

Such measures can be tailored for implementation at the institutional (or sectoral) level. However, it is important that implementation is consistent with the approach taken across the scheme. Certain safeguards (for example, obligations to provide opportunity to respond to allegations) should be set out in legislation. Guidelines should support the legislation and provide guidance on implementing essential safeguards. Providing centralised support within the institution (or sector) to promote a consistently sound approach to management of information requests and responses under the scheme will also be beneficial.

Managing personal information in accordance with privacy laws

As some stakeholders and commentators have observed, there is capacity for an information exchange scheme and privacy principles to co-exist.⁴⁹³ The NSW Privacy Commissioner submitted that privacy should be recognised and promoted as an enabler that, properly used, can build trust in government institutions and service providers.⁴⁹⁴

To that end, we have considered the potential for an information exchange scheme to operate alongside privacy laws – in so far as these do not subvert the purpose of the scheme – rather than excluding their operation entirely. It is important to note, for example, that legislation for an information exchange scheme would enable information sharing that is consistent with exceptions under privacy law for disclosure of personal information as authorised or required by law. Prescribed bodies under the scheme would continue to be subject to any applicable privacy law provisions that do not conflict with the provisions of the scheme. As a result, some important privacy law protections could operate as safeguards for the handling of personal information under the scheme – for example, provisions for:

- individuals to access and correct information held about them⁴⁹⁵
- information security⁴⁹⁶
- institutions to maintain privacy policies setting out how personal information is collected, used, stored and disclosed.⁴⁹⁷

Most states and territories have privacy laws that apply to their public sector agencies.⁴⁹⁸ Many larger non-government institutions are subject to Commonwealth privacy regulation. However, most non-government entities with an annual turnover of less than \$3 million are not subject to privacy regulation. In their response to our discussion paper on information sharing, the Australian Government expressed concern about relying on inconsistent state and territory privacy regimes. However, the benefits of privacy regulation generally include requirements for the institution holding a person's personal information to:⁴⁹⁹

- ensure that an individual is informed that their personal information is being collected, and about the use, disclosure, right of access and right of correction of that information
- provide an individual with access to their personal information held by the institution at the request of that individual
- take reasonable security safeguards to ensure personal information held by the institution is protected against unauthorised access, use, modification or disclosure.

Information sharing limited to the identified need for information

Information sharers under our recommended information exchange scheme should properly consider the purpose of information sharing. Proactive sharers under the scheme should identify a clear need for their intended recipient to have particular information before sharing it. Taking into account the nature of the information and the role of the receiving body, proactive sharers should be able to reasonably conclude that the receiving body needs the information because it would assist that body to exercise its responsibilities related to children's safety and wellbeing. This approach should foster information sharing that is proportionate.

Those responding to a request for information under the scheme should also give careful consideration to the need for the information, as identified by the prescribed body requesting it. Reactive sharers should, before sharing, be able to reasonably conclude that the information might assist the requesting body to exercise its responsibilities related to children's safety and wellbeing.

Guidelines issued under the legislation should support decision-making in this regard. In our view, these guidelines should also advise prescribed bodies to disclose only as much information as is necessary and proportionate to the identified need for information. A party requested to provide information may not always be in a position to determine exactly what and how much information is required, and should take advice on this from the party requesting the information. A party planning to proactively provide information should first consult with the intended recipient to avoid providing unnecessary information.

Similarly, institutions should ensure only appropriate personnel – preferably a designated senior officer – are authorised to request and release information under the scheme. On this point, we note the NSW Ombudsman's written evidence in the *Knox Grammar School* case study that his office requires senior officer level approval for both releases and requests for information under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).⁵⁰⁰

A further safeguard that may be appropriately addressed in guidelines is that information be shared only between authorised personnel. This information may be disseminated further within the organisation only on a need-to-know basis. Institutions should implement effective measures for restricted access to information within the institution and information security to restrict this access to personnel who are authorised by the institution as suitable to handle and use the information – for example by:

- restricting access, through secure communications and technology systems and a secure physical environment, to personnel who are authorised by the institution as suitable to handle and use the information
- monitoring or auditing access, and responding to security breaches and risks.

Such restrictions on intra-institutional access to information obtained under the scheme are consistent with a more general requirement to restrict further use of information.

In addition, where possible and appropriate, information should be redacted for de-identification purposes before it is shared. For example, in some cases, the identity of a child or a victim may not be relevant information, and will not need to be shared. This may be the case where institutions seek to share information about concerns relating to an adult who works with children. Guidelines should provide for the redaction of identifying or personal information about children in such circumstances.

Limiting the disclosure of information to that which needs to be known and limiting recipients to those who need to know will serve as important safeguards, helping to ensure that the sharing of information under the information exchange scheme is reasonable, necessary and proportionate.

Restrictions on further use

The New South Wales and Northern Territory schemes include provisions that explicitly restrict further use of information shared under the scheme. As the Australian Privacy and Information Commissioner noted, restrictions on further use are particularly important in the context of sharing untested or unsubstantiated allegations, and counselling and medical records. These restrictions can also be helpful in minimising infringements of privacy, including for victims.

A clearly expressed restriction on further use and disclosure of information that has been shared under the scheme, where that further use and disclosure is for purposes unrelated to children's safety and wellbeing, could help to address concerns about privacy, information security and procedural fairness. The restriction set out in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) prevents further use or disclosure (except as otherwise permitted or required by law) for any purpose not associated with the safety, welfare or wellbeing of the child, or class of children, 'to whom the information relates'.⁵⁰¹

The formulation of the equivalent restriction under the Northern Territory scheme allows further use and disclosure of the information for purposes related to the safety and wellbeing of a child to whom the information relates. That includes a reference to a child, other than the child (or group of children) for whose safety and wellbeing the information was originally given under the scheme.⁵⁰²

The Tasmanian Government noted in relation to this difference:

Inevitably, the more distant the information is from the source, exacerbated by a capacity to reuse information, the greater the likelihood of that information being misunderstood, misapplied, and having unintended negative consequences for a range of people including the child on whose behalf the information was originally shared.⁵⁰³

Australian governments should consider adopting a consistent approach to further use or disclosure of information shared under our recommended information exchange scheme. This approach should balance the need for 'organisations [to be] able to share the right information, at the right time and in the right way to allow risks to children to be appropriately responded to'⁵⁰⁴ against the potential negative consequences of a broad power to further disclose information shared under the scheme.

Proportionality of limits on privacy

There are risks to children's safety and wellbeing when relevant information is not shared with those who need to know and take action to protect children. Evidence and information before us also demonstrates that undue deference to privacy has limited information sharing in the past. Strong measures are needed to remedy this, including legislation that clearly dictates that privacy and confidentiality must not be protected to the detriment of children's safety and wellbeing.

We have considered a number of factors to determine whether our recommended information exchange scheme (including elements that need further consideration by Australian governments) is a proportionate response to the need for information sharing to better protect children from sexual abuse and promote their best interests. These factors include the need to correctly identify the appropriate range of bodies prescribed under the scheme, in order to limit access to information to those who need to know and are capable of responding to and handling that information appropriately. Exceptions to information sharing obligations under the scheme will also go some way to ensuring the scheme is not a disproportionate solution to the problem of poor information sharing.

In our view, in order to provide a proportionate solution to the problems resulting from poor information sharing, the information exchange scheme should:

- be underpinned by the principle that children's safety and wellbeing is paramount as a guide for all decisions and actions under the scheme
- clearly prioritise safety and wellbeing of a child or children over privacy and confidentiality
- recognise that the safety and wellbeing of a child may, in some circumstances, depend on the protection of their privacy and confidentiality
- include effective safeguards to minimise unnecessary infringements of privacy and confidentiality
- retain privacy protections to the extent that they support and do not subvert the operation of the scheme.

3.3.4 Promoting compliance and accountability

We heard from stakeholders about the importance of compliance by, and accountability of, those operating as prescribed bodies in an information exchange scheme. For example, the New South Wales Government stated that it is ‘necessary and appropriate for decision-makers in government and non-government organisations to be accountable for information sharing decisions’.⁵⁰⁵

We have considered a number of measures that may promote compliance with information sharing obligations and accountability for decision-making under an information exchange scheme. One of these measures is that legislation implementing our recommended information exchange scheme should require written reasons to be provided when a prescribed body refuses an information sharing request.

There are also existing obligations and recommended records and recordkeeping principles (see Recommendation 8.4) that apply, or will apply, to many institutions covered by the recommended scheme.

Governments may wish to consider complementary measures to promote accountability, such as:

- clarification in guidelines or policies of recordkeeping obligations in relation to decisions and actions under the information exchange scheme, including best practice principles
- timeframes for responding to information sharing requests
- mechanisms for appeals or complaints relating to information sharing, including recourse to oversight bodies.

Written reasons

One measure to promote compliance and accountability is the requirement for prescribed bodies to provide written reasons when they refuse a request for information.⁵⁰⁶ This is provided for under the New South Wales and Northern Territory schemes, as well as the ACT hybrid scheme.⁵⁰⁷ This measure was supported by key stakeholders, including state governments and the Truth, Justice and Healing Council. The New South Wales Government submitted that this provision has ‘proved sufficient’ to make decision-makers accountable, ‘allowing for review and the provision of additional advice’.⁵⁰⁸ Similarly, the Northern Territory Government submitted that:

[requiring] written reasons following a refusal to share requested information is sufficient to promote compliance and accountability by prescribed bodies. It would make an organisation accountable for their decision not to provide the information.⁵⁰⁹

In our view, the information exchange scheme should include a legislated requirement for written reasons for refusal to share information. This approach is consistent with mechanisms promoting accountability that already exist in some jurisdictions.

Keeping records

As well as written reasons for refusal, records of all exchanges of information under the scheme would promote compliance and accountability. Prescribed bodies under the scheme would ordinarily be subject to recordkeeping and information management obligations under state and territory records, privacy and other legislation,⁵¹⁰ or under government funding agreements or contracts. These include requirements for retention, security and storage of records containing personal information, as well as requirements for individuals to have access to their own records, and rights to correct or amend those records.

In Chapter 2 we discuss legal requirements for recordkeeping more generally and make recommendations for best practice records and recordkeeping principles. Guidelines to support our information exchange scheme could address the need for recordkeeping in relation to requests, decisions to share or not share, and exchanges of information under the scheme, consistent with institutions' legal obligations and our recommended records and recordkeeping principles.

For example, the Northern Territory Information Sharing Guidelines set out requirements that prescribed bodies keep records of:⁵¹¹

- information requests received
- information requests made
- information that has been shared
- information requests that have been refused, together with the reasons for refusing.

In particular, those guidelines note:

In the Northern Territory, with outreach services working in remote communities, information sharing often will occur verbally, either over the phone or face-to-face. Authorised information sharers should make a written note of verbal exchanges as soon as practicable as best practice.⁵¹²

Similarly, we heard from the Anglican Church that it has a policy of documenting information sharing between directors of professional standards. This policy is intended to introduce accountability for information sharing and apply rigour to balancing considerations of safety and reputation. The policy aims to create a contemporary record should questions about the exchange arise in the future.⁵¹³

We consider such guidelines and internal policies regarding documentation of information sharing to be desirable.

Timeframes

A further measure to promote compliance and accountability under an information exchange scheme is the specification of timeframes for responding to an information sharing request, as provided for by the Information Sharing Protocol between the Commonwealth and Child Protection Agencies. This may address information sharing delays that we heard occur under the New South Wales scheme.⁵¹⁴ The Truth, Justice and Healing Council told us:

Prescribed time limits for responding to requests for information would be preferable as they would increase the timely flow of required information. Currently, time delays in some organisations responding to Chapter 16A requests for information are sometimes experienced.⁵¹⁵

Timeframes may be expressed in guidelines, protocols, or elsewhere. However, while specifying response timeframes may be best practice, it may be more feasible for government agencies than non-government organisations and individuals. While we have not made a recommendation regarding appropriate response timeframes to be specified, governments and government agencies should consider this option in relation to their internal policies and practices.

Accountability mechanisms and oversight

We have heard from some key stakeholders about the need for appeal or complaint mechanisms as part of any information exchange scheme.⁵¹⁶ The Northern Territory Government submitted that ‘consideration around a mechanism to challenge any refusal to share information may be necessary’.⁵¹⁷ The Truth, Justice and Healing Council commented that an appeal mechanism, where the requesting party considers the reasons for refusal invalid, may strengthen an information exchange scheme.⁵¹⁸

The Australian Government and the New South Wales Privacy Commissioner pointed specifically to the need for oversight to support information sharing. An oversight body could provide an avenue for appeals and complaints and also a support role for prescribed bodies, improving compliance with the scheme. As submitted by the Truth, Justice and Healing Council:

An appropriately resourced oversight body will be required to take responsibility for effective implementation of information sharing processes and to support and assist smaller organisations, particularly those constituted predominantly by volunteers in the practical implementation of the requirements. Production of guidance material, management of training for personnel in prescribed bodies and (perhaps) management of appeals around issues to do with refusal, failure or inappropriate release of information might also form part of the oversight body’s responsibilities.⁵¹⁹

Australian governments should develop appeal or complaints mechanisms for decisions under our recommended information exchange scheme and consider whether such mechanisms may best be provided by an oversight body.

The Northern Territory Government submitted that, in the first instance, existing structures and processes should be identified as a means for resolving disagreements about information sharing.⁵²⁰ We agree. In our view, this responsibility could rest with state, territory and Commonwealth ombudsmen, or state, territory and Commonwealth privacy commissioners.

In each jurisdiction, complaints about breaches of privacy are handled by privacy commissioners. Under current arrangements the jurisdictions of privacy commissioners would be expected to extend to concerns about breaches of privacy as a result of information being disclosed under a legislated information exchange scheme. To some degree, their jurisdictions may overlap with those of ombudsmen. In New South Wales, for instance, the Ombudsman has the capacity to monitor and review the delivery of community services and related programs,⁵²¹ both generally and in particular cases,⁵²² and to ‘receive, assess, resolve, or investigate’ complaints relating to the conduct of certain community services providers.⁵²³

Privacy commissioners may be well placed to address specific concerns about privacy breaches. However, in some circumstances the relevant ombudsman, with a broader monitoring and review role in relation to community services, including examination of systemic issues, may be better placed to respond. We note, however, the potential for confusion given the capacity of one or more existing bodies to play a role in each jurisdiction.

The question of complaints, appeals and oversight mechanisms should be considered further by all jurisdictions to ensure that any systems implemented can promote compliance and accountability without creating unnecessary complexity, unduly increasing regulatory burden, and inadvertently impeding timely decision-making to protect children.⁵²⁴

Recommendation 8.6

The Australian Government and state and territory governments should make nationally consistent legislative and administrative arrangements, in each jurisdiction, for a specified range of bodies (prescribed bodies) to share information related to the safety and wellbeing of children, including information relevant to child sexual abuse in institutional contexts (relevant information). These arrangements should be made to establish an information exchange scheme to operate in and across Australian jurisdictions.

Recommendation 8.7

In establishing the information exchange scheme, the Australian Government and state and territory governments should develop a minimum of nationally consistent provisions to:

- a. enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing
- b. permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts
- c. require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions
- d. explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts
- e. provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme
- f. require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.

3.4 Supporting implementation and operation

The resource implications associated with improving the capacity of all child-related sectors to identify and act upon child protection information is significant and will require a long-term investment in education, training and oversight of the information sharing system ... Regardless of additional resources to build capacity in child-related organisations and while recognising that legislation can drive changes in practice, real and lasting improvements to children's safety can only be achieved through attitudinal and behavioural change.⁵²⁵

Clear and robust information sharing arrangements, such as those we have recommended, will go a significant way to overcoming many of the current barriers to information sharing. However, legislative and policy reforms alone will not improve practice or create a culture of information sharing among agencies and institutions with responsibilities for children.⁵²⁶

Considerable action, commitment and resource investment by Australian governments, as well as institutions, will be required to effectively implement our recommended reforms and improve institutional responses to child sexual abuse. This will need to be a coordinated effort across all jurisdictions.⁵²⁷

This section considers factors that will be important in supporting implementation and operation of a nationally consistent information exchange scheme.

3.4.1 The need for guidelines

Guidelines should support individuals to make decisions about sharing information in accordance with the recommended information exchange scheme. Guidelines may support appropriate information sharing by describing relevant legislative provisions, including privacy laws, plainly and in one accessible document.

Stakeholders have emphasised the importance of clear guidelines that can be quickly and easily applied, in particular by front-line workers.⁵²⁸ The New South Wales Government told us that 'Guidelines, standards and protocols could help to address perceived barriers to information sharing and enable more consistent practice'.⁵²⁹ It also submitted:

Very clear guidance will be required to ensure the appropriate sharing, use and protection of information and to avoid individual organisations or jurisdictions developing their own interpretations.⁵³⁰

The South Australian Ombudsman emphasised the importance of guidelines that describe a process for staff to follow and explain in the simplest terms ‘what decisions staff need to make to ensure earlier and more effective interventions’.⁵³¹ The Ombudsman noted that without this, protocols can ‘be difficult for staff to interpret and apply, frequently leading to information not being shared even where it can or is required by law’.⁵³²

In both the Northern Territory and New South Wales, guidance material is provided in relation to those jurisdictions’ information sharing schemes, in the form of administrative guidelines (Northern Territory)⁵³³ and checklists and form letters (New South Wales). In our view, the Northern Territory’s Information Sharing Guidelines provide an instructive model of plainly written guidelines.

Section 293H of the *Care and Protection of Children Act* (NT) requires the CEO of the department with responsibility for child protection to make and publish guidelines for the operation of Part 5.1A of that legislation (‘Sharing information for safety and wellbeing of children’). Without limiting the matters that may be addressed in these guidelines, the legislation requires the CEO to make administrative guidelines providing for the matters that may be taken into account in forming a ‘reasonable belief’⁵³⁴ and circumstances in which an information sharing authority should consider obtaining the consent of a person before giving information about the person under Part 5.1A.⁵³⁵

As noted in Section 3.3.2, the New South Wales Government submitted that guidelines could be used to assist in identifying categories of information that can be shared under the scheme:

While it is of fundamental importance that schools have access to a child’s medical or counselling information in circumstances where that information impacts on the child’s educational and wellbeing needs, not all information meets this test, and not all prescribed bodies have the same need for this information as schools do. Consideration could be given to guidelines/supporting legislation identifying the broad categories of information that may/must be provided by prescribed bodies.⁵³⁶

The New South Wales Government also submitted that guidelines to support information exchange ‘should require the receiving body to assess the accuracy and currency of information provided before using it’.⁵³⁷

We consider that legislation for our recommended scheme should be supported by advice in guidelines on the following matters, which are discussed in detail earlier in this chapter:

- who, within an institution, may share information (consideration should be given to including guidance for particular institution types)

- when information can and should be shared, including
 - guidance for sharing information proactively, without a request
 - the matters that may be taken into account in forming a ‘reasonable belief’ regarding the receiving institution’s need for the information
 - guidance for requesting information from or sharing information with a prescribed body in another jurisdiction
- what information may be shared, and guidance on the exchange of particular types of information, including
 - sharing a child’s personal information
 - sharing counselling, therapeutic and medical records
 - sharing and using information about untested or unsubstantiated allegations that relate to a risk an adult may pose to a child or children
- when information must be shared and when a prescribed body can refuse to share information
- that consent is not required, and providing guidance on
 - seeking the views of an individual, particularly a child, where it is proposed to share his or her personal information, as best practice
 - when seeking the individual’s views will be appropriate, and how it should be done
 - giving such views due weight when deciding whether to share that personal information.
- administrative matters, including
 - recordkeeping and documentation
 - protecting confidentiality and storage of information
- other lawful means of sharing information related to the safety and wellbeing of children.

We acknowledge that jurisdictions will tailor guidelines to suit their legislative and regulatory environment. However, it is important that guidelines in each jurisdiction adopt a consistent approach to the matters listed above. As with the principal legislation, differences in the approach adopted by each jurisdiction to guidelines will introduce complexity for bodies seeking to share information inter-jurisdictionally, and for prescribed institutions that operate in multiple jurisdictions, potentially discouraging information sharing that could protect children.

For this reason, we consider that the minister whose portfolio includes the department responsible for child protection in each state and territory, and an appropriate minister at the federal level, should work together to produce ministerial guidelines to support our recommended legislated information exchange scheme. Provision for these ministerial guidelines should be made in the principal legislation.

Australian governments may need to consider whether there is a need for explicit direction, rather than advice, to institutions on particularly critical issues such as sharing of untested and unsubstantiated allegations. Without the force of law, guidelines may be inadequate to protect against misuse of this type of information and to promote accountability.

Legislation could require guidelines to be made in each jurisdiction, subject to an intergovernmental agreement to ensure consistency. Legislation could also require that all prescribed bodies have regard to the guidelines in exercising their powers and obligations under the scheme. Governments may also need to consider addressing the sharing and use of untested and unsubstantiated allegations more directly with the relevant safeguards set out in legislation, in order to ensure greater compliance and accountability. However, the detailed and nuanced considerations that may need to be set out to address this issue may not be best placed in legislative form.

3.4.2 Changing culture and practice

the effectiveness of information exchange provisions relies on relevant staff in prescribed organisations understanding the nature of information sharing powers and responsibilities. It is also reliant on staff having the confidence to engage the provisions where appropriate and/or required.⁵³⁸

We appreciate the need for change, beyond law reform, to overcome barriers to information sharing. As the Tasmanian Government submitted to us, legislative reforms and the implementation of robust information sharing arrangements will not ‘address the cultural issues that can lead to institutional reluctance to share information’.⁵³⁹ The submission continued, ‘Cultural issues and capacity building would require further detailed consideration in future phases of this work’.⁵⁴⁰

Similarly, the Queensland Family and Child Commission told us:

Legislative amendments that enable greater information sharing between organisations in the best interests of the child require concurrent investment in supporting cultural change to ensure legislation is interpreted correctly and implemented effectively among those working with children.⁵⁴¹

A number of other stakeholders emphasised the need for cultural change and change in practice. The Aboriginal Child Family and Community Care State Secretariat New South Wales submitted that the proper use of information sharing provisions requires ‘significant cultural change and practice support to help practitioners and other stakeholders to understand the provisions (particularly the proactive provisions) and utilise them to their full effect’.⁵⁴² Stakeholders have also identified the need for changes in the practices of particular agencies. For example, the New South Wales Law Society told us:

Better information exchange, which appears to require a shift in FACS [Department of Family and Community Services] practice (whether on an institutional level, or at a caseworker level, or both), is likely to improve both (1) outcomes for the child; and (2) the relationship between FACS and the Aboriginal community, which has long been fraught with historical distrust.⁵⁴³

It is significant that a 2015 report on information sharing in New South Wales, including discussion of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), noted that organisational factors ‘are the most significant barriers (and enablers) of information sharing’.⁵⁴⁴

For information sharing arrangements to operate effectively, they must be supported by organisational and professional cultures with strong governance and practice leadership, which understand and observe the proper limits of privacy. The Truth, Justice and Healing Council submitted, ‘If senior leadership are supportive of the organisation being open and transparent the organisation is more likely to be “open” in its information exchanges’.⁵⁴⁵

In our work on child safe institutions, we have identified 10 standards for a child safe institution. The first of these standards is that ‘Child safety is embedded in institutional leadership, governance and culture’, which emphasises the importance of staff and volunteers understanding their obligations on information sharing and recordkeeping.⁵⁴⁶ Another (Standard 10) is that ‘Policies and procedures document how the institution is child safe’. This includes having policies and procedures that are accessible and easy to understand, and that they are understood and implemented by leaders, staff and volunteers.⁵⁴⁷ As the New South Wales Government submitted:

In a child safe organisation staff should have a good working knowledge of their information sharing powers and responsibilities, so that they can share and access information from other organisations about the children in their care, to ensure those children are safe.⁵⁴⁸

Our work on child safe organisations, including our 10 Child Safe Standards, is discussed in more detail in Volume 6, *Making institutions child safe*. This section considers mechanisms for improving information sharing practice in and between agencies and institutions more specifically.

Training and education

Education and training, along with clear guidelines for children’s safety and wellbeing will assist in overcoming risk-averse organisational cultures and improve understanding of legislative and administrative arrangements for information exchange.⁵⁴⁹

Australian governments should work together to build capacity among agencies and institutions included in our recommended information exchange scheme. This includes developing consistent and clear guidelines to support the implementation of the scheme and providing training on how the scheme works, both when it is implemented and periodically after that.

Stakeholders have consistently emphasised the importance of clear guidelines and education or training to accompany legislation that facilitates information sharing.⁵⁵⁰

The Queensland Family and Child Commission noted that their 2015 review of professional reporting behaviours identified that where individual agencies had customised training materials that were not quality assured, this led to less consistent messaging in relation to legislative changes.⁵⁵¹

The Northern Territory Government told us that despite considerable work done to improve information sharing to protect vulnerable children, there appear to be gaps between intention and practice in some areas where information sharing is concerned. It noted that the ‘causes are likely to be complex and not easily resolved by one solution such as legislative change’ and that:

It may be the case that some workers have a limited understanding of their duties and responsibilities where information sharing is concerned. Some may unnecessarily apply a narrow interpretation of current legislation frustrating a reasonable opportunity for an information exchange. At the front line, there may be a lack of understanding of what, how and with whom personal information can or should be shared and some workers may have had little to no training to educate them on these issues. This coupled with a high turnover of staff can exacerbate the problems. Maintaining an educated workforce through initiatives such as tailored induction training and annual refresher training for all those dealing with vulnerable children would assist.⁵⁵²

Similarly, a 2015 review of information sharing arrangements in New South Wales prepared for the NSW Department of Premier and Cabinet found:

Many professionals find the process of sharing information challenging and time consuming. Practitioners may be unfamiliar with legislation and the protocols for exchanging information, and may not have the time to discuss issues with colleagues from other organisations. Resource issues may also affect the capacity of organisations and individuals to exchange information, including access to legal advice.⁵⁵³

That review emphasised the importance of the high profile roll-out and ‘significant investment in training the workforce’ that accompanied the introduction of the New South Wales scheme.⁵⁵⁴ However, the review also found that despite this training, ‘there was a general consensus that awareness and practice among workers was still inadequate’.⁵⁵⁵ It noted that many interviewees confirmed that training should be repeated periodically.⁵⁵⁶

The New South Wales Government also told us that consideration should be given to providing training on the dynamics of sexual assault, the disclosure process for victims of child sexual abuse and grooming, 'which are particularly important in relation to sharing suspicions and untested or unsubstantiated allegations'.⁵⁵⁷ It also submitted that consideration should be given to 'Existing national, state and territory forums and channels that could be used to deliver education, training and guidance'.⁵⁵⁸

A number of submissions to our *Out-of-home care* consultation paper emphasised the importance of education and training on information sharing in relevant sectors.⁵⁵⁹ The Truth, Justice and Healing Council submitted that in its experience:

health professionals including doctors, counsellors and psychologists tend to place emphasis on ethical codes of conduct and confidentiality. There can be a general reluctance to share information even if it is relevant to the ability of another prescribed body to ensure the safety and wellbeing of children. Education of these professionals around the operation of the information sharing scheme may assist in alleviating their concerns about appropriate exchange of information in accordance with it.⁵⁶⁰

The New South Wales Government submitted that there may be concerns from some Aboriginal community-controlled organisations that information sharing would erode relationships of trust in the community. It submitted, 'Training of staff would be required to ensure that organisations and the community understand the reasons for information sharing and what can and cannot be shared, to reassure all parties that Aboriginal organisations are a trusted part of the community'.⁵⁶¹ However, training and education alone are unlikely to provide a solution to the challenges of resolving issues of trust and information sharing in these communities.

Recommendation 8.8

The Australian Government, state and territory governments and prescribed bodies should work together to ensure that the implementation of our recommended information exchange scheme is supported with education, training and guidelines. Education, training and guidelines should promote understanding of, and confidence in, appropriate information sharing to better prevent, identify and respond to child sexual abuse in institutional contexts, including by addressing:

- a. impediments to information sharing due to limited understanding of applicable laws
- b. unauthorised sharing and improper use of information.

Support and advice

A number of stakeholders have commented on the need for a central contact point that can provide institutions and individuals with advice on sharing information under our recommended information exchange scheme.

As noted in Section 3.2.2, MacKillop Family Services told us that while they support enhanced information sharing mechanisms in line with the New South Wales scheme:

we note there have been some difficulties with implementation which should be considered prior to implementation in other jurisdictions. In MacKillop's experience, some agencies still do not understand their role and responsibilities in information sharing under Chapter 16A. In our view, it would be useful for a single entity to be responsible for overseeing and supporting the implementation of legislation for information sharing in other jurisdictions.⁵⁶²

The Northern NSW Local Health District told us:

Chapter 16A legislation is interpretive by nature and there is not sufficient support available to assist agencies to make decisions on the appropriateness of information exchange where there is a question about whether the information requested is legally able to be exchanged. Clearly, if there was national legislation, central contact points would need to be guaranteed in each agency and this would be costly and therefore could be a challenge in implementation.⁵⁶³

The New South Wales Government submitted that consideration should be given to:

Establishing an easily contactable point from which prescribed agencies can obtain information and advice in situations where they need assistance with making decisions about information sharing. This may be of particular benefit for prescribed bodies who do not need to share information on a regular basis, or who have high turnover of staff and varying levels of expertise in this area.⁵⁶⁴

Similarly, the Truth, Justice and Healing Council noted that smaller organisations, particularly those constituted predominantly by volunteers, 'may experience difficulties in practical implementation of information sharing requirements and must have access to support through an appropriate oversight agency'.⁵⁶⁵

A central contact point in each jurisdiction could provide institutions and individuals with advice on sharing information under the scheme. State and territory governments should consider whether an ombudsman, privacy commissioner or other body that provides an accountability mechanism and oversight for reportable conduct should also act as a contact point for prescribed bodies under our recommended information exchange scheme, and provide them with support and advice.

For example, under current arrangements in New South Wales, the Ombudsman provides guidance for institutions subject to the reportable conduct scheme to help them ensure they are complying with laws relating to the disclosure of personal information in the context of responding to reportable conduct allegations.⁵⁶⁶

Internal policies and procedures

Institutions, particularly those included in a statutory information exchange regime, should have policies and procedures to encourage and guide appropriate information sharing. The Northern Territory Information Sharing Guidelines explicitly provide that the guidelines do not:

Replace an organisation's own policy or procedures documents. Authorised information sharers should produce policy and procedures documents that are consistent with the legislation and these guidelines and are tailored to their specific needs...⁵⁶⁷

One matter that should be detailed in internal policies and procedures is who in the agency can share information. The New South Wales Ombudsman told us that, in their agency, 'Approval by a senior officer is required for all external releases of information. Releases of information under Chapter 16A require approval at Director-level or above'.⁵⁶⁸

Similarly, the South Australian Ombudsman emphasised the importance of ensuring decisions to share information without consent are approved by a senior member of staff in order to protect against breaches of privacy.⁵⁶⁹ Life Without Barriers (LWB) submitted, regarding our proposed information sharing scheme:

It is recognised that such an information exchange regime is very broad and unprecedented, especially within the NGO [non-government organisation] sector. LWB concedes that it would require appropriate checks and balances to ensure that such powers are being properly exercised by agencies other than the statutory child protection department of the state. To allay any concerns, we would recommend that the NGO sector be required to ensure that the delegation for the exercise of these powers resides at a sufficiently senior level.⁵⁷⁰

Internal policies and procedures should also address other matters, including the storage, use and disposal of personal information shared under the scheme.⁵⁷¹ Internal policies and procedures should be 'clear and as simple as possible in order to be effectively implemented'.⁵⁷²

Improved interagency collaboration and communication

We heard from government agencies in the Australian Capital Territory that there is 'significant potential for improved information sharing to occur through interagency communication and collaborative practice within states and territories, even without a broad national power to share information'.⁵⁷³ At the same time, laws, regulations, guidelines and protocols that permit or require information sharing should underpin efforts for agencies and organisations to work together.⁵⁷⁴

The 2013 interim review of *Keep them safe* – the New South Wales Government’s action plan in response to the recommendations of the Special Commission of Inquiry into Child Protection Services in New South Wales – noted that among the respondents to its workforce survey who cited barriers to information sharing, the two most commonly identified causes were confidentiality or resistance from families, and a lack of cooperation from other organisations.⁵⁷⁵

A 2015 literature review prepared for the New South Wales Department of Premier and Cabinet identified the following organisational barriers to information sharing:⁵⁷⁶

- mistrust between professional groups and organisations
- organisational structures and cultures
- lack of knowledge of other organisations
- professional cultures and perspectives, particularly those that view information sharing as a breach of professional responsibility⁵⁷⁷
- perception that collaboration and information sharing is challenging
- differences between the information needs of different agencies.

Collaboration between organisations to facilitate information sharing involves more than each organisation having appropriate structures in place.⁵⁷⁸ Research has found that ‘Where inter-organisational trust is low, effort to develop trust and knowledge of other organisations can facilitate information exchange’.⁵⁷⁹ Research has also indicated the need for organisations to have a clearly stated objective regarding the purpose of information sharing, as well as the importance of common shared objectives across organisations.⁵⁸⁰

This is supported by submissions from our stakeholders and information from other inquiries. The 2013 report of the Queensland Child Protection Commission of Inquiry, *Taking responsibility: A roadmap for Queensland child protection*, identified the need for collaboration across the child protection sector.⁵⁸¹ It observed, ‘The success of collaborative practice relies on the development of a shared vision, a common practice framework, clear information-sharing procedures and a demonstrated commitment to the partnership’.⁵⁸² The report concluded:

successful collaboration appears to depend on the context – that is, the quality of the relationship between the agencies, the sectors involved and the strategies used by the agencies. As a result, collaboration can be ‘dangerously over dependent on the commitment and skills of individuals, rather than organisations, and too easily disrupted by their departure’.⁵⁸³

We were told that the Queensland Family and Child Commission’s Strengthening Our Sector framework is designed to respond to this need, and ‘encourages diverse sector organisations to develop a collaborative culture, allowing partners to share information, in accordance with legislation, in a child’s best interests’.⁵⁸⁴

Most children and families at risk need assistance from more than one agency. For example, the New South Wales Government noted that this is particularly true of Aboriginal and Torres Strait Islander children and families at risk. Improving information sharing between agencies may assist in early identification, intervention and support for children at risk, including Aboriginal children.⁵⁸⁵ The New South Wales Government has submitted that consideration should be given to an agreed means of sharing information between national, state and non-government Aboriginal organisations that ‘could work to better protect Aboriginal children from sexual abuse’.⁵⁸⁶

3.4.3 Improving technology

Research indicates that improvements in technology, including in records management systems and databases, can enable more efficient exchange of information. Equally important to this is improving the ability of the workforce to use technology appropriately.⁵⁸⁷ Research confirms that ‘factors such as incompatibility of databases and mismatched data structures can create practical barriers, which make information sharing cumbersome and challenging in some circumstances’.⁵⁸⁸

A nationally consistent information exchange scheme has the potential to significantly increase the demands on some agencies’ resources. For this reason, ‘Consideration should be given to the resources needed to support a national system, including technological solutions to minimise the processing burden’.⁵⁸⁹ The Northern Territory Government submitted:

The development of an information exchange scheme will put in place nationally consistent arrangements for information sharing and be a potential driver in improving information systems, quality and actionability of information and consistency in information screening. A significant challenge is the limitation on technology. While progress is being made, we presently operate on multiple platforms, some of which do not link. This impacts not only on information exchange, but data gathering more generally.⁵⁹⁰

The inter-jurisdictional child protection information sharing project, under the Third Action Plan of the National Framework for Protecting Australia’s Children 2009–2020, has identified the need for a digital solution that supports jurisdictional child protection agencies to share information across borders.⁵⁹¹ The Australian Government told us that a ‘sharing information nationally to help ensure child safety’ challenge was issued under the Department of Industry, Science and Innovation’s Business Research and Innovation Initiative in August 2016. The Australian Government said that the technical solution to this challenge:

will interact with child protection systems nationwide to conduct a real-time check, and alert child protection authorities when an ‘adult of interest’ or a ‘child at risk’ is known to child protection authorities in other jurisdictions.

While the solution will initially only operate between child protection agencies, it may be scalable to later include other categories of information. There is also future potential for this solution to be utilised to support inter-jurisdictional access to information on related interstate registers, such as those holding carer information and working with children check status information.⁵⁹²

The Queensland Government has also announced a significant investment in upgrading information technology (IT) systems to allow for faster information sharing between agencies for missing children, and that work has begun on delivering this solution.⁵⁹³

Research suggests, however, that while improving the capability of IT can benefit information sharing between organisations, ‘overcoming technical issues is less difficult than addressing organisational and political factors’.⁵⁹⁴ A 2015 review of information sharing arrangements in New South Wales found:

In no case did technology create a fundamental barrier to information sharing (or conversely provide a solution to problems around information sharing), but difficulties with technology resulted in a number of inefficiencies being identified across the three case studies [considered in the review].⁵⁹⁵

This highlights the importance of not focusing on technology in isolation without also removing legislative, policy and organisational barriers to the exchange of information related to the safety and wellbeing of children.

3.4.4 Phased implementation

We acknowledge that the implementation of our recommended information exchange scheme will have significant administrative and cost implications for governments and institutions. It will take time for state and territory governments to reach agreement on the aspects of the scheme that require consistency to ensure information can be shared effectively between jurisdictions, as well as within jurisdictions. In addition, institutions will need time to understand what is required, and how they can implement the scheme.

Accordingly, a phased approach to agreeing on which institutions will be covered in the scheme and to including institution types may be desirable. In particular, phased implementation will support the progressive inclusion of different institution types, based on their capacity and readiness to participate in the scheme. In this regard, we note the approach Victoria has taken to introducing its reportable conduct scheme, with the staggered implementation of that scheme, by institution type, in three phases from 2017 to 2019.⁵⁹⁶

3.4.5 Review

The Northern Territory Government told us that there should be regular evaluation of our proposed information exchange scheme ‘to monitor its effectiveness and adequacy of the education, training, and guidance being provided’.⁵⁹⁷ We agree with this approach. One aspect that should be reviewed in the early stages of the implementation of the scheme is the appropriate range of prescribed bodies. As the capacity and expertise of agencies and institutions with regard to information sharing improves, governments should consider whether other institutions should be prescribed under the scheme.

The New South Wales information exchange scheme has not been formally evaluated. However, the 2013 interim review of *Keep them safe* considered to what degree there was coordination and information sharing among agencies in New South Wales.⁵⁹⁸ A further evaluation of *Keep them safe* was conducted in June 2014, which also included consideration of information sharing following the introduction of the New South Wales scheme.

We note that the *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic) – which introduces an information exchange regime in relation to family violence – contains provisions that require the responsible minister to cause a review of the operation of the legislation to be conducted within two years of its commencement, and again within five years of its commencement.⁵⁹⁹

In our view, a similar timetable should be adopted for statutory review and evaluation of the operation of our recommended information exchange scheme.

Endnotes

- 1 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 1. See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: Victorian Aboriginal Legal Service, p 12; State Government of Victoria, p 10; The Law Society of NSW, p 2.
- 2 Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 6.
- 3 See, for example: The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Sydney, 2008; Australian Law Reform Commission, *Family violence – A national legal response*, Commonwealth of Australia, Sydney, 2010; M Bamblett, H Bath & R Roseby, *Growing them strong, together: Promoting the safety and wellbeing of the Northern Territory's children: Report of the Board of Inquiry into the child protection system in the Northern Territory*, Northern Territory Government, Darwin, 2010; Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse: Ampe Akelyernemane Meke Mekarle 'Little Children Are Sacred'*, Northern Territory Government, Darwin, 2007, pp 98–102; NSW Ombudsman, *Responding to child sexual assault in Aboriginal communities: A report under Part 6A of the Community Services (Complaints, Reviews and Monitoring) Act 1993*, Sydney, 2012; State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parliamentary Paper No 132, 2014–16; Child Protection Systems Royal Commission, *The life they deserve: Child Protection Systems Royal Commission report*, Government of South Australia, Adelaide, 2016.
- 4 See for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014, pp 15–16, 19–20, 26–7, 29; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014, pp 12, 39–40; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 9: The response of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*, Sydney, 2015, pp 20–1; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 15: Response of swimming institutions, the Queensland and NSW Offices of the DPP and the Queensland Commission for Children and Young People and Child Guardian to allegations of child sexual abuse by swimming coaches*, Sydney, 2015, pp 29, 127; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 36: The response of the Church of England Boys' Society and the Anglican Dioceses of Tasmania, Adelaide and Sydney to allegations of child sexual abuse*, Sydney, 2017, p 67.
- 5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes*, Sydney, 2015, pp 36–9. See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 5: Response of The Salvation Army to child sexual abuse at its boys' homes in New South Wales and Queensland*, Sydney, 2015, pp 46–7, 50–3, 73–4. See also our discussion of the *Brisbane Grammar School and St Paul's School* case study in Chapter 4, which considers how lack of information sharing enabled Gregory Robert Knight to continue abusing children as he moved between schools and jurisdictions.
- 6 We heard evidence in the *Harmful sexual behaviours of children in schools* case study on the need for information about transferring students' harmful sexual behaviour, as well as experience of sexual abuse, to be shared to enable receiving schools to take appropriate risk management measures, and to provide appropriate support. See, for example, Transcript of S Button, Case Study 45, 4 November 2016, 22887:22–36; Transcript of S Button, Case Study 45, 4 November 2016, 22900:27–22901:11; Transcript of S Florisson, Case Study 45, 4 November 2016, 22902:45–7, 22903:1–6. We also received submissions from stakeholders on this issue: see, for example, Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional responses to child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 22. See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues paper No 9: Risk of child sexual abuse in schools*, 2015: Sexual Assault Support Service, p 6; Catholic School Parents Australia, p 4. See also our discussion of this issue in Chapter 4.
- 7 The *Privacy Act 1988* (Cth) imposes obligations and restrictions (with respect to collection, use and disclosure of personal information) on Commonwealth public sector agencies and private sector organisations (those with an annual turnover of \$3 million or more, and health service providers). State/territory privacy legislation imposes obligations and restrictions on state/territory public sector agencies: *Information Privacy Act 2014* (ACT); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic). In South Australia, the handling of personal information by state/territory public sector agencies is regulated by a Cabinet Administrative Instruction: *Information Privacy Principles Instruction 2016* (SA). In some jurisdictions, obligations and restrictions (with respect to personal information related to health) are also imposed under specific health privacy legislation, which applies to both public sector agencies and private sector organisations: *Health Records (Privacy and Access) Act 1997* (ACT); *Health Records and Information Privacy Act 2002* (NSW); *Health Records Act 2001* (Vic).
- 8 See, for example, confidentiality obligations in child protection legislation: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29, 254; *Care and Protection of Children Act* (NT) ss 150, 195, 221; *Child Protection Act 1999* (Qld) ss 186–8; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Community Services Act 2004* (WA) s 241; *Children's Protection Act 1993* (SA) ss 13, 52E, 52L, 58; *Children, Youth and Families Act 2005* (Vic) ss 127(5), 180.

9 Including service agreements for government funded services for children, common law and equitable obligations of confidence, and professional and ethical codes. See for example: *Code of ethics*, The Royal Australian & New Zealand College of Psychiatrists, Melbourne, 2010; *Code of ethics*, Australian Association of Social Workers, Canberra, 2010.

10 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: Uniting Church in Australia, p 19; Relationships Australia, p 5; Wesley Mission Victoria, p 13. See also The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, p 40.

11 The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, p ix; The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Sydney, 2008, pp 986–7; M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 38–9; Australian Law Reform Commission, *Family violence – A national legal response*, Commonwealth of Australia, Sydney, 2010, pp 1427, 1443.

12 Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017.

13 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016; Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015.

14 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.

15 See Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 19 and 34 on children’s right to protection from sexual abuse and sexual exploitation.

16 See, for example, Care Leavers Australasia Network, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 6–7; Queensland Commission for Children and Young People & Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013, p 10; Queensland Commission for Children and Young People & Child Guardian, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 3: Child safe organisations*, 2013, p 37. See also Transcript of M Walk, Case Study 24, 12 March 2015 at 13146:6–11 on the clarification of the paramourcy of children’s safety, welfare and wellbeing by Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). See Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 19 and 34 on children’s right to protection from sexual abuse and sexual exploitation. In relation to state and territory legislation, see for example *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245A; *Child Protection Act 1999* (Qld) s 159B.

17 See Universal Declaration of Human Rights, A Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948), art 12; International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 17. See also Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 16.

18 See C Adams & K Lee-Jones, ‘Sharing personal information in the child protection context: Impediments in the Australian legal framework’, *Child & Family Social Work*, 2017, p 5; United Nations Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation imposed on State Parties to the Covenant*, Geneva Human Rights Committee, Geneva, 2004.

19 See The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Sydney, 2008, Chapter 24.

20 NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2. Australian Institute of Family Studies, ‘Risk assessment instruments in child protection’, *CFCA Resource sheet*, 2016, www.aifs.gov.au/cfca/publications/risk-assessment-child-protection (viewed 20 September 2017); T Crea, ‘Balanced decision making in child welfare: Structured processes informed by multiple perspectives’, *Administration in Social Work*, vol 34, no 2, 2010, pp 196–212.

21 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015.

22 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

23 See Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, pp 33, 542–4, Recommendations 14, 15.

24 See, for example: *Privacy Act 1988* (Cth) Sch 1 APP 6.1; *Privacy and Personal Information Protection Act 1998* (NSW) ss 18(1)(a), 18(2); *Information Privacy Principles Instruction 2016* (SA) cl 4(10).

25 *Privacy Act 1988* (Cth); *Information Privacy Act 2014* (ACT); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic). In some jurisdictions, obligations and restrictions (with respect to personal information related to health) are also imposed under specific health privacy legislation, which applies to both public sector agencies and private sector organisations: *Health Records (Privacy and Access) Act 1997* (ACT); *Health Records and Information Privacy Act 2002* (NSW); *Health Records Act 2001* (Vic). Information related to child sexual abuse may also be classified

- as sensitive information under privacy laws, and subject to higher privacy standards than other types of personal information – see, for example: *Privacy Act 1988* (Cth) s 6, Sch 1 APP 6.2(a); *Information Act* (NT) s 4, Sch 2 IPP 2.1(a); *Personal Information Protection Act 2004* (Tas) s 3, Sch 1 PIPP 2 (1)(a); *Privacy and Data Protection Act 2014* (Vic) Sch 1 IPP 10. See also *Privacy and Personal Information Protection Act 1998* (NSW) s 19(1). The handling of criminal records is also subject to particular obligations and restrictions under the *Crimes Act 1914* (Cth) and state/territory criminal records legislation, as well as under privacy legislation.
- 26 For examples of confidentiality obligations in child protection legislation, see: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29, 254; *Care and Protection of Children Act* (NT) ss 150, 195, 221; *Child Protection Act 1999* (Qld) ss 186–8; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Community Services Act 2004* (WA) s 241; *Children’s Protection Act 1993* (SA) ss 13, 52E, 52L, 58; *Children, Youth and Families Act 2005* (Vic) ss 127(5) and 180.
- 27 This includes equitable and common law obligations of confidence. For examples of confidentiality obligations in child protection legislation, see: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29, 254; *Care and Protection of Children Act* (NT) ss 150, 195, 221; *Child Protection Act 1999* (Qld) ss 186–8; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Community Services Act 2004* (WA) s 241; *Children’s Protection Act 1993* (SA) ss 13, 52E, 52L, 58; *Children, Youth and Families Act 2005* (Vic) ss 127(5) and 180. See also Office of the Australian Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 3.
- 28 For example, service agreements for government funded out-of-home care services, and professional and ethical codes. See *Code of ethics*, The Royal Australian & New Zealand College of Psychiatrists, Melbourne, 2010; *Code of ethics*, Australian Association of Social Workers, Canberra, 2010.
- 29 See, for example: *Privacy Act 1988* (Cth) Sch 1 APP 6.1(a); *Information Privacy Act 2014* (ACT) TTP 6.1(a); *Privacy and Personal Information Protection Act 1998* (NSW) s 26(2); *Information Act* (NT) Sch 2 IPP 2.1(c); *Information Privacy Act 2009* (Qld) Sch 3 IPP 11(1)(b), Sch 4 NPP 2(1)(b); *Personal Information Protection Act 2004* (Tas) Sch 1 PIPP 2 2(1)(b); *Privacy and Data Protection Act 2014* (Vic) Sch 1 IPP 2.1(b).
- 30 See, for example: *Privacy Act 1988* (Cth) ss 16A, 16B(3), APP 6.2; *Privacy and Personal Information Protection Act 1998* (NSW) ss 23–5. Privacy laws may also support information sharing where privacy commissioners authorise special arrangements, including public interest directions and codes of practice, to modify privacy restrictions in particular circumstances. See *Privacy Act 1988* (Cth) ss 72–3; *Privacy and Personal Information Protection Act 1998* (NSW) s 41.
- 31 *Privacy Act 1988* (Cth); *Information Privacy Act 2014* (ACT); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic).
- 32 *Information Privacy Act 2014* (ACT); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic). In South Australia, the handling of personal information by state/territory public sector agencies is regulated by a Cabinet Administrative Instruction: *Information Privacy Principles Instruction 2016* (SA). Western Australia has no dedicated privacy legislation – government agencies are directed to observe standards in the state’s *Policy Framework and Standards for Information Sharing between Government Agencies* as well as any applicable statutory provisions and common law, and to share information consistent with appropriate minimum privacy standards, such as those under Commonwealth privacy legislation: see *Policy Framework and Standards for Information Sharing between Government Agencies*, Government of Western Australia Department of the Attorney General, 2003 and *Public Sector Commissioner’s Circular 2014–02: Policy Framework and Standards for Information Sharing Between Government Agencies*, Government of Western Australia Public Sector Commission, 2014.
- 33 See for instance *Health Records (Privacy and Access) Act 1997* (ACT); *Health Records and Information Privacy Act 2002* (NSW); *Health Records Act 2001* (Vic).
- 34 The *Privacy Act 1988* (Cth) imposes obligations and restrictions (with respect to collection, use and disclosure of personal information) on Commonwealth public sector agencies and on private sector organisations (those with an annual turnover of \$3 million or more, and health service providers) in all states and territories.
- 35 See, for example, *Privacy Act 1988* (Cth) ss 6, 13(3); *Privacy and Data Protection Act 2014* (Vic) s 17.
- 36 See, for example, The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, p 40. See also C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 28; Parenting Research Centre, *Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, pp 91, 97; M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW Social Policy Research Centre, Sydney, 2015, pp 20, 64, 88.
- 37 Office of the Australian Information Commissioner, *Chapter 6: APP 6 – Use or disclosure of personal information*, 2014, www.oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-6-app-6-use-or-disclosure-of-personal-information (viewed 4 October 2017), [6.17].
- 38 See, for example: *Privacy Act 1988* (Cth) Sch 1 APP 6.1; *Privacy and Personal Information Protection Act 1998* (NSW) ss 18(1)(a), 18(2); *Information Privacy Principles Instruction 2016* (SA) cl 4(10).

39 C Adams and K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016 p 32.

40 C Adams and K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 1, 5.

41 See, for example, *Privacy Act 1988* (Cth) Sch 1 APP 6.2, 6.3.

42 See *Privacy Act 1988* (Cth) s 16A(1), Sch 1 APP 6.2. The Act allows disclosure for this purpose where ‘it is unreasonable or impracticable’ to obtain consent to disclose. See also *Information Privacy Principles Instruction 2016* (SA) cl 4(10)(c); *Information Privacy Act 2009* (Qld) Sch 3 IPP 11(1)(c); *Personal Information Protection Act 2004* (Tas) Sch 1 PIPP 2(1)–(d); *Information Act* (NT) Sch 2 IPP 2.1(d)(iii).

43 The *Information Act* (NT) allows for disclosure where there is ‘a serious or imminent threat of harm to, or exploitation of, a child’: Sch 2 IPP 2.1(d)(ii), but deals with threats to life, health or safety of individuals in general, differently: Sch 2 IPP 2.1(d)(i).

44 See, for example: *Privacy and Personal Information Protection Act 1998* (NSW) s 18(1)(c) and 19(1); *Privacy and Data Protection Act 2014* (Vic) Sch 1 IPP 2.1(d). The *Information Act* (NT) also refers to ‘serious and imminent threat’ to life, health or safety of individuals: Sch 2 IPP 2.1(d)(i), but deals with threats of harm to, or exploitation of a child differently: Sch 2 IPP 2.1(d)(ii).

45 See The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Sydney, 2008, pp 1042–3. See also Australian Law Reform Commission, *For your information: Australian privacy law and practice*, Report 108, 2008, pp 2324–5.

46 Risks or incidents of abuse may become much clearer when information is considered in combination with other information from a range of sources over time.

47 The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Sydney, 2008, p 983.

48 The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Sydney, 2008, pp 1043–6; *Privacy and Personal Information Protection Act 1998* (NSW) ss 18, 19(1). As the Wood Report noted, there are some exceptions to ss 18 and 19, but these are of limited assistance in facilitating exchange of child protection information. It should also be noted that s 19(1) addresses sensitive information without explicitly labelling it as such. Instead, s 19(1) lists certain types of information (including information relating to sexual activities) as subject to special restrictions. Provisions in other jurisdictions explicitly label similar types of information, which are subject to special restrictions, as sensitive information – see for example, *Privacy and Data Protection Act 2014* (Vic) Sch 1.

49 *Privacy Act 1988* (Cth) s 7B(3).

50 *Privacy Act 1988* (Cth) s 6C, definition of ‘organisation’.

51 National Disability Services, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

52 See, for example, *Privacy Act 1988* (Cth) ss 72–3; *Privacy and Personal Information Protection Act 1998* (NSW) s 41; and *Privacy and Data Protection 2014* (Vic) Pt 3, Divs 5, 6.

53 See Victoria, Legislative Assembly 2014, *Debates*, 12 June 2014, p 2109 (RW Clark, Attorney-General) regarding the purpose of approved information usage arrangements.

54 See for example, *Children and Young People Act 2008* (ACT) s 879; *Children and Young People Act 2008* (ACT) Ch 25; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 248(6); *Children and Young Persons (Care and Protection) Regulation 2000* (NSW) r 7; *Child Protection Act 1999* (Qld) Pt 4; *Children, Young Persons and Their Families Act 1997* (Tas) ss 3, 14(1), 53B; *Care and Protection of Children Act 2007* (NT) s 34; *Public Guardian Act 2014* (Qld) Ch 4, Pt 4; *Children’s Protection Act 1993* (SA) s 52CA; *Ombudsman Act 1974* (NSW) ss 25D, 25DA, 25GA, 25I. See also, for example, arrangements for care teams in the ACT: *Children and Young People Act 2008* (ACT) s 863, and in Victoria: Victoria State Government, *Care teams – Advice*, 2016, www.cpmanual.vic.gov.au/advice-and-protocols/advice/out-home-care/care-teams (viewed 4 October 2017). With respect to sharing information between schools about students, see *Education Act 1990* (NSW) Pt 5A. For a more detailed account of some of these arrangements, see C Adams and K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.

55 These interagency joint response teams include the Joint Investigation Response Team (JIRT) in NSW; the Suspected Child Abuse and Neglect (SCAN) Team System in Queensland; the ChildFirst Assessment and Interview Team (CAIT) in Western Australia; the Child Abuse Taskforce (CAT) in the Northern Territory; and Multidisciplinary Centres (MDCs) in Victoria.

56 Arrangements not considered in detail here include specific arrangements for information sharing: between police and others, including child protection agencies, for investigation purposes; with regulator/oversight bodies for purposes related to the exercise of the regulator/oversight body’s functions; and within care teams.

57 These include arrangements provided for in: *Children and Young People Act 2008* (ACT) Div 25.3.2; *Children and Young Persons (Care and Protection) Act 1998* (NSW) Ch 16A; *Care and Protection of Children Act* (NT) Pt 5.1A; *Child Protection Act 1999* (Qld) Ch 5A (in particular, Pt 4); *Children, Young Persons and Their Families Act 1997* (Tas) Pt 5A; *Children and Community Services Act 2004* (WA) s 23 and Pt 3 Div 6; *Children, Youth and Families Act 2005* (Vic) Pt 4.5 and ss 35–6. South Australia’s main arrangements for sharing safety and wellbeing information were, until August 2017, provided for administratively, rather than legislatively, in the *Information Sharing Guidelines for Promoting Safety and Wellbeing 2013* (SA). The *Children and Young People (Safety) Act 2017* (SA) Ch 11, Pt 3, which received assent on 2 August 2017,

- provides an information gathering and sharing scheme. Arrangements may identify jurisdictional child protection agency heads, employees and authorised officers for the purposes of information sharing with prescribed bodies. See, for example: *Child Protection Act 1999* (Qld) ss 159M, 159N; *Care and Protection of Children Act* (NT) s 293C(1)(a). Here we use the term ‘child protection agency’ to include such references.
- 58 Specified bodies/individuals are variously described as ‘prescribed bodies’, ‘information sharing entities’, ‘information sharing authorities’, ‘prescribed entities’, ‘information holders’ and ‘prescribed authorities’: see C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 55.
- 59 South Australia does not provide for equivalent information sharing arrangements in legislation. Arrangements for sharing safety and wellbeing information are provided for administratively, consistent with the *Privacy Act 1988* (Cth) and the *Information Privacy Principles Instruction 2013* (SA): South Australian Ombudsman, *Information Sharing Guidelines for promoting safety and wellbeing*, Adelaide, 2013. These arrangements are considered later in this chapter.
- 60 See discussion in C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, Part 5. See also The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, p 998. In relation to the operation of these schemes in the out-of-home care context, see Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, Sydney, 2016, pp 60–1.
- 61 For example, while arrangements in New South Wales focus on organisations which have direct responsibility for or supervision of services wholly or partly to children (as well as government agencies more generally), other jurisdictions include adult mental health and drug/alcohol treatment services. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8 compared to *Care and Protection of Children Act* (NT) s 293C(1); *Children, Young Persons and Their Families Act 1997* (Tas) ss 3, 14(1); *Children, Youth and Families Act 2005* (Vic) s 3.
- 62 Provisions for proactive sharing include *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C; *Care and Protection of Children Act* (NT) s 293D; *Child Protection Act 1999* (Qld) ss 159C(1), 159D, 159M; *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(3); *Children and Community Services Act 2004* (WA) s 28B.
- 63 For instances where information *must* be provided, see, for example, *Child Protection Act 1999* (Qld) s 159N(1); *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(1)(b); *Care and Protection of Children Act* (NT) s 293E(3); *Children, Youth and Families Act 2005* (Vic) ss 195–7; and *Children and Young People Act 2008* (ACT) ss 862, 863C. For instances where information *may* be provided, see, for example, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C(1); *Children and Young People (Safety) Act 2017* (SA) s 152; and *Children and Community Services Act 2004* (WA) s 28B.
- 64 For instances where prescribed entities may share between each other, see, for example, *Care and Protection of Children Act* (NT) s 293D; *Child Protection Act 1999* (Qld) s 159N; *Children, Young Persons and Their Families Act 1997* (Tas) s 53B; *Children and Young People Act 2008* (ACT) Div 25.3.3; *Children and Community Services Act 2004* (WA) s 28B; *Children and Young People (Safety) Act 2017* (SA) s 152; *Children and Young Persons (Care and Protection) Act 1998* (NSW) Ch 16A. For instances where prescribed entities may share information only via the child protection agency, see *Children, Youth and Families Act 2005* (Vic) ss 195–7.
- 65 Arrangements for intra-jurisdictional information sharing under child protection legislation in some jurisdictions provide for sharing information related to the safety and wellbeing of children who have come to the attention of, or are involved with, the child protection system. See *Children, Young Persons and their Families Act 1997* (Tas) ss 53A, 53B; and *Children, Youth and Families Act 2005* (Vic), Pt 4.5. This is also the case with inter-jurisdictional information sharing under the *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*: see Introduction. In contrast, Chapter 16A allows potentially significant information to be captured even before a risk or harm is reported to child protection agencies.
- 66 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C; *Care and Protection of Children Act* (NT) s 293D. In New South Wales, the relevant information is described as ‘information relating to the safety, welfare or wellbeing of a particular child or young person or class of children or young persons’: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C(1), and see also s 245D(1). In the Northern Territory, it is described as ‘any information that relates to the safety or wellbeing of the child’: *Care and Protection of Children Act* (NT) s 293B(1). Information sharing for risk management purposes (with respect to risks that might arise in the information recipient’s capacity as an employer or OOH provider) is referred to explicitly in New South Wales’ provisions, but not in the Northern Territory’s provisions: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C(1)(b), and see also s 245D(2)(b).
- 67 Some federal courts and Commonwealth departments are included as prescribed bodies for the purposes of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (see ss 245B(1) and 248(6)(f) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8. However, these bodies cannot be compelled to provide information under Chapter 16A: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245I.
- 68 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(1)–(3); *Care and Protection of Children Act* (NT) s 293E(1)–(3).
- 69 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(4); *Care and Protection of Children Act* (NT) s 293E(5).

70 See *Children and Young People Act 2008* (ACT) ss 860(1)–(2), 862 and *Children, Young Persons and Their Families Act 1997* (Tas) ss 53A, 53B(1). See also *Children, Youth and Families Act 2005* (Vic) ss 36, 195–7. Similarly, in Queensland, the child protection agency can require prescribed bodies to provide it with relevant information, without being required to provide information itself: *Child Protection Act 1999* (Qld) ss 159M(4), 159N. However, there are some limited circumstances where the child protection agency is required to provide information to a prescribed body under the *Child Protection Act 1999* (Qld). Where the child protection agency has asked a prescribed body (which belongs to a particular group of prescribed bodies specified in s 159H(1) to provide a service to a child in need of protection, the child protection agency must give that prescribed body the information it needs to provide the service: *Child Protection Act 1999* (Qld) ss 159H(2), (4) and 159N. Under *Children and Community Services Act 2004* (WA) s 23(2), the West Australian child protection agency may (but is not obliged to) provide relevant information to prescribed bodies if they fall within the range of bodies specified in s 23(2). In Victoria, the child protection agency can require information from prescribed bodies under *Children, Youth and Families Act 2005* (Vic) Pt 4.5: see ss 195–7.

71 See, for example, *Child Protection Act 1999* (Qld) ss 159N–159P; *Children and Community Services Act 2004* (WA) Divs 3, 6.

72 South Australian Ombudsman, *Information Sharing Guidelines for promoting safety and wellbeing*, Adelaide, 2013, p 6.

73 In South Australia, the handling of personal information by state/territory public sector agencies is regulated by a Cabinet Administrative Instruction: *Information Privacy Principles Instruction 2013* (SA).

74 The Hon Margaret Nyland AM, *The life they deserve: Child Protection Systems Royal Commission report*, Government of South Australia, Adelaide, 2016, p 575.

75 The Hon Margaret Nyland AM, *The life they deserve: Child Protection Systems Royal Commission report*, Government of South Australia, Adelaide, 2016, p 576.

76 *Children and Young People (Safety) Act 2017* (SA) s 152. At the time of writing this Act is yet to commence.

77 *Children and Young People (Safety) Bill 2017* (SA), Second Reading, The Hon J R Rau, 14 February 2017.

78 *Children and Young People (Safety) Act 2017* (SA) s 152(7)(a). It also has a provision for the regulations to prescribe other information or documents for the purpose of that definition of ‘prescribed information and documents’: s 152(7)(b).

79 *Children and Young People (Safety) Act 2017* (SA) s 152(1).

80 *Children and Young People (Safety) Act 2017* (SA) s 152(1)(h).

81 *Children and Young People (Safety) Act 2017* (SA) ss 152(2), (5).

82 The Hon Margaret Nyland AM, *The life they deserve: Child Protection Systems Royal Commission report*, Government of South Australia, Adelaide, 2016, Recommendation 242(a).

83 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.

84 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.

85 *Education Act 1990* (NSW) s 26B.

86 See, for example: *Children and Young People Act 2008* (ACT) s 863. In relation to care teams in Victoria, see Victoria State Government, *Care teams – Advice*, 2016, www.cpmanual.vic.gov.au/advice-and-protocols/advice/out-home-care/care-teams (viewed 4 October 2017).

87 See, for example, *Children and Young People Act 2008* (ACT) s 863.

88 The Royal Australian and New Zealand College of Psychiatrists, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 10: Advocacy and support and therapeutic treatment services*, 2015, pp 7–8.

89 Exhibit 24-0001, ‘Response to areas to be examined for Case Study 24’, Case Study 24, ANG.0069.001.0001 at 0016.

90 See, for example: *Children and Young People Act 2008* (ACT) ss 859(1)(g), 859(1)(i)(v), 859(1)(i)(vi); *Children and Community Services Act 2004* (WA) s 23.

91 A number of services are excluded – such as short-term or casual occasional care services; services that provide education and care for no more than four weeks per calendar year during school holidays; transition to school services; home-based care (except in Western Australia) unless the care is provided as part of a family day care service. See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 90.

92 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2016, p 16.

93 Victorian Government Department of Human Services, *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*, Melbourne, 2011; Victorian Government Department of Human Services, *Information Sharing Protocol between the Commonwealth and Child Protection Agencies*, Melbourne, 2009. Interstate exchange of criminal history information for screening of carers and others employed in the OOH sector is governed by the *Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working With Children*. The latter is considered in Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015. Other interstate information sharing arrangements which are in place for criminal justice/ law enforcement purposes are not included in our discussion here.

94 Victorian Government Department of Human Services, *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*, Melbourne, 2011, cl 25.

95 See Victorian Government Department of Human Services, *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*, Melbourne, 2011, cls 3 (definition of 'Department'), 25.

96 Exhibit 24-0001, 'Response to areas to be examined for Case Study 24', SA.0029.001.0001, 2015, at 0023.

97 The NSW Ombudsman has noted that this may not be effective in cases where the critical information being sought is not actually 'held' by the statutory child protection authority in the state where the information is located. See Exhibit 23-0056, 'Part 1: Overview of our child protection role', Case Study 23, OMB.0010.001.0001_R at 0021_R–0022_R.

98 Exhibit 23-0056, 'Part 1: Overview of our child protection role', Case Study 23, OMB.0010.001.0001_R at 0022_R.

99 Exhibit 23-0056, 'Part 1: Overview of our child protection role', Case Study 23, OMB.0010.001.0001_R at 0022_R.

100 The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, p vi.

101 Victorian Government Department of Human Services, *Information Sharing Protocol between the Commonwealth and Child Protection Agencies*, Melbourne, 2009 covers jurisdictional child protection agencies and the following Department of Human Services programs: Centrelink, Medicare, and the Child Support Agency.

102 Transcript of K Boland, Case Study 24, 2 July 2015 at T14941:1–5, T14941:36–7; Transcript of S Kinmond, Case Study 24, 3 July 2015 at T15068:27–T15069:17; Transcript of B Glass, Case Study 24, 3 July 2015 at T15069:40–5; Transcript of M Walk, Case Study 24, 12 March 2015 at T13146:19–29. See also the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues paper No 1: Working With Children Checks*, 2013: Australian Human Rights Commission, p 12, on the need to establish protocols and laws for information exchange across and within jurisdictions and between government and non-government agencies when risks to children are identified; NSW Ombudsman, p 10.

103 See, for example, *Data Sharing (Government Sector) Act 2015* (NSW).

104 See *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020*, Council of Australian Governments, Canberra, 2009.

105 Prior to this, each jurisdiction's child-related employment [WWCC] screening units access to criminal history information from other Australian jurisdictions was limited primarily to unspent convictions. The *Intergovernmental agreement for a national exchange of criminal history information for people working with children* sets out the range of 'expanded criminal history information' (that is, information in addition to convictions) to be exchanged between jurisdictions for the purposes of child-related employment screening. This includes spent convictions, pending charges and, with respect to all jurisdictions other than Victoria, non-conviction charges. Further, the *Intergovernmental agreement for a national exchange of criminal history information for people working with children* sets out the range of 'circumstances information' that will be exchanged. This is information held by jurisdictions' police services (usually in prosecution briefs or statements of material facts) about the circumstances of an (alleged) offence that might not be apparent on the face of the record of that (alleged) offence. See *Intergovernmental agreement for a national exchange of criminal history information for people working with children*, Council of Australian Governments, 2014, cl.4.4. See also Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 1: Working With Children Checks*, 2013, p 3.

106 See for instance NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 22; Anglicare Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 1: Working with children check*, 2013, p 2.

107 Under the ECHIPWC arrangements, 'non-conviction charges' include withdrawn charges; charges which have been the subject of a *nolle prosequi*, a no true bill or a submission of no evidence to offer; charges which have resulted in acquittal, or which have been disposed of by a court otherwise than by way of conviction; and charges where the conviction that was quashed on appeal – see *Intergovernmental agreement for a national exchange of criminal history information for people working with children*, Council of Australian Governments, 2014. However, Victoria has not agreed to exchange this category of information. See *Intergovernmental agreement for a national exchange of criminal history information for people working with children*, Council of Australian Governments, 2014, cl 3.5. See also NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 1: Working with children check*, 2013, p 2; Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 16. Note our *Working with Children Checks* report has made recommendations relating to exchange of criminal history information exchange across jurisdictions. However, those recommendations are specifically aimed at improving WWCC decision making. They do not address all concerns related to information exchange between sectors and jurisdictions. In addition, jurisdictions will need to formalise arrangements to improve the sharing of information between all relevant agencies under the WWCC scheme.

108 See, for example, Australian Human Rights Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 1: Working With Children Checks*, 2013, p 6.

109 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 45.

110 See Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation*, 2015.

111 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 89.

112 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 90.

113 K Kaufman, M Erooga, K Stewart, J Zarkin, E McConnell, H Tews & D Higgins, *Risk profiles for institutional child sexual abuse: A literature review*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 44.

114 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, pp 61–74.

115 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 110.

116 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 88.

117 See definitions of ‘reportable conduct’ in *Ombudsman Act 1974* (NSW) s 25A(1); *Child Wellbeing and Safety Act 2005* (Vic) s 5(1); *Ombudsman Act 1989* (ACT) s 17E(1).

118 *Ombudsman Act 1974* (NSW) Part 3A; Exhibit 23-0056, ‘Part 1: Overview of our child protection role’, Case Study 23, OMB.0010.001.0001_R at 0001_R.

119 *Child Wellbeing and Safety Act 2005* (Vic) Part 5A; *Ombudsman Act 1989* (ACT) Div 2.2A.

120 See *Ombudsman Act 1974* (NSW) ss 25D, 25DA, 25GA, and 25I.

121 *Ombudsman Act 1974* (NSW) s 25H.

122 See, eg, Exhibit 23-0056, ‘Part 1: Overview of our child protection role’, Case Study 23, OMB.0010.001.0001_R at 0022_R–0043_R; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2016; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015.

123 See *Children Legislation Amendment (Reportable Conduct) Act 2017* (Vic) s 6, inserting new Part 5A (and in particular s 16ZC) into the *Child Wellbeing and Safety Act 2005* (Vic); *Children and Young People Act 2008* (ACT) Pt 25.3.

124 See *Children and Young People Act 2008* (ACT) Div 25.3.3. Reportable conduct bodies under the ACT scheme are administrative units (of the ACT public service) that deal with the safety, welfare or wellbeing of a particular child or class of children, as well as health service providers, government and non-government schools, providers of education and care services, childcare services, approved kinship, foster care, and residential care organisations, and other entities that may be prescribed by regulation – see *Ombudsman Act 1989* (ACT) Div 2.2A, s 17D(1).

125 See *Children and Young People Act 2008* (ACT) Div 25.3.3.

126 See *Ombudsman Act 1989* (ACT) s 17H(2). These include the Commissioner for Children and Young People, the Commissioner of Fair Trading, specified directors-general, the Human Rights Commission, the chief executive officer of the ACT Teacher Quality Institute and the police.

127 *Child Wellbeing and Safety Act 2005* (Vic) s 3(1).

128 *Ombudsman Act 1989* (ACT) s 17D(1), definition of ‘reportable allegation’.

129 *Ombudsman Act 1974* (NSW) s 25A(1), definition of ‘reportable allegation’.

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131 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

132 See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 2; Royal Commission into Family Violence, *Report and recommendations (Volume I)*, Government of Victoria, Melbourne, 2016, pp 170–2; The Hon J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, pp 80–6.

133 Private sector organisations are generally regulated by Commonwealth privacy legislation. In some circumstances private sector organisations, for example private sector organisations contracted or funded by government and private health providers, may also have to comply with state/territory privacy and health privacy legislation. See, for example, *Health Records and Information Privacy Act 2002* (NSW) s 11; *Health Records Act 2001* (Vic) s 11; *Privacy and Data Protection Act 2014* (Vic) s 17(2). It has been reported that where non-government organisations receive joint funding from both state/territory and Commonwealth bodies, they are uncertain as to whether the information they hold is subject to state/territory or Commonwealth privacy legislation, for example see: The Allen Consulting Group, *Operational review of the information sharing protocol between the child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, p 40. See also C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 28; Parenting Research Centre, *Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, pp 91, 97; M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 20, 64, 88.

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- 140 See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016 for a discussion of the information sharing arrangements in different sectors (including child protection and out-of-home care, early childhood services, schools, juvenile detention and extracurricular activities), as well as a discussion of the jurisdictional differences in comparable legislation.
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- 143 Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, pp 6–7.
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- 145 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 72.
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- 235 The Law Society of NSW, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 2.
- 236 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245I.
- 237 See *Child Protection Act 1999* (Qld) ss 159D (definitions of ‘prescribed entity’ and ‘service provider’), 159H(4), 159M(1); *Children, Youth and Families Act 2005* (Vic) s 3 (definitions of ‘information holder’, ‘community-based child and family service’, ‘community service’, ‘registered community service’ and ‘service agency’ for different information sharing arrangements under, ss 35, 36, 192, 195, 196 of that Act); *Children and Community Services Act 2004* (WA) s 28A and *Children and Community Services Regulation 2006* (WA) r 20A (definitions of ‘authorised entity’ and ‘prescribed authority’ for the purpose of information sharing under Pt 3, Div 6). See also definitions of the bodies subject to information sharing arrangements under s 23, some of which are also prescribed bodies subject to information sharing arrangements under *Children and Community Services Act 2004* (WA) Pt 3, Div 6.
- 238 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4: ‘NSW notes the identified risk of a tiered system becoming unnecessarily complex and requiring an ongoing process for classification of organisations’. See also Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 14.
- 239 This was proposed by the then NSW Ombudsman. See Special Commission of Inquiry into Child Protection Services in New South Wales, *Report*, NSW Department of Premier and Cabinet, Sydney, 2008, p 999.
- 240 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 1.
- 241 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 4.
- 242 The New South Wales Government submitted that ‘While the scope of an information exchange scheme needs to be clear, NSW considers that it should not be so prescriptive that it inadvertently excludes relevant organisations, contrary to the intention and objects of Chapter 16A’. See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3. See also Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12, which submitted that ‘the definition should be clear enough that it will not serve to create such a broad category that it generates complexity and inadvertently contributes to either unnecessary demand or confusion as to whether bodies which do not normally provide services to children may nevertheless be prescribed bodies’.
- 243 See NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 1 on the scope of current information sharing arrangements in New South Wales. The Truth, Justice and Healing Council told us that in their experience in NSW there ‘has been some confusion regarding the definitions of “welfare” “education” and “children’s services” as currently used in Chapter 16A’. It also noted that clarification of these terms would be beneficial. See Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.
- 244 *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B, 248(6) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8(j).
- 245 In the absence of a more precise definition, terms such as ‘children’s services’ might be interpreted widely. However, the legislative history of the term ‘children’s services’ in the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

indicates that, at the time that Chapter 16A was introduced, that term referred to education and care services for children under the age of 6 years, and specifically excluded services primarily concerned with provision of ‘lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity’. The definition of the term ‘children’s services’ was subsequently repealed by the *Children (Education and Care Services) Supplementary Provisions Act 2011* (NSW) along with other provisions of Chapter 12 when the regulatory scheme for children’s services was superseded by the new regulatory scheme for education and care services under the Education and Care Services National Law.

Care and Protection of Children Act 2007 (NT) ss 293C(1)(n) (lawyers) and 293C(1)(c) (carers).

See Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

New South Wales, Victoria and the ACT currently have reportable conduct schemes in operation: see *Ombudsman Act 1974* (NSW); *Child Wellbeing and Safety Act 2005* (Vic) Pt 5A; *Children and Young People Act 2008* (ACT) Div 25.3.3.

See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3. The Truth, Justice and Healing Council submitted ‘It is important that there is alignment between the range of institutions that are prescribed bodies for the purposes of the information sharing scheme and those subject to state and territory child protection oversight and reportable conduct schemes’. See Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 13.

The range of prescribed bodies under Chapter 16A is set out *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B, 248(6) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8. The range of bodies under the jurisdiction of the reportable conduct scheme is set out in the *Ombudsman Act 1974* (NSW) s 25A.

The scope of the NSW reportable conduct scheme was considered by the NSW Solicitor-General in 2015. Following this advice, the NSW Ombudsman commented that there is a ‘compelling case’ for the NSW Parliament to clarify, and potentially further expand, the reach of the reportable conduct scheme. See NSW Ombudsman, *Strengthening the oversight of workplace child abuse allegations*, Sydney, 2016, p 19.

See Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, Recommendations 5–13.

Child-related work should extend to cover, for example, accommodation and residential services for children; activities or services provided by religious leaders, officers or personnel of religious organisations; childcare services; child protection services; disability, education, health and justice and detention services for children; services provided by clubs and associations with a significant membership of, or involvement by, children; coaching or tuition services for children; commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions; and transport services for children, including school crossing services. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, Recommendation 12.

Accommodation and residential services institutions for children include housing or homelessness services that provide overnight beds for children and young people, and some providers of overnight camps.

Childcare services include approved education and care services under the Education and Care Services National Law and approved occasional care services.

Child protection services include child protection authorities and agencies; providers of foster care, kinship or relative care; providers of family group homes; and providers of residential care.

Disability services and supports for children with disability include disability service providers under state and territory legislation and registered providers of supports under the National Disability Insurance Scheme (NDIS).

Education services for children include government and non-government schools, TAFEs, and other institutions registered to provide senior secondary education or training, courses for international students or student exchange programs.

Health services for children include those provided by government health departments and agencies, and statutory corporations; public and private hospitals; and providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people.

Justice and detention services for children include youth detention centres and immigration detention facilities.

See discussion below on inclusion of Commonwealth agencies in a prescribed bodies information exchange scheme.

See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6)(f) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8.

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 245B(2A).

The legislative history of this particular provision, makes it clear that it was enacted to amend Chapter 16A as part of the implementation of NSW public sector reforms at that time. These reforms included amalgamations, in some cases, of multiple government departments into entities within a single department. See Parliament of New South Wales, *Explanatory note: Public Sector Restructure (Miscellaneous Acts Amendments) Bill 2009*, 2009, www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=1509 (viewed 23 December 2016).

See for instance the approach adopted in the *Children and Community Services Act 2004* (WA) s 28A and *Children and Community Services Regulations 2006* (WA) r 20A; *Child Protection Act 1999* (Qld) s 159D(d).

See, for example, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 248(6)(a); *Children and Young People (Safety) Act 2017* (SA) s 152(1)(f).

See summary in Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 32. Note that, in Queensland, the Blue Card (WWCC equivalent) has transitioned to the Department of Justice and Attorney-General since the release of that report.

Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 93.

269 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, pp 101–2.
 270 NSW Ombudsman, *2014–2015 Annual Report*, Sydney, 2015, p 87.
 271 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 51.
 272 NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to
 Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.
 273 This was the case in NSW prior to the WWCC reforms introduced in the *Child Protection (Working with Children)*
Act 2012 (NSW).
 274 NSW Ombudsmen, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper*
No 9: Addressing the risk of child sexual abuse in primary and secondary schools, 2015, p 21.
 275 Centre for Excellence in Child and Family Welfare Inc., Submission to the Royal Commission into Institutional Responses
 to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 4.
 276 National Disability Services, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 1.
 277 NDIS Quality and Safeguarding Framework, Australian Government Department of Social Services, Canberra, 2016, pp 59–61.
 278 NDIS Quality and Safeguarding Framework, Australian Government Department of Social Services, Canberra, 2016, pp 59–61.
 279 See Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues*
paper no 4: Preventing sexual abuse of children in out-of-home care, 2013, pp 1–2. See also NSW Ombudsman,
Strengthening the oversight of workplace child abuse allegations, 2016, pp 9–10 on the NSW Ombudsman’s use of
 Chapter 16A to refer information received in the course of exercising reportable conduct functions to the Office of the
 Children’s Guardian, to inform its exercise of WWCC functions and assist it in developing profiles of individuals where
 there is some information indicating possible emerging risk.
 280 *Ombudsman Act 1974* (NSW) Pt 3A.
 281 See Exhibit 23-0056, ‘Part 1: Overview of our child protection role’, Case Study 23, OMB.0010.001.0001_R at
 0022_R–0043_R; Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse: *Issues paper no 4: Preventing sexual abuse of children in out-of-home care*, 2013, pp 1–2. See also NSW
 Ombudsman, *Strengthening the oversight of workplace child abuse allegations*, 2016, pp 9–10.
 282 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 41: Institutional responses*
to allegations of the sexual abuse of children with disability, Sydney, 2017.
 283 The ACT Public Advocate, Children and Young People Commissioner & Victims of Crime Commissioner, Submission to
 the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information*
sharing arrangements, 2017, p 2.
 284 See for example evidence in Transcript of D Glass, Case Study 24, 3 July 2015 at 15083:36–9; Transcript of P Clarke, Case
 Study 24, 3 July 2015 at 15083:29–34.
 285 In that case, the Commission for Children and Young People (CCYPCG) formed the view that it did not have the power to issue
 a negative notice with respect to Mr Volkers’ WWCC (blue card) because, as an employee of a government entity providing
 sport and recreation activities to children and young people, Mr Volkers was exempt from blue card screening requirements.
 In addition, the CCYPCG formed the view that it could not use the concerning information it had for any purpose beyond the
 WWCC process. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 15: Response*
of swimming institutions, the Queensland and NSW Offices of the DPP and the Queensland Commission for Children and Young
People and Child Guardian to allegations of child sexual abuse by swimming coaches, pp 29, 127.
 286 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 15: Response of*
swimming institutions, the Queensland and NSW Offices of the DPP and the Queensland Commission for Children and
Young People and Child Guardian to allegations of child sexual abuse by swimming coaches, Sydney, 2015, pp 29, 127.
 287 The Truth, Justice and Healing Council has told us that the capacity for the NSW Ombudsman and the NSW Children’s
 Guardian (the WWCC and out-of-home care regulator) to exchange information with each other under Chapter 16A ‘should
 be replicated in any reportable conduct scheme implemented nationally, to enable similar information sharing between
 the [reportable conduct] oversight body and the WWCC regulator both within and between jurisdictions’: Truth, Justice
 and Healing Council, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse: *Consultation*
paper: Best practice principles in responding to complaints of child sexual abuse in institutional context, 2016, p 22.
 288 Exhibit 23-0056, ‘Part 1: Overview of our child protection role’, Case Study 23, OMB.0010.001.0001_R at 0022_R–0043_R.
 289 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 248(6)(a); *Child Protection Act 1999* (Qld) s
 159D(e) prescribes the police commissioner; *Children and Young People (Safety) Act 2017* (SA) s 152(1)(f) prescribes a
 ‘state authority’ which includes the South Australia Police; *Care and Protection of Children Act* (NT) s 293C(1)(o), a police
 officer is a prescribed entity; *Children and Community Services Regulations 2006* (WA) r 20A(la) prescribes the Police
 Force of Western Australia.
 290 Australian Capital Territory Policing, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Consultation paper into criminal justice*, 2016, p 4.
 291 See Transcript of K Larkman, Case Study 50, 16 February 2017 at T25627:14–35; Transcript of T Chambers-Clark, Case
 Study 52, 21 March 2017 at T27077:30–40. In Case Study 41 we heard evidence that The Disability Trust encountered
 difficulties in getting information from the police for the purposes of their reportable conduct investigation, ‘and that
 the Trust would have liked a more comprehensive report when it was first requested’. See Exhibit 41-0007, ‘Statement
 of Margaret Bowen’, Case Study 41, STAT.1035.001.0001_R at 0237_R.
 292 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, p 543.

293 These interagency joint response teams include: the Joint Investigation Response Team (JIRT) in New South Wales; the
 Suspected Child Abuse and Neglect (SCAN) in Queensland; the ChildFirst Assessment and Interview Team (CAIT) in Western
 Australia; the Child Abuse Taskforce (CAT) in the Northern Territory; Multidisciplinary Centres (MDCs) in Victoria. Generally,
 their membership is made up of the jurisdictional child protection agency, the jurisdictional police force, and sometimes
 others, such as jurisdictional health agencies. They are established differently in jurisdictions, by either legislation or policy.

294 The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South
 Wales, 2008, vol 3, chapter 4.

295 Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues
 paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, p 7; NSW Government, Submission to the
 Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing
 arrangements*, 2017, p 3; Tasmanian Government, Submission to the Royal Commission into Institutional Responses to
 Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5; Truth, Justice and
 Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion
 paper: Strengthening information sharing arrangements*, 2017, p 12; Tasmanian Government, Submission to the Royal
 Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing
 arrangements*, 2017, p 5. See also Northern Territory Government, Submission to the Royal Commission into Institutional
 Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

296 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6)(f) and *Children and Young
 Persons (Care and Protection) Regulation 2012* (NSW) r 8.

297 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245I.

298 The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and
 child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*,
 Sydney, 2011, p vi.

299 The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and
 child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*,
 Sydney, 2011, p viii.

300 The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and
 child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*,
 Sydney, 2011, p 40.

301 See overview of laws that restrict the disclosure of certain information by Centrelink, Medicare and the Child Support
 Agency in relation to the Information Sharing Protocol in The Allen Consulting Group, *Operational review of the
 information sharing protocol between the Commonwealth and child protection agencies: Report to the Department of
 Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, pp 15–17. See also Victorian Department
 of Human Services, *Protocol for the transfer of care and protection orders and proceedings and interstate assistance*,
 Melbourne, 2009, cl 25.

302 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 6.

303 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, pp 7–8.

304 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion
 paper: Strengthening information sharing arrangements*, 2017, p 3; Tasmanian Government, Submission to the Royal
 Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing
 arrangements*, 2017, p 5. See also Northern Territory Government, Submission to the Royal Commission into Institutional
 Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

305 See, for example, Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, p 7.

306 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Discussion paper: Strengthening Information Sharing Arrangement* 2017, p 12.

307 See *NDIS Quality and Safeguarding Framework*, Australian Government Department of Social Services, Canberra, 2016.

308 Although this term is undefined, it appears to refer to person against whom a relevant allegation has been made, or who
 has been charged with or convicted of a relevant offence.

309 Exhibit 51-0001, ‘Making children safer: The wellbeing and protection of children in immigration detention and regional
 processing centres’, Case Study 51, AG.DIBP.02.0029.001.0001_R at 0013_R.

310 Transcript of C Moy, Case Study 51, 6 March 2017 at T26229:41–T26230:44.

311 See discussion above about limitations on prescribed bodies’ capacity for information exchange, and below about the
 exclusion of non-government agencies from inter-jurisdictional information sharing protocols. See also Act for Kids,
 Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing
 sexual abuse of children in out of home care*, 2013, pp 5–6.

312 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues
 paper No 4: Preventing sexual abuse of children in out of home care*, p 9; NSW Children’s Guardian, Submission to the
 Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of
 children in out of home care*, p 16. For information about the transfer of OOH service provision to non-government
 organisations, see Transcript of M Walk, Case Study 24, 10 March 2015 at T12825:34–T12826:9; Transcript of S
 Kinmond, Case Study 24, 3 July 2015 at T15065:18–56. See also Uniting Church, Submission to the Royal Commission

- into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013, for discussion about limited information sharing with the transfer of placements.
- 313 See for instance *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 248(6)(b) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8(1)(c); *Care and Protection of Children Act* (NT) s 293C(1)(h). Note in the Northern Territory out-of-home care placements are provided by Territory Families, which is a government agency. See Inca Consulting, *A national comparison of carer screening, assessment, selection and training and support in foster, kinship and residential care*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 29–30. See also *Children and Community Services Act 2004* (WA) s 28A. While the application of Chapter 16A to systemic Catholic schools in New South Wales appears less clear, the Truth, Justice and Healing Council told us that in practice, this has not been an issue for Catholic education systems in New South Wales and both Catholic schools and education offices have been treated as prescribed bodies under that scheme: Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.
- 314 In some jurisdictions these institutions can, by making an appropriate request, oblige other participants in the scheme to provide them with relevant information. This is the case in New South Wales and the Northern Territory, although note there may be exceptions to these obligations. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(4); *Care and Protection of Children Act* (NT) s 293E(5). In other jurisdictions, information can be requested, but there is no obligation on the recipient to provide that information. See for example the arrangements in Western Australia: *Children and Community Services Act 2004* (WA) s 28B. See also arrangements in Tasmania: *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(3); and South Australia: *Children and Young People (Safety) Act 2017* (SA) s 152.
- 315 This is the case in New South Wales and the Northern Territory, although note there may be exceptions to these obligations. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D; *Care and Protection of Children Act* (NT) s 293E. In Tasmania, non-government providers can share information without the involvement of a public authority: see *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(3).
- 316 See for example the arrangements in Western Australia and Queensland: *Children and Community Services Act 2004* (WA) s 28B; *Child Protection Act 1999* (Qld) s 159M.
- 317 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8(j), compared, for example, to *Care and Protection of Children Act 2007* (NT) s 293C(1)(e), which captures ‘a person in charge of an organisation that receives funding from the Commonwealth or Territory to provide a service, or perform a function for or in connection with children’. See also proposal in Victorian consultation paper on a proposed legislative model for child safety and wellbeing information sharing: Nous Group, *Consultation paper: Proposed legislative model for child safety and wellbeing information sharing*, Melbourne, 2016, p 12.
- 318 See for example *Health Records and Information Privacy Act 2002* (NSW) s 10; *Health Records Act 2001* (Vic) Health Privacy Principle 2.
- 319 See for example *Care and Protection of Children Act* (NT) s 293C(1)(l), which includes a person registered under the Health Practitioner Regulation National Law to practice a health profession (other than a student); in Western Australia, the *Children and Community Services Regulations 2006* (WA) r 21(m) include health service providers established by an order made under the *Health Services Act 2016* (WA) s 32(1).
- 320 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6)(f); and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8.
- 321 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8(2).
- 322 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.
- 323 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.
- 324 National Mental Health Consumer & Carer Forum, *Position statement and issues paper – Privacy, confidentiality & information sharing – Consumers, carers and clinicians*, Canberra, 2011, p 23.
- 325 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, p 14; Royal Commission consultation with juvenile justice bodies, 2017.
- 326 National Mental Health Consumer & Carer Forum, *Position statement and issues paper – Privacy, confidentiality & information sharing – Consumers, carers and clinicians*, National Mental Health Consumer & Carer Forum, 2011, p 24.
- 327 See in particular, NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, February 2017, p 3.
- 328 *Care and Protection of Children Act* (NT) s 293C(1)(e).
- 329 *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B, 248(6) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8(1)(j).
- 330 The term ‘children’s services’ was previously defined in the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to capture education and care services for children under the age of 6 years, and specifically excluded services primarily concerned with provision of ‘lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity’. This definition was subsequently repealed by the *Children (Education and Care Services) Supplementary Provisions Act 2011* (NSW) along with other provisions for the regulation of children’s services when that regulatory scheme was superseded by the regulatory scheme for education and care services under the Education and Care Services National Law.

331 The NSW Office of the Children's Guardian submitted that the current information sharing arrangements in New South Wales, 'include the majority of child-related sectors in NSW, however they do not extend to smaller, unaffiliated institutions in the 'clubs and other bodies' sectors'. See NSW Government Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 1.

332 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening Information Sharing Arrangements*, 2017, p 13.

333 See, for example Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton*, Sydney, 2015, in relation to the Marist Brothers authorities not informing school principals of matters relating to child sexual abuse.

334 Transcript of G Blake, Case Study 46, 1 December 2016 at T24221:6–29.

335 See NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 17.

336 Transcript of Archbishop Fisher, Case Study 50, 24 February 2017 at T26145:7–12.

337 Transcript of Archbishops Coleridge, Hart, Costelloe and Wilson, Case Study 50, 24 February 2017 at T26145:14–25.

338 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 7, 12.

339 See, eg, Transcript of G Blake, Case Study 46, 1 December 2016 at T24221:6–29.

340 K Kaufman & M Erooga, *Risk profiles for institutional child sexual abuse*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 53.

341 K Kaufman & M Erooga, *Risk profiles for institutional child sexual abuse*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 53.

342 Transcript of Revered Professor Sandeman, Case Study 52, 20 March 2017 at T26598:42–T26960:23.

343 Transcript of S Tynan, Case Study 50, 16 February 2017 at T25638:36–T25639:34.

344 See NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 17.

345 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 2: Towards healing*, 2013, p 20.

346 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, Sydney, 2015, p 5.

347 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, Sydney, 2015, p 5.

348 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, Sydney, 2015, p 13.

349 On concerns relating to inclusion of religious institutions in a nationally consistent information exchange scheme, see NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3. That submission also noted similar concerns in relation to the inclusion of sport and recreation institutions. See also NSW Government Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

350 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.

351 See *Privacy Act 1988* (Cth) ss 6D, 6EA.

352 See for Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014. See also Transcript of A West, Case Study 39, 12 April 2016 at 18980:1–40.

353 Transcript of A West, Case Study 39, 12 April 2016 at 18980:1–40.

354 NSW Government Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 1.

355 See Scouts Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, p 4, where Scouts Australia told us of their experience of individuals with unresolved allegations in one organisation, moving to another youth development organisation and working with vulnerable children. See also Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, pp 12–16; Transcript of G Blake, Case Study 46, 1 December 2016 at 24220:24–24225:32; Anglican Church of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 58.

356 NSW Government Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 2–3.

357 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

358 The scouting movement is organised and managed by branches of Scouts Australia – such as Scouts NSW – and delivered by local scout groups subject to certain policies and rules that are agreed upon at a national level: Exhibit 48-0008, ‘Submission on matters relating to child protection’, Case Study 48, STAT.1270.001.0034_R at 0037_R.

359 See NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

360 On concerns relating to inclusion of sport and recreation institutions in a nationally consistent information exchange scheme, see NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3. That submission also noted similar concerns in relation to the inclusion of religious institutions. See also NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

361 Transcript of G Furness, Case Study 48, 6 December 2012 at 24472:38–42.

362 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse*, Sydney, 2016, p 30.

363 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse*, Sydney, 2016, p 31.

364 We note that sport and recreation institutions may be included under the Northern Territory’s Part 5.1A information exchange scheme where they receive funding from the Commonwealth or Territory to ‘provide a service, or perform a function, for or in connection with children’: *Care and Protection of Children* (NT) s 293C.

365 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

366 See *Privacy Act 1988* (Cth) ss 6D, 6EA.

367 NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 2–3.

368 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3; NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 1.

369 We note that in some jurisdictions, individuals who work for these organisations may be mandatory reporters.

370 Legislation in the Northern Territory, Tasmania and Victoria appears to cover some of these services. See *Care and Protection of Children Act* (NT) s 293C(1)(f); *Children, Young Persons and Their Families Act 1997* (Tas) s 3 (see ‘information-sharing entity’ paras (d) and (f)); and *Children, Youth and Families Act 2005* (Vic) s 3 (see ‘information holder’ paras (g), (i), (m)).

371 Unlike the jurisdictional child protection agency and services categorised as ‘community-based child and family services’, mental health service providers and state funded drug or alcohol treatment services (categorised as ‘information holders’ and ‘service agencies’) cannot initiate information exchange under the *Children, Youth and Families Act 2005* (Vic) (see ss 3, 36). They may, however, be asked to provide information to ‘community-based child and family services’ in certain circumstances (see s 36). They may also be compelled, in certain circumstances, to provide information to the child protection agency (see Part 4.5 of the Act).

372 Victorian Commission for Children and Young People, “...as a good parent would...”: *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Melbourne, 2015, p 22.

373 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 248(6)(a).

374 See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6)(f) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8, which identify the non-government organisations captured under Chapter 16A.

375 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

376 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 13.

377 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 13.

378 Provisions for proactive sharing include *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C; *Care and Protection of Children Act* (NT) s 293D; *Child Protection Act 1999* (Qld) ss 159C(1), 159D, 159M; *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(3); *Children and Community Services Act 2004* (WA) s 28B.

379 On this see M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 8–9 and C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 3.

380 *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245C, 245D (where it ‘may’ assist); *Care and Protection of Children Act* (NT) s 293D.

381 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5. However, we note also the submission of the Australian Government that ‘Some agencies have expressed agreement with the proposal that information should only be provided without a request if the provider believes the information would assist the recipient to meet

their responsibilities for children's safety and wellbeing'. See Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.

C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 64; see also M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 27–8.

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 245D(3). See also *Care and Protection of Children Act* (NT) s 293E(3).

See *Child Protection Act 1999* (Qld) s 159M; *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(3)(b); *Children and Community Services Act 2004* (WA) s 28B. Disclosure under the *Children, Youth and Families Act 2005* (Vic) s 36 is also voluntary. South Australia's *Information Sharing Guidelines for promoting safety and wellbeing* (2013) also support information sharing, but cannot require it.

For instance a 2015 review into the information sharing arrangements in New South Wales concluded that '[o]rganisational factors are the most significant barriers (and enablers) of information sharing.' It noted that organisations 'with risk-averse cultures or those which value client confidentiality over other objectives are less likely to share information appropriately with other agencies': M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 2.

See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(3). Some federal courts and Commonwealth departments are included as prescribed bodies for the purposes of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW): see ss 245B(1), 248(6)(f) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8. However, these bodies cannot be compelled to provide information under Chapter 16A: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245I.

Care and Protection of Children Act (NT) s 293E.

See *Care and Protection of Children Act* (NT) s 293E(3); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(3).

Care and Protection of Children Act (NT) s 293E(2).

Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, pp 6–7.

Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, p 7. We note that the New South Wales Government submitted that further consideration should be given to exceptions to the scheme, including in relation to 'the age of information held by an agency and its relevance to children's safety and wellbeing'. In our view this is better dealt with as a matter that can be taken into account when assessing 'reasonable belief' rather than as a specific exception. See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.

See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.

We note the relevance, in this context, of the distinction in the thresholds for proactive and reactive sharing, which has been made by Chapter 16A in New South Wales (but not by Part 5.1A in the Northern Territory). The lower degree of certainty required for forming a reasonable belief that the information may (in the case of reactive sharing), as opposed to would (in the case of proactive sharing) assist the recipient's exercise of functions related to safety and wellbeing, will influence the assessment of factors such as those outlined above.

Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(4); *Care and Protection of Children Act* (NT) s 293E(5); *Child Protection Act 1999* (Qld) s 159N(3).

See Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, March 2017.

Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, p 3.

Children and Young People Act 2008 (ACT) s 858(1).

C Adams & K Lee-Jones, 'Sharing personal information in the child protection context: Impediments in the Australian legal framework', *Child & Family Social Work*, 2017.

Chapter 16A and the Northern Territory scheme, like information exchange schemes under other state and territory child protection legislation, capture information related to a child or a group of children's safety and wellbeing. This information, described as 'safety, welfare or wellbeing' under Chapter 16A, is referred to hereafter interchangeably as 'safety, welfare or wellbeing' and 'safety or wellbeing'. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C; *Care and Protection of Children Act* (NT) ss 293D, 293E. This is similar in some other jurisdictions – see for instance, *Children and Community Services Act 2004* (WA) Pt 3 Div 6; *Children and Young People Act 2008* (ACT) Div 25.3.2.

See Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord*, Sydney, 2014, p 70, on the need for small pieces of relevant information to be

connected. See also E Munro & S Fish, *Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, p 23. In their analysis of *Case Study 2*, Professor Eileen Munro and Sheila Fish note that failures to suspect grooming or abusive behaviour may occur ‘when an accurate assessment depends on bringing together small items of information known by several different people or over a long period – items that in isolation do not look very worrying but when combined suggest a serious problem’.

403 T Crea, ‘Balanced decision making in child welfare: Structured processes informed by multiple perspectives’, *Administration in Social Work*, vol 34, no 212, 2010, pp 196–212; see also A Andrade, MJ Austin & A Benton, ‘Risk and safety assessment in child welfare: Instrument comparisons’, *Journal of Evidence-Based Social Work*, vol 5, no 1–2, 2008, pp 31–56; A White & P Walsh, *Risk assessment in child welfare: An issues paper*, NSW Department of Community Services, Ashfield, 2006; M Barry, *Effective approaches to risk assessment in social work: An international literature review*, Scottish Executive Social Research, Edinburgh, 2007.

404 D Finkelhor, RK Ormrod & HA Turner, ‘Polyvictimization and trauma in a national longitudinal cohort’, *Development and Psychopathology*, vol 19, no 1, 2007, p 149.

405 D Finkelhor, RK Ormrod & HA Turner, ‘Polyvictimization and trauma in a national longitudinal cohort’, *Development and Psychopathology*, vol 19, no 1, 2007, p 156.

406 As noted in Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim report: Volume 1*, Sydney, 2014, p 114, children who experienced sexual abuse in residential institutions often also experienced physical abuse, psychological maltreatment and neglect.

407 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

408 These are children who are the subject of reports of safety and wellbeing concerns, or are subject to assessment, intervention or protection orders. See *Children, Young Persons and Their Families Act 1997* (Tas) ss 53A, 53B; see also Transcript of T Kemp, Case Study 24, 12 March 2015 at T13149:27–9. With respect to Victoria, see *Children, Youth and Families Act 2005* (Vic) ss 35, 36, 192, 194–6.

409 *Children and Community Services Act 2004* (WA) Pt 3, Div 6; *Children and Young Persons (Care and Protection) Act 1998* (NSW) Ch 16A; *Children and Young People (Safety) Bill 2017* (SA) Ch 11, Pt 3; *Care and Protection of Children Act* (NT) Pt 5.1A. Note also that the *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic) addresses children’s safety in the context of family violence only.

410 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, p 73.

411 As discussed above, existing privacy laws allow sharing to prevent or lessen serious or imminent threats to life, health or safety. In the contexts discussed here, institutions may find it difficult to ascertain such risks. As we also indicated above, *Privacy Act 1988* (Cth) provisions allow private sector employers to disclose information which is directly related to their relationship with a past or current employee: see *Privacy Act 1988* (Cth) ss 6, 7(1)(ee), 7B(3), 16A. Privacy laws may also allow institutions to use or disclose personal information where, for example, unlawful activity or serious misconduct (relating to the institution’s functions or activities) is suspected - for the purpose of taking appropriate action in relation to the matter or for the purpose of the institution’s own investigation or to report the matter to the relevant authorities. Such provisions may assist institutions in their own complaints handling and non-criminal investigations. However, it is not clear that they promote collaborative responses to suspicions, concerns and allegations. See *Privacy Act 1988* (Cth) s 16A; *Privacy and Data Protection Act 2014* (Vic) Sch 1 IPP 2.1 (e).

412 See for example Child Wise, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016; Scouts Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016; Centre for Excellence in Child and Family Welfare Inc., Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016; Anglican Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 1: Working With Children Checks*, 2014.

413 See, for example, Transcript of H Bath, Roundtable discussion into preventing sexual abuse of children in out-of-home care, 16 April 2015 at T33:11–16.

414 Transcript of T Ladogna, Criminal Justice Roundtable: Multidisciplinary and specialist policing responses, 15 June 2016 at T48:1–T49:15.

415 *Standard operating procedures for employment related child abuse allegations*, NSW Police Force, Sydney, available in Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, Appendix E, 523.

416 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, recommendation 14.

417 See Scouts Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, p 4. See also Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, pp 12–16; Transcript of G Blake, Case Study 46, 1 December 2016 at 24220:24–24225:32; Anglican Church of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 58.

418 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening Information Sharing Arrangements*, 2017, p 15.

See discussion in Volume 7, *Improving institutional responding and reporting* in relation to barriers to reporting.

People with Disability Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 28. See also Transcript of J Cadwallader, Case Study 46, 29 November 2016 at T23949:36–9.

People with Disability Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 6.

Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014, p 33.

Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 20: The response of the Hutchins Schools and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school*, Sydney, 2015, p 73.

Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2; Australian Institute of Family Studies, ‘Risk assessment instruments in child protection’, *CFCA Resource sheet*, 2016, www.aifs.gov.au/cfca/publications/risk-assessment-child-protection (viewed 20 September 2017); T Crea, ‘Balanced decision making in child welfare: Structured processes informed by multiple perspectives’, *Administration in Social Work*, vol 34, no 2, 2010, pp 196–212.

Independent Education Union NSW/ACT, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

See for example, Independent Education Union NSW/ACT, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4; Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6; Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4. See also Transcript of A Kemp, Case Study 24, 12 March 2015 at 13151:11–26. See also Transcript of H Bath, Roundtable discussion into preventing sexual abuse of children in out-of-home care, 16 April 2015 at T33:11–16 on the difficulty of sharing such information across jurisdictions.

NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4. See also *NK v Northern Sydney Central Coast Area Health Service (No 2)* [2011] NSWADT 81 on the need for agencies to check the accuracy of information and consider privacy obligations when sharing sensitive information.

Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6; NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

Note that in NSW, the sharing of information from counselling records and medical records through Chapter 16A provisions is guided by specific NSW Health policy and procedures. See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

See, for example: Transcript of J Eyles, Case Study 24, 29 June 2015 at 14638:1–13; Transcript of K Finn, Case Study 24, 29 June 2015 at 14672:8–20. See also Transcript of J Reed, Case Study 24, 29 June 2015 at 14694:40–7.

P Sawrikar, *Culturally appropriate service delivery for Culturally and Linguistically Diverse (CALD) children and families in NSW child protection system (CPS): Final Report*, report prepared for NSW Department of Human Services, UNSW Social Policy Research Centre, Sydney, 2011, p 13; J Kaur, *Cultural diversity and child protection: A review of the Australian research on the needs of culturally and linguistically diverse (CALD) and refugee children and families*, JK Diversity Consultants, Queensland, 2012, p 32; Australian Law Reform Commission, *Family Violence – A national legal response*, Sydney, 2010, pp 1398–9, citing Department of Communities (Qld), *Review of the Domestic and Family Violence Protection Act 1989: Consultation Paper*, 2010, p 36. The Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec) told us about the familial and cultural complexity of kinship placements of Aboriginal children who have sexually harmed other children, and the need for appropriate cultural approaches in providing information to kinship carers: AbSec, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013, p 14.

440 People with Disability Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 17; National Disability Services, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 1.

441 The Victorian Aboriginal Child Care Agency, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 11.

442 For example, see Transcript of R Stewart, Case Study 45, 4 November 2016 at 22899:37–22900:17.

443 See for example Sexual Assault Support Service, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 6. See also Catholic School Parents Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 4.

444 See, for example: Transcript of B Orr, Case Study 24, 30 June 2015 at T14775:36–T14777:28; see the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013: Queensland Commission for Children and Young People, pp 9–10; Act for Kids, pp 4, 8; Dr Frank Ainsworth, p 4. See also the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013: CREATE Foundation, pp 9, 10; and Truth, Justice and Healing Council, p 36. On the Victorian child protection agency’s awareness of this issue and attempts to address it, see Transcript of Panel 5, Case Study 24, 1 July 2015 at 14889:4–T1890:15.

445 See Uniting Church in Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: note the submission that there is currently a gap in the information provided to agencies from child protection at the point of referral. This is concerning, especially in light of the fact that there are more children being re-referred than there are new children entering the system. This suggests that much more information would be known about the child than is passed on. The lack of initial information can seriously jeopardise the safety of the child – during contact with the birth family, or in failure to understand some of the child’s behaviour in care. See Centre for Excellence in Child and Family Welfare Inc., Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 4.

446 People with Disability Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 17.

447 Transcript of Panel 2.1, Case Study 57, 28 March 2017 at 27514:36–27515:6.

448 In most cases prohibition can be overcome by consent or court order. See *Young Offenders Act 1993* (SA) ss 13, 63C; *Children (Criminal Proceedings) Act 1987* (NSW) Div 3A, s 15A; *Children, Youth and Families Act 2005* (Vic) s 534; *Youth Justice Act 1992* (Qld) s 301; *Magistrates Court (Children’s Division) Act 1998* (Tas) s 12; *Youth Justice Act* (NT) s 50; *Criminal Code 2002* (ACT) s 712A; *Children’s Court of Western Australia Act 1988* (WA) s 35.

449 See, for example, *Children, Youth and Families Act 2005* (Vic) s 534.

450 Law Society of New South Wales, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 17.

451 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 8.

452 On this therapeutic and supportive benefit of information sharing see, for example, Wesley Mission Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 13 and Australian Law Reform Commission, *Family Violence – A national legal response*, Commonwealth of Australia, Sydney, 2010, p 1364.

453 See National Mental Health Consumer & Carer Forum, *Privacy, confidentiality & information sharing – Consumers, carers and clinicians: A position statement and issues paper by the National Mental Health Consumer & Carer Forum (NMHCCF)*, Canberra, 2011, p 26.

454 We heard, for example, that the practice advocated by the Association of Independent Schools of NSW, of allowing NSW non-government school principals to have open access to *all* school counsellors’ records may deter children from disclosing. See NSW Non-Government Schools School Counsellors Forum, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, pp 3–4. See also Australian Psychological Society, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 5.

455 This is discussed further in Volume 9, *Advocacy, support and therapeutic treatment services*.

456 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, p 7.

457 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

458 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29(1); *Children, Youth and Families Act 2005* (Vic) ss 41, 129–30, 190; *Child Protection Act 1999* (Qld) s 186–8; *Children and Community Services Act 2004* (WA) ss 23, 124F, 141, 240–1; *Children’s Protection Act 1993* (SA) ss 13, 52L; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Young People Act 2008* (ACT) ss 846, 868–71; *Care and Protection of Children Act 2007* (NT) ss 27(2), 150, 195, 221.

459 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016: J Bessant, p 1; Anglicare Sydney, p 3; Victorian Disability Services Commissioner, pp 6–7.

See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5. See also the Queensland Government's explanation of the purpose of notifier confidentiality protection under *Child Protection Act 1999* (Qld) s 186(2): Queensland Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

See, for example, *Public Interest Disclosure Act 1994* (NSW) s 22; *Public Interest Disclosures Act 1994* (ACT) s 33; *Public Interest Disclosures Act 2002* (Tas) s 23; *Public Interest Disclosure Act 2003* (WA) s 11; *Whistleblowers Protection Act 2001* (Vic) s 22.

See for instance, NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5; Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 14–15.

See Volume 7, Chapter 2, 'Reporting institutional child sexual abuse to external authorities'.

Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, Recommendation 8.

Universal Declaration of Human Rights, A Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948), art 12 and the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17. Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 16.

See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 39.

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 245A; *Child Protection Act 1999* (Qld) s 5D; *Care and Protection of Children Act 2007* (NT) s 293A.

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 245A(2). See also *Care and Protection of Children Act* (NT) s 293A; *Child Protection Act 1999* (Qld) s 159B.

See Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 3 and 19. See also art 34, which requires governments to protect children from all forms of sexual exploitation and sexual abuse.

See C Adams & K Lee-Jones, 'Sharing personal information in the child protection context: Impediments in the Australian legal framework', *Child & Family Social Work*, 2017 and United Nations Human Rights Committee, *General comment No 31: The nature of the general legal obligation imposed on State Parties to the Covenant*, Geneva Human Rights Committee, Geneva, 2004.

See, for example, Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2; The ACT Public Advocate, Children and Young People Commissioner & Victims of Crime Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.

See Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 19 and 34 on children's right to protection from sexual abuse and sexual exploitation.

See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245A(2)(d).

See, for example, Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013, p 10; Queensland Commission for Children and Young People and Child Guardian, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse *Issues paper No 3: Child safe organisations*, 2013, p 37. See also Transcript of M Walk, Case Study 24, 12 March 2015 at T13146:6–11, on the clarification of the paramountcy of children's safety, welfare and wellbeing by Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

See *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245H; *Care and Protection of Children Act* (NT) s 293J; *Child Protection Act 1999* (Qld) s 159R; *Children and Community Services Act 2004* (WA) s 28B(5). See also *Reportable Conduct and Information Sharing Legislation Amendment Act 2016* (ACT) s 5, inserting s 863F into the *Children and Young People Act 2008* (ACT).

Although note there is a level of inconsistency in how the provisions are framed in different privacy legislation. See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 33.

See, for example, C Adams & K Lee-Jones, 'Sharing personal information in the child protection context: Impediments in the Australian legal framework', *Child & Family Social Work*, 2017.

M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 52.

See for example: *Crimes Act 1914* (Cth) s 70; *Privacy Act 1988* (Cth) s 13G; *Privacy and Personal Information Protection Act 1998* (NSW) s 62. See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 40–1, 63. See also M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 3, 10, 52.

480 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C; *Care and Protection of Children Act* (NT)
s 293D; *Child Protection Act 1999* (Qld) s 159M; *Children, Young Persons and Their Families Act 1997* (Tas) s 53B.

481 See NSW Department of Family & Community Services, *Child Wellbeing and Child Protection – NSW Interagency
Guidelines*, 2017, www.community.nsw.gov.au/kts (viewed 6 October 2017); NSW Department of Family & Community
Services, *Providing and requesting information under Chapter 16A*, 2017, [www.community.nsw.gov.au/kts/guidelines/
info-exchange/provide-request](http://www.community.nsw.gov.au/kts/guidelines/info-exchange/provide-request) (viewed 6 October 2017); Chief Executive of the Department of Children and Families,
Information Sharing Guidelines, NT Department of Children and Families, Darwin, pp 13–16.

482 NSW Privacy Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 6.

483 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child
Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

484 South Australian Ombudsman, *Information Sharing Guidelines for promoting safety and wellbeing*, Adelaide, 2013, pp 14–17.

485 Australian Privacy Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual
Abuse, *Consultation paper: Criminal justice*, 2015, p 6.

486 Australian Privacy Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual
Abuse, *Consultation paper: Criminal justice*, 2015, p 6.

487 Determining children’s capacity to consent to disclosure of their personal information may be complex. Generally,
privacy laws do not prescribe the age at which individuals may be considered capable of consent to disclosure. The
general law on capacity, which is relevant in this context, recognises that children may have capacity to consent,
depending on their maturity, understanding and ability to communicate, assessed on a case-by-case basis: see *Gillick
v West Norfolk & Wisbech Area Health Authority* [1986] AC 112 and *Secretary of the Department of Health and
Community Services v JWB and SMB (Re Marion)* (1992) 175 CLR 218 on children’s capacity to consent to medical
treatment. This understanding of capacity to consent is reflected in some privacy legislation, which also expressly
enables authorised representatives (such as persons with parental responsibility) to consent where a child does not
have capacity: see, for example, *Health Records and Information Privacy Act 2002* (NSW) s 7; *Health Records Act 2001*
(Vic) s 85; *Privacy and Data Protection Act 2014* (Vic) ss 28(1), 28(3). However, in some cases, privacy legislation may
exclude children from consenting, and restrict the power to consent to those with parental responsibility: see *Health
Records (Privacy and Access) Act 1997* (ACT) ss 7(4), 25.

488 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children
and Families, Darwin, 2012, p 13.

489 The ACT Public Advocate, Children and Young People Commissioner & Victims of Crime Commissioner, Submission to
the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information
sharing arrangements*, 2017, p 2.

490 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children
and Families, Darwin, 2012, p 7.

491 See for instance *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 9; *Children, Youth and Families Act
2005* (Vic) s 10; *Children’s Protection Act 1993* (SA) s 3; *Children, Young Persons and Their Families Act 1997* (Tas) s 10D;
Care and Protection of Children Act 2007 (NT) s 9; *Children and Community Services Act 2004* (WA) s 8; *Child Protection
Act 1999* (QLD) s 5E.

492 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force
2 September 1990), art 12.

493 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 9. See also NSW Privacy Commissioner,
Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening
information sharing arrangements*, 2017, p 4.

494 NSW Privacy Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 4.

495 *Privacy Act 1988* (Cth) Sch 1 Pt 5; *Privacy and Personal Information Protection Act 1998* (NSW) ss 10(e), 14, 15; *Privacy
and Data Protection Act 2014* (Vic) s 28 and Sch 1, cl 6; *Information Privacy Act 2009* (Qld) Sch 3, cl 6 and Sch 4, cls 1(3)
(b), 6; *Information Privacy Act 2014* (ACT) Sch 1, cls 1.4(d), 12; *Personal Information Protection Act 2004* (Tas) Sch 1, cls
1(3)(b), 6; *Information Act 2002* (NT) Sch 2, cl 6; *Information Privacy Principles Instruction 2016* (SA) cls 4(5)–(6).

496 *Privacy Act 1988* (Cth) Sch 1 Pt 4; *Privacy and Personal Information Protection Act 1998* (NSW) ss 12, 18; *Privacy and
Data Protection Act 2014* (Vic) Sch 1, cl 4; *Information Privacy Act 2009* (Qld) Sch 3, cl 4, Sch 4 cl 4; *Information Privacy
Act 2014* (ACT) Sch 1, cl 11; *Personal Information Protection Act 2004* (Tas) Sch 1 cl 4; *Information Act 2002* (NT) Sch 2,
cl 4; *Information Privacy Principles Instruction 2016* (SA) cl 4(4).

497 *Privacy Act 1988* (Cth) Sch 1, cls 1.3–1.5, 5; *Privacy and Personal Information Protection Act 1998* (NSW) Pt 3; *Privacy and
Data Protection Act 2014* (Vic) Pt 3, Div 3, Sch 1, cl 5; *Information Privacy Act 2009* (Qld) Sch 4, cl 5; *Information Privacy
Act 2014* (ACT) Sch 1, cl 1; *Personal Information Protection Act 2004* (Tas) Sch 1, cl 5; *Information Act 2002* (NT) Sch 2, cl 5.

498 State and Territory privacy legislation imposes obligations and restrictions on state/territory public sector agencies:
Information Privacy Act 2014 (ACT); *Information Privacy Act 2002* (NSW); *Information Act* (NT); *Information Privacy
Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic). In South
Australia, the handling of personal information by state/territory public sector agencies is regulated by a Cabinet
Administrative Instruction: *Information Privacy Principles Instruction 2013* (SA).

499 See for instance *Privacy and Personal Information Protection Act 1998* (NSW) Pt 2, Div 1.

500 Exhibit 23-0056, ‘Part 1: Overview of our child protection role’, Case Study 23, OMB.0010.001.0001_R at 0012_R.

501 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245F.
 502 *Care and Protection of Children Act* (NT) s 293G.
 503 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.
 504 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.
 505 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.
 506 See Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 15.
 507 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(5); *Care and Protection of Children Act* (NT) s 293E(6); *Children and Young People Act 2008* (ACT) s 863C(3).
 508 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.
 509 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, p 8.
 510 See, for example, *State Records Act 1998* (NSW). Some institution types are subject to specific legal obligations for record keeping – for example, obligations imposed on out-of-home care providers under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 170; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) Pt 3.
 511 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, pp 16–17.
 512 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, p 12.
 513 See, eg, Transcript of A Hywood, Case Study 52, 22 March 2017 at 27141:34–27142:26; 27143:13–21.
 514 In relation to delays, see the following Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: Uniting Church in Australia, p 19; CareSouth, p 4; Wesley Mission Victoria, p 13. See also Aboriginal Child Family and Community Care State Secretariat New South Wales (AbSec), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 4–5, noting more generally the need for improvements in the timely exchange of information in the context of complaints handling.
 515 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 15.
 516 See, for example, see the following Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017: Commonwealth Government; NSW Privacy Commissioner.
 517 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.
 518 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 15.
 519 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 17.
 520 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.
 521 For the definition of ‘community services’, see *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) s 4.
 522 *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) s 11(1)(c).
 523 *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) ss 11(1)(f), 22. See also s 14A of that Act. See relevant service providers as identified in *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) s 4.
 524 We note and agree with the New South Wales Government’s view that a complaints system managed by an oversight body would need careful consideration to ensure it does not ‘impede proactive decision making’. NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.
 525 NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 3–4.
 526 Office of the Australian Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 6.
 527 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.
 528 See M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 90. See also Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6; NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

529 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

530 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.

531 South Australia Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 2.

532 South Australia Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 2.

533 See *Care and Protection of Children Act* (NT) s 293H in relation to the making of administrative guidelines.

534 The belief mentioned in *Care and Protection of Children Act* (NT) ss 239D(2)(c), 293E(2) or (3)(a).

535 See *Care and Protection of Children Act* (NT) s 293H(2) in relation to the making of administrative guidelines.

536 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

537 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

538 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

539 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

540 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 2–3.

541 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

542 Aboriginal Child Family and Community Care State Secretariat New South Wales (AbSec), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.

543 The Law Society of NSW, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 3.

544 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 2.

545 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 16.

546 See Recommendation 6.5, Child Safe Standard 1 in Volume 6, *Making institutions child safe*.

547 See Recommendation 6.5, Child Safe Standard 10 in Volume 6, *Making institutions child safe*.

548 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

549 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11.

550 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: NSW Government, p 18; Uniting Church in Australia, p 19; Anglicare Victoria, p 6; Wesley Mission Victoria, p 13; The Salvation Army Southern Territory, pp 6–7; NSW Government, p 4; The ACT Public Advocate, Children and Young People Commissioner & Victims of Crime Commissioner, p 2.

551 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5, citing Queensland Family and Child Commission, *Healthcheck report – Review of professional reporting behaviours*, 2015.

552 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

553 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 19.

554 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 52.

555 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 36.

556 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 43, 51.

557 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6. See also The ACT Public Advocate, Children and Young People Commissioner & Victims of Crime Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

558 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6. For instance existing oversight bodies, ‘interstate liaison officers’ under the *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance* (2007), and peak bodies with networks across relevant sectors.

559 See the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: NSW Government, p 18; Uniting Church in Australia, p 19; Anglicare Victoria, p 6; Wesley Mission Victoria, p 13; The Salvation Army Southern Territory, pp 6–7.

560 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 14.

561 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 16–17.

562 MacKillop Family Services, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 4.

563 Northern NSW Local Health District, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2017, p 3.

564 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

565 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

566 Following a June 2016 roundtable convened by the NSW Ombudsman to discuss the release of personal information in the context of handling reportable conduct matters, the NSW Ombudsman undertook to prepare such guidance – see Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, p 541.

567 Chief Executive of the Department of Children and Families, *Information Sharing Guidelines*, NT Department of Children and Families, Darwin, 2012, p 3.

568 Exhibit 23-0056, ‘Part 1: Overview of our child protection role’, Case Study 23, OMB.0010.001.0001_R at 0007_R.

569 South Australia Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016.

570 Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 6–7.

571 In this respect, see Australian Privacy and Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6 in relation to resources that could provide prescribed bodies with tailored guidance to assist them to implement their obligations and participate in the proposed scheme.

572 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

573 The ACT Public Advocate, Children and Young People Commissioner & Victims of Crime Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

574 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 22.

575 New South Wales Government, *Keep them safe: A shared approach to child wellbeing – Report of the Interim Review*, New South Wales Department of Premier and Cabinet, Sydney, 2013, p 26.

576 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 18–20.

577 The Allen Consulting Group, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Report to the Department of Families, Housing, Community Services and Indigenous Affairs*, Sydney, 2011, p ix.

578 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 22.

579 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 21.

580 AM Lawrence, ‘Interagency Coordination and Collaboration in the Management of Child Sexual Abuse in Australia and England’, University of Plymouth, 2001, p 233. As cited in C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 17.

581 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A roadmap for Queensland child protection*, Brisbane, 2013, p 154.

582 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A roadmap for Queensland child protection*, Brisbane, 2013, p 154.

583 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A roadmap for Queensland child protection*, Brisbane, 2013, p 154.

584 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

585 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 16.

586 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 16.

587 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 21.

588 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, pp 17–18.

589 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.

590 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 19.

- 591 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 3.
- 592 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 3–4. See also Transcript of M Coutts-Trotter, Case Study 51, 7 March 2017, T26368:32–T26369:14.
- 593 Queensland Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2016, pp 3–4.
- 594 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 17.
- 595 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, UNSW, Sydney, 2015, p 87.
- 596 Phase 1: From 1 July 2017, the scheme will apply to child protection and family services, out-of-home care services, youth justice services, residential services for children with a disability, certain education providers, government and non-government schools and government departments. Phase 2: From 1 January 2018 the scheme will apply to hospitals, other disability services for children, providers of overnight camps, religious bodies and the residential facilities of boarding schools. Phase 3: From 1 January 2019, the scheme will apply to early childhood services and statutory bodies that have responsibility for children, such as public museums and galleries. Commission for Children and Young People (Victoria), *Reportable conduct scheme: For organisations*, 2017, www.ccp.vic.gov.au/reportable-conduct-scheme/for-organisations (viewed 26 July 2017).
- 597 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10. See also Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.
- 598 New South Wales Government, *Keep them safe: A shared approach to child wellbeing – Report of the Interim Review*, New South Wales Department of Premier and Cabinet, Sydney, 2013, p 7.
- 599 *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic) Pt 2, Div 10 inserting ss 144S and 144SA into the *Family Violence Protection Act 2008* (Vic).

4 Improving information sharing in key sectors

4.1 Overview

Our inquiry has identified that schools and out-of-home care continue to be potentially high risk environments for institutional child sexual abuse.

The evidence and information before us indicate that strengthening the information sharing arrangements and practices in these sectors would assist institutions to better identify, prevent and respond to incidents and risks of child sexual abuse.¹

Volume 12, *Contemporary out-of-home care* and Volume 13, *Schools* discuss in detail the risks that may be present in these environments.

In this chapter we recommend implementation of:

- reforms to improve information exchange about teachers, between state and territory teacher registration authorities, as well as between teachers' employers and teacher registration authorities – including by improving state and territory teacher registers
- policies and procedures to enable information exchange between schools about students who have experienced sexual abuse in institutional contexts or have exhibited harmful sexual behaviours
- reforms to carers registers in each state and territory to facilitate information sharing about carers, within and across jurisdictions and between agencies responsible for assessing, authorising and supervising carers.

In considering these reforms, we have taken into account the need for strong safeguards to prevent unauthorised sharing and improper use of information.

Many of these reforms are directed at teacher and carers registers. They aim to improve the capture of information relevant to child sexual abuse on these registers, and to improve the registers as platforms for information sharing in order to better protect children.

Teacher and carers registers differ in their form, functions, the contexts in which they operate and their underpinning purposes. This means that the way they capture and provide a basis for sharing information about child sexual abuse also differs – and this is reflected in our recommendations.

The reforms discussed in this chapter would complement and, in some cases, could be supported by our recommended information exchange scheme (see Chapter 3). Registers could operate to enhance information sharing by collecting information relevant to child sexual abuse, and making it available to be shared, under the recommended information exchange scheme, with those who need it to protect children. Strengthened policies and procedures for information sharing about students who transfer between schools could also establish routine pathways for information sharing, under our recommended information exchange scheme, to better protect children in schools.

We recognise that further detailed work will be required to improve and harmonise across jurisdictions approaches to sharing information relevant to child sexual abuse in the schools and out-of-home care sectors. Accordingly, a number of recommendations in this chapter map a pathway for further consideration of reforms.

We conclude our discussion of sector-specific information sharing arrangements in this chapter by briefly considering information sharing through registers in the religious and sports and recreation sectors.

4.2 Improving information sharing in the schools sector

4.2.1 Information sharing about teachers

The need for reform

Evidence and information before the Royal Commission illustrated the risks to children that arise when information about child sexual abuse by teachers is not shared. Lack of information sharing with teacher registration authorities and employers can enable alleged perpetrators to move between schools and jurisdictions, as the following case study illustrates.

Lack of information sharing enabled a perpetrator to teach in different jurisdictions

In *Case Study 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse (Brisbane Grammar School and St Paul's School)* we heard that allegations of child sexual abuse were made against Gregory Robert Knight, a teacher at Wilunga High School in South Australia.² The allegations were referred to the South Australian police, but charges were not pursued as the police considered that the evidence was insufficient. In 1978 an inquiry held by the Department of Education in South Australia found that Knight had sexually abused boys. Knight was dismissed by the Minister for Education.

Subsequently the Minister rescinded his decision and permitted Knight to resign. Accordingly, Knight maintained his registration as a teacher in South Australia. The South Australian Teachers Registration Board was not notified of any of these proceedings. At the relevant time neither the Department of Education nor the Minister was under any legal obligation to notify the Teachers Registration Board of a teacher's dismissal, resignation or conduct.³ The Minister for Education 'accepted in his evidence that, in rescinding the dismissal of Knight and in not notifying the South Australian Teachers Registration Board, he acted in disregard for the welfare of the students at non-government schools in South Australia'.⁴

Knight later moved to Queensland. He applied for registration with the Queensland Board of Teacher Education. The Board was unaware of the findings of the South Australian inquiry. There was no evidence that the Queensland Board contacted the South Australian Board. Knight was granted registration.

Knight was then employed as a teacher at Brisbane Boys College, but was later dismissed following allegations by two senior boarding students. The then headmaster considered Knight's behaviour towards the students was misconduct or inappropriate conduct and behaviour in breach of school policy.⁵ Although there was no allegation of sexual assault or touching, the headmaster thought the conduct might point to the possibility of such behaviour in the future.

Knight went on to teach at St Paul's School, Brisbane, where more allegations of child sexual abuse were made against him.⁶ Knight was again permitted to resign.⁷

Knight moved to the Northern Territory, where he was employed at Dripstone High School. The Northern Territory Department of Education was not aware of allegations made against Knight at St Paul's School and there is no evidence that it was aware of the South Australian inquiry.⁸ Serious allegations of child sexual abuse were made against Knight at the Northern Territory school. Knight accepted the truth of the allegations and tried to resign. His resignation was not accepted and he was immediately dismissed. The principal of the school notified police and Knight was charged and ultimately convicted of a number of counts of child sexual abuse.⁹

Stakeholders told us that inadequate information sharing in the schools sector remained a problem today. For example, the Truth, Justice and Healing Council submitted in response to our *Issues paper 9: Addressing the risk of child sexual abuse in primary and secondary schools* that there is:

currently an inability in some jurisdictions to share information about employees who leave their employment before an investigation into a complaint has been finalised. This has the potential to allow people who pose a risk to children to move states and continue working with children.¹⁰

More generally, stakeholders identified that 'systemic and state boundaries prevent effective and vital sharing of information', and that there is 'an urgent need to increase the capacity of information sharing between sectors and states'.¹¹

We examined information sharing about teachers for two reasons. First, there is an existing mechanism for sharing information about teachers that could be improved. Teacher registers, and the state and territory laws that underpin them, are a key mechanism for sharing information about teachers who may pose a risk to children. The registers capture – and provide

a platform to share – information about teachers, including across jurisdictions.¹² There may be scope to enhance these existing mechanisms to better capture and share information about teachers, relevant to risks of child sexual abuse.

Second, our focus on teachers responds to information gathered during our inquiry that indicates that child sexual abuse by teachers has been and continues to be a significant problem. Information from our private sessions and data we collected from Catholic Church authorities and Anglican Church dioceses together show that a great number of people have alleged that they were sexually abused as a child in a school setting. Detailed information describing what we learned about the nature and extent of child sexual abuse in Australian schools, including by teachers, is discussed in Volume 13, *Schools*.

Australian Standards and teacher registration laws

The Australian Professional Standards for Teachers (Australian Standards) provide the basis for a national framework for teacher accreditation and registration. This framework applies to both government and non-government schools. A person must be a registered teacher to be employed to teach in schools.¹³ Registration is fixed for a period of not more than five years.¹⁴ The Australian Institute for Teaching and School Leadership (AITSL) developed the Australian Standards and is responsible for their ongoing implementation.¹⁵

State and territory teacher registration authorities are responsible for managing registration in each jurisdiction. Registration authorities grant, renew or refuse applications for teacher registration. The requirements for teacher registration includes that applicants ‘be suitable to both work with children and be a teacher, based on an assessment of character and criminal history’.¹⁶

Criminal history checks (discussed further in our *Working With Children Checks* report) are one way of determining an applicant’s ‘suitability’. Registration authorities may also take into account:¹⁷

- ‘information from other registration bodies and/or overseas employers’
- ‘analysis of previous misconduct based on the level, nature, frequency, recency and seriousness of the offence/s’
- ‘any other information relevant to an assessment of suitability for registration as a teacher, such as fitness to teach’.

Registration authorities may ‘impose sanctions or withdraw a teacher’s registration if they fail to meet the required standards of personal and professional behaviour or professional performance’.¹⁸

State and territory registration authorities also have responsibility for maintaining teacher registers and updating the information they contain. There are numerous requirements for recording information on teacher registers in each state and territory, which vary across jurisdictions.

Generally, registers contain information about registered teachers' personal details and their registration including, where applicable, the suspension or cancellation of their registration.¹⁹ Much of this information reflects decisions made by the registering authority (for example, granting or renewing registration, or imposing sanctions that affect registration). Other types of information on registers appears to be substantially provided by teachers – often at the time they apply for registration or registration renewal.²⁰

Teacher registration laws establish teacher registration authorities and teacher registers in each jurisdiction. Teacher registration laws also provide for some information sharing by (and with) registration authorities.

Our commissioned research noted that, '[w]hile the essential elements of the teacher registration framework are shared across Australia, the legislation implementing the scheme in each state and territory is different'.²¹ These legislative differences are notable in relation to legal arrangements for sharing information about teachers. The AITSL guide to nationally consistent teacher registration states that:

Where permitted, jurisdictions will share information with regard to discipline and de-registration of registrants. A jurisdiction *may request* from another jurisdiction where a teacher has been registered, information about unfinished investigations and any conditions that currently apply to the teacher's registration [emphasis added].²²

Our commissioned research noted that this:

reflects the fact that information sharing is not as straight forward in the schools sector as suggested by a nationally consistent teacher accreditation and registration framework. The national framework does not include specific provision for information sharing ... The information sharing arrangements in relation to teachers depend, therefore, on the teachers registration legislation in each state and territory.²³

Improving teacher registration laws and registers

The efficacy of registers as information sharing mechanisms about teachers who may pose risk to students' safety depends on what information is recorded on the registers, and who may access this information.²⁴ There are significant inconsistencies across state and territory laws in these respects, and regarding information sharing by state and territory registration authorities more generally.

Broadly, there are two planks to our package of reforms aimed at improving the sharing of information about teachers in order to reduce the risk of child sexual abuse within schools.

First, it is our view that an improved, and nationally consistent, capture of information on teacher registers would provide a stronger platform for information sharing about teachers.

Second, we consider that provisions regarding registration authorities sharing information about teachers should be consistent across jurisdictions, and improved to facilitate more effective information sharing about child sexual abuse. This would ensure that registration authorities provide their inter-jurisdictional counterparts and teachers' employers with:

- consistent and adequate access to information on teacher registers
- notification of certain matters relating to teachers and allegations or incidents of child sexual abuse.

Both planks to the recommended reform package could be achieved by amending state and territory teacher registration laws. The second plank could alternatively be facilitated by the implementation of our recommended information exchange scheme (see Chapter 3). This alternative approach would require no specific legislative changes beyond implementing the recommended scheme (and including teacher registration authorities, schools and other teachers' employers as 'prescribed bodies' under the scheme).

It is envisaged that, under our recommended scheme, a prospective employer would be able to request, from a registration authority, information about a teacher that is recorded on a register. In accordance with the recommended elements of the scheme, the registration authority would be required to provide that information where it reasonably believes that the employer needs the information to assist it to exercise its responsibilities related to children's safety and wellbeing. This legislative procedure could also apply where registration authorities request information from their inter-jurisdictional counterparts.

In our view it is worthwhile considering both options to improve information sharing by registering authorities. However, there are some clear advantages in improving information sharing provisions in teacher registration laws:

- Given that teacher registers – and the recording requirements attached to them – are underpinned by teacher registration laws, locating information sharing provisions in the same legislation provides a cohesive approach to capturing and sharing information about teachers.
- Teacher registration laws (and mutual recognition laws) currently provide the legislative infrastructure for information sharing about teachers by registration authorities. Improving these laws, and introducing national consistency, enhances the operation of existing frameworks.
- Teacher registration laws provide for registration authorities to notify their inter-jurisdictional counterparts, and teachers' employers, of certain matters. We have recommended improvements to these provisions to facilitate consistent, and more effective, sharing of information relevant to child sexual abuse.
- Locating improved information sharing provisions in registration authorities' governing legislation may foster clarity and predictability in relation to information sharing arrangements and may promote compliance.

Reforms for consideration by Council of Australian Governments Education Council

The detailed work required to develop recommendations for improved and harmonised teacher registration laws is beyond the scope of the Royal Commission's inquiry. Our focus on institutional child sexual abuse is a limited lens through which to consider improvements to these laws. Improving information sharing under teacher registration laws could also facilitate the exchange of information about other forms of misconduct, such as physical abuse.

To achieve improved and nationally consistent information recording and information sharing arrangements in teacher registration legislation, several legislative or structural issues will need to be addressed, in consultation with stakeholders.

The Council of Australian Governments (COAG) Education Council should consider – or make arrangements to consider through a national body – improved and nationally consistent provisions in teacher registration laws about the types of information recorded on registers, and information sharing by registration authorities.

This approach accords with the position expressed by the Australian Government, which indicated its in-principle support for our suggested reforms now reflected in the recommendations made in this section. In its submission to our *Discussion paper: Strengthening information sharing arrangements (Information sharing)*, the Australian Government stated that the COAG Education Council would need to consider national consistency of legislation governing information held on teacher registers, and that:

While states and territories are responsible for the delivery of school education, the Commonwealth plays a role in driving national reform through the COAG Education Council and other collaborative mechanisms. This includes efforts to harmonise systems, data and regulations relating to schools and teaching where there is a benefit in a national approach or greater sharing of information.²⁵

The COAG Education Council should consider our recommendations in consultation with key stakeholders, including:

- the Australian Teacher Regulatory Authorities (ATRA)
- teacher unions, including the Australian Education Union, the Independent Education Union Australia (IEUA) and state and territory teacher unions
- the National Catholic Education Commission
- the Independent Schools Council of Australia.

Such consultation is particularly important given the different responses we received from stakeholders on these issues. Some key stakeholders (including governments) expressed support for the proposed reforms, or aspects of them.²⁶ Others expressed concerns about the proposed reforms or aspects of them.²⁷ Consultation should assist to ensure that, while child safety is

prioritised, teachers' 'welfare, employment, reputation and careers'²⁸ are not unduly impacted. This is particularly important in relation to sharing information about untested allegations (for example, in the context of pending investigations into allegations of child sexual abuse).

Structural issues to be addressed for national consistency

In order to harmonise provisions in teacher registration laws regarding the capture and sharing of information, jurisdictional differences that will need to be taken into account include:

- the role and functions of teacher registration authorities
- public availability of information on registers
- the identity of teachers' employers or employer authorities, which also varies across school sectors.

The role and functions of registration authorities: Procedures for disciplinary investigations and actions vary across jurisdictions, and this can be reflected in the information recorded on the registers.²⁹

Depending on the jurisdiction and the particular circumstances, disciplinary investigations may be undertaken by a teacher's employer (including an education department), a registration authority (or its appointees), a tribunal, or another person or body.³⁰ These differing arrangements may pose a barrier to consistent information being recorded on registers. For example, the Australian Capital Territory registration authority, the ACT Teacher Quality Institute (ACT TQI), commented that:

Currently, not all regulatory bodies have investigative powers, as in the ACT. Regulatory bodies may not be provided with details of allegations/complaints and may not have full details of the findings or outcomes of investigations.³¹

Additionally, the range of disciplinary actions can vary across jurisdictions. For example, in Victoria, disciplinary actions include cautions and reprimands of teachers, and these are required to be recorded on the state's teacher register.³² By contrast, the Northern Territory legislation does not provide for cautions and reprimands as disciplinary responses³³ – consequently there is no requirement to record cautions and reprimands on the register in that jurisdiction.³⁴ The level of consistency that might be achieved on registers across jurisdictions in relation to requirements for recording information is therefore likely to be at a less detailed level.

Finally, we heard that some aspects of capturing and sharing a wider range of personal information may be onerous on some registration authorities. The IEUA, which represents teachers working in non-government schools, did not support registration authorities having responsibility for managing information on child sexual abuse, stating that it:

rejects such a proposition for a number of reasons, most significantly being that these authorities, paid for by registered teachers, are not equipped to deal with this task. The resources to undertake such work would increase the costs of these bodies and would inevitably be borne by our members. This community service responsibility of managing the repository is correctly a responsibility of and financial function of the state.³⁵

It may be that registration authorities will require higher levels of government funding in order to accurately record additional information on teacher registers, and to share this information appropriately. Generally, registering authorities' income is predominantly based on teachers' fees and government funding. In most jurisdictions, teachers' fees account for the substantial proportion. In Queensland, for example, 'The major income for the QCT [Queensland College of Teachers] is the annual fee paid by teachers to remain on the register'.³⁶

Public availability of information on registers: Jurisdictions differ in relation to how much information the registration authorities make available to the public. For example:

- The registration authority in Victoria must make its two teacher registers available to the public. Victoria uniquely keeps – in addition to its teacher register – a 'Register of Disciplinary Action', containing details of disciplinary actions against registered teachers.³⁷ The registration authority may also publish the registers, in whole or part – for example, on its website.³⁸
- In Queensland, certain information on the register is 'publicly available'.³⁹ Other information is recorded on the register but is not available to the public. In its submission to our *Information sharing* discussion paper, the Queensland registration authority made the distinction between 'the public register', which is published on its website and 'the full register', which contains further information.⁴⁰
- There is no public register in New South Wales and its teacher registration legislation does not provide for public or general access to the teacher register.⁴¹

In discussing the recording of additional types of information on teacher registers, we do not necessarily suggest that this information be publicly available. Indeed, it may be important for teachers' safety that some of this information is not publicly available (for example, a teacher's former names or current workplace as well as information reflecting allegations or incidents of child sexual abuse).

Further, registers that are publicly available or published in their entirety may be more limited in the information they can record safely. For example, in Victoria, where the Register of Disciplinary Action is publicly available, and may be published, the registration authority can exclude information, on application by a registered (or formerly registered) teacher. The registration authority can make such a decision where it considers excluding the information necessary to avoid endangering a person's physical safety, where there is no overriding public interest.⁴² This could mean that where employers or registration authorities in other jurisdictions rely on publicly available register information, they are not accessing complete information.⁴³

For teacher registers to be improved in a nationally consistent way, jurisdictions with public registers may need to amend their teacher registration laws so that some information about teachers is recorded but not publicly available (as in Queensland).

Who is the teacher's employer? The answer to the question 'which entity is a teacher's formal employer?' may differ across schools and sectors, and between jurisdictions. Depending on the circumstances, a teacher's employer may be, for example, a school, a state education department, a Catholic education office, or a corporate entity.⁴⁴ This may have implications for reforming laws about information sharing with teachers' employers, as it raises the issue of whether differing entities or individuals should have uniform access to sensitive personal information. For example, there may be concerns about school principals having access to sensitive information on teacher registers about their current or prospective employees.

Intersection with other schemes

Our recommendations to improve information sharing about teachers sit alongside our recommendations for a nationally consistent information exchange scheme (see Chapter 3), and our suite of recommendations to make institutions child safe. Reforms concerning information sharing about teachers need to take account of other regulatory schemes that contribute to making institutions child safe, particularly reportable conduct schemes and Working With Children Checks (WWCCs).

Recommended information exchange scheme: As discussed in Chapter 3, Australian governments should consider including teacher registration authorities, schools and other teachers' employers as 'prescribed bodies' under our recommended information exchange scheme, as regulatory agencies (registration authorities) and providers of education services (schools and other teachers' employers). This could facilitate the exchange of information about teachers, relevant to risks of child sexual abuse, between schools and between schools and other prescribed bodies – both within and across Australian jurisdictions.

As discussed earlier, our recommended information exchange scheme could also provide an alternative legislative basis for some components of the reforms we recommend in relation to teacher registration laws.

Working With Children Checks schemes: While WWCCs play an important role in pre-employment screening, they are limited as information sharing mechanisms. WWCC decisions, as currently provided for in New South Wales, Victoria, Queensland and Western Australia – and as we recommended in our *Working With Children Checks* report – are in the nature of a clearance. Generally, there are two possible outcomes to a WWCC application: a person is, or is not, given a clearance to work with children.⁴⁵ We were told by key stakeholders that such a clearance may not, alone, alert prospective employers to past known conduct issues which may indicate that a teacher poses a risk to students' safety.⁴⁶ In Chapter 3, we set out the information sharing gaps in WWCC schemes in more detail. Teacher registers can provide a platform to provide fuller information than would be provided in a WWCC.

Reportable conduct schemes: We recommend in Volume 7, *Improving institutional responding and reporting* that state and territory governments establish nationally consistent legislative schemes (reportable conduct schemes) that oblige heads of institutions, including government and non-government schools, to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution’s employees.⁴⁷ Generally, the disciplinary matters we discuss in this chapter, concerning allegations or incidents of child sexual abuse by teachers, would also constitute reportable conduct matters. This means that the oversight body that administers the scheme should monitor and record the progress and outcomes of any investigations. As discussed in Chapter 3, the schemes should interact with our recommended information exchange scheme in a way that improves information sharing, including the sharing of information about teachers.

Information on teacher registers

All state and territory teacher registers must include personal details of registered teachers and information about the suspension or cancellation of a teacher’s registration.⁴⁸ Beyond this, requirements vary.

It is our view that improved and consistent information on teacher registers should be considered in relation to the following:

- teachers’ identifying information, such as former names and aliases
- teachers’ current and former employers
- disciplinary and other information relevant to incidents or allegations of child sexual abuse by teachers.

Teachers’ former names and aliases

Several jurisdictions, such as Tasmania, provide that teachers’ former names should be included on the register.⁴⁹ This may be information that would be helpful to include in all jurisdictions’ registers. The New South Wales Government told us that it ‘would be useful to include a list of aliases, where available, as a requirement and that ‘the teacher’s identity must be unambiguous because, in some instances, there is not enough information about the teacher to identify them, and the teacher can change their name’.⁵⁰

In some cases, teachers may not want their former names (or aliases) recorded on registers. There may be valid reasons for this – for example, where a teacher has been a victim of family violence. As discussed earlier, we do not necessarily suggest that the types of register information discussed in this chapter should be publicly available. Additionally, we consider that safeguards should be put in place to protect teachers’ personal information.

Details of teachers' current employers

In New South Wales, Queensland and Western Australia, the details of a teacher's current employer are to be recorded on the register.⁵¹ Several states and territories – for example, the Australian Capital Territory – alternatively provide that the register include the address where a person teaches.⁵² It appears that, generally, the teacher informs the registration authority of current employers.⁵³ We were told it can be difficult to verify such information. For example, the Tasmanian Government told us that 'the details of current and former employees' work history can be extensive and difficult to verify as the information is currently provided by applicants'.⁵⁴

We heard of other ways of capturing information about teachers' current employers. The New South Wales Government told us that the employment status of certain types of teachers in the state is tracked through data exchange.⁵⁵ Queensland registration authority the QCT told us it has a regular information exchange with the state education department that includes details of schools where the department's teachers are employed. The QCT also 'conducts an annual census of all teachers employed in non-State schools'.⁵⁶

We consider it may be useful to extend the requirement to record information about current employers to all states and territories. Including employers' details on registers may enable registration authorities to notify them of certain matters related to allegations or incidents of child sexual abuse by a teacher employee (this kind of information sharing is discussed later in this chapter). This may be particularly useful where a teacher works at more than one school – and in some cases in more than one school system – for example, as a casual teacher.⁵⁷

To support such a requirement, states and territories may also wish to consider strategies to improve the accuracy of information about employers' details, such as those in place in New South Wales and Queensland. An alternative that could be considered is an obligation on employers, rather than teachers, to advise the registration authority of the teacher's employment. We discuss reporting obligations on employers, and how these might assist a greater capture of information on registers, later in this section.

Details of teachers' former employers

State and territory governments should also consider whether details of teachers' former employers should be recorded on the register. In most jurisdictions, this is not currently required.⁵⁸ Including these details may facilitate information sharing relevant to child sexual abuse – for example, between a teacher's prospective and previous employers – where the prospective employer is prompted by information on the register to seek further information about the teacher.⁵⁹ The utility of this would need to be balanced with the compliance burden on regulatory authorities given an individual's employment history may be 'extensive and difficult to verify'.⁶⁰

Disciplinary and other information that may relate to child sexual abuse

Details or particulars on teacher registers about disciplinary action against teachers are recorded inconsistently across states and territories. Examples of information that is required to be recorded on the register in one or more jurisdictions, but not others, are:

- grounds for disciplinary orders or actions⁶¹
- endorsement or notation about the teacher entered under a disciplinary order⁶²
- a caution or reprimand of the teacher⁶³
- records to indicate where cancellation of registration was on disciplinary grounds⁶⁴
- the circumstances of cancellation where this was due to a sexual assault conviction⁶⁵
- any information that the teacher registration authority considers ‘necessary or appropriate’.⁶⁶

In our view there should be improved and consistent recording requirements about disciplinary actions related to allegations or incidents of child sexual abuse – at least at a minimum level. In particular, consideration should be given to including the following on teacher registers, where related to allegations or incidents of child sexual abuse:

- current and past disciplinary actions, such as conditions on, suspension of, and cancellation of registration
- the grounds for current and past disciplinary actions
- pending investigations
- findings or outcomes of investigations where these are substantiated
- resignation or dismissal from employment.

This would constitute a useful core of information for registers across jurisdictions. The Australian Government, in response to our *Information sharing* discussion paper, stated that it supports a nationally consistent approach to teacher registration, under the auspices of the COAG Education Council, and that it:

supports in-principle extending this approach to include legislation for including information of the kind [mentioned in our information sharing discussion paper and similar to that listed above] to be included with teacher registration records, noting that states and territories have constitutional responsibility for school education.⁶⁷

The Truth, Justice and Healing Council told us it is ‘strongly of the view that teacher registration bodies should maintain an expanded and consistent amount of information about registered teachers’.⁶⁸

Recording pending investigations, in particular, may be useful. The Truth, Justice and Healing Council submitted that it is ‘imperative’ that this information is maintained to address the ‘current problem’ where ‘teachers resign before investigation of a complaint against them has concluded, and mov[e] to a different jurisdiction to continue working with children’.⁶⁹

This was also reflected in the submission by the ACT TQI which noted that where an employee under investigation in the Australian Capital Territory resigns:

the investigation ceases and the truth of the allegation is not determined. In such cases the employee can move to another jurisdiction without the unresolved allegation affecting future registration or employment as a teacher.⁷⁰

The above list is not intended to be exhaustive and the COAG Education Council may wish to consider whether other types of information should also be included on state and territory teacher registers.

In particular, the COAG Education Council may wish to consider including reportable conduct allegations on teacher registers as an alternative to improving records on the registers about disciplinary investigations and actions relevant to child sexual abuse. It should be noted, however, that this may introduce duplication as records on reportable conduct allegations would capture similar information to records about disciplinary investigations and actions concerning child sexual abuse.

We recommend later in this chapter that state and territory governments consider including reportable conduct matters on carers registers in the out-of-home care sector, based on the current approach in New South Wales. The duplication of records is not such an issue in this sector as carers generally provide care in a non-professional context, which means that disciplinary investigations and orders are not in place to deal with allegations of child sexual abuse.

Reporting obligations on employers

The shift to record fuller information on teacher registers may require review of reporting obligations on teachers’ employers – and perhaps other entities – to teacher registration authorities.⁷¹ Improvements to reporting obligations may assist registration authorities to capture relevant information on teacher registers, as well as to take necessary actions in relation to a teacher.

Employers’ reporting requirements in state and territory teacher registration laws apply in different circumstances.⁷² In a number of states and territories, employers must notify their teachers’ registration authority when a teacher is dismissed⁷³ or resigns in certain circumstances.⁷⁴ Stakeholders have stressed the importance of reporting obligations on employers,⁷⁵ including emphasising that such reports should be timely. Early notification by employers assists registration authorities to ‘act quickly to protect children from harm’.⁷⁶

Consistent reporting requirements on employers may be difficult to achieve due to their different roles in disciplinary procedures, depending on jurisdiction. This means that employers across jurisdictions may not hold equivalent types of information about the teachers they employ relevant to disciplinary proceedings and child sexual abuse. However, reporting requirements on employers in each jurisdiction should be sufficient to support the capture of fuller information on registers about child sexual abuse – and allow for timely action by the registration authority. This may require further amendment to state and territory teacher registration laws, including in relation to safeguards to protect teachers’ personal information.⁷⁷

Recommendation 8.9

The Council of Australian Governments (COAG) Education Council should consider the need for nationally consistent state and territory legislative requirements about the types of information recorded on teacher registers. Types of information that the council should consider, with respect to a person’s registration and employment as a teacher, include:

- a. the person’s former names and aliases
- b. the details of former and current employers
- c. where relating to allegations or incidents of child sexual abuse:
 - i. current and past disciplinary actions, such as conditions on, suspension of, and cancellation of registration
 - ii. grounds for current and past disciplinary actions
 - iii. pending investigations
 - iv. findings or outcomes of investigations where allegations have been substantiated
 - v. resignation or dismissal from employment.

Information sharing by registration authorities

State and territory registration authorities can, and must be able to, share information with their inter-jurisdictional counterparts, as a person who is registered as a teacher in one jurisdiction may apply for registration in another, under mutual recognition legislation.⁷⁸ In most jurisdictions, teacher registration laws provide for inter-jurisdictional information sharing between registration authorities. Mutual recognition laws also provide for some information sharing between registering authorities. These provisions are discussed later.

Teacher registration laws provide two key pathways for information sharing by registration authorities with their inter-jurisdictional counterparts and with teachers’ employers. The first is by making information on teacher registers available. The second is by notification of certain matters specified in legislation.

Across these pathways, there are some differences between jurisdictions concerning the types of information that can be shared by registration authorities. An additional point of variation is that while in some cases registration authorities are *permitted* to share information, in others they are *required* to do so.

Access to information on teacher registers

Registration authorities in other jurisdictions: Teacher registration laws in several jurisdictions, such as in the Australian Capital Territory, specifically provide that the registration authority may share register information with its inter-jurisdictional counterparts.⁷⁹ Other jurisdictions have no such specific provisions, and it appears that the more limited public access and general provisions would apply in these jurisdictions – for example, South Australia.⁸⁰ However, the information available under these provisions is generally quite limited, with exceptions in some jurisdictions such as Victoria.⁸¹

Teachers' employers: The information on registers that is available to employers 'differs widely from jurisdiction to jurisdiction'.⁸² While teachers' employers will 'generally be able to access basic information about whether or not a person is registered, more detailed information about disciplinary matters may not be readily available' in every jurisdiction.⁸³

Laws in some jurisdictions specifically provide for register information to be available to employers.⁸⁴ These provisions usually provide that registration authorities *may* share specified information with employers.⁸⁵ In the Australian Capital Territory, the registration authority *must* share this information on request.⁸⁶

Where there are no such specific provisions, it appears employers may usually access register information under public access or other general provisions.⁸⁷

Notifying of certain matters

Teacher registration laws in most states and territories currently provide for registration authorities to notify their inter-jurisdictional counterparts, and teachers' employers, of certain matters.⁸⁸ These differ across jurisdictions, although there is some overlap.⁸⁹ In some jurisdictions, registration authorities *may* share this information with their inter-jurisdictional counterparts,⁹⁰ or with employers,⁹¹ while in others they *must* share this (or similar) information.⁹²

Depending on the jurisdiction, circumstances that prompt notification of inter-jurisdictional counterparts include:

- suspension or cancellation of registration,⁹³ including with notification of grounds⁹⁴
- conditions imposed on teachers' registration⁹⁵
- a decision made in disciplinary proceedings⁹⁶
- an inquiry into conduct, and the outcome⁹⁷

- a finding, order, reason, decision or other action⁹⁸
- where the teacher is found guilty of a sexual offence.⁹⁹

Circumstances that prompt notification of employers include:

- complaints that are not dismissed or are referred to police¹⁰⁰
- disciplinary inquiries or proceedings¹⁰¹
- the outcome of, or decisions made in, disciplinary inquiries or proceedings¹⁰²
- imposition or variation of a condition of registration¹⁰³
- suspension or cancellation of registration¹⁰⁴
- a charge or conviction of an offence that raises serious concerns about fitness to teach¹⁰⁵
- conviction for a serious or sexual offence that leads to cancellation of registration.¹⁰⁶

The need for reform

Information sharing with registration authorities: The legislative inconsistencies outlined earlier are likely to mean that registration authorities have differing information about teachers and teacher applicants from other states or territories, depending on which jurisdiction they have moved from. The New South Wales Government submitted to us that, while many registering authorities already share information across jurisdictions:

there is inconsistency in the level and type of detail provided by each jurisdiction. There needs to be agreement about what information to provide, for example, allegations, suspensions and the level of personal details required to be exchanged.¹⁰⁷

Additionally, the QCT stated that while it has offered to enter into information sharing arrangements with other registration authorities, they have not accepted (with the exception of the Northern Territory). Their reasons include limitations in their teacher registration laws.¹⁰⁸

Despite differences in state and territory laws, a couple of jurisdictions have told us that information sharing between the registration authorities is 'robust'.¹⁰⁹ However, others supported reforms in this area.¹¹⁰

In our view, registration authorities should have access to consistent information about a teacher moving into their jurisdiction – including information relevant to child sexual abuse – no matter which state or territory the teacher is from.

Nationally consistent legislative provisions about registration authorities sharing information with their inter-jurisdictional counterparts, in conjunction with improved and nationally consistent requirements as to the information recorded on registers, may help achieve this. Such reform may provide a useful and convenient pathway to share important information.

We heard that registration authorities – when dealing with registration applications from teachers moving from interstate – routinely check information on the register in the jurisdiction where the teacher is currently registered. The QCT told us that this is an implicit requirement under mutual recognition legislation.¹¹¹

Additionally, nationally consistent notification provisions in relation to disciplinary actions, investigations, dismissals or resignations – where related to child sexual abuse – should complement provisions about access to register information. Importantly, these provisions provide a pathway for proactive information sharing between registration authorities.

The Australian Government stated that it supports ‘reasonable access by state and territory teacher registration authorities to information on teacher registers held by registration authorities in other jurisdictions’.¹¹² It also stated that it supports notification of:

registration authorities in other states and territories of information in respect of incidents of child abuse as described [in our information sharing discussion paper and similar to that listed below]. While due diligence should be made in protecting the privacy of the teacher, notification of allegations should also be able to occur where the authority has reasonable grounds to do so.¹¹³

Along with teacher registration laws, mutual recognition laws provide for some information sharing, on request, between registration authorities.¹¹⁴ Mutual recognition laws apply broadly to state and territory registration authorities for any occupation, trade or profession carried out only by registered persons.¹¹⁵ These laws do not deal specifically with teacher registers, or provide for information sharing between teacher registration authorities and teachers’ employers.

Information sharing provisions in mutual recognition laws may be limited, including in comparison to the information sharing provisions in most jurisdictions’ teacher registration laws. Notably, the mutual recognition provisions do not provide a pathway for registration authorities to share information proactively, such as by notifying their inter-jurisdictional counterparts of circumstances concerning a teacher that may be relevant to child sexual abuse. There may be other limitations in mutual recognition laws’ information sharing provisions. For example, the ACT TQI notes of mutual recognition obligations that ‘if a teacher does not disclose that they have been registered or worked in another jurisdiction, there is no requirement to check with other regulatory authorities’.¹¹⁶

Information sharing with employers: It is undesirable that employers have different levels of access to information on teacher registers – including to teachers’ identifying information, information about current or previous employment, and disciplinary action relevant to child sexual abuse – depending on the jurisdiction they work in.

A number of stakeholders supported the position that teacher registration legislation should provide for employer access to information on registers.¹¹⁷ The Truth, Justice and Healing Council told us that the ‘capacity for principals to seek information directly from registration bodies as part of the pre-employment screening would inject further rigor and reliability in the selection processes’.¹¹⁸ However, there may be some concerns, by or on behalf of teachers, about access to registers by employers – and particularly at the school principal level. We recognise that there may need to be more safeguards in this area than in relation to information sharing between registration authorities. This is discussed later in this chapter.

Improved and consistent provisions about registration authorities notifying employers when they have or receive information about allegations or incidents of child sexual abuse by a teacher should improve children’s safety in schools. Communicating such information to the teacher’s current employer may assist the employer to manage risk and take appropriate action. This position was also supported by the Australian Government in its submission to our *Information sharing* discussion paper.¹¹⁹

Permitted or required information sharing: There may be some benefits in teacher registration laws requiring, rather than permitting, registration authorities to share information with their inter-jurisdictional counterparts and employers. Research has shown that ‘laws, regulations and policies that mandate information sharing have been identified as efficient enablers of information sharing’.¹²⁰ More specifically, the Truth, Justice and Healing Council told us that, in relation to notification provisions, requirements to notify are preferable, as simply permitting notification would enable current gaps in information sharing about high risk individuals to continue.¹²¹

We agree that there may be a particular advantage to laws that require registration authorities to notify their inter-jurisdictional counterparts and teachers’ employers of disciplinary matters related to child sexual abuse. This sets out a pathway for an automatic transfer of information relevant to child sexual abuse – a mandatory, proactive information exchange.

We also consider that there may be benefits to teacher registration laws:

- requiring registration authorities to share register information on the request of their inter-jurisdictional counterparts or employers
- permitting registration authorities to share register information.

Such legislative arrangements would provide for required reactive information sharing, as well as permissive proactive information sharing. This could, for example, enable information sharing arrangements such as entered into between Queensland and the Northern Territory. The approach would be consistent with that suggested under our recommended information exchange scheme, which could permit prescribed bodies to provide relevant information to other prescribed bodies without a request, and require sharing on request, subject to limited exceptions (see Recommendation 8.7).

However, we also acknowledge that there may be benefits in registering authorities having the discretion about whether or not to share information. It may be that a mix of mandatory and discretionary notification provisions are suitable for state and territory teacher registration laws. This is a matter for consideration by governments in the final design of nationally consistent legislation.

Options for reform: towards national consistency

Access to information on registers: The COAG Education Council should consider whether state and territory laws should contain specific provisions for sharing information on teacher registers with registration authorities in other jurisdictions, and with teachers' employers.

Notifying of certain matters: The COAG Education Council should consider whether state and territory laws should provide for registration authorities to notify their inter-jurisdictional counterparts and teachers' employers of certain matters, including those related to child sexual abuse. We recommend that information about the following matters, where they relate to allegations or incidents of child sexual abuse, should be included in consistent notification provisions:

- a. disciplinary actions, such as conditions or restrictions on, suspension of, and cancellation of registration, including with notification of grounds
- b. investigations
- c. findings or outcomes of investigations
- d. resignation or dismissal from employment.

These substantially reflect the types of information about child sexual abuse we recommend should be considered as the basis for consistent requirements for recording information on teacher registers.

Complete consistency in the types of information covered may be difficult to achieve, given the underlying differences in jurisdictions. For example, the ACT TQI told us that in the Australian Capital Territory, some of this information (such as about disciplinary inquiries) is more likely to be held by the employer than the registration authority – and should be shared by the employer with the registration authority.¹²²

Should information sharing be permitted or required? The COAG Education Council should consider whether registration authorities should be permitted or required to share these types of information. In particular, it should consider whether teacher registration laws should provide that registration authorities *may* make information on the register available and/or *must*, on request, make information on the register available to their inter-jurisdictional counterparts and to employers. Consideration should also be given as to whether notification provisions in teacher registration laws should provide that registration authorities *may* or *must* notify their inter-jurisdictional counterparts where they hold or receive information that is relevant to the circumstances listed earlier.

An alternative approach – information sharing through our recommended information exchange scheme:

As discussed, the COAG Education Council may wish to consider the alternative approach of relying on our recommended information exchange scheme to improve information sharing by registration authorities with their inter-jurisdictional counterparts, and with teachers' employers.

This option for reform would be available if Australian governments determine to include teacher registration authorities, schools and other teachers' employers as prescribed bodies under the scheme. This approach would mean that no specific reforms would need to be made to teacher registration laws providing for information sharing by registration authorities with teachers' employers.

There are some advantages to this approach. For example, registration authorities and teachers' employers may develop a high level of familiarity with our recommended information exchange scheme and be able to use it effectively to request relevant information, as it would be used in other contexts within the education sector. Employers may, for example, share information about non-teaching staff under our recommended scheme (as discussed later in this chapter).

In addition, our recommended scheme could provide for safeguards for information sharing. We suggest that our recommended scheme would authorise the sharing of information only where it relates to the safety and wellbeing of children and where the information is relevant to the services provided by the recipient. Other important safeguards expected to be attached to our recommended information exchange scheme may apply. These safeguards are discussed in Chapter 3 and later in this chapter.

However, as noted earlier, the legislation establishing our recommended information sharing scheme would not necessarily provide for registration authorities to proactively notify their inter-jurisdictional counterparts or teachers' employers of certain matters that could be relevant to child sexual abuse, as provided for in most teacher registration laws. This could be addressed by providing for notification in guidelines, protocols or memoranda of understanding (MOU) enabled by our recommended information exchange scheme. Alternatively, the COAG Education Council may consider a hybrid approach, with access to register information regulated by our recommended information exchange scheme; and notification provisions maintained, consistently implemented (as far as possible), and improved in state and territory teacher registration laws.

Our recommended information exchange scheme could also provide the legislative basis for protocols or MOUs between registration authorities to facilitate information sharing arrangements such as those provided for in Queensland legislation, discussed earlier.

Recommendation 8.10

The COAG Education Council should consider the need for nationally consistent provisions in state and territory teacher registration laws providing that teacher registration authorities may, and/or must on request, make information on teacher registers available to:

- a. teacher registration authorities in other states and territories
- b. teachers' employers.

Recommendation 8.11

The COAG Education Council should consider the need for nationally consistent provisions

- a. in state and territory teacher registration laws or
- b. in administrative arrangements, based on legislative authorisation for information sharing under our recommended information exchange scheme

providing that teacher registration authorities may or must notify teacher registration authorities in other states and territories and teachers' employers of information they hold or receive about the following matters where they relate to allegations or incidents of child sexual abuse:

- a. disciplinary actions, such as conditions or restrictions on, suspension of, and cancellation of registration, including with notification of grounds
- b. investigations into conduct, or into allegations or complaints
- c. findings or outcomes of investigations
- d. resignation or dismissal from employment.

Safeguards for teachers' personal information

The COAG Education Council should consider what safeguards are necessary to protect teachers' personal information. Some stakeholders have stressed the need for strong safeguards. For example, the IEUA noted concerns about its members' 'welfare, employment, reputation and careers' and stated that 'any national consistent approach will require inbuilt review and appeals processes'.¹²³

There are a number of safeguards for teachers' personal information under existing laws, including:

- provisions in Queensland teacher registration legislation providing for guidelines for dealing with personal information
- provisions in some teacher registration laws making it an offence to disclose personal information except in certain circumstances
- the application of privacy laws.

If teachers' information is shared under our recommended information exchange scheme, the safeguards attached to that scheme would offer some important privacy and other protections (see Chapter 3).

Guidelines

The registration authority in Queensland is required to make guidelines for dealing with teachers' personal information. These are to ensure:¹²⁴

- natural justice for the person who the information is about
- only relevant information is used to decide whether a person is suitable to teach
- decisions about whether a person is suitable to teach, based on the information, are made consistently.

We heard that the Queensland safeguards are effective.¹²⁵ The COAG Education Council should consider whether the Queensland legislation, and the guidelines issued under it, present a model in this regard.

Offence to disclose personal information

Teacher registration legislation in some jurisdictions contains safeguards for protecting teachers' personal information. In several jurisdictions, it is an offence to disclose personal information under teacher registration legislation except in specified circumstances.¹²⁶ For example, in South Australia, teacher registration law provides that it is an offence to communicate personal information obtained in official duties under that Act, except:¹²⁷

- 'as required or authorised under this Act or the regulations or any other Act or law'
- 'with the consent of the person to whom the information relates'
- 'in connection with the administration of this Act or the repealed provisions'
- 'to another teacher regulatory authority'
- 'to another statutory authority of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions'.

Such provisions could be consistently provided for in all states and territories, as a strong safeguard for teachers' personal information. There is, however, a risk that provisions criminalising unlawful disclosure may affect individuals' willingness to share information even where this would be lawful, and necessary to prevent risks to children.¹²⁸ Such provisions should therefore be accompanied by provisions protecting individuals who give information in good faith from liability.

Managing personal information in accordance with privacy laws

Privacy laws (and associated safeguards) apply to personal information recorded on teacher registers to the extent that the privacy laws are not inconsistent with teacher registration laws. Privacy laws are likely to be of increasing importance if the quantity of personal and sensitive information on teacher registers expands.

Privacy regulation generally includes requirements to:¹²⁹

- ensure an individual is informed that their personal information is being collected, and about the use, disclosure, right of access to and correction of that information
- provide an individual, on their request, with access to the personal information held by an agency
- take reasonable security safeguards to ensure personal information held by an agency is protected against unauthorised access, use, modification or disclosure.

More information about the protections offered by privacy laws is set out in Chapter 3.

Safeguards attached to our recommended information exchange scheme

As discussed earlier, the COAG Education Council may decide that information sharing by registration authorities can be regulated effectively by our recommended information exchange scheme – rather than by working towards consistency in state and territory teacher registration laws dealing with information sharing by registration authorities. If this approach is taken, a set of safeguards attached to our recommended scheme could apply in relation to teachers' personal information. These safeguards, set out in more detail in Chapter 3, could include:

- guidelines advising prescribed bodies to disclose only as much information as is proportionate to the identified need for information
- legislative provisions restricting further use
- guidelines for dealing with untested and unsubstantiated allegations (for example, when an investigation is pending)
- a legislative requirement that prescribed bodies provide teachers with an opportunity to respond to untested or unsubstantiated allegations against them where that information is received under the information exchange scheme, prior to taking adverse action against the teacher
- liability for improper or vexatious sharing of information.

Recommendation 8.12

In considering improvements to teacher registers and information sharing by registration authorities, the COAG Education Council should also consider what safeguards are necessary to protect teachers' personal information.

4.2.2 Information sharing about school staff other than teachers

School staff other than teachers can include counsellors and other support and administrative staff (such as learning support officers, Aboriginal education officers and paraprofessionals).¹³⁰ Sharing information about non-teaching school staff is also necessary where a staff member may pose a risk of sexual abuse to children. As with sharing information about teachers, it can enable employers to take action to address the risk to students and may also prevent the staff member from moving between schools, including to schools in different jurisdictions.

We heard examples of sexual abuse of students in schools by staff other than teachers in our public hearings and private sessions. For example, in *Case Study 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*, we heard that Brian Perkins, who was employed as a school bus driver and performed voluntary work at St Ann's Special School, sexually abused students with intellectual disability. He was ultimately convicted of sexual offences in relation to three of the school's students.¹³¹

Most states and territories do not have specific legislation regulating information sharing about non-teaching staff in the schools sector.¹³² Information about non-teaching staff may be shared under state and territory child protection legislation.¹³³ However, as discussed in Chapter 3, these arrangements are limited in a number of important respects. Privacy laws regulate information sharing about non-teaching staff where no other legislative provisions apply.

Our recommended information exchange scheme could facilitate information sharing about non-teaching staff between schools (including schools in different systems and jurisdictions) and between schools and other agencies. Our recommended information exchange scheme would apply to non-teaching school staff where Australian governments prescribe bodies that provide education services to children under the scheme (see Chapter 3). Information that could be shared under the recommended scheme relates to the 'safety and wellbeing of children', and could include risks of child sexual abuse posed by non-teaching staff members.

Additionally, staff members who have direct contact with children are generally required to have WWCC clearance.¹³⁴ The reforms we have recommended for WWCC schemes, across all states and territories, should also improve the safety of children in schools, including in relation to non-teaching staff members who pose risks of child sexual abuse.¹³⁵

Establishing reportable conduct schemes in all states and territories, as recommended in Volume 7, *Improving institutional responding and reporting*, should also improve the safety of children in schools, in relation to risks of child sexual abuse posed by non-teaching school staff. Under our recommended reportable conduct scheme, allegations of child sexual abuse against a non-teaching member of staff must be reported to an oversight body, which then monitors the investigation and handling of the matter.

4.3 Information sharing about students between schools

4.3.1 The need for information sharing about students

Generally, transferring a student's relevant information to a new school assists the new school to address the student's educational and support needs and to meet its legal obligations, including its duty of care. In *Case Study 45: Problematic and harmful sexual behaviours of children in schools*, we heard evidence that one of the most significant factors in the successful transition to a new school:

is being able to profile a student and to say, 'This is the student's profile. We can meet their needs'. If you don't have that information ... you cannot profile a student correctly and, therefore, you cannot really meet their needs.¹³⁶

Information sharing when a student moves schools, including across school systems and jurisdictions, may be particularly necessary where the student:

- has engaged in harmful sexual behaviours and, as a consequence, may pose risks to other students (see Volume 10, *Children with harmful sexual behaviours*) or
- has experienced sexual abuse and as a consequence has particular educational and support needs.

Children's regular attendance means that schools are uniquely positioned to provide support to them or to facilitate support through other services. Due to the near universal enrolment of Australian children in schools, the number of children that can be helped through the school system is significant.¹³⁷ Sharing information about students' particular needs between schools is therefore of particular importance – and also enables schools to address the risks that may be posed by students with harmful sexual behaviours.

Students with harmful sexual behaviours who may pose risks

It is important that there is a strong legislative and policy framework for transferring information about students with harmful sexual behaviours who may pose risks to other students – particularly given that children with harmful sexual behaviours make up a significant portion (about 20 per cent) of incidents of child sexual abuse reported to police.¹³⁸ Of the survivors in private sessions who mentioned where children have sexually abused other children, educational settings are the most common institutions, after out-of-home care. For detailed discussion, see Volume 13, *Schools*.

Stakeholders also stressed to our inquiry the ‘clear need’ for information transfer between schools about the ‘behaviour of high-risk students’.¹³⁹ We heard that it is ‘imperative’ that where a transferring student poses a risk to children at their new school, this information should be shared with staff at that school.¹⁴⁰ Providing the new school with relevant information can enable it to develop strategies to manage risks to other students and keep them safe.¹⁴¹ This information can also enable the school to actively support the student with harmful sexual behaviours. Research and expert witnesses in our case studies identified exposure to family violence,¹⁴² physical abuse¹⁴³ and sexual abuse¹⁴⁴ as common experiences of children who have exhibited harmful sexual behaviours.

Students with needs arising from experiences of child sexual abuse

In our view, schools in many cases should be able to share limited and relevant information about a student’s history of trauma – including where they have been victims of sexual abuse – when that student moves schools. This can enable the new school to support the student and address their educational and support needs.

It is important that schools have this ability given that research documents the significant negative educational impacts of child sexual abuse.¹⁴⁵ Research indicates negative effects on students’ academic achievement, learning ability, cognitive function, concentration, IQ scores, educational engagement and school completion rates.¹⁴⁶

In our case studies and private sessions, survivors described the adverse impacts of child sexual abuse on their education. They told us of: academic and literacy difficulties; unhappiness at school; school avoidance; and behavioural problems, including getting into fights and substance abuse (see Volume 3, *Impacts*). We heard from many survivors, now adults, who considered they had lost life opportunities, including employment opportunities, from the impact of child sexual abuse on their education.¹⁴⁷

Information sharing would better position schools to support victims of child sexual abuse when they move schools, and would promote their continued engagement in education.

4.3.2 The need for reform

States and territories have different mechanisms for transferring information about students between schools, and examples of these are discussed in this section. At the inter-jurisdictional level, the Interstate Student Data Transfer Note and Protocol (ISDTN) provides a national system for information sharing.

We were told, and our commissioned research indicates, that current arrangements for sharing information about students between schools may have some limitations, including across jurisdictions.¹⁴⁸ For example, the Northern Territory Government submitted to us that:

In terms of the transfer of personal information that is particularly sensitive, such as that relative to child sexual abuse, this is presently managed well between government schools, however, [it] is less effective when operating outside the government sector or across jurisdictions.¹⁴⁹

The New South Wales Government stated that while the ISDTN is effective in supporting the curriculum and wellbeing needs of students, it has ‘limitations in transferring information about a student’s safety or support needs, including information about sexual abuse and potential risks to the safety of other students’:¹⁵⁰

Anecdotally there has been resistance to information being provided by other States and Territories based on their privacy laws. The result is that information sharing between States and Territories is primarily dependent on consent of the student/their carers.¹⁵¹

To address these intra- and inter-jurisdictional limitations, jurisdictions could use our recommended information exchange scheme to underpin policies for proactively transferring information when students move between schools. Our recommended scheme would provide a strong platform for the transfer of information about students who pose risks to the safety and wellbeing of other children – including the transfer of information required to support these students themselves. Our recommended scheme would also facilitate information exchange about students with experiences of child sexual abuse who consequently have particular educational needs their new school should address.

4.3.3 The need for safeguards

In response to our *Information sharing* discussion paper, some stakeholders expressed concern about sharing personal information about students between schools, particularly without the students’ or their parents’ or carers’ consent. We heard, for example, that this may cause significant psychological and emotional harm.¹⁵²

We recognise the potential unintended consequences of sharing information about students' histories of sexual abuse or about students' harmful sexual behaviours. As discussed in Chapter 3, where such sensitive information about children is inappropriately shared – for example shared unnecessarily, disproportionately to what is required to address needs or risks, or too broadly – this can lead to unintended adverse consequences for the child. Such consequences could include re-victimisation, stigma and discrimination in their school and the community more generally.¹⁵³ Appropriate safeguards against unintended adverse consequences are critical.

We consider that a key advantage of using our recommended information exchange scheme to facilitate policies about transferring student information is that this scheme provides for a set of safeguards for personal information. We also consider that state and territory policies for sharing information about students between schools should set out further safeguards, due to the sensitivity of this information. Safeguards are discussed later in this chapter.

4.3.4 Intra-jurisdictional information sharing arrangements

Varied arrangements across sectors and jurisdictions

The arrangements for sharing information about students between schools vary significantly across jurisdictions and school systems. These arrangements can be provided, for example, in state and territory child protection or education laws.¹⁵⁴ In some jurisdictions, information exchange is regulated primarily by privacy laws.¹⁵⁵ Generally, state and territory privacy laws apply to government schools, while the *Privacy Act 1988* (Cth) applies to non-government schools with an annual turnover of more than \$3 million.¹⁵⁶

In most jurisdictions, schools have access to advice in policies and manuals about how to share information between schools in accordance with privacy principles.¹⁵⁷ Additionally, the *Privacy Compliance Manual* provides guidance to non-government schools across Australia about compliance with applicable (Commonwealth) privacy legislation.¹⁵⁸ This includes guidance on passing on information to other schools.¹⁵⁹

In at least some jurisdictions, students' information and files are routinely transferred when students move between government schools in the same jurisdiction. For example, in Victoria, the *School Policy Advisory Guide* states that the transferring school will provide a student's personal and health information – including 'foreseeable risk' and 'welfare' information – to the next school. Parental consent is not required. There is no reference to the student's consent and it appears that student consent is also not required for the transfer of information.¹⁶⁰ A different procedure, based on transfer notes, applies when a government school student transfers to a non-government school.¹⁶¹

New South Wales and Queensland have legislative arrangements for transferring information about students between schools within their respective jurisdictions.

Queensland

In Queensland, ‘transfer notes’ are specifically provided for in legislation. The *Education (General Provisions) Act 2006* (Qld) provides for these arrangements when students change schools within the state.¹⁶² Transfer notes enable transfer of a student’s personal information, including about behavioural issues.¹⁶³ This is intended to help the recipient principal to provide the student with continuity of education and to meet duty of care obligations to the student and school community.¹⁶⁴ Transfer notes are provided about new students on request from principals. Principals are permitted, not required, to request transfer notes.¹⁶⁵ Schools do not need the consent of students or parents in relation to transfer notes.¹⁶⁶

While the objectives of the Queensland provisions could be achieved under privacy legislation, specific legislative arrangements may be useful in providing ‘clarity and certainty’.¹⁶⁷ However, as the Truth, Justice and Healing Council noted, because this transfer note process is instigated only on request, it is ‘not proactive’. The Truth, Justice and Healing Council further commented that the practice around use of transfer notes ‘is not consistently implemented in Queensland’ and ‘transfer notes provided do not necessarily raise or identify detailed information around behaviours of concern’.¹⁶⁸

New South Wales

In New South Wales, sharing information about students between schools is regulated by Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (Chapter 16A) and Part 5A of the *Education Act 1990* (NSW) (Education Act), in addition to privacy laws. As discussed in Chapter 3 of this volume, under Chapter 16A, schools can share information about the safety, welfare and wellbeing of a student. This includes information such as past support from the school to the student, and the student’s educational, welfare and counselling records.¹⁶⁹

Part 5A of the Education Act also provides a mechanism for schools and non-government schools to obtain information from relevant agencies, including other schools:

- to assess whether a student’s enrolment ‘is likely to constitute a risk ... to the health or safety of any person (including the student)’ and
- to ‘develop and maintain strategies to eliminate or minimise any such risk’.¹⁷⁰

Schools are advised that these provisions should be used, instead of Chapter 16A, to obtain information about students with a history of violence,¹⁷¹ which includes ‘inappropriate sexual behaviour that could cause physical or psychological harm’.¹⁷²

The New South Wales Government has told us that Part 5A of the Education Act has a range of benefits. These include that compliance with the guidelines made under Part 5A is required. Additionally, this legislation applies to students who are over the age of 18 (unlike Chapter 16A and our recommended information exchange scheme).¹⁷³

The New South Wales Government has also described to us the procedures that apply when a child or young person who has displayed or engaged in harmful sexual behaviours leaves a school or school program. The principal of the school the child has left is obliged, under child protection procedures, to transfer information to the new school. It is this principal's responsibility to clarify whether the student has enrolled elsewhere, and to forward relevant papers to the principal or senior officer at the new school.¹⁷⁴ These obligations appear to establish a routine mechanism in both the government and non-government school systems for the transfer of relevant information about students whose behaviours pose a risk.

4.3.5 Inter-jurisdictional information sharing arrangements

The ISDTN is the basis of a national system for the transfer of information between schools when students move from one state or territory to another.¹⁷⁵ When a student from another jurisdiction enrolls at a school, the school must use ISDTN processes to request transfer of information from the previous school, and the previous school must comply with the request.¹⁷⁶ The ISDTN provides for the sharing of information about the student's support needs as well as behaviour and management issues.¹⁷⁷ It specifies that the 'safety of staff and students is paramount' when considering what information should be transferred.¹⁷⁸

An apparent gap in this national system is that the information transfer arrangements under the ISDTN involving government schools are 'more restrictive' than those arrangements between non-government schools.¹⁷⁹ When a student moves to or from a government school, the principal (or delegate) of the new school must obtain consent from the parent (or guardian) and the student – if they are 16 years and over – before requesting information from the previous school. Where consent is not given, the new school takes no further action.¹⁸⁰

In some cases, the principal of the school the student is leaving may have reasonable concerns about a serious risk to students or the public if the information is not transferred. In these circumstances, they are directed to 'contact the Privacy Officer in their state and territory education department or education authority for advice about the transfer of information without parent/guardian or student consent'.¹⁸¹ In research we commissioned, it was noted that this approach 'demonstrates the uncertainty caused by the complex web of privacy regulation at the state and territory level and is likely to impede appropriate information sharing'.¹⁸²

The New South Wales Government has told us that the ISDTN process 'would be greatly enhanced by empowering schools in different states and territories to exchange information without consent in certain limited circumstances'.¹⁸³

By contrast, consent is not required for information transfer between non-government schools where the previous school had a standard collection notice in compliance with the *Privacy Compliance Manual*.¹⁸⁴

Standard collection notices

Sample standard collection notices are set out in the *Privacy Compliance Manual* – a guide for non-government schools about how to comply with the Australian *Privacy Act 1988* (Cth). The *Privacy Compliance Manual* advises that schools' privacy policies include standard collection notices for reproduction on enrolment forms and other relevant documents. It also provides a sample with wording for schools to adapt.¹⁸⁵ The aim is to ensure that individuals are reasonably aware:

- that the school has collected certain information about them
- of the purposes for this collection
- of whom the information is usually shared with – including other schools, government departments, Catholic education institutions and parents (or guardians).¹⁸⁶

The *Privacy Compliance Manual's* guidance in relation to standard collection notices also appears to be consistent with the state and territory privacy laws that generally apply to government schools.¹⁸⁷ Standard collection notices could therefore be used by schools in the government sector.

If implemented, our recommended information exchange scheme may make standard collection notices unnecessary to facilitate information sharing between schools, and between schools and other prescribed bodies. Schools and sectors may, however, wish to retain them as best practice, to inform students of the types of personal information the school collects, how the information is used, and the circumstances in which the information will be shared. The implementation of our recommended information exchange scheme should prompt review of existing standard collection notices to ensure they reflect the scheme's provisions in addition to existing privacy laws.

We heard that a centrally developed sample standard collection notice would be useful.¹⁸⁸ A sample standard collection notice would contain wording for individual schools or sectors to adapt to their circumstances, and should reflect both our recommended information exchange scheme, and applicable privacy legislation at federal, state and territory levels. The COAG Education Council is likely to be the best placed body to consider and potentially deliver such a document.¹⁸⁹

4.3.6 Improving intra-jurisdictional information sharing between schools

Legal basis provided by our recommended information exchange scheme

As discussed, it is important that schools share information about a student's history of child sexual abuse, or risks to other students from a student's harmful sexual behaviours, when a student transfers to a new school. We consider that state and territory governments should ensure that policies provide for the sharing of information necessary to ensure students' safety and wellbeing between schools in these circumstances.¹⁹⁰

The laws establishing our recommended information exchange scheme – and the guidelines under such a scheme as discussed in Chapter 3 – could provide a strong framework for policies about sharing information relevant to students' safety and wellbeing, including between schools upon student transfer. Australian governments should consider including bodies that provide education services for children – including public, independent and systemic schools – as prescribed bodies under our recommended scheme. Our recommended scheme could provide for the exchange of information about a student's specific educational and support needs arising from a history of trauma, including child sexual abuse. It could also facilitate information sharing about risks arising from a student's harmful sexual behaviours to the safety and wellbeing of other children who attend the student's new school.

One of the clear advantages of underpinning policies and procedures for information transfer with a legislative framework, such as our recommended information exchange scheme, is that any safeguards attached to that scheme would apply. Such an approach was preferred by the Australian Privacy Commissioner, who told us that:

This would ensure a consistent and national approach to information sharing and reduce the risk that personal information will be mishandled. It would also provide a level of transparency to individuals as to the limits and purposes of information sharing in this area.¹⁹¹

Another advantage is that our recommended information exchange scheme should set out the best practice approach to informing children (and their parents/carers) that their personal information is going to be shared, and to considering their views. This approach, as well as the safeguards attached to our recommended scheme, are discussed in the section that follows.

As noted, in New South Wales, Part 5A of the Education Act also provides a framework for information sharing about students who pose risks due to their harmful sexual behaviours. We have not made a recommendation based on the information sharing provisions in Part 5A, as our recommended information exchange scheme could provide for information sharing between schools, and between schools and other prescribed bodies, about students who pose risks. However, we recognise that Part 5A complements New South Wales' scheme under Chapter 16A, and may also provide a basis for policies about transferring student information that include the features we recommend.

Safeguards

It is critical that safeguards apply to the transfer of sensitive information about students with harmful sexual behaviours who may pose risk, and about students who have particular needs due to their experiences of sexual abuse. As the Truth, Justice and Healing Council noted:

Stringent safeguards are required to conserve the confidentiality of students' personal information when it is transferred between schools. It is a very difficult and complex problem, as it is important to balance the welfare of the child transferring with the welfare of the children already at the school.¹⁹²

As discussed, we consider a key safeguard of our recommended information exchange scheme to be its parameters for information sharing. Information may be shared where it relates to the safety and wellbeing of a child or children and where it is relevant to the services provided by the recipient. Under the scheme, those transferring information would have to be reasonably able to conclude that the new school needs the information because it would – or may – assist it to exercise its responsibilities related to children's safety and wellbeing.

Other important safeguards that could be attached to our recommended information exchange scheme are discussed in Chapter 3, and would apply if students' information was shared under the scheme. These could include, for example:

- restrictions on further use of information
- liability for improper or vexatious sharing of information
- guidelines for dealing with untested and unsubstantiated allegations
- a requirement on schools receiving information about untested or unsubstantiated allegations about a student under the recommended scheme to provide the student with an opportunity to respond before taking adverse action against them (for example, declining to enrol them) on the basis of that information.

Important privacy law protections would also apply to the handling of students' information – as privacy laws can, to an extent, coexist with our recommended scheme. As discussed in Chapter 3, these would include, for example, provisions for: information security; individuals to access and correct information held about them; and institutions to maintain privacy policies setting out how personal information is collected, used, stored and disclosed.¹⁹³

We also consider that policies specifically addressing the transfer of student information should contain additional safeguards. They should provide that:

- information transferred between schools should be proportionate to the new school's need for that information
- the information should be shared between authorised information sharers such as principals.

We discuss these safeguards in more detail later in this chapter.

Informing children and parents and considering their views

In our view the child and/or their parents or carers (or the child's authorised representatives) should be informed of the information exchange between schools, should be given an opportunity to express their views, and these views should be given due weight. As discussed in Chapter 3, this approach is more empowering than seeking consent for the information exchange, given that consent would not be required under our recommended information exchange scheme (and existing similar laws) and that a refusal to consent may be overridden.

In our view, a number of principles should be applied in relation to informing children and their parents of information exchange and considering their views. These could be included in guidelines under our recommended scheme and could apply to schools transferring students' information in accordance with our recommended scheme. These principles include:

- Before sharing personal information, principals (or other authorised information sharers) should, where appropriate and possible, notify children and/or their parents of an intention to share their personal information, and the basis for doing so.
- Children and their parents should be informed that their consent to disclosure of personal information is not required under the law, and should be given the opportunity to
 - express their views, including objections to or concerns about the disclosure
 - provide additional information to support non-disclosure.
- Where a child is able to form their own views on the sharing of their personal information, they should be given the opportunity to freely express those views.
- The views of children and – where appropriate – their parents/carers should be taken into account in deciding to share or not to share their personal information.
- A child's views on whether their personal information should be shared must be given due weight in accordance with their capacity and other relevant circumstances.
- Consideration should be given to measures that may allow sufficient relevant information to be shared while addressing concerns raised – for example, redaction of unnecessary information.

As we discuss in Chapter 3, such guidance is an important accompaniment to our recommended scheme.¹⁹⁴ Additionally, in the context of student transfers, parents who have been advised of the exchange of information between schools are better placed to make a complaint if the new school does not respond appropriately to the information provided.

This approach could also operate as a significant safeguard against inappropriate information sharing. Students who have experienced sexual abuse may not wish that information to travel with them to a new school – even for the purpose of providing them with support.¹⁹⁵ Where the student indicates that providing their new school with this information may cause them emotional or psychological harm, this may in some cases outweigh the benefits of providing the information to assist the new school in supporting the student. As noted by the Northern Territory Government:

Where there are concerns about a child's general wellbeing, particularly an older or more mature child, their need for privacy may well be part and parcel of their wellbeing. For this reason, consideration will need to be given to all relevant factors including their age and maturity when deciding that information should reasonably be provided to others about them, particularly if their consent is not obtained.¹⁹⁶

We heard that families may be reluctant to transfer a student's information to a new school in cases where they are 'potentially going to pose risks or have behaviours', due to fears that the student will not be accepted in the new school.¹⁹⁷ Informing children and their parents or carers of the information exchange, and seeking their views, provides them with an opportunity to express any concerns. This enables the principal (or authorised information sharer) to reassure them about the processes and safeguards involved. We consider that improved information sharing about students between schools should coexist with the objective of avoiding student disengagement. It may be helpful for guidelines, policies or fact sheets about the transfer of student information to address this. For example, the guidelines issued under Part 5A of the Education Act deal with this issue explicitly:

Disengagement from the education system is regarded as a major predictor for poor educational and social outcomes including entering the juvenile justice system – therefore an outcome that leads to such disengagement should be avoided wherever possible.¹⁹⁸

The ISDTN 'Frequently Asked Questions' provide reassurance to parents about the transfer process: 'The information will not be used to bias our opinion of your child, rather decisions will be made to achieve positive outcomes for your child'.¹⁹⁹

Where a child or parent/carer expresses views that the information should not be exchanged, guidance may assist principals and other information sharers to weigh up competing considerations as to whether they should transfer information to the next school. This could be provided for in guidelines under our recommended information exchange scheme. Guidelines to steer consideration of competing factors should promote appropriate and consistent decision-making about sharing students' information between schools under our recommended scheme.

Additional safeguards in policies about transferring students' information

State and territory governments should provide policy safeguards on the transfer of student information related to child sexual abuse, in addition to any safeguards that may be attached to our recommended information sharing scheme. In our view, and as discussed in this section, policies should specifically provide that:

- the information shared is proportionate to what is needed by the new school to address students' safety and wellbeing needs (including risks to the safety of students at the school)
- information should be exchanged only between authorised information sharers (such as principals).

In Chapter 3, we discuss more general safeguards to similar effect that could be included in guidelines supporting our recommended scheme. Such safeguards should also be explicitly included in policies addressing the transfer of student information between schools. As the Australian Government stated, the demand for particular privacy protection in these circumstances is necessitated by 'The age and circumstances of these individuals, and the types of personal information involved'.²⁰⁰

Sharing of proportionate information

The legislative parameters of our recommended scheme should ensure that information is shared only where necessary for children's safety and wellbeing. In the case of students, policies should also provide that information transferred between schools should be proportionate to the new school's need for that information to assist it to address the student's safety and wellbeing and that of other students at the school.

This is an important safeguard for students and one that requires the principal, or authorised information sharer, to exercise their judgment in each circumstance. This approach is not dissimilar to some existing requirements regarding transfer of student information. For example, the Queensland legislation requires transfer notes to be 'factual, succinct and objective'²⁰¹ and the ITDSN Protocol states that the 'quality, nature and form' of the information transferred will be determined in part by the 'professional judgement of both principals (or delegates) as to what is necessary to facilitate the students' adjustment in the new school'.²⁰²

Such policies could be complemented by guidelines under our recommended information exchange scheme. These guidelines could assist information sharers to properly balance competing considerations when deciding whether – and to what extent – they should share information. For example, the Northern Territory guidelines for sharing information under the territory’s ‘safety and wellbeing’ information exchange scheme include the following factors for consideration by the sharer of information:²⁰³

- the possible impacts of not sharing the information, including the risk that harm may not be identified by another person or organisation due to an incomplete appreciation of a child’s situation
- the risk that sharing the information will have a negative impact on a child’s safety or wellbeing
- the likely or expressed wishes of the child, and the maturity, worldliness and independence of the child and the child’s capacity to make decisions for themselves
- whether the information is comprised of facts or opinion
- the currency of the information.

Such guidelines may assist principals and other decision-makers when considering competing factors in determining what information is necessary and proportionate and should therefore be shared with the new school. As noted earlier, guidelines could also facilitate appropriate and consistent decision-making about sharing student information under our recommended information exchange scheme.

Another way of fostering proportionate sharing of sensitive information, at least at first instance, is by using transfer notes containing tick boxes for such information. For example, under the ISDTN Protocol, a flagged tick box alerts the principal at a student’s new school to follow up with the previous school for further information. State and territory governments may wish to consider this option. This would only be effective if receiving schools routinely follow up alerts and if principals of previous schools limit the follow-up information shared to that which is proportionate. In this regard, the ISDTN Protocol states that:

When following up with the previous school on ‘flagged’ information fields both the new and previous schools are responsible for ensuring only information relating to the ‘flagged’ field is exchanged.²⁰⁴

Information exchanged between authorised information sharers

In our view, sensitive student information should be exchanged directly between principals or other authorised information sharers in the relevant schools. This is consistent with the position of the New South Wales Government, which submitted that safeguards should include ‘clear allocation of the authority to receive information concerning children’s safety and wellbeing’.²⁰⁵ We consider this an important safeguard against inappropriately broad dissemination of information.

The authorised information sharer may be the school principal, counsellor or other appropriate staff member, depending on support arrangements for students in the jurisdiction. For example, Victorian policy states that where a student has received Student Support Services (SSS) support in the last two years, the SSS coordinator must arrange for certain files to be sent to the SSS Coordinator at the receiving school.²⁰⁶

After the information exchange, relevant information should be made available to other staff on a need-to-know basis; that is, where they need the information to meet the needs of the student or to manage risk to other students.²⁰⁷

Additional features in policies about transferring students' information

As in the discussion that follows, state and territory governments should complement the legal framework that our recommended information exchange scheme could provide with additional policies to:

- establish a routine (or automatic) pathway for information sharing when a student changes schools by imposing requirements on principals (or other authorised information sharers)
- ensure that procedures for information transfer discussed apply to both government and non-government school systems.

Required information exchange

In our view, some kinds of information about students should be routinely transferred between schools. In order to establish a routine information sharing pathway, principals (or other authorised information sharers) should be *required* to share certain information when a student at their school moves to a new school.

However, our recommended information exchange scheme would not, by itself, provide the basis for such a requirement or provide pathways for routine information sharing between schools. Under our recommended scheme, prescribed bodies would be:

- authorised, rather than required, to proactively share information
- required to share information only in response to a request from another prescribed body
- not obliged to request information.

Consistent with this approach, we consider that state and territory policies about exchanging student information should include a requirement on principals (or other authorised information sharers) to share certain information when a student moves to a new school. Such a policy requirement, in conjunction with our recommended information exchange scheme, would mean that where a principal has information about needs arising from a student's experience of sexual abuse, or potential risks arising from a student's harmful sexual behaviours, they must:

- consider whether the new school needs this information to assist it in exercising its responsibilities related to children's safety and wellbeing
- share the information, if they reasonably believe the new school may – or would – need it.²⁰⁸

A routine information sharing pathway might be achieved by placing an obligation on a student's new school to request information from the previous school, and a corresponding obligation on the previous school to provide relevant information upon receiving the request. This would mirror the ITDSN obligations and may promote consistency.

Alternatively, the obligation might be placed on the principal of the previous school to establish where the student has enrolled and forward relevant papers—as in New South Wales child protection protocols described earlier. In addressing this issue, states and territories should consider the different thresholds under our recommended scheme for proactive and reactive sharing, discussed in Chapter 3.

Also in Chapter 3, we suggest a number of exceptions should apply to information sharing obligations under our recommended information exchange scheme. These exceptions could also apply where our recommended scheme provides the basis for policies concerning exchanging information on student transfer. Principals could be exempted from obligations to share information with a student's new school in appropriate cases, such as where sharing the information may compromise police investigations. In considering whether a school needs information to meet its new student's needs, a principal of the former school would have the discretion to take into account the quality of the information – particularly where it concerns untested or unsubstantiated allegations.

Applicable to all school systems

Policies and procedures for sharing student information relevant to needs arising from child sexual abuse, or risks arising from harmful sexual behaviours, should apply to government and non-government school systems. As much consistency as possible across the systems would reduce complexity and increase the likelihood that schools in all sectors receive, and pass on, relevant information. Our recommended information exchange scheme could provide a basis for consistent policies and procedures across school systems.

Supplementing the coverage of our recommended information exchange scheme

Our recommended information sharing scheme would facilitate sharing of information relevant to the safety and wellbeing of children only. Many students in the final years of school are 18 years old. This would not limit the sharing of information about risks that adult students may pose to students at a new school, because at-risk students would generally include those under 18 years old. However, it means our recommended scheme would not provide a basis for policies to address information transfer to meet the needs of a student aged 18 years or over – whether in relation to their own harmful sexual behaviours or to their experiences of child sexual abuse.

There are several ways to address this limitation:

- **Consent** – The transferring student may consent to this information being shared, particularly if they are involved in the decision-making process. If they do not consent, in at least some circumstances it may be that this information should not be shared. As adults, these students may be well placed to consider the benefits and detriments of sharing their sensitive information with their next school, and make an informed decision.
- **Standard collection notices** – It appears that such information may currently be shared by non-government schools through their use of standard collection notices.
- **Legislation about exchanging students' information between schools** – We heard from the New South Wales Government that one of the benefits of Part 5A of the Education Act is that it addresses information sharing about students aged 18 and over, although this is limited to students whose behaviour is likely to constitute risk.²⁰⁹

Recommendation 8.13

State and territory governments should ensure that policies provide for the exchange of a student's information when they move to another school, where:

- a. the student may pose risks to other children due to their harmful sexual behaviours or may have educational or support needs due to their experiences of child sexual abuse, and
- b. the new school needs this information to address the safety and wellbeing of the student or of other students at the school.

State and territory governments should give consideration to basing these policies on our recommended information exchange scheme (Recommendations 8.6 to 8.8).

Recommendation 8.14

State and territory governments should ensure that policies for the exchange of a student's information when they move to another school:

- a. provide that the principal (or other authorised information sharer) at the student's previous school is required to share information with the new school in the circumstances described in Recommendation 8.13; and
- b. apply to schools in government and non-government systems.

Recommendation 8.15

State and territory governments should ensure that policies about the exchange of a student's information (as in Recommendations 8.13 and 8.14) provide the following safeguards, in addition to any safeguards attached to our recommended information exchange scheme:

- a. information provided to the new school should be proportionate to its need for that information to assist it in meeting the student's safety and wellbeing needs, and those of other students at the school
- b. information should be exchanged between principals, or other authorised information sharers, and disseminated to other staff members on a need-to-know basis.

4.3.7 Improving information sharing between schools in different jurisdictions

Implementing our recommended information exchange scheme could provide a broader platform for existing ISDTN procedures for inter-jurisdictional transfer of information related to risks of child sexual abuse or needs arising from a child's history of sexual abuse. This is important given the limitations of the ISDTN, highlighted in government submissions and discussed earlier, in facilitating the sharing of information relevant to child sexual abuse or risks to other students' safety.²¹⁰

Additionally, the existing gap in the ISDTN – where consent is required for the transfer of information about students moving to and from government schools, but not for students moving between non-government schools – could substantially be addressed by our recommended information sharing scheme, in relation to safety and wellbeing information. A smaller gap would remain in relation to information about the needs of adult students. As discussed earlier, this could be left to be dealt with by consent, or addressed by standard collection notices. In relation to inter-jurisdictional information transfer, students and/or their parents should be informed of the transfer of information and given an opportunity to express their views, which should be given due weight. This procedure should apply consistently to government and non-government school systems.²¹¹

It is our view that the COAG Education Council should review the ISDTN in implementing our recommended information exchange scheme, in particular where Australian governments determine to prescribe bodies that provide education services for children under the scheme. In its review, the COAG Education Council should have regard to the considerations concerning information sharing discussed in this chapter and in Chapter 3, as well as those features and safeguards we recommend should be included in specific policies addressing information sharing about students.

The ISDTN already reflects some of these features:

- it applies to both government and non-government schools (although not consistently due to the different procedures regarding sharing information without consent, as discussed)
- it establishes a routine information exchange mechanism by imposing requirements on principals to provide information to a student's new school
- information is shared between principals and made available to staff on a need-to-know basis.²¹²

Recommendation 8.16

The COAG Education Council should review the Interstate Student Data Transfer Note and Protocol in the context of the implementation of our recommended information exchange scheme (Recommendations 8.6 to 8.8).

4.4 Improving information sharing in the out-of-home care sector

We were told in case studies, private sessions and consultations about incidents and risks of child sexual abuse in out-of-home care. This section considers the need for reforms to address one particular and significant area of risk for children in out-of-home care – the risk of sexual abuse by carers and others in their household. The issues considered here are related to our broader work on out-of-home care, which is set out in Volume 12, *Contemporary out-of-home care*.

We heard from a range of stakeholders, including government and non-government out-of-home care agencies and regulatory and oversight bodies, about the risks that inappropriately authorised carers pose for children in out-of-home care. In private sessions, we were told about the sexual abuse of children in out-of-home care by foster carers, by residential care staff and by other adults, including friends of carers and adult members of carer households (see Volume 12).

Our commissioned research on the different dimensions and degrees of risk of child sexual abuse in institutions identified an elevated risk for children in out-of-home care. We were informed about the risk and incidence of sexual abuse in different placement types by our commissioned and other research; information from stakeholders responding to our *Out-of-home care* consultation paper and our *Information sharing* discussion paper; and evidence we received in *Case Study 24: Preventing and responding to allegations of child sexual abuse occurring in out-of-home care (Out-of-home care)*.

Inadequate information sharing between out-of-home care agencies about carer suitability can place children in care at risk. Our recommended reforms to improve information sharing about carers are aimed at reducing the risk of sexual abuse of children in care by assisting the agencies responsible for assessing, authorising and supervising carers to make better-informed decisions about carer suitability and placement safety.

We recommend the development and implementation of jurisdictional carers registers with a minimum set of nationally consistent features. Carers register reforms could complement, and be supported by, our recommended information exchange scheme (see Chapter 3) to facilitate more proactive and routine information exchange between:

- out-of-home care service providers (government and non-government)
- jurisdictional child protection agencies
- regulatory and oversight bodies with statutory responsibilities relating to children in care.

In Chapter 3 we consider the need for improvements in information exchange between a range of institutions. This includes the need to strengthen arrangements and practice in information sharing by, and with, out-of-home care institutions.

We also consider the need for sharing information with parents and carers of children who may have been sexually abused by an adult or harmed by the sexual behaviours of another child – and also sharing information with parents and carers of other children in the institution – in the following volumes:

- Volume 7, *Improving institutional responding and reporting*, which considers best practice for institutions in responding to an incident of child sexual abuse
- Volume 10, *Children with harmful sexual behaviours*, which discusses communication when a child in an institution has displayed harmful sexual behaviours
- Volume 12, *Contemporary out-of-home care*, which considers how the sharing of relevant information between out-of-home care agencies and carers should be improved, as part of a range of strategies to increase placement safety and stability.

In our *Criminal justice* report, we considered the information and assistance police can provide to institutions where a current allegation of institutional child sexual abuse is made, and to children and parents and carers and the broader community.²¹³

4.4.1 Sharing information about carers

Stakeholders told us about risks and harm to children in out-of-home care that can result from poorly-informed decisions about carer suitability and placement safety.²¹⁴ It is important that agencies responsible for screening, authorising and supervising carers – whether non-government out-of-home care service providers or government agencies – are able to obtain sufficient information to assess and manage risks of child sexual abuse in out-of-home care. Current arrangements for sharing information relevant to carer suitability and placement safety do not appear adequate to address these risks.

Arrangements for sharing information about carers include those in information exchange schemes under child protection legislation and inter-jurisdictional protocols. However, as discussed in Chapter 3, these are subject to significant constraints, particularly in relation to the capacity of non-government service providers to access and share information relevant to carer suitability. With greater reliance on contracted out-of-home care services in some jurisdictions (as discussed in Volume 12, *Contemporary out-of-home care*), relevant records may be fragmented and dispersed among different out-of-home care providers. This reduces the likelihood of screening processes identifying carers with problematic histories as they move between different out-of-home care providers, putting children in care at greater risk of harm.²¹⁵

Stakeholders have also raised concerns about limits on inter-jurisdictional exchange of information about carers who move between jurisdictions. As the New South Wales Government told us, at present, ‘jurisdictions assessing carer applicants rely primarily on the applicant disclosing their own carer history in another jurisdiction’.²¹⁶ We understand that this is particularly challenging for out-of-home care agencies working in cross-border regions.²¹⁷ The Queensland Family and Child Commission submitted that:

Allowing direct access to critical information through a central mechanism is likely to provide higher safeguards than relying on applicant self-disclosure to prompt history checks in other jurisdictions.²¹⁸

Including agencies responsible for children in care in our recommended information exchange scheme would assist by enabling those agencies to exchange information relevant to the risk of child sexual abuse directly with each other, and with other prescribed bodies under that scheme. We have recommended that Australian governments consider including a range of government and non-government institutions, such as those providing out-of-home care services, as prescribed bodies under the scheme.

Direct information exchange under our recommended scheme would overcome limits created by relying on jurisdictional child protection agencies, under the Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance, as centralised hubs of information.²¹⁹ It would also overcome the limitations of existing provisions that enable some intra-jurisdictional information exchange, such as section 248B of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). While this provision promotes the safety of children in care, it can only enable one-way sharing of carer assessment information – from New South Wales child protection bodies (including the jurisdictional child protection agency, the out-of-home care regulator and out-of-home care service providers) to similar bodies in other jurisdictions.

Direct information exchange between prescribed bodies in the out-of-home care sector and the other institution types under our recommended information exchange scheme will promote essential cross-sector collaboration in many institutional contexts. For example, the information exchange scheme can operate to facilitate sharing of important information between out-of-home care agencies and other institutions that provide services for children in care (such as schools), or that authorise or supervise carers' engagement with children in other sectors (for example, carers who are also childcare workers).

More particularly, the capacity under our recommended information exchange scheme for out-of-home care agencies assessing or supervising carers to obtain relevant information about carer history from other out-of-home care agencies across Australia would help to reduce risks resulting from inappropriate carer authorisation.

However, the operation of our recommended information exchange scheme will depend on prescribed bodies being able to identify which other prescribed bodies may have, or may need, information. We have considered the potential for carers registers to complement the operation of our recommended information exchange scheme. Carers registers could enhance agencies' capacity for intra- and inter-jurisdictional information sharing under our recommended information exchange scheme by:

- indicating the relevant information that exists and its location – prompting effective requests for information under the scheme
- indicating to those who hold relevant information which out-of-home care agencies may need that information – prompting appropriate proactive information sharing under the scheme.

Beyond improving information sharing, carers registers should promote the safety of children in out-of-home care by operating as a mechanism to implement the minimum carer assessment and authorisation requirements we have recommended in Volume 12. We discuss how carers registers can function to ensure agency compliance with their assessment and authorisation obligations later in this section.

The need for carers register reforms

Some jurisdictions maintain a carers register as a standalone central index of information about people who have applied for authorisation or are authorised to care for children in out-of-home care in that jurisdiction.²²⁰ Information on these registers can be accessed by approved organisations. Other jurisdictions record this information on a government database available only to employees of the relevant statutory child protection agency.²²¹

Existing carers registers (and databases) vary in the range of information they capture.²²² There are also differences between jurisdictions as to whether the registers are legislatively or administratively established and governed, whether they are maintained by an independent out-of-home care regulator or by the jurisdictional child protection agency,²²³ and in the bodies that have access to them.²²⁴ With variable and often limited arrangements for capturing relevant information about carers, opportunities to promote children's safety in out-of-home care may be missed.

Stakeholders responding to our *Out-of-home care* consultation paper and our *Information sharing* discussion paper generally indicated support for carers register reforms.²²⁵ As discussed later, governments have also recognised the importance of reform in this area, and have taken steps towards improving arrangements for the exchange of information about carers.

Options for carers register reforms

Options for carers register reforms include establishing:

- carers registers in each jurisdiction with a minimum set of nationally consistent features and a capacity to share information inter-jurisdictionally
- a national carers register.

In our *Out-of-home care* consultation paper, we proposed the establishment of a carers register in each jurisdiction, containing relevant information about all applicant and authorised carers, accessible by all jurisdictions' accredited out-of-home care service providers and appropriate regulatory and oversight bodies. While there was some stakeholder support for a national carers register,²²⁶ many stakeholders indicated their support for nationally consistent carers registers in each jurisdiction.²²⁷

Developments towards a national carers register

In its response to our *Information sharing* discussion paper, the Australian Government told us about a project to develop a national carers register through the Inter-jurisdictional Carer Information Sharing project.

The project was established under the National Framework Third Action Plan, Strategy 3 (Organisations responding better to children and young people to keep them safe) and has been endorsed by the Children and Families Secretaries Group.²²⁸ The intent of the Inter-jurisdictional Carer Information Sharing project is to promote the safety, welfare and wellbeing of children in out-of-home care by ensuring designated care agencies have access to up-to-date information about the suitability of current and prospective carers who have previously applied for or undertaken carer roles in other jurisdictions.²²⁹ The New South Wales Department of Family and Community Services (NSW FACS) is leading the project.²³⁰

The Australian Government told us that implementing a national carers register would give ‘authorised users access to information about whether an individual has a carer history in another jurisdiction and contact details for agencies holding information about the carer’.²³¹ It stated that developing a national carers register also involves developing an ‘enabling environment to support the sharing of information about carers including: nationally consistent consent arrangements and nationally consistent legislative arrangements’.²³²

The Australian Government indicated that the development of a national carers register and its enabling environment would be addressed as part of the Department of Industry’s August 2016 Business Research and Innovation Initiative for a digital information sharing solution to ensure child safety.²³³ In its account of this work, the Australian Government told us that ‘the solution will initially operate between child protection agencies only’. However, there is:

future potential for this solution to be utilised to support inter-jurisdictional access to information on related interstate registers, such as those holding carer information and working with children check status information.²³⁴

Divergence in support for a national carers register: While indicating support for developing a national carers register, the Australian Government also told us that:

as a National Carer Register would be designed to support the states and territories discharge their statutory responsibilities in relation to child protection, the Commonwealth is not required to be involved in the administration of the register.²³⁵

In 2016, the New South Wales Government told us it supported exploring alternatives to a national carers register, given the Australian Government’s concerns about the feasibility of administering a national register.²³⁶ In its later response to our *Information sharing* discussion paper, the New South Wales Government again noted concerns about the feasibility of administering a formal national register,²³⁷ and told us its preference ‘remains that each state or territory maintains its own carers register based on a nationally consistent minimum set of data items, as opposed to a consolidated national register’.²³⁸

In our view, the development of adequate digital platforms to support inter-jurisdictional sharing of information about carers is essential. There is not as yet agreement between the Australian Government and state and territory governments on whether inter-jurisdictional information sharing about carers should be pursued through a standalone national carers register. However, implementation is unlikely to avoid the need for each state and territory to record and make available a sufficient range of information to identify and respond to risks resulting from inappropriate authorisation of carers. As discussed later, we consider the establishment of jurisdictional carers registers, with capacity to support inter-jurisdictional information exchange, should be a priority for all state and territory governments.

The way forward

We recognise that the benefit of a national carers register would be that agencies responsible for assessing and authorising carers could, in the first instance, undertake a single search to determine whether agencies in other jurisdictions have relevant information about a person's suitability to care for children. However, a single register is likely to be constrained in its capacity to accommodate the requirements of jurisdictions' different out-of-home care service delivery, management arrangements and regulatory settings. As a result, a single national carers register may only be able to record and provide access to extremely limited information.

In our view, establishing jurisdictional carers registers, based on a nationally consistent set of minimum features, is an important and necessary step towards making relevant information available to those who need it across Australia. A national carers register, or another digital information sharing platform operating across jurisdictions, could build upon carers registers in each state and territory.

We agree with the Queensland Child and Family Commission that implementing jurisdictional carers registers (with information sharing capability) could be the first stage in implementing a national carers register.²³⁹ As the New South Wales Children's Guardian also observed:

A single national register could allow for the operation of state-based registers, however essential identifying information could be exported to a single, national register. The purpose of the national register would be to require a search of one database that could return results from all states and territories, and prevent jurisdictions undertaking unnecessary searches of all other state and territory registers.²⁴⁰

The importance of minimum national consistency: Nationally consistent regulatory approaches are likely to improve the capacity of those responsible for the safety of children in care to detect and respond to the movement in the out-of-home care sector of identified and potential perpetrators, both within and across jurisdictions. As the Victorian Government observed in its response to our *Out-of-home care* consultation paper, nationally consistent approaches, with clear expectations and mechanisms regarding cross-jurisdictional information sharing, will improve carer screening and assessment processes and better protect children across Australia.²⁴¹

State and territory governments should work together to establish carers registers in each jurisdiction with consistency in minimum data requirements, underpinned by consistent regulatory requirements. This is likely to promote consistency in the quality and availability of information to support appropriate carer authorisation.

Minimum consistent requirements for information recorded and shared on jurisdictional carers registers can both support, and be supported by, minimum consistency in carer assessment and authorisation requirements. We address consistency in assessment and authorisation requirements briefly in the following section, and in more detail in Volume 12. The establishment of reportable conduct schemes in each jurisdiction, as recommended in Volume 7, *Improving institutional responding and reporting*, will also support consistency in the recording and availability of relevant information on jurisdictional carers registers.

Minimum national consistency in carers registers

In our consultations we put forward proposals for minimum national consistency in carers registers drawing on the features of the New South Wales Carers Register. We were told that the New South Wales model generally supports effective decision-making about carer authorisations.²⁴²

By operating both as a mandated authorisation tool and a key information sharing mechanism, the New South Wales Carers Register aims to ensure that the assessment, authorisation and supervision of carers effectively protects children in out-of-home care. The stated objective of the New South Wales Carers Register is to:

promote the safety, welfare and wellbeing of children and young people in statutory or supported out-of-home care by supporting the appropriate authorisation of carers. The Carers Register will provide a common resource that all designated agencies [accredited out-of-home care service providers responsible for assessing, authorising and supervising carers] must use to share information about carers and prospective carers.²⁴³

In our *Out-of-home care* consultation paper we noted that of the existing registers, the New South Wales Carers Register appears to provide the greatest utility to out-of-home care agencies and other bodies responsible for protecting children in out-of-home care.

Stakeholder responses to our *Out-of-home care* consultation paper were largely consistent with this view. Uniting Church Australia and Wesley Mission Victoria told us that the New South Wales Carers Register provides the most comprehensive approach.²⁴⁴ Anglicare Sydney told us that, ‘Coupled with information sharing protocols for agencies, the Carers’ Register is a powerful tool because agencies are no longer dependent upon self-reporting by prospective carers’. The flagging of relevant information on the Register ‘enables other agencies to make enquiries with

the reporting agency as part of assessment of potential applicants'.²⁴⁵ Anglicare Sydney also observed that, in its experience, introducing the New South Wales Carers Register in 2014 has improved monitoring and carer accountability.

Some stakeholders expressed concerns about the New South Wales Carers Register, or suggested improvements to its operation.²⁴⁶ However, many others indicated support for nationally consistent jurisdictional registers based on this model.

In our *Information sharing* discussion paper, we sought comments on proposed minimum key elements for nationally consistent jurisdictional carers registers. The Australian Privacy and Information Commissioner observed that our proposal would 'be effective for equipping decision makers with sufficient information to allow them to make the right decision'. However, he cautioned that including sensitive material on carers registers would necessitate careful consideration of privacy implications and appropriate mitigation strategies.²⁴⁷

The New South Wales Government expressed broad support for our proposed key elements.²⁴⁸ The Queensland Family and Child Commission considered there were both benefits and risks associated with such a register, but indicated its support for 'initiatives to improve information sharing arrangements relevant to carer suitability and placement safety'.²⁴⁹ While the Australian Government advanced a national register as a solution, it also noted future potential for the Department of Industry's Business Research and Innovation Initiative digital information sharing solution to be utilised for 'inter-jurisdictional access to information on interstate registers'.²⁵⁰

Our proposed key elements drew on the New South Wales model, which the New South Wales Ombudsman's office strongly endorsed:

the [New South Wales] Register is a highly significant development in the regulation of OOHC [out-of-home care] in NSW. Over the 20 months of its operation, in addition to facilitating the systematic exchange of information between OOHC agencies, and ensuring that all mandatory checks are completed; it has prompted OOHC agencies to improve their practice in a range of areas – particularly in relation to appropriately identifying and assessing [carers'] household members.²⁵¹

In its response to our discussion paper, the Truth, Justice and Healing Council expressed its support for our proposed key elements 'to overcome the considerable variability (and siloing) in the existing carers registers/directories'.²⁵² The council told us:

While the barriers to the establishment of carers registers may be argued to be inhibitive, the Council considers that such issues are capable of being overcome when the ultimate goal of the protection of children and young people is the overarching principle.²⁵³

Minimum key elements of carers registers

Complex laws, concerns about privacy and other barriers to information sharing can limit the sharing of information relevant to children's safety in institutions (see Chapter 3). A clear statutory framework providing for the establishment of carers registers and authorising or requiring the collection, use and disclosure of information through them is important to address both these barriers and concerns about the risks of inappropriate sharing of information about carers.

In our view, carers registers should be established by legislation in all states and territories. The legislation should identify the agency or body responsible for maintaining the register, the register's parameters and the obligations of relevant agencies with respect to it. Individual states and territories should decide whether their register should be maintained, as existing registers are, by either a regulatory or oversight body with responsibilities related to out-of-home care, or the jurisdictional child protection agency.

In this section we discuss the minimum key elements that should be adopted as part of a nationally consistent model for jurisdictional carers registers. Primarily, we have considered the need for a minimum level of national consistency in:

- the carer types included on registers
- the types of information recorded on registers
- the types of information made available to agencies or bodies with responsibilities related to the suitability of persons to be carers and the safety of children in out-of-home care.

We have considered the need for responsible agencies to check carers registers and seek further information, related to but beyond that on the register, relevant to carer suitability. By imposing obligations on those assessing and authorising carers to record and check relevant information, carers registers can be used to implement consistent mandatory authorisation requirements.

We recognise that establishing and operating carers registers will be affected by regulatory settings for carer authorisation and local arrangements for out-of-home care service delivery and management which, as discussed, currently differ across jurisdictions. The legislative and administrative arrangements and the platforms required in each jurisdiction to enable essential register information to be recorded by those who hold that information, and accessed by those who need it, will vary to some extent. However, it is important that such variations do not compromise the basic level of consistency required for the operation of registers to protect children in out-of-home care in all jurisdictions.

In considering the minimum key elements of carers registers, we have drawn on a number of features of the New South Wales Carers Register. However, we have diverged from the model in some important respects, including in relation to inter-jurisdictional access to carers registers and the carer types included.

Recommendation 8.17

State and territory governments should introduce legislation to establish carers registers in their respective jurisdictions, with national consistency in relation to:

- a. the inclusion of the following carer types on the carers register:
 - i. foster carers
 - ii. relative/kinship carers
 - iii. residential care staff
- b. the types of information which, at a minimum, should be recorded on the register
- c. the types of information which, at a minimum, must be made available to agencies or bodies with responsibility for assessing, authorising or supervising carers, or other responsibilities related to carer suitability and safety of children in out-of-home care.

Recommendation 8.18

Carers registers should be maintained by state and territory child protection agencies or bodies with regulatory or oversight responsibility for out-of-home care in that jurisdiction.

Inclusion of carer types

The definitions of out-of-home care and carer types differ across jurisdictions in Australia.²⁵⁴ There is also variation in the carer types captured on carers registers or databases in each jurisdiction. New South Wales, for example, currently includes authorised and applicant foster carers in statutory out-of-home care, and relative/kinship carers in statutory or supported out-of-home care.²⁵⁵ Similarly, Western Australia only captures foster and relative/kinship carers.²⁵⁶ Others, like Victoria, include residential care staff as well.²⁵⁷

In discussing carer types, we refer to three generally recognised categories: foster carers, relative/kinship carers and residential care staff.

Our consideration of which carer types should be included on jurisdictional registers was informed by our understanding of the risk of sexual abuse of children in different placement types, discussed in detail in Volume 12. Our knowledge of the prevalence and risk of sexual abuse of children in contemporary out-of-home care is limited by inadequate and incomplete national data. However, administrative data that we received from all states and territories and from 12 non-government organisations to assist us in our *Out-of-home care* case study²⁵⁸ has enabled us to make some qualified observations about potential risks and reporting rates of sexual abuse for different placement types.

In addition, we were informed by our commissioned research,²⁵⁹ including research on the different dimensions and degrees of risk of child sexual abuse in out-of-home care and other institutional contexts. We also considered what our stakeholders told us about the vulnerability of children in care to sexual abuse, and the role of carers registers in managing risks to their safety.

Foster carers: Foster carers are supervised by child protection agencies, or an approved government or non-government out-of-home care agency to provide home-based care. Foster carers generally provide statutory out-of-home care.²⁶⁰

From the data we received from government agencies and non-government out-of-home care agencies, the highest number of child sexual abuse reports, by placement type, came from foster care settings. We note that the number of reports was proportionate to the number of foster care placements.²⁶¹ We also recognise that some of the alleged perpetrators in reported cases may not have been foster carers or their household members. However, as the New South Wales Ombudsman has observed, limits on supervision in domestic settings make foster caring high risk.²⁶² This heightened situational risk is combined with the often heightened vulnerability of children in foster care.²⁶³

In our view, inappropriate authorisation of foster carers poses significant risks to the safety of children in foster care. We consider that, together with other measures to promote appropriate authorisation of foster carers, applicant and authorised foster carers should be included on carers registers.

Relative/kinship carers: Relative/kinship carers are relatives (other than a parent) considered to be family, or members of the child or young person's community (according to their culture) who provide home-based care. Relative/kinship carers may provide statutory or supported out-of-home care.²⁶⁴

Summoned data suggested that approximately 20 per cent of child sexual abuse reports concern children and young people in relative/kinship care.²⁶⁵ While this was a lower proportion than reports from foster care and residential care, we also heard concerns that 'weaknesses'²⁶⁶ in screening and assessment – or 'less rigorous monitoring'²⁶⁷ – of relative/kinship care may result in children being placed in unsafe environments. We note the concerns of some stakeholders and research suggesting that relative/kinship care placements can carry the same risks as foster and residential care placements, and may pose some additional risks to children.²⁶⁸

Some stakeholders consider that to protect children from those risks, prospective relative/kinship carers should be subject to assessment and authorisation processes as robust as those that apply to foster and residential carers. The Centre for Excellence in Child and Family Welfare told us:

In some extended families, a child may be exposed to the original abuser or other abusive individuals. Not all extended families can therefore provide safe care for children. This level of risk should necessitate careful assessment of all prospective family carers before a child is placed with them.²⁶⁹

We were told that the prospect of being included on carers registers, together with the imposition of standardised and more stringent carer authorisation requirements, may deter some potential carers. This may be particularly problematic in relation to relative/kinship carers, potentially diminishing an already insufficient pool of people who are willing to provide such care.²⁷⁰ Barnardos Australia expressed concern that:

A highly bureaucratic system may prove to be a disincentive for many potential carers because of requirements to complete multiple administrative procedures. We are concerned with its impact on Aboriginal people coming forward to care and this is particularly important in recruiting kin carers.²⁷¹

Similarly, the Queensland Family and Child Commission told us that ‘the register may deter prospective kinship carers who already feel the assessment process is overly intrusive’.²⁷²

However, other comments by stakeholders on the risk of sexual abuse in relative/kinship care lend support to including relative/kinship carers on carers registers. For example, CareSouth submitted:

Of concern ... is the lower standards of screening and oversight for kinship carers. Given the incidence of sexual abuse within families, and the new directions in out-of-home care policy which promote kinship care above other forms of foster care, this appears to be an area where risk will escalate.²⁷³

Professor Muriel Bamblett, CEO of the Victorian Aboriginal Child Care Agency (VACCA), gave evidence about the need for the same standards of assessment and authorisation of Aboriginal and Torres Strait Islander relative/kinship carers as other carer types:

I think sometimes for Aboriginal kinship care, there seems to be less standards ... For us as Aboriginal people, we say we want child safety; we want wellbeing; we want the same standards for all children, and our children have a right to those same standards.²⁷⁴

VACCA’s submission noted that while it supports sharing of information and transparency, ‘the sharing of information with carers can pose privacy and confidentiality issues within the Aboriginal community’.²⁷⁵

We consider that, given the potential risk to children arising from inappropriate authorisation of relative or kinship carers, applicant and authorised relative/kinship carers providing statutory or supported out-of-home care should be included on carers registers.

Residential care staff: Residential care staff support children as paid staff in residential facilities.²⁷⁶ Residential care may be provided for children in statutory or voluntary out-of-home care. The discussion here concerns residential staff in statutory out-of-home care. The discussion later in this section concerns carers generally, and includes residential care staff in statutory or voluntary out-of-home care.

As discussed in Volume 12, *Contemporary out-of-home care*, requirements for authorisation of residential carers vary across jurisdictions. Jurisdictions also differ as to whether residential carers are recorded on a central register or database.

According to Australian Institute of Health and Wellbeing data, only 5 per cent of all children in out-of-home care in Australia were living in residential care as at 30 June 2016.²⁷⁷ However, a number of reports have identified the comparatively high rates of child sexual abuse in residential care. The government and non-government agency data we received indicated that 33 per cent of sexual abuse reports, where the care type was known, were about the abuse of children in residential care.²⁷⁸ In a 2010 report, the Victorian Ombudsman noted:

The department's *Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007* demonstrates that a disproportionate number of allegations of abuse in out of home care have arisen in residential care. While only seven per cent of the out of home care population were living in residential care at the time of the analysis, 35 per cent of possible abuse in care allegations related to this placement type.²⁷⁹

The report also found that 'Children with the most complex behaviours and needs often end up in residential care'.²⁸⁰ Our examination of contemporary out-of-home care systems in Australia has shown that the factors that disproportionately affect children in out-of-home care – such as disability, previous experiences of abuse and/or neglect, social or economic deprivation, family trauma and dislocation from family – can also increase the risk of child sexual abuse.²⁸¹ As discussed in Volume 12, we heard that these risks are much higher when out-of-home care is provided in residential care settings.

The risks associated with residential care appear to be higher for children with disability. Our commissioned research on risk typologies identifies children with physical and intellectual disability in residential facilities as being in the highest category of situational risk, as well as in the highest category of vulnerability risk.²⁸²

Data from the New South Wales Ombudsman indicates that children with disability are significantly over-represented in connection with reportable conduct notifications.²⁸³ In Volume 12, we discuss the systemic factors that can increase the vulnerability of all children in residential care. These include the high turnover of staff, the use of casual labour and staff who lack the skills and experience to work with adolescents. We also note the form of residential care itself may present a risk as 'uniformity, control and surveillance' are prioritised over 'care, development and individuality and the emergence of separate and divisive staff and resident cultures'.²⁸⁴

In its 2015 report, *"...as a good parent would...": Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, the Victorian Commission for Children and Young People examined the adequacy of residential care services for Victorian children, including children with disability, who had been sexually abused or sexually exploited

while in residential care. The report noted the risks arising from the ability of potential offenders to move undetected between different vulnerable groups – for example, ‘between aged care, disability and children’s sectors’.²⁸⁵

The New South Wales Carers Register does not currently include residential care staff. However, we understand the feasibility of developing a register of workers engaged in statutory residential care settings is under consideration.²⁸⁶ In Victoria, the carers register includes residential care staff, although we were told that the information it contains is limited in scope and focuses primarily on whether a carer is disqualified.²⁸⁷

In our view, there is sufficient indication of risk to justify the inclusion of residential care staff on all jurisdictional carers registers.

Carers or staff providing voluntary out-of-home care: Voluntary out-of-home care is usually arranged between a parent and a non-government organisation in circumstances where there are no orders for the child to be in care and no, or minimal, child protection concerns. In these cases, the parent retains guardianship and may have the child returned to their care at any time. Voluntary out-of-home care is provided in different forms, including centre-based respite care, host family-based care or care in a residential facility.²⁸⁸

While voluntary out-of-home care is usually arranged on an informal basis, in New South Wales it is regulated by the New South Wales Children’s Guardian. However, carers in voluntary out-of-home care are not included on the New South Wales Carers Register, and there are no authorisation requirements for individuals providing this type of care.²⁸⁹

The New South Wales Government submitted that there would be value in considering whether voluntary out-of-home care carers should be included on the carers register.²⁹⁰

The variability of voluntary out-of-home care arrangements both within and across jurisdictions, and limited regulation and oversight in some jurisdictions, may make some voluntary out-of-home care arrangements difficult to identify. To include the providers of voluntary out-of-home care on carers registers, governments would need to consider how these arrangements could be identified, including following changes to funding and oversight of disability services as a result of the National Disability Insurance Scheme (NDIS).

We understand that many children with disability use voluntary out-of-home care. Data from the New South Wales Children’s Guardian indicates that in 2015–16, about 86 per cent of children who accessed voluntary out-of-home care in the state had disability.²⁹¹

Given that children with disability may be at greater risk of sexual abuse than their peers,²⁹² governments could consider the need for minimum assessment and authorisation of carers of children with disability when institutions provide this form of voluntary out-of-home care. This would both facilitate these carers’ inclusion on carers registers and enhance the safety of children with disability in voluntary out-of-home care.

Minimum national consistency in the inclusion of carer types on carers registers: We discussed earlier the need for a minimum set of nationally consistent key elements for jurisdictional carers registers. In our view, jurisdictional carers registers should also be consistent in carer types, and should include:

- foster carers
- relative/kinship carers
- residential care staff.

In Volume 12 we consider the importance of carer assessment and authorisation requirements in managing risks to the safety of children in care. We have recommended that foster and relative/kinship carers and residential care staff be subjected to minimum assessment and authorisation requirements. Including these carers on a register will assist in ensuring consistency in assessment, and compliance with minimum assessment and authorisation requirements. While including carers in voluntary out-of-home care could also be considered, we note the significant challenges this may present.

Requirements to record, check and seek carer history information

Existing carers registers (and child protection agency databases) that enable out-of-home care agencies to ascertain or confirm carer status play an important role in protecting children in out-of-home care. Carers registers can also operate to promote children's safety by making a range of relevant information available to those who need it. Information including relevant history of applicant and authorised carers, and others residing on the same property, can contribute to better decision-making about carer suitability and placement safety.

In our view, carers registers should have a minimum level of national consistency in the types of information they hold about: ²⁹³

- individuals who apply to be or are authorised as relative/kinship carers, foster carers or residential care staff
- persons residing on the same property as applicant and authorised foster and relative/kinship carers (we also refer to this group as household members).

The New South Wales Carers Register captures basic information about some children because it records information about persons over the age of 16 residing on the same property as the applicant and authorised carers.²⁹⁴ Information about children in statutory out-of-home care is not recorded on the register.²⁹⁵ Given the already high level of institutional intrusion into the lives of children in care, we do not believe they should be included in carers registers as 'other household members' even if they are older than 16 years. Any concerns about risks presented by a child in care should be documented in other records held by the child protection agency

and/or out-of-home care service provider with case management responsibility. It is important that relevant information is shared with carers to assist them in making informed decisions to accept placements, and in managing risks to other children in their household.

We recognise that the recording and sharing of personal and sensitive information will raise concerns about privacy. To mitigate these concerns, and to minimise technical complexity and administrative burden, carers registers should record essential information in minimum detail. As the New South Wales Government told us:

One of the strengths of the NSW carers register is that it contains only a minimum level of information about individual carers, sufficient to alert an OOHC [out-of-home care] agency as to whether further inquiries into any risks previously noted about a carer are necessary. It is considered that this minimum level of data would be the most efficient and effective model to apply nationally.²⁹⁶

Types of information recorded and shared

In New South Wales, out-of-home care agencies must record specified information on the carers register about applicant carers, and others residing on the same property, as part of the authorisation process.²⁹⁷ Out-of-home care agencies are also required to update information on the carers register, following authorisation, as part of their supervision of carers.²⁹⁸

As part of their assessment of applicant carers, out-of-home care agencies must check the carers register for previous carer history. Requirements for recording and updating information on the register mean that essential carer history information is made available to out-of-home care agencies assessing carer applications.

Current or prior association with an out-of-home care agency: The carer history information recorded on the New South Wales Carers Register allows out-of-home care agencies to identify whether an applicant carer they are assessing, an authorised carer under their supervision, or a person residing on the same property:

- has previously been authorised or sought authorisation by another out-of-home care agency in New South Wales
- is a current or past resident on the same property as another person who has been authorised or sought authorisation by another out-of-home care agency in New South Wales.

Out-of-home care agencies assessing a carer application are required to seek further relevant information held by other out-of-home care agencies, using Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (Chapter 16A), where such an association with another out-of-home care agency is indicated.²⁹⁹

Withdrawal or refusal of application, cancellation or surrender of authorisation:

The New South Wales Carers Register requires out-of-home care agencies to indicate whether a carer's application for authorisation has been:

- withdrawn 'with concerns'³⁰⁰
- refused because the person is unsuitable to be a carer.³⁰¹

Out-of-home care agencies are also required to indicate whether a carer's authorisation has been cancelled or surrendered 'with concerns'.³⁰² These are concerns the agency has about a person's suitability to care for a child or to reside on the same property as an authorised carer. This is information the agency would disclose to another out-of-home care agency at their request.³⁰³

Out-of-home care agencies assessing a carer application are required to use Chapter 16A to seek further information from the relevant out-of-home care agency about an application that has been refused or withdrawn, or an authorisation that has been cancelled or surrendered in these circumstances.³⁰⁴

Reportable conduct allegations: We have considered the need for carers registers to specifically capture complaints or allegations against applicant and authorised carers, their household members, and residential care staff. Responding to our *Information sharing* discussion paper, the New South Wales Government submitted that 'the inclusion of all complaints [on jurisdictional carers registers] may be excessive'.³⁰⁵ We agree. In our view, including reportable conduct allegations on jurisdictional carers registers, including those related to child sexual abuse, would be more useful.

Reportable conduct schemes oblige heads of certain institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. Conduct that is reportable generally includes abuse or neglect of a child, including sexual abuse, physical abuse and psychological abuse.³⁰⁶ In Volume 7, *Improving institutional responding and reporting* we make recommendations for the implementation of nationally consistent legislative reportable conduct schemes, based on the approach adopted in New South Wales (see Recommendation 7.9).

Recording and accessing reportable conduct allegations on the New South Wales Carers Register

Out-of-home care agencies investigating an allegation of reportable conduct against an authorised carer under their supervision, or against a household member of that carer, must record the date of the allegation and its status as current on the New South Wales Carers Register.³⁰⁷ After completing an investigation into a reportable conduct allegation, the responsible out-of-home care agency must record that the investigation has been finalised, and whether the agency has concerns arising from the investigation.³⁰⁸ An agency may determine that the person the subject of the allegation poses, or may pose, an ongoing risk to children in care even when the allegation was not sustained.³⁰⁹ This serves as an information sharing flag for other out-of-home care agencies to seek that information.

The New South Wales Ombudsman, who has oversight of reportable conduct investigations, can also review records of current and finalised reportable conduct matters on the register. The carers register will flag that the New South Wales Ombudsman's office should be contacted for further information about current or finalised reportable conduct allegations where there are sensitivities – for example, due to an ongoing police investigation.³¹⁰

Where the Ombudsman becomes aware of risk-related information about a carer who works, or has worked, with children in a different sector, the Ombudsman is able to direct the Children's Guardian to flag this on the register.³¹¹

Out-of-home care agencies will also receive an alert to notify them of reportable conduct allegations against a household member of an applicant or authorised carer they are assessing or supervising who is a carer under the supervision of a different out-of-home care agency.³¹²

Out-of-home care agencies that access reportable conduct records related to the applicant carers they are assessing, carers under their supervision, or their household members, can only view records on the date and status of reportable conduct allegations. Status is marked as either current or finalised, with concerns. Out-of-home care agencies are required to seek further information about these matters, under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), from the out-of-home care agency responsible for the reportable conduct record. They are also required to seek further information from the Ombudsman's office where relevant.³¹³

In our view, the New South Wales Carers Register model for recording and sharing information about reportable conduct allegations has a number of benefits, including:

- a minimum level of essential information is recorded and made available – specific details of allegations are not held on the register, and complaints falling outside the parameters of reportable conduct (not related to carer suitability) are excluded³¹⁴

- permanent records of finalised allegations are kept on the register where the out-of-home care agency responsible for the investigation decides they should be flagged for information sharing because there are, or may be, ongoing risks that other out-of-home care agencies may need to know about.³¹⁵ Where there are no such concerns, records relating to finalised reportable conduct allegations cannot be viewed by other agencies³¹⁶
- information sharing flags direct agencies that need further information related to an applicant carer they are assessing, or an authorised carer under their supervision, to seek that information from the relevant responsible body
- the risk that information sharing will compromise police investigations or prosecution is addressed by the reportable conduct oversight body.

In our view, nationally consistent reportable conduct schemes should operate as a critical plank of the regulatory framework to protect children in care. In the absence of such schemes, inconsistencies within and across jurisdictions in the recording of allegations on carers registers, and in their interpretation, may limit the value of that information in assessing carer suitability and placement safety.

Recommendation 8.19

State and territory governments should consider the need for carers registers to include, at a minimum, the following information (register information) about, or related to, applicant or authorised carers, and persons residing on the same property as applicant/authorised home-based carers (household members):

- a. lodgement or grant of applications for authorisation
- b. status of the minimum checks set out in Recommendation 12.6 as requirements for authorisation, indicating their outcomes as either satisfactory or unsatisfactory
- c. withdrawal or refusal of applications for authorisation in circumstances of concern (including in relation to child sexual abuse)
- d. cancellation or surrender of authorisation in circumstances of concern (including in relation to child sexual abuse)
- e. previous or current association with an out-of-home care agency, whether by application for authorisation, assessment, grant of authorisation, or supervision
- f. the date of reportable conduct allegations, and their status as either current, finalised with ongoing risk-related concerns, and/or requiring contact with the reportable conduct oversight body.

Compliance with minimum assessment and authorisation requirements

Jurisdictional carers registers are likely to promote children's safety in out-of-home care more effectively if they operate beyond databases of carer records to function as legislatively mandated tools for implementing minimum carer assessment and authorisation requirements.

All jurisdictions already require fairly extensive screening and authorisation of out-of-home carers, although the requirements vary between jurisdictions and across different types of carers (see Volume 12, *Contemporary out-of-home care* for a detailed discussion of variations). Variation in carer assessment and authorisation requirements can create operational challenges for agencies that need to address risks posed by the movement of potential perpetrators between jurisdictions.

Differences in jurisdictions' regulatory requirements – and variations in policy and practice within jurisdictions – may make the recording of equivalent information on carers registers, and the interpreting of different assessment information obtained from carers registers, difficult. This is likely to limit the potential of registers to protect children in care.

Nationally consistent carer assessment and authorisation requirements will assist in this respect. In Volume 12, we identify the minimum processes and checks that should be undertaken for authorisation of foster and relative/kinship carers and residential care staff (see Recommendations 12.6 to 12.8). These include:

- probity checks and suitability assessment, including national police checks, Working With Children Checks, referee checks and community services checks
- checks for 'household members' (we recommend checks for persons over the age of 16 living on the same property as home-based carers)
- at least annual carer reviews (including review of risk management plans).

We recognise the need for expanded assessment of and support for relative/kinship carers, but also the challenges this may sometimes present. In Volume 12 we recommend the adoption of specific models of assessment appropriately tailored for relative/kinship care that will better identify the strengths as well as the support and training needs of relative/kinship carers and enable the development of appropriately resourced plans to support the placement.

In our view, nationally consistent carers registers should support the implementation of minimum assessment and authorisation requirements by obliging responsible agencies to record whether or not the requirements have been satisfied, and preventing authorisation where they have not been. The New South Wales Government told us that that the operation of the New South Wales Carers Register 'mandated licensing tool for the authorisation of carers ... has had a significant impact in helping to protect children in care'.³¹⁷ By operating as a mandated authorisation tool, carers registers can serve to both ensure agencies' compliance with their regulatory obligations, and assist them to prevent and respond to inappropriate authorisation.

Recommendation 8.20

State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies to:

- a. record register information in minimal detail
- b. record register information as a mandatory part of carer authorisation
- c. update register information about authorised carers.

Recommendation 8.21

State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies:

- a. before they authorise or recommend authorisation of carers, to:
 - i. undertake a check for relevant register information, and
 - ii. seek further relevant information from another out-of-home care agency where register information indicates applicant carers, or their household members (in the case of prospective home-based carers) have a prior or current association with that other agency
- b. in the course of their assessment, authorisation, or supervision of carers, to:
 - i. seek further relevant information from other agencies or bodies, where register information indicates they hold, or may hold, additional information relevant to carer suitability, including reportable conduct information.

State and territory governments should give consideration to enabling agencies to seek further information for these purposes under our recommended information exchange scheme (Recommendations 8.6 to 8.8).

Interconnected operation of carers registers and information exchange scheme

In our view, the interconnected operation of the New South Wales Carers Register and Chapter 16A strengthens agency capacity for risk management. For example, a carer de-authorised by one agency due to conduct that raised serious concerns but did not result in a criminal charge cannot be authorised by another agency without the two agencies discussing that person's suitability to be a carer.³¹⁸

Requirements similar to those just discussed for recording and checking carers register information, and seeking further information from relevant agencies and bodies, should be introduced in all jurisdictions to facilitate collaborative management of risks to children in care.

Out-of-home care agencies could be included in the range of prescribed bodies under our recommended information exchange scheme, for the purpose of exchanging information related to children's safety and wellbeing. Information exchanged under this scheme would include information relevant to incidents and risks of child sexual abuse in institutional contexts (see Chapter 3). The operation of our recommended information exchange scheme could support a requirement that out-of-home care agencies seek further information from agencies holding records of relevant carer history.

Access to register information

Making relevant register information available to agencies or bodies with responsibilities related to carer suitability will help to ensure that those who pose risks to children's safety are not authorised as carers. We have taken the roles and responsibilities of different agencies and bodies into account in considering their need for access to register information.

Regulatory and structural arrangements for out-of-home care vary considerably between jurisdictions. Variations include in the roles and responsibilities of government and non-government organisations, and arrangements for monitoring, oversight and accountability in relation to out-of-home care service provision.³¹⁹ Some variation in arrangements for access to register information will be required to accommodate such jurisdictional differences. This should not, however, compromise the basic level of consistency required for certain essential purposes – for example, to ensure those responsible for authorisation have adequate access to register information, and for registers' inter-jurisdictional utility.

In summary, it is our view that state and territory legislative and administrative arrangements should enable the following agencies to access or obtain register information:

- agencies responsible for assessing or authorising carers that need register information relating to prospective carers
- agencies that need register information relating to carers they supervise
- other agencies, such as jurisdictional child protection agencies and regulatory and oversight bodies, that need register information relevant to the exercise of their responsibilities related to suitability of carers and safety of children in out-of-home care.

These agencies and bodies should be able to access or obtain information from the carers registers in their own and in other jurisdictions, where that information is relevant to the performance of their responsibilities for children's safety in out-of-home care.

Agencies with responsibilities for assessing, authorising, or supervising carers: Sharing register information with agencies responsible for assessing, authorising or supervising carers can help those agencies to make better decisions about carer suitability and to manage risks that may arise in placements with authorised carers.

Responsibility for assessing, authorising and supervising carers varies across jurisdictions. For example, in New South Wales, accredited non-government out-of-home care agencies and the jurisdictional child protection agency, in its capacity as an accredited out-of-home care service provider, are responsible for assessing and authorising the carers they supervise.³²⁰ These agencies are required to record and access specified information on the Carers Register for the purposes of carer authorisation.³²¹ They are also required to update information on the Carers Register, following authorisation, as part of their supervision of carers.³²² In contrast, in Western Australia, the Foster Carers Directory is located within the Department for Child Protection.³²³ Out-of-home care service providers can only access the Directory via the Custodian of the Directory, and information can only be recorded on the Directory if it is submitted to the Custodian using the Directory's template documents.³²⁴

In Queensland, non-government organisations assess carer applicants and make recommendations regarding their suitability but do not make final approval decisions – these are made by the jurisdictional child protection agency.³²⁵ We were told that for this reason, access to a carers register for those authorising carers 'may prove problematic' in that state.³²⁶

Regulators and oversight bodies: Sharing relevant register information with regulatory and oversight bodies will support the complementary operation of different regulatory schemes designed to protect children, including children in care. In New South Wales, the Office of the Children's Guardian, as the authority maintaining the Carers Register, has direct access to the register. The Children's Guardian is obliged to provide the Ombudsman with access, on request, to information held on the Carers Register.³²⁷ This access complements the work of the Children's Guardian and the Ombudsman as the WWCC regulator and the reportable conduct oversight body, respectively.³²⁸

Jurisdictional child protection agencies and other agencies: Apart from any role in assessing, authorising or supervising carers, jurisdictional child protection agencies may need to access register information given their statutory responsibilities for children in out-of-home care. Other agencies with responsibilities related to children's safety in out-of-home care may also need register information. For example, the federal Department of Immigration and Border Protection submitted that a carers register would allow it and its service providers 'to better determine whether certain placements are suitable and in the best interests' of a child in the Unaccompanied Humanitarian Minors Programme.³²⁹ Our recommended information exchange scheme would enable other agencies that are prescribed bodies under the scheme to seek and obtain information from carers registers relevant to their responsibilities for children's safety and wellbeing.

We recognise that multiple-agency access to carers registers may create logistical challenges and security risks. The extent to which access is necessary or useful for the proper exercise of an agency or body's functions should be taken into account in determining their level of access (that is, whether all or only some of the available information should be accessible to them). It should also be taken into account in determining whether they should be able to directly access entries on the register, or whether the register body should provide relevant register information.

Direct access to register information has a number of benefits. These include reducing administrative burden for the register body by avoiding the need for it to act as a gatekeeper and assess information requests before providing register information. Direct access could also increase efficiency for bodies needing register information. However, providing direct access to the register is likely to add to concerns about information security, and to create additional challenges for oversight of the register.

Direct and more extensive access is likely to be more important for bodies responsible for authorising carers than for some others, such as reportable conduct oversight bodies. Special provisions for indirect access could ensure that register information is always provided on the request of certain bodies, such as relevant regulatory and oversight bodies.³³⁰ Those needing register information may also be able request it, when and as required, from the register body under our recommended information exchange scheme.

In noting its support for nationally consistent jurisdictional carers registers, the Western Australian Government observed that 'careful consideration must be given to the mechanisms required to enable access to relevant information by appropriate bodies'.³³¹ We agree. We note that, in particular, mechanisms for inter-jurisdictional access will require agreement by state and territory governments.

To promote efficiency and certainty, reduce complexity arising from different arrangements in each jurisdiction, and enhance registers' inter-jurisdictional utility, state and territory governments should work together to ensure a consistent approach is taken to inter-jurisdictional access to register information.

As discussed, developing adequate digital platforms to facilitate inter-jurisdictional sharing of information about carers is essential. We consider the implementation of jurisdictional carers registers, based on a minimum of nationally consistent features, to be an important and necessary step towards making relevant information available to those who need it across Australia.

Jurisdictional registers need not preclude the development of another digital information sharing platform to operate across jurisdictions – such a platform could be designed to build on carers registers in each state and territory. In the interim, arrangements for jurisdictional carers registers should allow relevant agencies and bodies – both within and outside that jurisdiction – to either directly or indirectly access register information, depending on need and feasibility. We note that logistical challenges and security concerns may be exacerbated with direct inter-jurisdictional access to carers registers.

Leaving aside digital solutions, it is important to provide clear legislative authority for inter-jurisdictional access to carers register information. Carers register legislation in each jurisdiction could enable relevant agencies and bodies from other jurisdictions to obtain information from the local carers register. Including register bodies, relevant regulatory and oversight bodies and out-of-home care agencies from each jurisdiction as prescribed bodies under our recommended information exchange scheme could also enable inter-jurisdictional sharing of register information either on an ad hoc or routine basis, in accordance with agreed protocols.

Recommendation 8.22

State and territory governments should consider the need for effective mechanisms to enable agencies and bodies to obtain relevant information from registers in any state or territory holding such information. Consideration should be given to legislative and administrative arrangements, and digital platforms, which will enable:

- a. agencies responsible for assessing, authorising or supervising carers
- b. other agencies, including jurisdictional child protection agencies and regulatory and oversight bodies, with responsibilities related to the suitability of persons to be carers and the safety of children in out-of-home care

to obtain relevant information from their own and other jurisdictions' registers for the purpose of exercising their responsibilities and functions.

Safeguards: accountability, information security and privacy obligations

There is a range of strategies that could be implemented to help address privacy concerns and promote accountability and information security in relation to carers registers.

If carers register information is shared under our recommended information exchange scheme it would be subject to the safeguards attached to that scheme. These measures may include restrictions on further use of information, and specific safeguards applying to the exchange of untested and unsubstantiated allegations (see Chapter 3).

Managing personal information in accordance with privacy laws

Most states and territories have privacy laws that apply to their public sector agencies, and would apply to the authorities responsible for maintaining carers registers in those jurisdictions.³³² In South Australia and Western Australia, such authorities would be subject to privacy obligations under administrative and policy directives.³³³ The *Privacy Act 1988* (Cth) applies to non-government out-of-home care agencies (with an annual turnover of more than \$3 million).³³⁴ In some cases, non-government out-of-home care agencies may also be subject to state or territory privacy laws in their jurisdiction.³³⁵ We discuss the operation of privacy laws in more detail in Chapter 3.

Consent: Laws permitting or requiring collection, use and disclosure of personal information on carers registers will override any inconsistent restrictions imposed by privacy laws. Our recommended law reforms for carers registers, together with laws establishing our recommended information exchange scheme, would overcome the need for consent for personal information on registers to be shared with out-of-home care agencies, child protection agencies and regulatory and oversight bodies across Australia. The law relating to consent and information sharing is discussed in Chapter 3.

As discussed, the Australian Government told us that developing the national register will involve establishing nationally consistent consent arrangements.³³⁶ The approach taken in New South Wales is to inform applicant and authorised carers and their household members about the recording and sharing of their personal information, rather than seeking consent.³³⁷ Apart from the question of legal necessity, we recognise the sensitivity of the issue of consent, especially with respect to household member information. Consent may be sought and obtained as a prerequisite for carer authorisation. However, consent as a prerequisite for authorisation will be more complicated in relation to existing carers. The need to minimise the potentially deterrent effect of this on suitable carers, both current and prospective, requires further consideration by jurisdictions.

Agencies responsible for maintaining carers registers and for collecting, using and disclosing register information will remain subject to privacy law obligations that do not conflict with their legislated carers register obligations. These include obligations to:

- ensure that an individual is informed about the collection, use and disclosure of their personal information, and about their right of access to and correction of that information
- take reasonable security measures to ensure personal information is protected against unauthorised access, use, modification or disclosure.³³⁸

The continued application of privacy law obligations will provide important safeguards for accountability, information security and privacy. Jurisdictional carers registers should have measures in place to ensure compliance with applicable privacy laws, and to guard against unfair damage to reputation. Such measures could include:

- ensuring that applicant carers and their household members are informed, at the time of assessment, of the recording and use of their personal information on carers registers
- allowing persons whose details are recorded to access, and seek correction of, their personal information on the register, provided that will not alert them to a reportable allegation and compromise investigations³³⁹

- requiring the register body and other agencies responsible for recording information on the register to amend (or request the register body to amend) the register if they become aware that information recorded about a person is incorrect³⁴⁰
- restricting access to the database, including by allowing only nominated personnel (with unique user identification) from each relevant authority to access, record, and amend information on the register in a secure environment³⁴¹
- providing the register body with the capacity to track and audit user access and additions, amendments and deletions to entries on the register where agencies have direct access to information on the register.

Child protection departments and out-of-home care providers need to be aware that foster carers and particularly kinship carers may experience registration requirements as intrusive. Agencies must diligently educate and support carers to understand the obligations imposed by the scheme and the protections available to them.

Progressing reform and supporting implementation

Considerable work will be required to develop and implement carers registers based on a nationally consistent model. This will include:

- developing the required information technology
- addressing data recording requirements and limitations (for example, availability and quality of data related to carers authorised prior to register commencement)
- establishing and implementing regulatory requirements to support register operation, including minimum consistent assessment authorisation requirements.

Following implementation, agencies will need to allocate resources to ensure ongoing compliance with register requirements. While Anglicare Sydney observed the New South Wales Carers Register was a ‘powerful tool’, it also commented that ‘systems such as the [New South Wales] Carers’ Register will only be effective where agencies are prepared to devote additional administration resources to ensure that such a Register is kept up-to-date and comprehensive.’³⁴² Other stakeholders expressed concern about the potential administrative burden.³⁴³ Smaller, community-based providers are particularly likely to lack administrative resources and may require investment by government in building administrative capacity.

The complementary and interconnected operation of regulatory and oversight schemes, reporting requirements and information sharing mechanisms is important to ensure the protection of children in care. At the same time, we recognise the need for caution in imposing increasingly complex and procedure-driven requirements on service providers where the cost-benefit may not be balanced to best serve the needs of children in care.³⁴⁴ The challenges for out-of-home care agency staff responding to allegations of child sexual abuse through multiple reporting and oversight mechanisms – including the jurisdictional carers register, Working With Children Checks, mandatory reporting, reportable conduct, and criminal reporting – while at the same time responding to the significant needs of an alleged victim of child sexual abuse cannot be underestimated.³⁴⁵ As discussed earlier, ensuring only minimal essential information is recorded on registers will help to contain the administrative burden, as well as minimising privacy concerns.

Development and implementation of jurisdictional carers registers will also need to anticipate and accommodate the potential development of new digital solutions for inter-jurisdictional exchange of carer-related information. As discussed, such solutions may include a national carers register or other platform that facilitates access to a wider range of information related to carer suitability on jurisdictional carers registers. This will be a significant factor to consider in any efforts to progress effective carers register reforms.

Guidelines, education and training: The implementation of nationally consistent carers registers in all jurisdictions – alongside nationally consistent reportable conduct schemes and our recommended information exchange scheme – may present significant challenges, particularly in those jurisdictions unfamiliar with such schemes.

In our view, governments, regulators and the out-of-home care sector should work together to develop clear and consistent guidelines for out-of-home care agencies on the operation of these schemes and on the use of sensitive information gathered through them. For example, the New South Wales Children’s Guardian has noted that ‘Clear business rules would be required to ensure that reportable conduct information is interpreted correctly’.³⁴⁶ The Queensland Family and Child Commission told us that if ‘circumstances of concern’ were to be relied on as an indicator for recording matters on carers registers, guidance would be required on what might constitute circumstances of concern, ‘particularly when looking to record information on registers which has not led to a conviction or formal outcome/decision’.³⁴⁷

Guidelines should assist out-of-home care agencies to fulfil their carers register and related obligations, including to:

- record assessment and authorisation requirements
- record reportable conduct allegations
- seek further information from other agencies and bodies (potentially under our recommended information exchange scheme)
- seek advice from the reportable conduct oversight body in relation to sensitive reportable conduct matters.

Guidelines should also provide specific guidance on matters such as:

- interpreting carers register information, including information about reportable conduct matters
- obligations and capacity for sharing register information relevant to child sexual abuse, including through our recommended information exchange scheme
- privacy safeguards, including privacy controls on access to the register, information security and management of personal information in accordance with applicable privacy laws.

Governments, regulators and the out-of-home sector should also work together to provide regular education and training to persons responsible for recording and accessing information on carers registers. This should:

- enhance understanding of, and confidence in, the operation of carers registers to reduce the risk of inappropriate authorisation and promote the safety of children in care
- encourage appropriate proactive information sharing, prompted by information on carers registers
- promote awareness of and improved practice with respect to privacy and information security.

Further consultation on the development and implementation of registers: To progress carers register reforms, states and territories should consult with carer representative bodies to address concerns that may be raised by carers and prospective carers. In addition, states and territories should consult with out-of-home care agencies, which will be subjected to carers register requirements, to address concerns about the time and resource cost and the need for support and capacity building for compliance. We agree with Anglicare Northern Territory that ‘Any register would need to be developed in collaboration with the sector to ensure that the administration burden is acceptable, and that issues of privacy and fairness are adequately explored’.³⁴⁸

At the same time, states and territories will need to work together to reach agreement on the changes to regulatory settings and information technology required to support a minimum level of consistency in the operation of jurisdictional carers registers. States and territories will also need to consult with the Australian Government about aligning development of jurisdictional carers registers with development of a complementary national register or other national digital information sharing platform. These consultations should consider:

- the need for, and feasibility of, retrospective capture of information about pre-existing authorised carers
- the need to minimise the potentially deterrent effect of carers registers on suitable prospective carers

- appropriate safeguards and mechanisms to address privacy and other concerns, including accountability, information security and accuracy
- the need for phased implementation of nationally consistent state/territory carers registers, development of a national register or other digital platform/s to facilitate inter-jurisdictional access to information on jurisdictional registers, and interim solutions for inter-jurisdictional information sharing through state/territory registers
- the feasibility of including on carers registers those carers working for institutions providing voluntary out-of-home care to children with disability, and the implications of this for regulatory alignment of assessment and authorisation.

The Inter-jurisdictional Carer Information Sharing Project, discussed earlier, may provide an appropriate mechanism to progress intergovernmental discussions, as well as consultations with carer representative bodies and out-of-home care agencies on carers register reforms.

The challenges of establishing and operating jurisdictional carers registers based on a nationally consistent model will be significant. However, we also note the evidence and information before us about the vulnerability of children in care, and the need for effective information sharing mechanisms to reduce the risk of inappropriately authorised carers. We believe that the investment required to implement such jurisdictional carers registers, with intra- and inter-jurisdictional information sharing capability, is warranted by the significant potential for such registers to promote the safety of children in care.

Recommendation 8.23

In considering the legislative and administrative arrangements required for carers registers in their jurisdiction, state and territory governments should consider the need for guidelines and training to promote the proper use of carers registers for the protection of children in out-of-home care. Consideration should also be given to the need for specific safeguards to prevent inappropriate use of register information.

4.5 Information sharing in other sectors

4.5.1 Registers in the religious and sport and recreation sectors

In Chapter 3, we discussed the need for information sharing to prevent and respond to child sexual abuse in religious institutions and in sport, recreation, arts, culture, community and hobby groups. In our case studies we heard evidence about registers that have been established in these sectors to facilitate the collection and sharing of information relevant to child sexual abuse. Registers may serve to promote children's safety by assisting in the detection of potential perpetrators moving within or between organisations and jurisdictions.

In *Case Study 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse* we were told that Football Federation Australia manages a national database that all state and territory bodies in the federation can access.³⁴⁹ This database facilitates information sharing to ensure that a person who has been suspended in one state or territory cannot be registered in another. Football NSW also maintains a database of unsuitable or suspended persons – the 'Suspended Persons Register'.³⁵⁰ We also heard evidence about Tennis Australia's database, and the challenges the organisation has experienced in collecting information (see Chapter 3). Tennis Australia told us that it has 'established a new integrity unit that will oversee a review and implementation of a national database of prohibited people'.³⁵¹

In *Case Study 48: Institutional review of Scouts and Hunter Aboriginal Children's Service* we heard that Scouts Australia has established a 'National Flag Database' that provides information about individuals considered not suitable for scouting. We heard that all branches of Scouts Australia have access to and contribute to this database.³⁵²

In the religious sector, we heard in *Case Study 52: Institutional review of Anglican Church institutions* that the Anglican Church has established a national register. This operates as a 'screening tool to assist bishops and other diocesan leaders consider all the information necessary when they are considering appointing people to positions within their diocese'.³⁵³

In 2016, the Catholic Church in Australia announced its own national screening tool for those exercising ministry – the Australian Catholic Ministry Register (ACMR). The ACMR is an online system that allows the Catholic Church Authority to verify whether a 'priest or male religious' has a Working With Children Check and has been 'licensed' to work in a diocese or congregation, and to facilitate their safe transfer and appointment.³⁵⁴ In *Case Study 50: Institutional review of Catholic Church authorities* we heard the ACMR was in its 'embryonic stage'.³⁵⁵ A number of Catholic Church authorities gave evidence in that case study that they are or will be participating in the ACMR.³⁵⁶

As we discuss in Volume 16, *Religious institutions*, a number of religious institutions examined by the Royal Commission coordinate and organise on a national level. People in religious ministry in religious organisations can move between affiliated institutions and services provided under the umbrella of that organisation, including between jurisdictions. National registers can help to overcome cultural and structural barriers to sharing information about people in religious ministry for the purposes of risk management and ensuring children's safety.

For this reason, in Volume 16 we recommend that each religious organisation consider establishing a national register that records limited but sufficient information to assist affiliated institutions identify and respond to any risks to children that may be posed by people in religious or pastoral ministry (Recommendation 16.61).

We recognise that for small institutions without an overarching national, state or territory body, registers may not be an appropriate or achievable means of collecting and exchanging information related to child sexual abuse. It may be difficult to develop and maintain well-functioning, accurate and up-to-date registers in the absence of regulatory or registration authorities and underpinning legislative frameworks. Unregulated registers may raise concerns about privacy, accountability, data integrity and accuracy, information security, fairness and unfair reputational damage. Without regulatory requirements and sufficient resourcing for recording and updating information, registers may become unreliable. For example, in *Case Study 3: Anglican Diocese of Grafton's response to child sexual abuse at the North Coast Children's Home* we heard about difficulties with the Anglican Church's national register, which did not contain information on known and alleged offenders. A significant backlog of files to be reviewed meant that the register was not up to date.³⁵⁷

Registers established by religious organisations should be developed and implemented on the basis of legal advice and in consultation with relevant bodies to ensure that concerns about privacy, reliability, security and use of information on the register, as well as fairness to those affected, are addressed.

Endnotes

- 1 This includes evidence from our case studies and information from private sessions, stakeholder consultations and our commissioned research.
- 2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, p 11.
- 3 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, pp 11, 63.
- 4 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, p 11.
- 5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, pp 63–4.
- 6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, p 66.
- 7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, p 70.
- 8 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, p 71.
- 9 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2016, pp 71–2. After our report into this case study was published significant new information came to our attention. This indicated that – prior to the events outlined in the summary above – Mr Lynch was sentenced for two counts of indecent assault against a male person (whom we are satisfied was a child) in New South Wales and was subsequently dismissed from a position with the New South Wales Department of Education. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 34: Supplementary report to the response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse*, Sydney, 2017, pp 10–11. See also Volume 13, *Schools*.
- 10 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, p 16.
- 11 Anglican Schools Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, p 2.
- 12 In some jurisdictions, registers also record information about workers in the early childhood sector. See, for example, *Teachers Registration and Standards Act 2004* (SA) ss 3 ('prescribed service'), 28(1); *Education and Training Reform Act 2006* (Vic) ss 1.1.3 ('registered teacher'), 2.6.24. This chapter does not deal with information sharing in this context. We note that the *Education and Care Services National Law* provides a clear framework for information sharing in the early childhood sector, both between agencies and across jurisdictions: C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 95.
- 13 There is, however, provision for short term permits in each jurisdiction 'to address workforce shortages and the need to place trainee teachers': C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 100.
- 14 Australian Institute for Teaching and School Leadership Limited, *Nationally consistent registration for all teachers*, 2017, www.aitsl.edu.au/teach/start-your-career/registration/nationally-consistent-teacher-registration (viewed 30 August 2017).
- 15 Australian Institute for Teaching and School Leadership Limited, *Annual report 2015–16*, Melbourne, 2017.
- 16 Australian Institute for Teaching and School Leadership Limited, *Nationally consistent registration for all teachers*, 2017, www.aitsl.edu.au/teach/start-your-career/registration/nationally-consistent-teacher-registration (viewed 30 August 2017).
- 17 Australian Institute for Teaching and School Leadership Limited, *Nationally consistent registration for all teachers*, 2017, www.aitsl.edu.au/teach/start-your-career/registration/nationally-consistent-teacher-registration (viewed 30 August 2017).
- 18 Australian Institute for Teaching and School Leadership Limited, *Nationally consistent registration for all teachers*, 2017, www.aitsl.edu.au/teach/start-your-career/registration/nationally-consistent-teacher-registration (viewed 30 August 2017).
- 19 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 108.
- 20 See, for example, *ACT Teacher Quality Institute Act 2010* (ACT) ss 30(2)–(3), 45, 51(2) and *ACT Teacher Quality Institute Regulation 2010* (ACT) reg 6.
- 21 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 99.
- 22 Australian Institute for Teaching and School Leadership Limited, *Nationally consistent registration for all teachers*, 2017, www.aitsl.edu.au/teach/start-your-career/registration/nationally-consistent-teacher-registration (viewed 30 August 2017).
- 23 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 100.
- 24 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 108.

25 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.

26 For example, the Truth, Justice and Healing Council stated that it is ‘strongly of the view that teacher registration bodies should maintain an expanded and consistent amount of information about registered teachers that is capable of being shared with equivalent bodies in other jurisdictions and with current and prospective employers’: Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10. See also Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8; Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 12, 14.

27 For example, Independent Education Union Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017; Independent Education Union NSW/ACT Branch, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017.

28 The Independent Education Union Australia told us that it is their responsibility to protect the ‘welfare, employment, reputation and careers’ of members and stressed the importance of review and appeal processes: Independent Education Union Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 20.

29 Another significant difference relates to the New South Wales legislation which uniquely provides for teacher accreditation authorities in addition to the registration authority. The Secretary of the Department of Education, or a person or body approved by them, is the teacher accreditation authority for government schools. The Minister for Education, or a person or body approved by them, is the teacher accreditation authority for non-government schools. The NSW Education Standards Authority (‘NESA’), the registration authority, is the teacher accreditation authority in relation to provisional or conditional accreditation: *Teacher Accreditation Act 2004* (NSW) s 4(1A)(a).

30 Contrast, for example, the *Education (Queensland College of Teachers) Act 2005* (Qld) ss 97–8, and *Education and Training Reform Act 2006* (Vic) ss 2.6.3 and 2.6.30.

31 ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

32 *Education and Training Reform Act 2006* (Vic) s 2.6.54C.

33 The registering authority may take the following disciplinary actions in relation to a teacher’s registration under *Teacher Registration (Northern Territory) Act* (NT) ss 53(1), 64(1): impose or vary conditions on registration, suspend or cancel registration, or disqualify a teacher from registration.

34 *Teacher Registration (Northern Territory) Act* (NT) s 26.

35 Independent Education Union Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 15. It also notes that the registers will not cover staff who are not members of the teacher registration and licensing authority by nature of their employment.

36 Queensland College of Teachers, *Annual report 2016*, Queensland College of Teachers, Brisbane, 2016, p 27.

37 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016 p 106. For further information about the Victorian Register of Disciplinary Action, see State Government of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, p 20.

38 *Education and Training Reform Act 2006* (Vic) ss 2.6.25(2), 2.6.54B(3).

39 *Education (Queensland College of Teachers) Act 2005* (Qld) s 289.

40 Queensland College of Teachers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 7–8.

41 The register is the ‘accreditation list’ in NSW: *Teacher Accreditation Act 2004* (NSW) s 18.

42 *Education and Training Reform Act 2006* (Vic) s 2.6.54E.

43 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 108.

44 See, for example, *Teachers Registration Act 2000* (Tas) s 25; Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 18.

45 In the remaining states and territories, WWCCs can be limited to specific roles or subject to conditions.

46 NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of Child Sexual Abuse in Schools*, 2015, p 21; Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 18.

47 See Recommendations 7.9–7.12 in Volume 7, *Improving institutional responding and reporting*.

48 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 108. The language around cancelling registration can vary across jurisdictions. In our discussion, reference to cancellation includes similar actions such as revocation, cessation and disqualification from teaching.

49 *Teachers Registration Act 2000* (Tas) s 25(2)(b). See also *ACT Teacher Quality Institute Act 2010* (ACT) s 43(1)(a);
Education (Queensland College of Teachers) Act 2005 (Qld) s 288(3)(b).

50 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion*
paper: Strengthening information sharing arrangements, 2017, p 8.

51 *Teacher Accreditation Act 2004* (NSW) s 18(1)(d) and *Teacher Accreditation Regulation 2015* (NSW) reg 4(c); *Education*
(Queensland College of Teachers) Act 2005 (Qld) s 288(3)(p); *Teacher Registration (General) Regulations 2012* (WA)
 reg 21A(e) ('insofar as that information is known' to the registering authority).

52 *ACT Teacher Quality Institute Act 2010* (ACT) s 43(1)(b). See also *Teacher Registration (Northern Territory) Act* s 26(2)(b);
Teachers Registration and Standards Act 2004 (SA) s 28 (2)(a). The South Australian legislation provides the register must
 include a registered person's 'business address (if any)' – this provision appears to capture the address where they teach.

53 See, for example, *Teachers Registration Act 2000* (Tas) s 14(2)(b); *Education and Training Reform Act 2006* (Vic)
 s 2.6.21A; Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6.

54 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 6. See also Queensland College of Teachers,
 Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening*
information sharing arrangements, 2017, p 10.

55 'Tracking teachers who are employed casually by a number of employers can also be challenging. NSW is able to
 track the employment status of casual teachers working in government schools through a data exchange. NESA [NSW
 Educational Standards Authority, the registration authority] is working with Catholic systemic employers to establish a
 similar data sharing arrangement. This improves the quality and accuracy of information about teachers' employment
 patterns': NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 8.

56 The information exchange with the Department of Education in relation to teachers' employers was due to come into
 operation in February 2017: Queensland College of Teachers, Submission to the Royal Commission into Institutional
 Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.
 The QCT notes that there is, however, a limit to the extent to which registration authorities can ensure the accuracy
 of information on the register, particularly in relation to temporary or casual teachers: p 10.

57 The NSW Ombudsman told us that, in NSW, the Department of Education may temporarily revoke a teacher's casual
 approval while an investigation is being undertaken, and list them on the Department's centralised 'not to be employed'
 list until the investigation is finalised. This approach ensures that a casual teacher who is the subject of an allegation will
 not be able to work in any government schools during the investigation period. However, teachers may be approved to
 work in more than one school sector simultaneously. Consequently, there is a risk that a person could continue to work
 in a Catholic or independent school while an investigation is underway, despite being placed on the 'not to be employed'
 list: NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues*
paper No 9: Risk of child sexual abuse in schools, 2015, p 26.

58 In New South Wales, 'employment history' must be included on the register: *Teacher Accreditation Act 2004* (NSW)
 s 18(1)(d) and *Teacher Accreditation Regulation 2015* (NSW) reg 4(d).

59 Such an enquiry could be made under our recommended information exchange scheme or consistently with privacy
 legislation.

60 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion*
paper: Strengthening information sharing arrangements, 2017, p 6. See also Northern Territory Government, Submission
 to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information*
sharing arrangements, 2017, p 12. The ACT Teacher Quality Institute also noted the costs associated with 'transferring
 years of manual records to current teacher registers'. It commented collecting historic employer details is problematic
 due to varying commencement dates of teacher regulation across jurisdictions; and that it is preferable 'to set a start date,
 say employer details from at least 1 January 2011. Employers should have employment details available on personnel
 files or payroll databases, if required'. ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional
 Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

61 For example, *ACT Teacher Quality Institute Act 2010* (ACT) ss 43(1)(m)–(n); *Education (Queensland College of Teachers)*
Act 2005 (Qld) ss 288(3)(n)–(o).

62 *Education (Queensland College of Teachers) Act 2005* (Qld) s 288(3)(m).

63 *Education and Training Reform Act 2006* (Vic) s 2.6.54C.

64 *Education (Queensland College of Teachers) Act 2005* (Qld) s 288(5).

65 *Teacher Registration (Northern Territory) Act* (NT) s 69(4). See also *Education and Training Reform Act 2006* (Vic) s 2.6.54C.

66 *Teacher Registration (Northern Territory) Act* (NT) s 26(4). See also *Teachers Registration Act 2000* (Tas) s 25(2).

67 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse,
Discussion paper: Strengthening information sharing arrangements, 2017, p 8.

68 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

69 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual
 Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 18.

70 ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10. The Northern Territory Government, however, noted the difficulty in capturing resignations related to untested or unsubstantiated allegations. Its submission notes that ‘the principles of natural justice would need to be considered, which could require giving a person who resigns, or is offered the opportunity to resign when investigations have not been completed, a right of reply prior to information being placed on a register regarding the resignation’: Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.

71 For example, in Victoria, there are obligations on registered teachers, teachers’ employers and the Chief Commissioner of the Victorian Police to notify the registration authority of certain matters: State Government of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, p 19. See also State Government of Western Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, pp 10–11.

72 For example, the teacher has ‘contravened a condition of the teacher’s registration’: *ACT Teacher Quality Institute Act 2010* (ACT) s 67(a)(i); ‘disciplinary action’ is being taken against the teacher: *ACT Teacher Quality Institute Act 2010* (ACT) s 67(b); or the employer has taken ‘any action’ in relation to serious misconduct, incompetence or fitness to teach: *Teacher Registration (Northern Territory) Act* (NT) s 67A, *Education and Training Reform Act 2006* (Vic) s 2.6.31, and see *Teachers Registration Act 2000* (Tas) s 31 regarding ‘unacceptable behaviour’; investigations into conduct that has caused or is likely to cause alleged harm, as well as the outcome of the investigation: *Education (Queensland College of Teachers) Act 2005* (Qld) ss 76–7, and see *Teachers Registration Act 2012* (WA) s 42; the employer becomes aware that the teacher has been charged with, or convicted of, a sexual offence: *Education and Training Reform Act 2006* (Vic) s 2.6.31(3).

73 See, for example, *Teacher Registration (Northern Territory) Act* (NT) s 67A(1)(a); *Teachers Registration and Standards Act 2004* (SA) s 37; *Teachers Registration Act 2000* (Tas) s 31.

74 Such as unacceptable behaviour: *Teachers Registration Act 2000* (Tas) s 31(3); allegations of unprofessional conduct: *Teachers Registration and Standards Act 2004* (SA) s 37; or an investigation into misconduct: *Teacher Registration Act 2012* (WA) s 42(1)(d), and see *Teacher Registration (Northern Territory) Act* (NT) s 67A(1)(b).

75 ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 15–6; Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, p 16.

76 Queensland College of Teachers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 16. The QCT advised us that following changes to reporting requirements on employers commencing in July 2017, it will be in a ‘stronger position to act quickly to protect children from harm’. Employers ‘will be required to notify the registration authority as soon as they start to deal with an allegation of harm caused, or likely to be caused, to a child from a teacher’s conduct. At present, the obligation only arises upon the employer commencing an investigation into the allegation. This will enable the QCT to take earlier action to suspend the registration of teachers who pose an unacceptable risk of harm to children: p 16. The ACT TQI also stated they may not be provided with information on resignations by employers early in the process: ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

77 To avoid duplication or complexity, consideration of such reporting requirements should be considered in conjunction with requirements to report to an oversight body under our recommended reportable conduct scheme.

78 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 100. This legislation is in place at the Commonwealth and state and territory levels: see, for example, the *Mutual Recognition Act 1992* (Cth). The NSW Government told us that ‘NSW will not be a party to the *Mutual Recognition Act* in respect of a teacher’s interstate registration until 1 January 2018’: NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.

79 *ACT Teacher Quality Institute Act 2010* (ACT) s44.

80 The *Teachers Registration and Standards Act 2004* (SA) provides for public access, and for certain details to be available for inspection on a website established by the registration authority: s 28(6).

81 *Education and Training Reform Act 2006* (Vic) ss 2.6.25, 2.6.54B. See also State Government of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015, p 20; *Education (Queensland College of Teachers) Act 2005* (Qld) s 289.

82 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 108–9.

83 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 109.

84 For example, *ACT Teacher Quality Institute Act 2010* (ACT) s 42(4); *Teacher Registration Act 2012* (WA) s 37(3).

85 For example, in Queensland, the QCT may allow an employing authority to inspect a part of the register that is not publicly available: *Education (Queensland College of Teachers) Act 2005* (Qld) s 289(2) – see also *Teacher Registration Act 2012* (WA) s 37(3), which requires the registration authority to make register information (professional) available for inspection to, among others, employers, as it thinks appropriate. The *Teachers Registration Act 2000* (Tas) provides that registration authorities ‘may on request’ share certain register information with a teaching employing authority, including such information as particulars of suspension of registration or limited authority, and other particulars with the teachers’ consent: ss 25(4)–(5).

86 *ACT Teacher Quality Institute Act* (ACT) s 42(4).

87 For example, the *Teachers Registration and Standards Act 2004* (SA) s 28(6). In New South Wales, the *Teacher Accreditation Act 2004* (NSW) does not provide for public access, but provides for information to be shared with teacher accreditation authorities as well as with registration authorities in other jurisdictions: s 18(3). While there are provisions for providing information on the accreditation list to other persons or bodies prescribed by regulations, none are currently prescribed: *Teacher Accreditation Regulation 2015* (NSW).

88 The *Teacher Accreditation Act 2004* (NSW) alone does not contain provisions to this effect. Additionally, in some cases, the legislation also provides for notification of certain matters to registration authorities in New Zealand – for example, *Teachers Registration and Standards Act 2004* (SA) s 40 – or other overseas registration authority, for example, *Teacher Registration (Northern Territory) Act* (NT) s 67(5).

89 In some cases differently expressed matters may capture the same or similar outcomes.

90 For example, *Teacher Registration Act 2012* (WA) s 118.

91 Queensland and Western Australia are the jurisdictions that permit, rather than require, registration authorities to notify employers of certain matters. However, both also require registration authorities to notify employers of other matters. For example, the *Education (Queensland College of Teachers) Act 2005* (Qld) provides that the registration authority may notify the employing authority for a school after the Queensland Civil and Administrative Tribunal makes a decision in disciplinary proceedings against a teacher: s 164(b)(iii). Additionally, the QCT must notify a teacher’s employing authority and principal of cancellation of teacher’s registration in particular circumstances: s 56(5).

92 The registration authority may be required to share this information with other registration authorities generally – eg *Education and Training Reform Act 2006* (Vic) s 2.6.51, or with other registration authorities in jurisdictions where they are aware the teacher is registered – for example, *Education (Queensland College of Teachers) Act 2005* (Qld) s 165.

93 For example, *Teacher Registration (Northern Territory) Act* (NT) s 67(4); *Education and Training Reform Act 2006* (Vic) s 2.6.51.

94 For example, *ACT Teacher Quality Institute Act 2010* (ACT) s 66.

95 For example, *Education and Training Reform Act 2006* (Vic) s 2.6.51.

96 For example, *Education (Queensland College of Teachers) Act 2005* (Qld) s 165.

97 For example, *Teachers Registration and Standards Act 2004* (SA) s 40(d).

98 *Teacher Registration Act 2012* (WA) s 118.

99 For example, *Teacher Registration (Northern Territory) Act* (NT) s 69(4).

100 *Teacher Registration (Northern Territory) Act* (NT) ss 49(5), 75(1).

101 For example, *Teachers Registration and Standards Act 2004* (SA) s 40(a).

102 For example, *Teachers Registration and Standards Act 2004* (SA) s 40(a); *Teachers Registration Act 2000* (Tas) s 24A.

103 For example, *Teacher Registration (Northern Territory) Act* (NT) s 67(1)(a).

104 For example, *ACT Teacher Quality Institute Act 2010* (ACT) s 65(2)(b); *Teacher Registration (Northern Territory) Act* (NT) s 67(1)(b).

105 *Teachers Registration and Standards Act 2004* (SA) s 52(1)(a).

106 For example, *Education (Queensland College of Teachers) Act 2005* (Qld) s 56(5); *Teacher Registration (Northern Territory) Act* (NT) s 69(4).

107 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 7.

108 Queensland College of Teachers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9. In Queensland, the QCT is enabled by specific provisions in its teacher registration legislation to enter information sharing arrangements: *Education (Queensland College of Teachers) Act 2006* (Qld) s 287.

109 Tasmanian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 6; Queensland College of Teachers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.

110 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 12, 14; Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.

111 Queensland College of Teachers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 14.

112 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

113 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.

114 *Mutual Recognition Act 1992* (Cth) s 37 and equivalent state and territory provisions.

115 *Mutual Recognition Act 1992* (Cth) s 4 and equivalent state and territory provisions.

116 ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 12.

117 The ACT TQI stated to us that '[i]deally, teacher employers in a jurisdiction should have full access to information on an employee's record held by the jurisdiction teacher regulatory body': ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11.

118 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 18.

119 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.

120 M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, Social Policy Research Centre, Sydney, 2015, p 28.

121 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 19.

122 ACT Teacher Quality Institute, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 13–6.

123 Independent Education Union Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 20.

124 *Education (Queensland College of Teachers) Act 2005* (Qld) s 284(2).

125 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8; Queensland College of Teachers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 16.

126 *ACT Teacher Quality Institute Act 2010* (ACT) s 92; *Teacher Registration (Northern Territory) Act* (NT) s 21; *Teachers Registration and Standards Act 2004* (SA) s 53; *Teachers Registration Act 2012* (WA) s 117.

127 *Teachers Registration and Standards Act 2004* (SA) s 53(1).

128 Laws imposing civil or criminal liability for improper disclosure, and their effects as a barrier to information sharing, are also discussed in Chapter 3.

129 See for instance *Privacy and Personal Information Protection Act 1998* (NSW) Pt 2, Div 1.

130 See, for example, NSW Department of Education, *School support roles*, 2016, www.dec.nsw.gov.au/about-us/careers-centre/school-careers/school-support-roles (viewed 15 December 2016).

131 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*, Sydney, 2015, p 46.

132 Only in New South Wales is information sharing about administrative and support staff specifically addressed in legislation. Sections 7D–7E of the *Education (School Administrative and Support Staff) Act 1987* (NSW), applicable to the government school sector, ensure 'that some information, in particular about criminal offences, is disclosed to the Department of Education and stored centrally': C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 114. The NSW Government has noted the '[p]otential redundancy of such lists in the context of the new Working With Children Check requirements': NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

133 See for example, *Children and Young Persons (Care and Protection Act) 1998* (NSW) Ch 16A and *Care and Protection of Children Act 2007* (NT) Pt 5.1A. In South Australia, the *Information Sharing Guidelines for Promoting Safety and Wellbeing* may apply: C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 111. See also the newly enacted *Public Sector (Data Sharing) Act 2016* (SA), and *Children and Young People (Safety) Act 2017* (SA) Ch 10, Pt 3, which at 30 August 2017 has not come into operation.

134 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 114–5.

135 These recommendations are set out in Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks*, Sydney, 2015, pp 6–15.

136 Transcript of S Florisson, Case Study 45, 4 November 2016 at 22902:46–22903:6.

137 This relates to children between six and fifteen years. Australian Curriculum, Assessment and Reporting Authority, *National report on schooling in Australia 2014*, Sydney, 2016, p 83. See also Volume 13, *Schools*.

138 A Ferrante, J Clare, S Randall & J Boyd, *Police responses to child sexual abuse 2010–14*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 137.

139 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 22. In our consultations we heard of circumstances where students were removed from school following reports that they had engaged in sexual and physical abuse. As the victims' parents did not wish to report the matter, it was not dealt with criminally. The importance of providing the students' next school with a history was stressed: Royal Commission into Institutional Responses to Child Sexual Abuse, *Schools private roundtable*, Sydney, 2015.

- 140 Sexual Assault Support Service, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of Child Sexual Abuse in Schools*, 2015, p 6. See also Catholic School Parents Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of Child Sexual Abuse in Schools*, 2015, p 4.
- 141 The National Safe School framework is discussed in Volume 13, *Schools*.
- 142 W O'Brien, *Problem sexual behaviour in children: A review of the literature*, Australian Crime Commission, Canberra, 2008.
- 143 A Gray, A Busconi, P Houchens & WD Pithers, 'Children with sexual behavior problems and their caregivers: Demographics, functioning, and clinical patterns', *Sexual Abuse: A Journal of Research and Treatment*, vol 9, no 4, 1997; Transcript of E Letourneau, Case Study 57, 27 March 2017 at 27422:25–45.
- 144 AF Jespersen, ML Lalumière & MC Seto, 'Sexual abuse history among adult sex offenders and non-sex offenders: A meta-analysis', *Child Abuse & Neglect*, vol 33, no 3, 2009; Transcript of E Letourneau, Case Study 57, 27 March 2017 at 27422:25–45; Transcript of W O'Brien, Case Study 45, 20 October 2015 at 21655:20–28.
- 145 T Blakemore, JL Herbert, F Arney & S Parkinson, *Impacts of institutional child sexual abuse on victims/survivors: A rapid review of research findings*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 62–3; A Wilde, C Bonfiglioli, B Meiser, PB Mitchell & PR Schofield, 'Portrayal of psychiatric genetics in Australian print news media, 1996–2009', *Medical Journal of Australia*, vol 195, no 7, 2011; C Shakeshaft, *Educator sexual misconduct: A synthesis of existing literature*, US Department of Education, Washington, 2004, p 42; JN Briere & DM Elliott, 'Immediate and long-term impacts of child sexual abuse', *The Future of Children*, vol 4, no 2, 1994, p 58.
- 146 T Blakemore, JL Herbert, F Arney & S Parkinson, *Impacts of institutional child sexual abuse on victims/survivors: A rapid review of research findings*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 62–3; A Sadeh, RM Hayden, J McGuire, H Sachs & R Civita, 'Somatic, cognitive and emotional characteristics of abused children in a psychiatric hospital', *Child Psychiatry and Human Development*, vol 24, no 2, 1994; M Barrera, L Calderón & V Bell, 'The cognitive impact of sexual abuse and PTSD in children: a neuropsychological study', *Journal of Child Sexual Abuse*, vol 22, no 6, 2013, pp 626–7; JP Mersky & J Topitzes, 'Comparing early adult outcomes of maltreated and non-maltreated children: A prospective longitudinal investigation', *Children and Youth Services Review*, vol 32, no 8, 2010, p 1092; A Wilde, C Bonfiglioli, B Meiser, PB Mitchell & PR Schofield, 'Portrayal of psychiatric genetics in Australian print news media, 1996–2009', *Medical Journal of Australia*, vol 195, no 7, 2011; C Shakeshaft, *Educator Sexual Misconduct: A synthesis of existing literature*, US Department of Education, Washington, 2004, p 42.
- 147 Of all survivors who described the impacts of child sexual abuse in private sessions, more than half told us about negative educational and economic outcomes. For a more detailed discussion, see Volume 3, *Impacts*.
- 148 See C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 125. Adams and Lee-Jones note that inter-jurisdictional information sharing arrangements for government schools are more restrictive than those between non-government schools.
- 149 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 16.
- 150 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issue paper No 9: Risk of child sexual abuse in schools*, p 30.
- 151 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issue paper No 9: Risk of child sexual abuse in schools*, 2015, p 28.
- 152 ACT Privacy Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017.
- 153 See Chapter 3 for further discussion of potential unintended consequences of information sharing on children.
- 154 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 123.
- 155 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 123. Examples are the Australian Capital Territory, South Australia, Tasmania and Victoria.
- 156 *Privacy Act 1988* (Cth) ss 6, 6C; C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 122. Additionally, in 2009, the Ministerial Council on Education, Employment, Training and Youth Affairs (now the COAG Education Council) agreed that Australian governments would 'establish a unique student identifier to track student performance': Ministerial Council on Education, Employment, Training and Youth Affairs, *MCEETYA four-year plan 2009–2012: A companion document for the Melbourne declaration on education goals for young Australians*, 2017, www.scseec.edu.au (viewed 23 August 2017), p 9. In its report on the National Education Evidence Base, the Productivity Commission describes the unique student identifier as a student number that remains fixed and 'makes it easier for information about a student to follow that student as they move from one education provider to another': Commonwealth Productivity Commission, *National education evidence base: Productivity Commission inquiry report*, Parliament House, Canberra, 2016, p 128. The Productivity Commission has noted that while this has not happened, 'there has been some progress towards this goal at a national level': Commonwealth Productivity Commission, *National education evidence base: Productivity Commission inquiry report*, Parliament House, Canberra, p 128. While the unique student identifier may be useful to transfer administrative and performance information about students, we consider that schools should take a considered approach before transferring highly sensitive information, supported by clear policies.

157 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 123. See, for example, South Australia Department for Education and Child Development, *Responding to problem sexual behaviour in children and young people: Guidelines for staff in education and care settings*, 2013, pp 26–7, attached to State Government of South Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2015.

158 *Privacy Act 1988* (Cth).

159 National Catholic Education Commission & National Council of Independent Schools' Association, *Privacy compliance manual*, National Catholic Education Commission & National Council of Independent Schools' Association, Canberra, 2016, p 79.

160 The guide advises that as the Department of Education and Training is a single entity – including all government schools – this transfer of information, from one Victorian government school to another, is consistent with Victorian privacy law: Victorian Government, *School policy advisory guide: Transfers*, 2017, www.education.vic.gov.au/school/principals/spag/participation/pages/transfers.aspx (viewed 21 August 2017). Similarly, the Northern Territory enrolment policy provides for the transfer of 'Student Record Folders' when students move between government schools. Student Record Folders contain 'all documentation pertaining to the student's enrolment and attendance at the school'. The folders are (and must remain) 'property of the Department of Education'. *Policy: Enrolment*, Northern Territory Government, Darwin, 2016, pp 5–6.

161 Victorian Government, *School policy advisory guide: Transfers*, 2017, www.education.vic.gov.au/school/principals/spag/participation/pages/transfers.aspx (viewed 21 August 2017).

162 *Education (General Provisions) Act 2006* (Qld) Ch 14.

163 *Education (General Provisions) Act 2006* (Qld) s 384.

164 *Education (General Provisions) Act 2006* (Qld) s 385.

165 The principal may request the transfer note and the previous school principal must provide it on request, along with any document relating to the student mentioned in the transfer note: *Education (General Provisions) Act 2006* (Qld) s 387.

166 However, the principal at the new school must inform the student's parents or the student – where the student is an adult or it is inappropriate in the circumstances to notify the parents – that they have requested a transfer note. The new principal must also give a copy of the transfer note and documents included with it to the parent or student on request: *Education (General Provisions) Act 2006* (Qld) s 387.

167 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 124.

168 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 21.

169 Catholic Education Commission NSW, Association of Independent Schools NSW & Public Schools NSW, *Information sharing between principals and schools*, Sydney, 2014, p 2.

170 *Education Act 1990* (NSW) s 26B(1). When a school seeks information from a relevant agency under part 5A, the agency must provide it. Schools may also proactively share information with other schools: s 26D.

171 NSW Department of Education, *Legal Issues Bulletin no 50*, 2016, www.det.nsw.edu.au (viewed 22 December 2016). See also M Keeley, J Bullen, S Bates, I Katz & A Choi, *Opportunities for information sharing: Case studies*, Social Policy Research Centre, Sydney, 2015, pp 53–4.

172 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of Child Sexual Abuse in Schools*, 2015, p 30. In this submission, the NSW Government also told us that when a child with harmful sexual behaviours leaves a school, principals should consider whether information should be shared with other prescribed bodies under Chapter 16A: pp 26–7.

173 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.

174 The Principal must refer the matter to the 'local manager of the enrolment program' for further investigation if a new enrolment cannot be established. They should also consider whether information should be shared with another prescribed body under Ch 16A: NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2017, pp 26–7.

175 Education Council, *Interstate student data transfer note*, 2016, www.educationcouncil.edu.au/archive/Publications/ISDTN.aspx (viewed 15 December 2016).

176 Education Council, *Interstate student data transfer notice: Schools' fact sheet*, 2017, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Schools%20FactSheet.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Schools%20FactSheet.pdf) (viewed 30 August 2017); Education Council, *Interstate student data transfer note frequently asked questions*, 2016, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/SCSEEC-ISDTN_FAQ_.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/SCSEEC-ISDTN_FAQ_.pdf) (viewed 15 December 2016).

177 Education Council, *Interstate student data transfer notice: Schools' fact sheet*, 2017, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Schools%20FactSheet.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Schools%20FactSheet.pdf) (viewed 30 August 2017).

- 178 Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 27 September 2017); Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 27 September 2017).
- 179 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 125.
- 180 Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 30 August 2017).
- 181 Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 15 December 2016).
- 182 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 2.
- 183 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.
- 184 Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 15 December 2016).
- 185 National Catholic Education Commission and National Council of Independent Schools' Association, *Privacy Compliance Manual*, Canberra, 2016, pp 25–7.
- 186 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 125.
- 187 C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 123.
- 188 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9. See also, Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 16; Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 20–1.
- 189 We note that the Interstate Student Data Transfer Note and Protocols were jointly developed and agreed by the COAG Education Council under a previous name (the Council of Australian Governments (COAG) Standing Council on School Education and Early Childhood): Education Council, *Interstate student data transfer note: Schools' fact sheet*, 2017, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Schools%20FactSheet.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Schools%20FactSheet.pdf) (viewed 30 August 2017); C Adams & K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 124.
- 190 Such policies providing for information sharing between schools could be based on privacy laws, however, as discussed in Chapter 3, these laws provide a limited framework for sharing information relevant to children's safety and wellbeing. Alternatively, policies could be based on specific information sharing provisions in education laws, as provided for by *Education Act 1990* (NSW) Pt 5A and *Education (General Provisions) Act 2006* (Qld) Ch 14.
- 191 Office of the Australian Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.
- 192 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 22.
- 193 See Chapter 3.
- 194 It is consistent with Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 12, which includes the right of children to express their views and participate in decisions that affect their lives. It is also consistent with one of the elements we have identified for child safe institutions – that is, children's participation and empowerment: see Volume 6, *Making institutions child safe*.
- 195 The Office of the Privacy Commissioner NSW gives the example of 'A child who, at 14 years, changes schools after being the victim of a sexual assault with the aim to escape judgment, rumour and stigma': Office of the NSW Privacy Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.

196 Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 1. The Northern Territory Government also commented that some agreed text at an appropriate point in the process alerting parents and students to the value of information sharing where the student has experienced child sexual abuse may address their reluctance about information sharing: p 16.

197 Transcript of N Thompson, Case Study 45, 4 November 2016 at 22899:7–12. These comments were made concerning the boarding facilities context.

198 NSW Department of Education and Training, *Guidelines issued under Part 5A of the Education Act 1990 for the management of health and safety risks posed to schools by a student's violent behaviour*, Sydney, p 25.

199 Education Council, *Interstate student data transfer note protocol – Frequently asked questions*, 2017, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_FAQ_.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_FAQ_.pdf) (viewed 30 August 2017).

200 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 9–10. It notes that this combination of factors 'demands that any information exchange proposals are subject to appropriate privacy protection and oversight'. Oversight of our recommended information sharing scheme is discussed in Chapter 3.

201 *Education (General Provisions) Act 2006* (Qld) s 384(3).

202 Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 30 August 2017); Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 30 August 2017); Education Council, *Form 6 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%206.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%206.pdf) (viewed 30 August 2017).

203 Chief Executive of the Department of Children and Families, *Information sharing guidelines*, Darwin, 2012, pp 7–8.

204 Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 30 August 2017); Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 30 August 2017); Education Council, *Form 6 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%206.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%206.pdf) (viewed 30 August 2017). One advantage of this approach, highlighted by the Northern Territory Government, is that it also facilitates 'school to school personal contact, such as through a telephone conversation between principals' – which it considers an appropriate way of transferring sensitive information such as about unsubstantiated allegations: Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 16.

205 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.

206 Victorian Government, *School policy advisory guide: Transfers*, 2017, www.education.vic.gov.au/school/principals/spag/participation/pages/transfers.aspx (viewed 23 August 2017).

207 This approach is consistent with Interstate Student Data Transfer Note procedures: Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 30 August 2017); Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 30 August 2017); Education Council, *Form 6 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%206.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%206.pdf) (viewed 30 August 2017).

208 Under our recommended scheme, proactive sharers should be able to reasonably conclude that the receiving body needs the information because it *would* assist them to exercise its responsibilities related to children's safety and wellbeing. Reactive sharers should be able to reasonably conclude that the information *may* assist that body to exercise its responsibilities related to children's safety and wellbeing. This is discussed in more detail in Chapter 3.

209 The Queensland transfer note legislation also appears to enable information exchange about adult students: *Education (General Provisions) Act 2006* (Qld) Ch 14.

210 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Risk of child sexual abuse in schools*, 2017, p 30. See also Northern Territory Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 19.

- 211 Existing procedures require the principal of the new school to give the parent and – where appropriate – the student, the opportunity to discuss the information on request. Parents can also request to see all information received from the previous school: Education Council, *Form 4–Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 30 August 2017); Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 30 August 2017); Education Council, *Form 6 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%206.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%206.pdf) (viewed 30 August 2017).
- 212 Education Council, *Form 4 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%204_02.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%204_02.pdf) (viewed 30 August 2017); Education Council, *Form 5 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%205.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%205.pdf) (viewed 30 August 2017); Education Council, *Form 6 – Interstate student data transfer note protocol*, 2013, [www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20\(2013\)/EC-ISDTN_Form%206.pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/ISDTN%20PDFs%20(2013)/EC-ISDTN_Form%206.pdf) (viewed 30 August 2017).
- 213 See Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice*, Sydney, 2017, pp 33, 542–4, Recommendations 14, 15.
- 214 See, for example, Association of Children’s Welfare Agencies, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 47; The Salvation Army Southern Territory, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional Responses to Child Sexual Abuse in out-of-home care*, 2016 p 6; Care Leavers Australasia Network (CLAN), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 6.
- 215 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013: NSW Government, p 9; NSW Children’s Guardian, p 16; Uniting Church in Australia, pp 18–19.
- 216 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 17–18.
- 217 CareSouth, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.
- 218 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.
- 219 The *Protocol for the transfer of care and protection orders and proceedings and interstate assistance April 2009*, Victorian Department of Human Services, Melbourne, 2009 facilitates the exchange of information, including carer assessment information, between state and territory child protection agencies across Australia and New Zealand.
- 220 These include the New South Wales Carers Register, the Foster Carer Directory of Western Australia and the Victorian Carer Register.
- 221 For example, in the Australian Capital Territory, details of approved out-of-home care carers are kept on the Child and Young Person System, an electronic record system managed within Child and Youth Protection Services in the ACT Government Community Services Directorate. All staff have access to the system, but only staff involved in the approval and funding process for carers have access to data showing who is approved: Correspondence from ACT Community Services Directorate, 25 May 2017.
- 222 For example, the Victorian Carer Register records basic information about carers who have been approved, engaged or employed as carers (non-government out-of-home care agencies are required to register and identify care type). Information about disqualified carers is not recorded on the register, and any entry relating to a disqualified carer must be removed: see *Children, Youth and Families Act 2005* (Vic) s 80; *Children, Youth and Families Regulations 2017* (Vic) r 11. The NSW Carers Register contains significantly more information: see *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181(1)(d); *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86D–86I. The Western Australian Directory records the identifying approval details of foster carer applicants, their assessment outcomes, and categories of children for whom they are approved to care: see *Protocols for the foster carer directory of Western Australia*, Western Australia Department of Child Protection, Perth, 2012, p 5.
- 223 For example, the recording of carer information on the ACT child protection agency’s electronic child protection record system is governed by internal operating procedures rather than legislation: Correspondence from ACT Community Services Directorate, 25 May 2017. In contrast, the New South Wales Carers Register is established under the *Children and Young Persons (Care and Protection) Act 1998* (NSW), with legislated and administrative requirements governing its operation. It is maintained and overseen by the independent statutory authority regulating out-of-home care, the Children’s Guardian: see *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181(1)(d); *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86B, 86J–86N; NSW Office of the Children’s Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016. In Western Australia, the Foster Carer Directory of Western Australia is administered by the Department of Child Protection, and overseen by the ‘Custodian’, located within the Fostering and Adoption Services Division of the Department. The directory is not legislated, but sits alongside the *Children and Community Services Regulations 2006* (WA) r 4, which provides for the approval of carers: see Department of Child Protection, *Protocols for the foster carer directory of Western Australia*, Government of Western Australia, Perth, 2012, p 3. The Victorian Carer Register is legislated; responsibility for maintaining and overseeing the carers register lies with the Department of Human Services: see *Children, Youth and Families Act 2005* (Vic) ss 3, 80.

224 For example, in New South Wales, designated agencies (accredited out-of-home care service providers, responsible for authorising and supervising carers) are given access to information on the register to the extent that the information relates to individuals they are considering for authorising, or who they have authorised and are supervising, and their household members: see *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86M(3)(a); NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 22. The NSW Children's Guardian, the NSW Ombudsman (responsible for overseeing reportable conduct in out-of-home care) and the NSW Department of Family and Community Services can also access information on the carers register: *Children and Young Person (Care and Protection) Regulation 2012* (NSW) r 86M(2). Law enforcement agencies, and child protection bodies in other jurisdictions can also be granted access to information on the register: see *Children and Young Person (Care and Protection) Regulation 2012* (NSW) r 86M. In Western Australia, the Foster Carers Directory can be accessed when relevant by participating out-of-home care service providers and by the Department: *Protocols for the foster carer directory of Western Australia*, Western Australia Department of Child Protection, Perth, 2012, p 3. Assessment and decision making information relating to foster care applicants may also be shared with other Australian jurisdictions if the person applies to be assessed as a foster carer in another state or territory: p 15.

225 See, for example, the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: CareSouth, p 5; South Australia Ombudsman, pp 1–2; Anglicare Northern Territory, p 3; MacKillop Family Services, p 4; Uniting Church in Australia, p 16.

226 For example, the Victorian Commission for Children and Young People proposed the creation of an 'interconnected national register' for carer staff working with vulnerable people (including children, persons with disability, and the elderly): Commission for Children and Young People (Victoria), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 5–6.

227 See, for example, the following submissions to the Royal Commission on Institutional Responses to Child Sexual Abuse on *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016: South Australia Ombudsman, p 1; Life Without Barriers, p 6; MacKillop Family Services, p 4; Uniting Church in Australia, p 16; NSW Government, pp 17–18; Government of Western Australia, p 11.

228 The Children and Families Secretaries Group membership consists of senior representatives (Secretary or Deputy Secretary equivalent) from the agency in each jurisdiction that has portfolio responsibility for children and families: see Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

229 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

230 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

231 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017.

232 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

233 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

234 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, pp 3–4. See also Transcript of M Coutts-Trotter, Case Study 51, 7 March 2017 at T26368:32–T26369:14.

235 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

236 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 18.

237 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.

238 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.

239 See Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

240 NSW Government Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.

241 State of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 11.

242 See, for example, Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5; Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out of home care*, 2013, p 6; Uniting Church in Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 16.

- 243 See New South Wales Office of the Children Guardian, *NSW Carers Register*, 2017, www.kidsguardian.nsw.gov.au/statutory-out-of-home-care-and-adoption/nsw-carers-register (viewed 5 April 2017).
- 244 Uniting Church in Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 16; Wesley Mission Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 11.
- 245 Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.
- 246 See, for example, Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5; Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 6. See also Transcript of L Voigt, Case Study 24, 13 March 2015 at 13193:36–13194:1.
- 247 Office of the Australian Information Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4.
- 248 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 10.
- 249 Queensland Family and Child Commission, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 8.
- 250 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening Information Sharing Arrangements*, 2017.
- 251 NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 2.
- 252 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 21.
- 253 Truth, Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 21.
- 254 M Benton, R Pigott, M Price, P Shepherdson & G Winkworth, *A national comparison of carer screening, assessment, selection and training and support in foster, kinship and residential care*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 12.
- 255 NSW Government Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5. Statutory out-of-home care in NSW is care of children, in accordance with *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 135A(1), under an order of the children's court or as protected person. Supported out-of-home care in NSW is care that is arranged, provided or otherwise supported by the jurisdictional child protection agency (NSW FACS) following a decision, under *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 135B, that a child is in need of care and protection.
- 256 For the position in Western Australia, see *Protocols for the foster carer directory of Western Australia*, Western Australia Department of Child Protection, Perth, 2012, p 5.
- 257 Victorian Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, pp 27, 29.
- 258 Data produced under summons by the Royal Commission from government agencies within all states and territories and from 12 non-government organisations including: Anglicare, Barnardos Australia, MacKillop, United Protestant Association, Berry Street, CatholicCare, Uniting Care, Wesley Mission, Life Without Barriers, Baptist Care, Marymead and Victorian Aboriginal Child Care Agency, as cited in Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional responses to child sexual abuse in out-of-home care*, 2016.
- 259 See T Moore, M McArthur, S Roche, J Death & C Tilbury, *Safe and sound: Exploring the safety of young people in residential care*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016; K Kaufman & M Erooga, *Risk profiles for institutional child sexual abuse: A literature review*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016; D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.
- 260 Statutory out-of-home care is care that is arranged as a result of care and protection orders following an application by the state or territory child protection agency; parental responsibility is usually allocated to the minister.
- 261 Child sexual abuse reports in foster care represented 39 per cent of the total number of reports – this was roughly proportional to the number of foster care placements (41 per cent of the total number of placements) as cited in Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, Sydney, 2016, p 5.
- 262 NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 7.
- 263 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 85.
- 264 Supported out-of-home care is care that is arranged or otherwise supported by the state or territory child protection agency after it has formed the opinion that the child is in need of care and protection. The responsible child protection agency is supervising and/or funding supported out-of-home care placement; allocation of parental responsibility varies.

265 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, Sydney, 2016, p 5.

266 Secretariat of National Aboriginal and Islander Child Care, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, p 6.

267 Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, p 6.

268 See, for example: Commission for Children and Young People (Victoria), Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 4: Preventing sexual abuse of children in out-of-home care*, 2013, p 4; M McHugh, *A framework of practice for implementing a kinship care program: Final report*, UNSW Social Policy Research Centre, Sydney, 2009, pp 11, 63–5; A Shlonsky & J Berrick, ‘Assessing and promoting quality in kin and nonkin foster care’, *Social Service Review*, vol 75, no 1, 2001, pp 60–83; T Terling-Watt, ‘Permanency in kinship care: An exploration of disruption rates and factors associated with placement disruption’, *Children and Youth Services Review*, vol 23, no 2, 2011, pp 111–26.

269 Centre for Excellence in Child and Family Welfare Inc., Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 25.

270 On the shortage of suitable kinship carers see L Bromfield, J Higgins, D Higgins & N Richardson, *Why is there a shortage of Aboriginal and Torres Strait Islander Carers? Perspectives of professionals from Aboriginal and Torres Strait Islander agencies, non-government agencies and government departments*, Australian Institute of Family Studies, Melbourne, 2007.

271 Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.

272 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

273 CareSouth, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.

274 Transcript of M Bamblett, Out-of-home care public roundtable: Preventing sexual abuse of children in out-of-home care, Sydney, 16 April 2014 at T43:19–26.

275 Victorian Aboriginal Child Care Agency, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 11–12.

276 Australian Institute of Health and Welfare, *Child protection Australia: 2014–15*, Canberra, 2016, p 133.

277 Australian Institute of Health and Welfare, *Child protection Australia: 2015–16*, Canberra, 2016, p 49.

278 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, Sydney, 2016, p 5.

279 Victorian Ombudsman, *Own motion investigation into child protection – Out of home care*, Government of Victoria, Melbourne, 2010, p 14.

280 Victorian Ombudsman, *Own motion investigation into child protection – Out of home care*, Government of Victoria, Melbourne, 2010, p 14.

281 See, for example: L Bromfield & D Higgins, ‘Chronic and isolated maltreatment in a child protection sample’, *Family Matters*, vol 70, 2005, pp 38–45; D Finkelhor & J Dzuiba-Leatherman, ‘Victimization of children’, *American Psychologist*, vol 49, no 3, 1994, pp 173–83; D Finkelhor, *Child sexual abuse: New theory and research*, Free Press, New York, 1984, pp 56–7.

282 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 24, 33.

283 The NSW Ombudsman data shows that, between 1 July 2013 to 30 June 2015, 29 per cent of notifications of reportable conduct related to children with disability or additional support needs: NSW Ombudsman, *Disability sector: Reportable conduct forum*, 2016, www.ombo.nsw.gov.au/_data/assets/pdf_file/0017/31760/Disability-Forum-slides-1April.pdf (viewed 21 September 2017). NSW Family and Community Services has reported that, while children with disability account for 12 per cent of the out-of-home care population, 36 per cent of all concluded reportable conduct matters in out-of-home care involve a child with disability: see G Llewellyn, S Wayland & G Hindmarsh, *Disability and child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 28.

284 L Green, ‘Analysing the sexual abuse of children by workers in residential care homes: Characteristics, dynamics and contributory factors’, *Journal of Sexual Aggression*, vol 7, no 2, 2001, p 17, cited in T Moore, M McArthur, S Roche, J Death & C Tilbury, *Safe and sound: Exploring the safety of young people in residential care*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 17.

285 Commission for Children and Young People, “...as a good parent would...”: *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Melbourne, 2015, p 22.

286 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion Paper: Strengthening information sharing arrangements*, 2017, p 11; NSW Government Office of the Children’s Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion Paper: Strengthening information sharing arrangements*, 2017, p 5.

287 Wesley Mission Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 11.

288 See for example, NSW Office of the Children's Guardian, *Statutory procedures: Voluntary out-of-home care in NSW*, Sydney, 2016, p 4; NSW Office of the Children's Guardian, *Registration and monitoring guide: Voluntary out-of-home care monitoring framework*, Sydney, 2016, p 1. In New South Wales, voluntary out-of-home care (VOOHC) is overseen by the New South Wales Office of the Children's Guardian: see NSW Office of the Children's Guardian, *VOOHC fact sheet 1: Information for families*, 2014, www.kidsguardian.nsw.gov.au/out-of-home-care/voluntary-out-of-home-care/fact-sheets (viewed 27 September 2017).

289 NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.

290 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion Paper: Strengthening information sharing arrangements*, 2017, p 11.

291 NSW Government Office of the Children's Guardian, *Voluntary out-of-home care statistics*, 2017, www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care/key-statistics (viewed 3 April 2017).

292 In their submission in response to our consultation paper on out-of-home care, People with Disability Australia noted data from the NSW Ombudsman that children with disability represent 12 per cent of the out-of-home care population but 36 per cent of closed notifications from that sector: People with Disability Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 10. See also, G Llewellyn, S Wayland & G Hindmarsh, *Disability and child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 33, 43; S Robinson, *Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 29.

293 We use the term 'persons residing on the same property' as applicant/authorised carers consistently with the *Children and Young Persons (Care and Protection) Act 1998* (NSW): ss 79D, 137(3); see also *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86B(2)(c), 86D–86H. The term 'persons residing on the same property' was introduced in New South Wales legislation in 2015 by the *Children and Young Persons (Care and Protection) Amendment (Authorised Carers) Regulation 2015* (NSW) to capture a broader group (for the purposes of carer assessment) than that captured by the previous term, 'household members'. Both of these formulations include children, but refer only to children over the age of 16 for the purposes of certain checks. While we intend to capture the wider group of persons residing on the same property as applicant/authorised carers, for ease of reference we have used the term 'household members' interchangeably with 'persons residing on the same property'. We note that the term 'household members' is used in other jurisdictions, and that New South Wales policy documents also continue to refer to 'household members'. See, for example, NSW Office of the Children's Guardian, *New Carer's Register to make children safer*, 2015, www.kidsguardian.nsw.gov.au/about-us/news/new-carer-s-register-to-make-children-safer (viewed 1 September 2017); NSW Office of the Children's Guardian, *Carers Register fact sheet 1: Probity and suitability checks*, Sydney, 2016; NSW Office of the Children's Guardian, *Carers Register fact sheet 2: Information for carers and household members*, Sydney, 2016.

294 Information must be recorded about a person (other than a child or young person in out-of-home care) who resides for more than 21 days on the same property as the carer applicant/authorised carer. See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86E, 86H.

295 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86E(1), 86H(1).

296 See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017.

297 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86E, 86H.

298 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86D, 86J; see also r 86J.

299 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) Sch 2, cl 2(1)(d); NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 26. See also *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) Sch 2, cl 5.

300 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86D(j). See also NSW Office of the Children's Guardian, *Carers Register Fact Sheet 3: Information for designated agencies: What data is entered?*, 2015, www.kidsguardian.nsw.gov.au/ArticleDocuments/541/CR_FS3_InfoForDesignatedAgencies.pdf.aspx?Embed=Y (viewed 6 April 2017).

301 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, pp 36–7; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86D(2)(l).

302 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86G(d). See also NSW Office of the Children's Guardian, *Carers Register Fact Sheet 3: Information for designated agencies: What data is entered?*, 2015, www.kidsguardian.nsw.gov.au/ArticleDocuments/541/CR_FS3_InfoForDesignatedAgencies.pdf.aspx?Embed=Y (viewed 6 April 2017).

303 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86D(j), 86G(d).

304 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) Sch 2, cl 2(1)(d); NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney 2016, p 26. See also *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) Sch 2, cl 5.

305 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11.

306 See definitions of 'reportable conduct' in *Ombudsman Act 1974* (NSW) s 25A(1); *Child Wellbeing and Safety Act 2005* (Vic) s 5(1); *Ombudsman Act 1989* (ACT) s 17E(1).

307 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, pp 28–9; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86I.

308 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86I(4).

309 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 29.

310 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 30; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86M(4).

311 NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 7–8; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86I(6).

312 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 30.

313 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 30; *Children and Young Persons (Care and Protection) Act 1998* s 245D; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86I(8), Sch 2, cl 2(1)(d).

314 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11.

315 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, pp 28–9; *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86I.

316 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 29.

317 NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11. See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 30(4), 30(5) and 31A.

318 See New South Wales Office of the Children Guardian, *NSW Carers Register*, 2017, www.kidsguardian.nsw.gov.au/statutory-out-of-home-care-and-adoption/nsw-carers-register (viewed 5 April 2017).

319 M Benton, R Pigott, M Price, P Shepherdson & G Winkworth, *A national comparison of carer screening, assessment, selection and training and support in foster, kinship and residential care*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 16.

320 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) Pt 6, Div 2; *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 137–41.

321 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) rr 86E, 86H.

322 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86D.

323 Department of Child Protection, *Protocols for the foster carer directory of Western Australia*, Government of Western Australia, Perth, 2012, p 3.

324 Department of Child Protection, *Protocols for the foster carer directory of Western Australia*, Government of Western Australia, Perth, 2012, p 3.

325 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion Paper: Strengthening information sharing arrangements*, 2017, p 9.

326 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

327 *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86M(2)(c).

328 See NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016 for an overview of the circumstances that will trigger a notification from the carers register.

329 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11.

330 See, for example, *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86M(2).

331 Government of Western Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 11.

332 State and territory privacy legislation imposes obligations and restrictions on state and territory public sector agencies: *Information Privacy Act 2014* (ACT); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic).

333 In South Australia, the handling of personal information by state public sector agencies is regulated by a Cabinet Administrative Instruction (*Information privacy principles instruction 2016* (SA)). Western Australia has no dedicated privacy legislation – government agencies are directed to observe standards in the state's *Policy framework and standards for information sharing between government agencies* as well as any applicable statutory provisions and common law, and to share information consistently with appropriate minimum privacy standards, such as those under Commonwealth privacy legislation: see Department of the Attorney General, *Policy framework and standards for information sharing between government agencies*, Perth, 2003 and Public Sector Commissioner, *Circular 2014-02 Policy framework and standards for information sharing between government agencies*, Perth, 2014. Various confidentiality provisions and some privacy principles are also provided for in the *Freedom of Information Act 1992* (WA).

334 The *Privacy Act 1988* (Cth) imposes obligations and restrictions (with respect to collection, use and disclosure of personal information) on Commonwealth public sector agencies and private sector organisations (those with an annual turnover of \$3 million or more, and health service providers).

335 See, for example, *Children, Youth and Families Act 2005* (Vic) s 72, which applies the *Information Privacy Act 2000* (Vic) to a registered community service in relation to the collection and handling of information under the *Children, Youth and Families Act 2005* (Vic) as if the registered community service were an organisation within the meaning of *Information Privacy Act 2000* (Vic). State and territory government funding agreements may also impose obligations under the state or territory's privacy legislation on funded out-of-home care agencies.

336 Commonwealth of Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 4. See also Northern Territory Department of Children and Families, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 4.

337 NSW Office of the Children's Guardian, *NSW Carers Register: Guidance notes*, Sydney, 2016, p 23.

338 See for instance *Privacy and Personal Information Protection Act 1998* (NSW) Pt 2, Div 1.

339 In NSW, *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86N provides that the Children's Guardian must comply with such a request unless a flag in relation to that person is on the register. Where the Children's Guardian has determined not to comply with the request, it must provide reasons unless it believes that this may alert the person about a reportable allegation.

340 See *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 86J. The NSW regulations also require the Children's Guardian to notify the relevant authorising and supervising out-of-home care agency of such a change as soon as practicable after amending the register.

341 For example, the New South Wales Government told us that there are limits to the information that the NSW child protection department (NSW FACS) can access on the carers register. Only a small number of NSW FACS staff are authorised to access the carers register, and they can only do so for specified purposes. It also informed us that 'work is underway to introduce privacy and ethical safeguards to the Carers Register': NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 11.

342 Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 5.

343 See, for example, Anglicare Northern Territory, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 3; Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, pp 5–6. See also Queensland Child and Family Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

344 See G Winkworth & M McArthur, 'Being "child centred" in child protection: What does it mean?', *Children Australia*, vol 31, no 4, 2006, p 14.

345 On this point, see Association of Children's Welfare Agencies, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 48.

346 NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 5.

347 Queensland Family and Child Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Discussion paper: Strengthening information sharing arrangements*, 2017, p 9.

348 Anglicare Northern Territory, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, 2016, p 3.

349 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse*, Sydney, 2016, p 31.

350 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse*, Sydney, 2016, p 30.

351 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse*, Sydney, 2016, p 78.

352 Transcript of G Furness, Case Study 48, 6 December 2016 at 24472:38–42.

353 Transcript of A Hywood, Case Study 52, 22 March 2017 at 27141:34–7.

354 Truth, Justice and Healing Council, *Priest and male religious register now up and running*, media release, Canberra, 27 October 2016.

355 Transcript of M Coleridge, Case Study 50, 20 February 2017 at 25700:34–8.

356 Exhibit 50-0009, 'Statement of Provincial Gregory Brett: General Statement', Case Study 50, CTJH.500.90001.0198_R at 0199_R; Exhibit 50-0009, 'Statement of Brother Peter Carroll: General Statement', Case Study 50, CTJH.500.90001.0160 at 0188; Exhibit 50-0009, 'Statement of Archbishop Timothy Costelloe: General Statement', Case Study 50, CTJH.500.90001.0034 at 0269; Exhibit 50-0009, 'Statement of Bishop Antoine-Charbel Tarabay: General Statement', Case Study 50, CTJH.500.90001.0284 at 0289; Exhibit 50-0009, 'Statement of Bishop Gerard Hanna: General Statement', Case Study 50, CTJH.500.90001.0088 at 0095.

357 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 3: Anglican Diocese of Grafton's response to child sexual abuse at the North Coast Children's Home*, Sydney, 2014, pp 58–9.



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ISBN 978-1-925622-62-1
Published December 2017