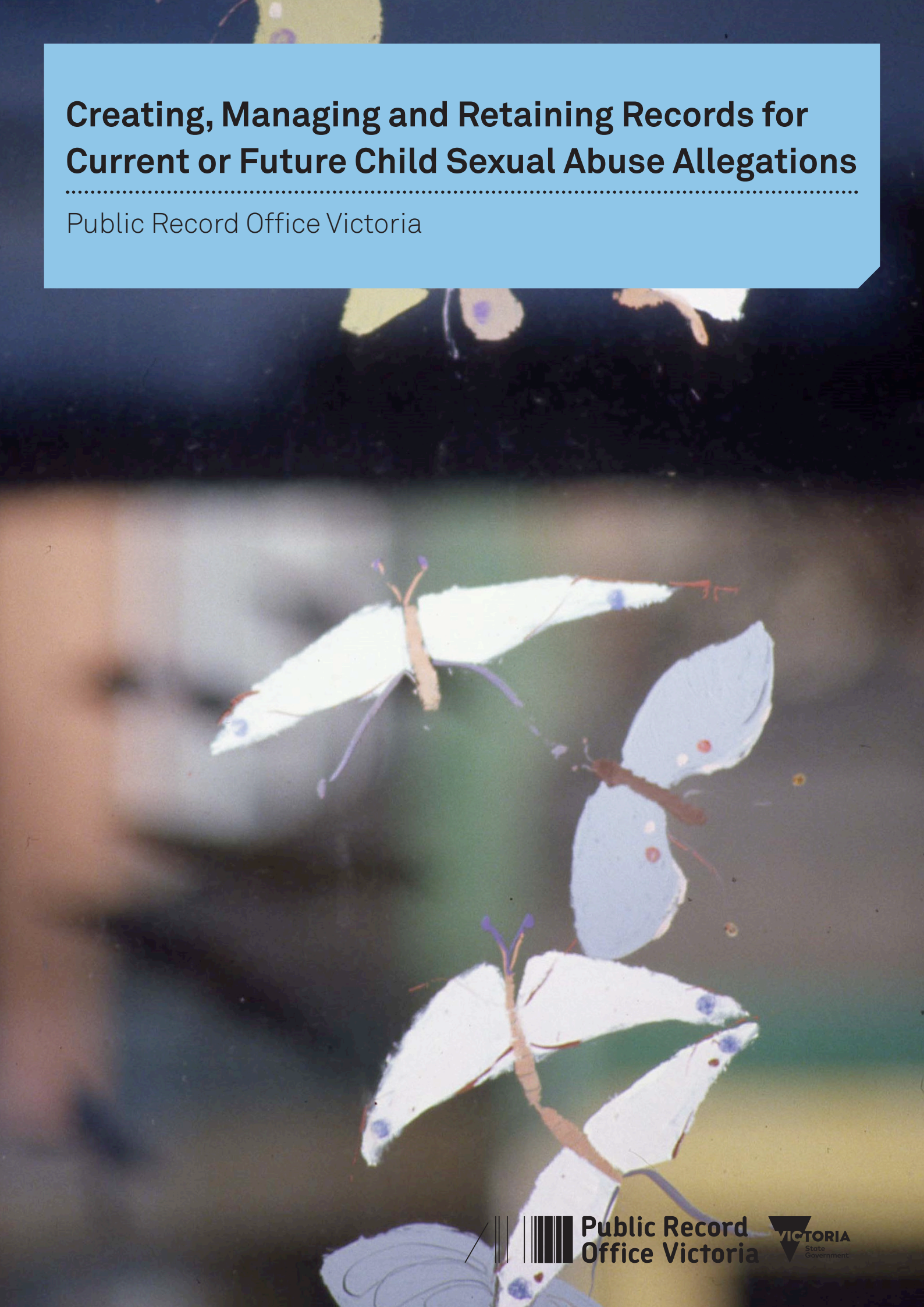


# Creating, Managing and Retaining Records for Current or Future Child Sexual Abuse Allegations

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Public Record Office Victoria



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# This document outlines the responsibilities of Victorian Government offices to satisfy Public Record Office Victoria (PROV) standards and recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA).

## 1. Responsibilities of the Victorian public sector offices

The head of every Victorian public sector office is responsible for ensuring that full and accurate records of the activities of their office are created and managed in accordance with the *Public Records Act 1973*. This includes ensuring that outsourced or contracted providers create and provide the records which may be needed in the future by government and the community.

It is an offence to unlawfully destroy a public record<sup>1</sup>.

Record destruction is lawful if done in accordance with a [Retention and Disposal Authority \(RDA\)](#), a [Standard](#) established under S12 of the *Public Records Act 1973* unless it is reasonable to assume the record will be required in evidence in a current or future legal proceeding<sup>2</sup>.

In 2015, the Victorian Government responded to the recommendation of the *Betrayal of Trust* report by the Victorian Parliament's Family and Community Development Committee by removing all limitation periods that apply to civil actions for damages founded on child abuse by amending the *Limitation of Actions Act 1958*.

This means that Victorian public sector offices cannot destroy any records which are likely to be needed for civil action legal proceedings, for at least the life of the child and possibly longer.

The [RCIRCSA Final Report](#) recommended that records relating to child<sup>3</sup> sexual abuse that has occurred or is alleged to have occurred be retained for at least 45 years after the incident. However, this may not be sufficient, as it may reasonably be assumed that these records will be required in future legal proceedings. PROV is reviewing RDAs to ensure required retention periods are sufficient.

Public sector offices also need to ensure they create, manage and retain records which are reasonably likely to be needed in the case of an allegation being made in the future. In Victoria, there are no limitation periods for civil actions for damages founded on child abuse.

It is the responsibility of every public sector office to undertake their own detailed analysis of their business processes, information management and recordkeeping practices to identify affected records and ensure they are managed and retained in accordance with requirements.

This includes assessing records created in all formats and held within all systems and those created or held by outsourced or contracted service providers on behalf of the public office.

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<sup>1</sup>A 'record' means any document within the meaning of the Evidence Act 2008. This defines 'document' as meaning any record of information, and includes—

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

A 'public record' means any 'record' made or received by a public officer in the course of their duties and any record made or received by a court or person acting judicially in Victoria.

<sup>2</sup>A 'legal proceeding' has the same meaning as the Evidence (Miscellaneous Provisions) Act 1958, and includes any civil, criminal or mixed proceeding and any inquiry in which evidence is or may be given before any court or person acting judicially, including a Royal Commission or Board of Inquiry under the Inquiries Act 2014.

<sup>3</sup>Child is defined in Victorian legislation such as the Child Wellbeing and Safety Act 2005 as being a person under the age of 18 years.

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## 2. Recordkeeping requirements for Victorian public sector offices which interact with children

Every Victorian public sector office must meet the Standards and Specifications established by the Keeper of Public Records under the *Public Records Act 1973*. This includes ensuring that proper recordkeeping arrangements are established and requirements met when services or programs are delivered by external parties on behalf of the public office. The Standards and Specifications, including RDAs, and guidance on how to use and implement them can be found on the Public Record Office Victoria website under 'Government Recordkeeping':

Here is a link to the page: [www.prov.vic.gov.au/recordkeeping-government/](http://www.prov.vic.gov.au/recordkeeping-government/)

In respect to incidents or allegations of child sexual abuse, every Victorian public sector office must:

- Ensure full and accurate records are created to document all aspects of the allegation and investigation. These records must be properly managed, protected and retained over time.
- Carefully consider which records might reasonably be required in the case of an allegation being made in the future and ensure they are properly managed and retained. An allegation may be made many years after an incident. Being able to find and access authentic, informative and reliable records is likely to be critical to the investigation.

Public sector offices need to take a risk-based approach to recordkeeping, based on the type and level of interaction they have with children. There may be a higher risk of child sexual abuse occurring if:

- A child stays overnight.
- A child is alone with an adult or another child.
- Parents or guardians do not remain in close proximity.
- There are times when a child is in an environment which is not under public scrutiny.

Public sector offices should follow the steps set out in 2.1 to 2.5, to assist them in meeting their responsibilities. This guidance is specifically about child sexual abuse but should be followed in relation to any sort of child abuse.

## 2.1 Establish and maintain appropriate policies and effective practices

Every public sector office which interacts with children must:

- Establish policies, processes and systems to ensure recordkeeping requirements are met.
- Ensure that employees, volunteers, contractors and outsourced providers understand and meet their recordkeeping responsibilities.
- Monitor and check recordkeeping activity to ensure that correct action is being undertaken and implement remedial action where necessary.

## 2.2 Create a full and accurate record of any incidents, or allegations of incidents, that occur

In the case of an incident or alleged incident occurring, public sector offices must:

- Create a full and accurate record to document the allegation / incident and how this is investigated, responded to and managed. Allegations and incidents should be broadly defined to include grooming and breaches of the public office behavioural standards. An initial allegation may be made which appears to relate to a minor breach, but which may then uncover more serious allegations over time. Records should be created to document conversations and actions. They must be detailed, objective and include contextual and supporting information so that they form good evidence if needed in the future. They should be dated and clearly set out the details of participants and witnesses.
- Identify and include supporting records, or a copy of them, in the incident / investigation record. There may be older existing records which should be identified and copied to form part of the record. If copies, rather than original documents, are included in the record, it is important to ensure the copies / scans are high quality and complete (i.e. text can easily be read, and there are no missing sections).
- Contextual information about the supporting records should be included so that their evidential weight can be considered and further information sought in the future. For example, if a page is copied from an official personnel record, this source should be referenced, to give authenticity to the record and to allow people to source the original record if needed.

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Examples of records which could form part of the allegation and investigation record are:

- Letters or emails making allegations or in relation to allegations (if this occurs verbally, a record should be made of this).
- Incident reports, witness statements.
- Records, including notes, of meetings or discussions about the actual or alleged incident.
- Investigation records.
- Referrals to law enforcement authorities and briefs of evidence supporting cases, including evidence gathered for cases that do not proceed.
- Reports received from medical practitioners, health professionals, psychologists, teachers, coaches, social workers, legal officers, counsellors, chaplains and case officers in relation to actual or alleged incidents.
- Records documenting support and remedial action i.e. claims, assessments, support, counselling, compensation, redress.
- Records of cases or decisions by bodies, tribunals, courts.
- Rosters, sign on sheets, personnel records of employees and volunteers, records detailing student work placements.
- Enrolment, attendance and absence records of children.
- Permission forms from parents and carers.
- Surveillance images and footage.
- Program flyers, location maps, photographs of the environment.

### **2.3 Determine which records need to be created and kept in case any allegations are made in the future**

Public offices need to think carefully about the sorts of records which should be created and kept to ensure that any future allegations can be properly investigated. This can be difficult to assess, as an allegation could be made many years into the future.

The sorts of records which are likely to be of importance:

- Personnel and work placement records, including results of Working with Children Checks.
- Records which could be used to provide information about the whereabouts of an alleged abuser or child within a particular timeframe (rosters, attendance sheets, sign on sheets, observation records, personnel records, student work placement records, leave records, records showing travel or visits, enrolment, attendance, absence records).
- Records outlining the program or service, what it involved and how it was managed. This might include policies, procedures or flyers outlining the program.
- Records detailing policies, guidelines, training programs and behavioural standards.

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## **2.4 Retain the records for the required period of time – based on the RDA plus the public sector office assessment**

Records documenting an incident or alleged incident of child sexual abuse must be retained by the public sector office for the minimum period specified in an RDA plus any further time they might reasonably be needed for a future legal proceeding. The RCIRCSA Final Report recommended retaining these records for 45 years after the incident or alleged incident. However, this may not be a sufficient period of time as limitations for civil damages founded on child sexual abuse have been removed in Victoria and it may reasonably be assumed that these records will be required in future legal proceedings.

In addition to the records created and kept when an allegation of child sexual abuse is made and investigated, public sector offices need to assess which records are reasonably likely to be needed in case an allegation is made in the future. Public sector offices need to retain these records for as long as they might reasonably be needed for a current or future legal proceeding. This might mean retaining records for longer than the minimum time period specified in an RDA.

PROV is checking RDAs to ensure appropriate retention requirements are set.

## **2.5 Properly store and manage the records during the period they must be retained**

The public sector office must:

- Store the records securely so that they cannot be lost, damaged, altered or tampered with over time.
- Store the records confidentially so that privacy is protected and only authorised people are aware of them and can access and use them for legitimate purposes.
- Retain the records for as long as they might reasonably be needed for current or possible future legal proceedings, in such a way that they can be accessed and used for authorised purposes.
- Ensure that contextual information is retained with the records, so that future users are able to understand them and that they can be used to provide good evidence.

**For further information see <https://prov.vic.gov.au/recordkeeping-government>**

**If you have any questions please submit them via our online enquiry form. You can find that in the 'Contact Us' section of our website. [prov.vic.gov.au](https://prov.vic.gov.au)**

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## **Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) Final Report Recommendation 8.4**

The RCIRCSA Final Report recommended that all institutions that engage in child-related work implement the principles set out below. These principles are consistent with PROV Standards and Specifications.

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.

**The full RCIRCSA report can be read in full at [www.childabuseroyalcommission.gov.au/final-report](http://www.childabuseroyalcommission.gov.au/final-report)**

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