

## KEY ACTION AREA 1.6:

Staff and volunteers understand their obligations on information sharing and recordkeeping.

## INTRODUCTION

All SSA staff and volunteers need to be aware of their information sharing and recordkeeping obligations. This can sometimes be hard, as there are various legislative and contractual requirements SSAs must adhere to. However, this is an important component of your SSA's child safety processes and helps to protect your SSA if there are clear records.

As a first step, your SSA needs to identify which recordkeeping legislation it needs to comply with (see below for a starting point). Next, your SSA needs to identify what obligations it may have within any contracts (for example facility hire or use) or grant agreements. Once you have identified what you need to do, you can plan how you are going to do it, and then start implementation of your recordkeeping requirements.

## HOW LONG SHOULD CHILD SAFEGUARDING RECORDS BE KEPT FOR?

Although there are no statutory requirements which expressly require child safeguarding records (as defined below) to be kept for a prescribed time period, there are various considerations which may inform how long your SSA keeps child safeguarding records. As a general rule, child safeguarding records **should be kept indefinitely** by your SSA to enable it to be recovered at any time for potential investigations and/or legal proceedings. While this is the primary reason for maintaining such records indefinitely (rather than a shorter time-period), such records may also be retained and therefore recovered for other reasons connected with the activities and operations of your SSA (including, for example, disciplinary action) which is an added benefit of retaining records indefinitely.

However, it is also important to be aware, that certain child safeguarding records overlap with various other types of records, some of which have statutory prescribed minimum record periods (for example health, financial/governance and employment records, which should generally be kept for a minimum of 7 years). However, if these records also fall within the category of child safeguarding records, they should be kept indefinitely (which, as an unintended benefit, would achieve compliance with any statutory prescribed minimum anyway).



## WHAT ARE CHILD SAFEGUARDING RECORDS?

There are various types of child safeguarding records your SSA may hold including (but not limited to):

- Alleged or actual child abuse or other misconduct relating to a child or young person
- Alleged or actual grooming of a child or young person
- Disciplinary matters involving a child or young person
- Child safety incidents, concerns or complaints and your SSA's response to the same, including investigations
- Qualifications, employment history, Working with Children Cards and suitability assessments including recruitment, screening, supervision and training of workers and volunteers who may or will be working with children and young people
- Establishing the whereabouts of children, young people, staff, volunteers and contractors on particular dates and times
- Reviews/audits of your SSA child safeguarding policies, procedures and practices
- Membership and/or registration of children and young people
- Health information about a child or young person
- Attendance of a child or young person at an SSA event or activity
- Records relating to carers, coaches, managers or other individuals in a position of influence over a child or young person
- Complaints and discipline records relating to workers
- Records outlining programs of services, comments or complaints
- Evaluation records of services, comments or complaints
- Agreements or memoranda of understanding related to the care, protection or supervision of children and young people
- Policies, procedures, reporting mechanisms and training material relating to the provision of services to children and young people
- Insurance policies or historical claims documentation relating to children and young people and insuring against risks arising that involve children and young people (for example, public liability and professional indemnity insurance)



## WHAT PRIVACY CONSIDERATIONS ARE THERE?

Your SSA also needs to consider privacy obligations in the context of recordkeeping, in particular under the Privacy Act 1998 (Cth) (Privacy Act), which governs, amongst other things, the collection, storage, use and disclosure of personal information collected or stored by entities that are bound by the Act, and their respective privacy policies.

It is important for all SSAs to take appropriate steps to protect any personal information in its possession, including all personal information in child safeguarding records and have regard to these practices when managing and retaining these records.

An SSA is (presently) legally bound by the Privacy Act and associated Australian Privacy Principles if its annual turnover is, or has been, more than \$3M annually. Earlier in 2023, the Attorney-General's Department received a report recommending that the exemption of smaller entities (ie those below this turnover threshold) be removed or tightened. It is therefore important for your SSA to follow the proposed amendments to the Privacy Act to ensure you are complying with applicable statutory requirements if they are subsequently brought within the legislation in future.

The Australian Privacy Principles under the Privacy Act require the de-identification of personal information in specified circumstances, including where the entity no longer needs personal information for the purpose it was collected, or any purpose for which it may be used or disclosed, in which case, the entity must take reasonable steps to destroy or de-identify the information. This requirement does not apply where the entity is required by law or a court order to retain the personal information.

SSAs that are bound by the Privacy Act must take reasonable steps to protect the personal information they hold from misuse, loss, unauthorised access, modification or disclosure.

There are many reasons why an SSA would need to review historical child safeguarding information of this nature, including for potential legal proceedings, investigations or prosecutions. In contrast, more generic child safeguarding records that do not relate to specific incidents, allegations or concerns, such as member or participation records, are unlikely to qualify for ongoing retention. Under the Privacy Act, it is likely this information will need to be de-identified once it is no longer needed for any purpose for which it was collected (ie the child's membership of the SSA).

For further information, refer to the [Office of the Australian Information Commissioner website](#).



## STORING RECORDS

There is no statutory requirement to maintain child safeguarding records in a particular format or location. Accordingly, such records may be kept either in hard copy or electronically. However, best practice dictates that where records can be kept electronically, provided they can be kept safely (see below for more information), SSAs should retain records in electronic format.

### Electronic records should:

- Ensure there is a reliable means of ensuring integrity of information contained in the document
- Be readily accessible and useable for subsequent reference
- If a particular kind of storage device is required by regulations, meet that requirement
- If the records are confidential and sensitive, be secure and include privileges to access the record and make changes or dispose of the information
- Be adaptable to changes in technology
- Be convertible to hard copy.

### If non-electronic records are used, they should:

- If confidential and/or sensitive be stored in a locked filing cabinet and should never be left unattended on a desk or other insecure location
- Be maintained in an indexed, logical and secure manner
- Be cross-referenced (as applicable) to ensure that people using those records are aware of all relevant information.

## INFORMING MEMBERS ABOUT RECORDKEEPING PRACTICES

Once your SSA is clear about what child safety records it needs to keep and for how long, it is important that children and young people and their families are informed about this.

It is also important to be aware that children and young people have a right to access their records and to provide comments or changes. Therefore, it is important for your SSA to have a process to enable this to happen if a request is made. The Privacy Act safeguards individuals' personal information regardless of their age and does not prescribe a minimum age from which an individual can make their own privacy decisions. However, for a person's consent to be valid, they must have capacity to consent. In other words, if a child or young person requests

access to their personal information, including information in records which may be distressing, your SSA should consider whether the child has capacity to consent before releasing any such information or record. This must be determined by your SSA on a case-by-case basis.

The Office of the Australian Information Commissioner (OAIC) states that, as a general rule, an individual under the age of 18 has the capacity to consent if they have the maturity to understand what is being proposed (for example, accessing potentially traumatic or distressing materials). If it is determined that they lack maturity, it may be appropriate for a parent or guardian to consent on their behalf. If your SSA is unsure, you can seek professional or legal advice and/or visit the website of the [Office of the Australian Information Commissioner](#).



<b>EXAMPLE SSA ACTIONS TO WORK TOWARDS IMPLEMENTING KEY ACTION AREA 1.6</b>	<p>The SSA ensures their child safety recordkeeping processes meet legislated or contractual obligations.</p>
	<p>The SSA informs children and young people and their families about what records are kept about them, for how long, and how they can access them.</p>
	<p>Children and young people are supported to read certain records and to comment on them or seek changes to them.</p>
	<p>The SSA provides training and support for staff and volunteers to understand and comply with information sharing and recordkeeping processes.</p>

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If you need support:

> [Mental health community links](#)

> [Reporting flowchart](#)

