

THE DIFFERENCE IT MAKES: IMAGINING THE IMPACT OF THE CHARTER ON CHILDREN IN OUT-OF-HOME CARE - A fictional case study

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Introduction

The Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care is an aspirational and ambitious agenda for changing records in practice. It positions the Child at the centre of recordkeeping, addressing key identity, participation, accountability and memory rights within a human rights framework. This is tailored to specific recordkeeping rights immediately affecting practice in relation to records creation and participatory rights, privacy and safe recordkeeping rights and rights in disclosure, access and records expertise. The accompanying tools and implementation guidance are intended to assist implementers to introduce change. But what difference will having the Charter Rights embedded in practice actually make?

This fictional case study is intended to illustrate the outcomes that the Charter Rights and imagine what affect practice change to support the Charter will have on an individual child. The Case Study is structured by age, reflecting maturing requirements of a child during their period of time in Care and beyond. Each section outlines the fictional circumstances, a precis of current experiences using today's system, and a future re-imagined after the implementation of the Charter.

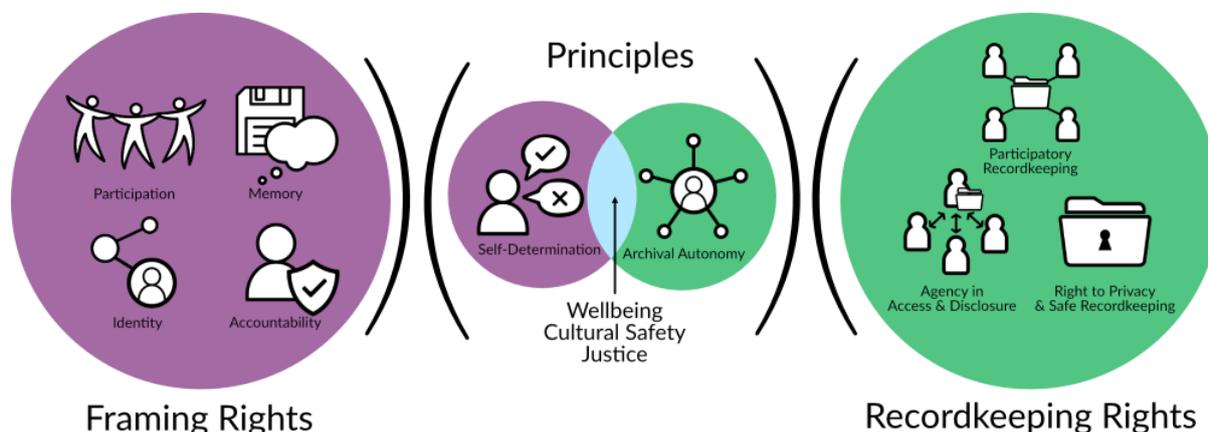


Figure 1:
Summary graphic of the Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care

The Case Study

The case study uses a fictional character, Alex. Alex is a fictional composite character, grounded in reality. The persona and circumstances of Alex's life experience and how the current systems work

were co-developed through a collaborative research project involving academic researchers and five recent (within the past 10 years) Care Leavers. This research was primarily intended to investigate and imagine a reconfigured recordkeeping environment supporting children in Care: one that supported children in becoming active participants in their Care and in the recordkeeping about their Care. The work was undertaken largely in the context of Out-of-Home Care in Victoria and while the issues are generic, there will be some components of specific records that are specific to the Victorian jurisdiction. Further details about the process and outcomes of this collaborative research are included in the references section.

From the co-design work, further development and extension of Alex’s life experience have been imagined to illustrate the changes anticipated through implementation of the Charter. Details about Alex’s requirements for records later in life have been drawn from the extensive testimony of ‘care’ Leavers evidenced in Royal Commissions, Inquiries and through consultation with Dr Frank Golding, the CREATE Foundation and CLAN.

Alex’s backstory

This is the story of the fictional Alex, who has a ‘reasonable’ history with the OOHC system. That is, Alex’s circumstances have been devised to depict what the project work defined as an ‘average’ experience – not focusing on either extreme of horrendous experience or exemplary experience.

Alex enters the OOHC system at age 8. She entered the system due to 3rd party report of concerns about neglect. An overview of Alex’s experience is illustrated below, taking her from age 8 into the future. She has multiple engagements with the “care” system, through emergency placement, multiple instances of foster care, residential care and transitioning to independent living. Our case study traces Alex’s experiences across this trajectory and positions Alex at different ages, interacting with systems and experiences as she grows older.



Figure 2: Alex's 'care' trajectory

Alex's experience aged 8

At the time of her entry into the system Alex is quite young, with strong memory of incidents and events leading up to her placement. She is traumatized at her removal from family notwithstanding the daily circumstances she is removed from. It is what she knows.

Current practice

In practice the systems do what the systems do. These are largely forms based systems, with procedurally established sets of records required to be created. Records will exist at all tiers of the system. This is a distributed system. Not all the records will go back to the Department. Exactly what does end up in the government system is dependent on the specific jurisdiction. If the jurisdiction operates a distributed system, then it is fair to assume that the key documents will end up in government systems. However a secondary layer of information will be maintained by the Service Provider agency. Again, the specifics of the Service Provider agency system will vary depending on the contractual obligations under the service level agreements made between the agency and the Department. The systems in place in the Service Provider agencies and the procedural requirements within the agency will guide what records are created for an individual child.

Additionally, Service Providers will maintain a range of records about individual Carers. Following recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, most jurisdictions have implemented independent regulators to register individual carers, with checks on any criminal histories and compulsory Working with Children checks. The Service Provider has a contractual arrangement with the individual Carer which is compliant with jurisdictional requirements, but left with Service Provider agencies to define, monitor and enforce.

Individual carers also maintain records. They will receive some (variable) documentation relating to individual children on placement. Of course, in emergency situations, documentation lags behind intervention. Carers have anecdotally reported that the information received about the child isn't always the information that would assist the child in a state of trauma. Very human details about comfort foods or soothing routines is often not provided, with individual carers left to try and find out such things while trying to comfort and settle a child.

Recordkeeping responsibilities of the carer are largely defined by the Service Provider agencies. The most detail available relates to LifeStory work, which is not the first priority with a distressed child. This work will await a more stable placement in foster care. In the main, at present, the majority of procedural/monitoring/planning/decision making will be recorded in the Carer agency system, with a proportion of these sent to the Government Department.

Personal records created for and about Alex are maintained with the individual carer.

All this is completely opaque to Alex. At age 8 and with traumatic experiences to confront, records are not front of mind for her. She only knows what she encounters and her experience is primarily related to the individuals with whom she interacts. Her primary point of contact is her assigned carer. But she also has periodic sessions with child protection workers from the Department. With the known issue of staff burn out and a high turn over rate, this person can be different from visit to visit, which is not particularly reassuring for Alex.

At this point in her life, Alex is not particularly interested in the issue of records – her life and reality are the primary drivers in her world. She is largely at the mercy of the system and dependent on adults to ensure that the systems provide her with stability, safety and well-being. The underlying principle of child protection is the expectation of all in the system is that adults are acting in Alex’s best interests.

The types of records which would be expected to be created in current systems are sketched in Table 1.

TYPES OF RECORDS - Entering the system	
Government department	<ul style="list-style-type: none"> •Plethora of records, often form based, including: •FigureInitial reporting (protected by law) •Assessment checks •Emergency placement •Intake investigation •Court records and orders •Referral to placement/care •Family contact/access arrangements •Carer registration
Service Agency/ies	<ul style="list-style-type: none"> •Carer registration •Assignment to carer •Family contact •Monitoring of placement •System for carer use
Carer/Personal	<ul style="list-style-type: none"> •Documenting ‘life-story’ as time permits

Table 1: Records expected to be created at time of entry to Out-of-Home Care

Future with the Charter implemented and embedded

Alex's interest in records is probably no different with an implemented Charter. She is not likely to be particularly concerned by records at this point of her life. However, she is made aware of her rights in recordkeeping. The Charter is obvious in all her engagements with people in authority (external carers, social workers who interview her etc). She is repeatedly told that records are being made about her experience of 'care'. Her views and opinions are asked for and recorded – these are shown to her as they are created. She knows that records are made at different parts of the system. She is told that these are her records – records about her - and that they contain information about her time in 'care'. She is told that she can ask to look at records at any time, that these will be available to her (except in specific cases where the law currently says not – eg initial child protection report). She is told about the records that exist about her family connections and access arrangements. She knows she can ask for copies of records at any time. She knows that various people associated with her 'care' will have access to her records, but that when personal details are shared, she will know about it in general terms, and be asked for her consent where this is discretionary.

While Alex isn't specifically interested in any of this at this time, she has a basic understanding of the system and that information is being made about her. Through the organisations and individuals associated with her 'care' being recordkeeping aware and having their practice guided by the Charter, recordkeeping is taken seriously on her behalf. Alex is aware of recordkeeping throughout the process. Recordkeeping is demystified and normalized.

Figure 3 illustrates how this future scenario embeds recordkeeping rights and framing rights defined in the Charter.

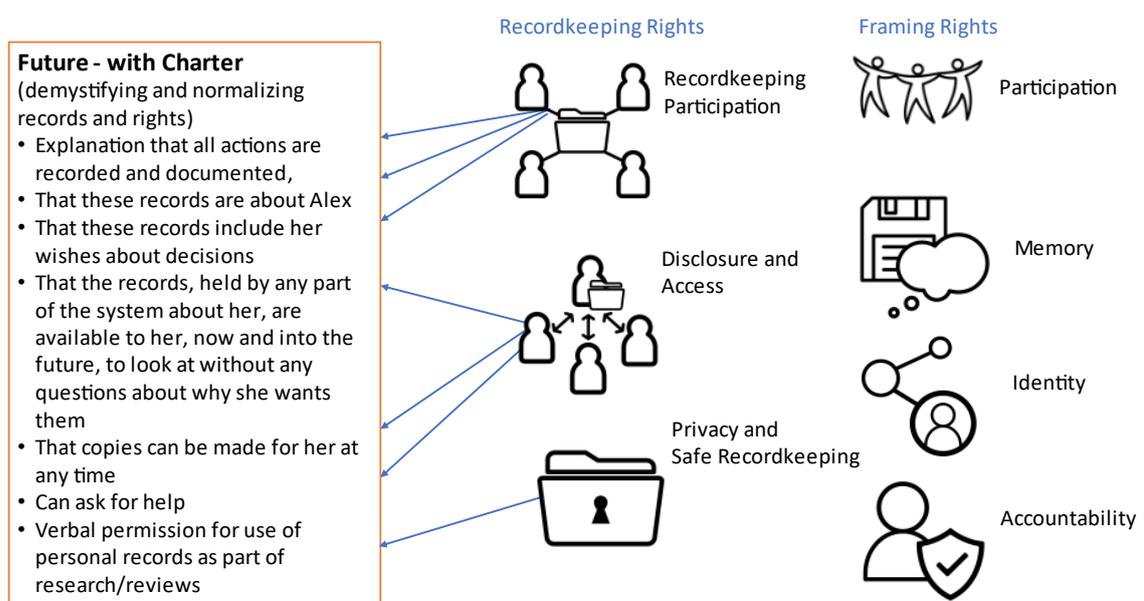


Figure 3: How the Charter Rights are addressed

Alex at Age 15

By 15 Alex has had a number of different experiences of Out-of-Home Care. She had a fairly stable initial placement with a foster carer, where she stayed from ages 8-12. During this time there were occasional experiences of respite care. This stable placement 'broke down' when her carers decided to move interstate. A second placement was not successful, with possible violence in the home and an overall hostile experience. As a result, at 15 Alex is placed into Residential Care.

At age 15, Alex is a typical teenager. There are the normal teenage issues of growing into an adult identity and responsibility including questioning and challenging of identity, authority and controls. As a child removed from her family, she is particularly concerned about her identity, that of her family and particularly questions about why she is in the 'care' system. Why were there no family around to care for her if her parents couldn't? What efforts have been made to reunite her with her parents and family unit?

Alex at this time is consolidating her knowledge of rights, and is beginning to demand that her rights are respected and her input into decision making is given the weight it deserves.

Current practice

While Alex knows that records are made about her, she has no real understanding of how the system works or what is being recorded. She knows that social workers visit her and have made decisions about her. She has been asked her opinion and expressed her opinion to people she comes in contact with. She knows that incident reports have been made about her behaviour in at least two instances (the great condiment issue, where tomato sauce was spread all over the kitchen in an act of defiance, and one when she threw plastic cutlery at a residential care staff member). In the normal family dynamics a teenager pitching a temper fit wouldn't be recorded anywhere, but in the 'care' system, risk aversion requires documentation.

As she becomes more interested in being actively involved in monitoring and overseeing decisions made about her, Alex asks her social worker if she can look at the records about her. As before The social worker is sympathetic to this and shows Alex the records contained on her mobile device, but this access is a bit limited. Alex can't really browse around and poke into the system for records about her, because the social worker has got other people's records on the device and it's also not complete – it's just the stuff that the social worker needed for this visit. The social worker logs into the Service Provider agency system and shows Alex the basics of the system and what is there. Again, Alex can't explore for privacy and security reasons. The social worker kind of explains how the systems work – what goes to the Department, what is kept by ResiCare (the current Service Provider agency). Between them, they agree that Alex can see what the social worker writes about the visit and Alex can approve or ask for changes, and she asks for this level of interaction to become part of her normal 'care' supervision programme. The social worker agrees but cautions that this will have to be negotiated with all individual staff Alex encounters because it is allowed but not normal practice. And it takes longer.

Alex, now interested, wants to know what else is contained in various systems about her. The social worker grimaces and explains that this isn't straightforward. While her sympathetic social worker assures her that she can do this, Alex is told that it is really quite complicated because different things are in different systems. The social worker is discouraging in terms of time and effort required just to satisfy Alex's general requirement to know. Getting access to the information and to copies of the records may require It might take a freedom of information request to get the whole picture. There is the strong likelihood that large parts of the record would be redacted. That could take quite a bit of time but Alex could do it. The social worker prompts Alex to think about why she wants records and whether there anything specific she wants to know. Rather than engage with access to information the systems encourage people to avoid exercising their rights and to work around formal processes leaving Alex dependent on good will of sympathetic individuals.

Alex has a LifeStory record. This has been compiled by individual carers, so at least 3 sets of carers have done some of this work. Alex hasn't had records and their importance explained to her, so when given copies of these records they haven't been particularly cared for. Carers and social workers call them 'treasure boxes' but this is all a bit naff to 15 year old Alex. The LifeStory records are supposed to move with Alex between placements but Alex isn't sure whether this was actually done, and doesn't really value these records. Some core documents which actually belong to Alex have been incorporated into the Department and into the Service Provider systems to mitigate against Alex herself not valuing the records. The Service Provider Agency has changed twice during Alex's time in 'care'. Where are her records now?

The types of records that would be expected to be created at present are illustrated in Table 2.

TYPES OF RECORDS	
Government department	<ul style="list-style-type: none"> •Incident reports •Records of placement breakdown •Placement history
Service Agency/ies	<ul style="list-style-type: none"> •Records of placement breakdown •Carer's versions and Alex's versions •Assessments of social worker (case notes) •Incident reports •Risk Assessments •Mental Health plan •Counsellor case notes – goal planning •Monitoring of placement •System for carer use

Carer/Personal	<ul style="list-style-type: none"> •Certificates •School reports •School counsellor reports/plans •Medical records, vaccinations etc •Extra curricula activities •Documenting 'life-story' as time permits
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Table 2: Types of records created in systems when Alex is around age 15

Future with the Charter implemented and embedded

Alex has always known that records are made about her, the decisions that affect her 'care', her behaviour etc and that she can get access to records. She knows what is in the record (or what should be in the record) because she has always seen, commented on or contributed her opinion to what is written about her in visits, care and counselling. Her views are appropriately recorded in the record.

Of course, she expects that there are additional things that she hasn't been specifically consulted about, and now she wants to get access to, and copies of, these records. The Government department keeps track of what systems are used for what records both in their systems, and in contracted third party providers systems as they evolve over time. So it's easy for Alex to request access.

Alex decides she wants to keep her own archive of these records. While, as yet, this is not supported by organizational systems, there are some 3rd party apps that make this possible, so she requests copies of all records about her to be sent to her as a matter of course (an option available to her).

In the past year, Alex has been asked three times about whether her records can be used in research studies – she has agreed to two research uses because she likes the sound of the research outcomes, but refused access to one. Access permissions are explicitly recorded and have (as far as Alex knows) been honoured by the Department.

Figure 4 illustrates how this future scenario embeds recordkeeping rights and framing rights defined in the Charter

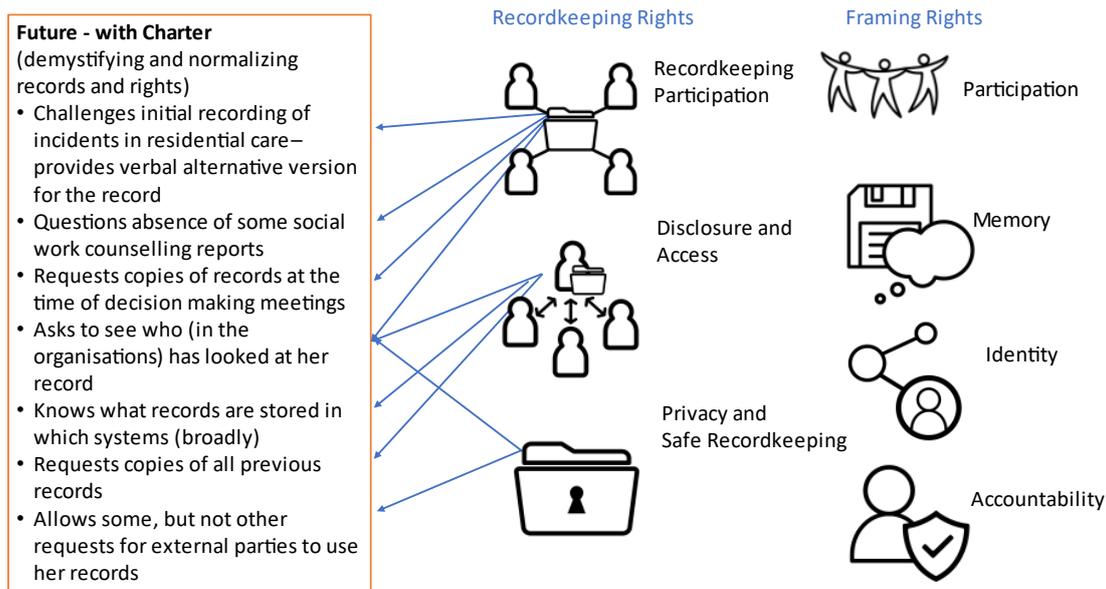


Figure 4: How the Charter Rights are addressed

Alex at Age 18-21 – transitioning to independent living

Between 18 and 21 Alex is transitioning to independent living. This is a challenging time and has brought about a lot of change. Being responsible for housing, finances and getting work has meant that Alex has had to obtain copies of basic identity documents etc. Getting all this together has been a huge business so Alex has a vague interest in connecting with her extended family – about whom she doesn't know much – but the stuff of daily living has meant that not much has been done to make this happen. Increasingly Alex is relying on the experience of recent Care Leavers turned advocates and the resources of external bodies such as CREATE to help her understand what she needs to do, and to understand the key role that records play, and will continue to play, in her independent life.

Current practice

One thing that is obvious to Alex is that there are a multitude of templates and forms that are put in front of her, aimed at assisting her in gaining an understanding and accepting responsibility for transitioning out of the 'care' system. A multitude of plans and forms are created. Alex is involved with determining the contents of these and gets copies as a matter of course.

Of course, Alex doesn't know what she doesn't know. A lot of this period is about learning to interact with government and other systems, setting up accounts and getting organized. While she has been administering her Medicare record since she was 14, this was always through the government's Medicare App. Now there is My Gov to negotiate, particularly for administration of allowances.

Some of most critical documents at this stage are those that are known as LifeStory records – not the somewhat naff narrative accounts, but the critical documents such as birth certificates and educational qualifications, eligibility for allowances and applications. Alex has copies of some of these, but not all of them. Some have made their way to the organizational systems, but some are not available and have to be obtained through multiple organisations (eg her birth certificate).

This world is confronting and confusing at a time when Alex feels like she is being cast adrift. Her initial naïve expectation was that all the documents that she needs are easily available to her through the systems with which she has interacted. She assumes that she can get easy access to records if and when she needs it. Her somewhat brutal reality is that things aren't actually as easy as she assumed. The default position is that a formal application to get copies of records is needed. Decisions about what she can see are mediated by someone in an organization – getting to talk to the responsible person is, in itself, not straightforward. Fighting for free access to records can also be a bit of a shock to Alex. Exemptions to fees for access to information are available, but a process of applying for this exemption is needed. Every time she requests access to records she encounters a new person who mediates the request. She is continually having to explain her circumstances, again and again, to an ever-changing audience. It feels confronting and intimidating and it is increasingly making Alex squirm with discomfort to obtain something that she feels should be hers by right.

The reality of the distributed record has been brought home to Alex. Where is the consolidated record? Does it exist? Which organization has it? She has been through three foster care placements and had her case managed by two separate Service Provider agencies and in one case, the Service Provider tells her that her records are no longer available because they have ceased to operate and all their organizational systems have changed.. What record are where and what does she need? Nobody prepared her for this complexity!

TYPES OF RECORDS	
Government department	<ul style="list-style-type: none"> •Incident reports •Records of placement breakdown •Placement history •Transition to independent living plan •Key identity documents
Service Agency/ies	<ul style="list-style-type: none"> •Records of placement breakdown •Carer's versions and Alex's versions •Assessments of social worker (case notes) •Incident reports •Risk Assessments •Mental Health plan •Counsellor case notes – goal planning •Monitoring of placement •Transition to independent living plan

	<ul style="list-style-type: none"> •System for carer use
Carer/Personal	<ul style="list-style-type: none"> •Certificates •School reports •School counsellor reports/plans •Medical records, vaccinations etc •Extra curricula activities •Documenting 'life-story' as time permits

Table 3: Types of records accumulated during Alex's time in 'care'

Future with the Charter implemented and embedded

In reality little is really different for Alex at this stage. Alex has always known and been aware of recordkeeping and its importance. So this stage is a change of regime and responsibility. She has always been able to ask for and get a clear indication of who has responsibility for what records exist about her. Her placement history is easily accessible, and the records created about each placement are clearly specified and accessible for Alex's lifetime. Asking for copies of records is routine, expected and completely normal. All the staff are aware of the importance of records at this critical life-stage, and make it as easy as possible for Alex to assume responsibility and control.

Alex needs to ensure that she is the responsible custodian of her documentation. Some of this has been obtained along the way, and although this has always been a present part of her knowledge, she is really beginning to appreciate the ongoing importance of recordkeeping and the implications of maintaining records.

Not being sure about whether she has got/kept a complete copy, she asks for all records from all systems for her own personal systems. A safe archiving service is made available at transition and copies of key documents and Alex stores key records there. But there are many options to choose from. Alex asks for assistance in selecting and setting up archive services that will last over time. She transfers all the accumulated material into digital form and stores it in her selected archive application. In doing so, she is introduced to the problems of originals vs copies by requesting agencies and also some problems in transferring documents/information into the new application. She has access to recordkeeping expertise to help her along the way whenever she needs help.

Figure 5 illustrates how this future scenario embeds recordkeeping rights and framing rights defined in the Charter

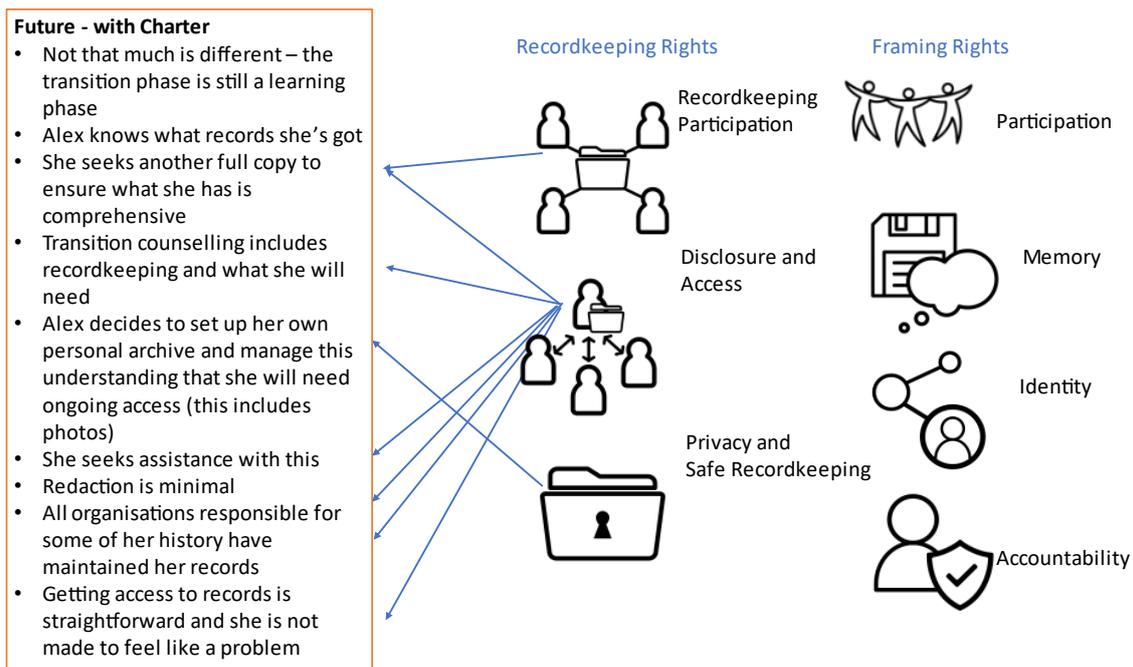


Figure 5: How the Charter Rights are addressed

And into the future

Of course, Alex’s need for records about her time in ‘care’ are not restricted to that period of her life. Over time, and depending on personal circumstances, Alex will reflect on her childhood and obtaining access to records will be a constituent part of this.

There are known triggers for more intense incidents of re-examination of the past. Some of those that are known include:

- When a Care Leaver has her own children, and being ‘known’ to the system, her children and her parenting skills are put under more intense scrutiny than is applied to others
- Health conditions of a Care Leaver or children. Needing to trace medical history in the family.
- Explaining family history to her children, often itself triggered by the seemingly ubiquitous primary school assignment which asks Alex’s children to document their family history
- Submissions to Inquiries, Royal Commissions or other investigative probes
- Options for redress which open up over time.

In any one of these scenarios in the future, Alex may have occasion to go back to the organisations and systems that document her own childhood. This may occur in the near future, in the case of childhood sexual abuse, this may be delayed for an average of 22 years after the events (as revealed by the Royal Commission into Institutional Responses to Child Sexual Abuse) and into older age to make peace with traumatic experiences that continue to haunt. These and other reasons are well documented in the work of Dr Frank Golding, Dr Jacqueline Wilson and others.

In such circumstances the expectation is that the records will be available to a Care Leaver when they need them. The assumption is that they will exist for at least the lifetime of the individual. Alex assumes she can get easy access to the records when she needs to.

Current practice

The unsatisfactory state of access to records of childhood recordkeeping are well documented. Dr Nina Lewis's literature review associated with this case study is a concise summary of the issues otherwise well documented in Australia and the impetus for this project to take a strategic approach to repositioning recordkeeping as a rights based practice.

In reality at present, records are hard to access. The processes guiding access to records by the person who is documented in the record is nominally available, but organisations holding the records are risk averse, reactive and defensive about past practices. While there are some exemplary organisations and best practices now implemented in practice, in general the experience can still be traumatizing and confronting for the individual. Redaction, or the process of blocking out chunks of text, is a common place. However the application of the process of redaction can be idiosyncratic and inconsistent. It is often dependent on the views of a single individual and reflects an organisation's risk appetite. The process can cost a lot of money in fees, and needing a strong will to succeed over numerous attempts.

Requests are treated bureaucratically and often forced through formal systems under legislative rules such as the Freedom of Information system. Without specific knowledge of what is likely to be in a record, it is very difficult to know how to ask for a record. Redaction to protect third party privacy are rife. There is still little, although improving, explanation of the record when approached through front line departments. Fees are routinely charged although there is a process to apply for exemption from fees to obtain personal information. The response is reactive and defensive. Where specific archival services are in place and post RCISA, the experience is improved with more sensitive and permissive approaches to release of information. But for Alex, the majority of her records were created in the digital era and such systems have yet to be reinvented for long term access. Indeed it is quite likely that Alex will be told that the records are inaccessible because of system change and decisions not to migrate records that were not current at the time. A summary record of her time in 'care' is possibly all she will get. Alternatively, the Department has a policy to ensure all records are returned to the Department from all agencies involved in 'care'. In such cases Alex may receive upwards of 10000 printed documents, in chronological order, consisting of total trivia and with little means of navigating to key documents of interest.

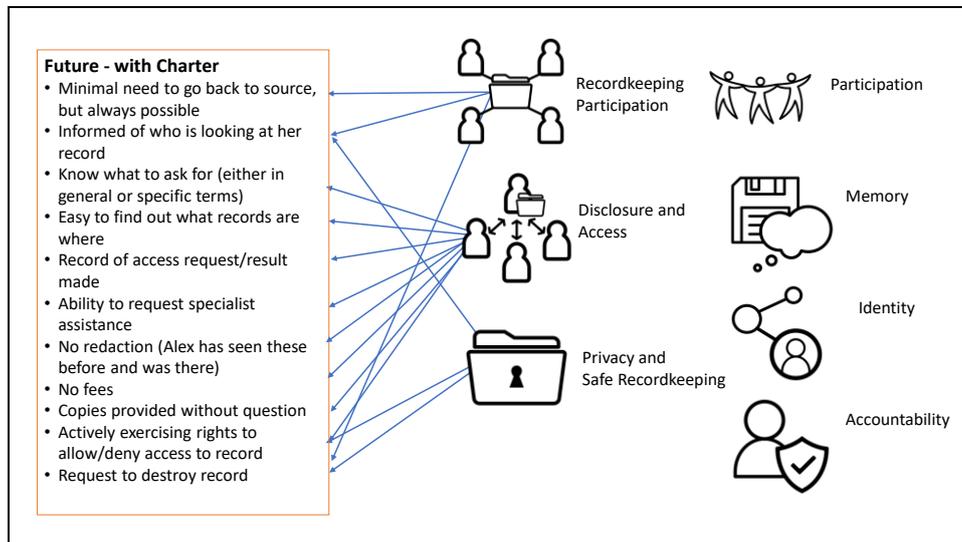
Future with the Charter implemented and embedded

Alex doesn't need to access the formal files of agencies as a matter of course. As a part of the changed regime for recordkeeping the records have been consistently made available to her. The trauma of inappropriate, inconsistent or judgemental records is eliminated because of the participatory involvement of Alex throughout her life in the process of records creation. She has always had access to copies. She knows exactly what is in the records. The whole horrible experience of fighting systems and risking re-traumatisation by incomplete, redacted or hurtfully judgemental records is eliminated.

Perhaps Alex has lost access to the third party app on which she stored the information. In that scenario (only too possible), Alex knows exactly what documentation should be made available to her, and what to ask for. Because the records were given to her contemporaneously (and the systems might record this) there should be no question of redaction. Because Alex is now interested in further exploring her extended family, referral to independent expertise is available through all access points.

Records will be retained for at least the whole of Alex's lifetime and for that of her children/grandchildren affected by the removal from family. Access is free. Alex and her children/grandchildren (with Alex's explicit permission during her lifetime) will be provided free of charge any number of times, upon request.

Recordkeeping is transformed. It operates to empower Alex, not to retraumatize her. It is a generous practice suited to a reparative justice framework for Alex, who encountered such systems through no fault of her own.



With an operationalized Charter: Alex doesn't need to access the formal files of agencies as a matter of course. As a part of the changed regime for recordkeeping the records have been consistently made available to her. But perhaps she has lost access to the third party app on which she stored the information. In that type of scenario (only too possible), Alex knows exactly what documentation should be made available to her, and what to ask for. Because the records were given to her contemporaneously (and the systems might record this) there should be no question of redaction. Because Alex is now interested in further exploring her extended family, referral to independent expertise is available through all access points.

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