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Dear Commissioner

Thank you for the opportunity to comment on the exposure draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2020.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) made significant recommendations on recordkeeping in addition to those relating to the Child Safe Standards. We fully endorse the adoption of the National Principles for Child Safe Organisations developed in 2017 by the Australian Human Rights Commission, although would suggest NSW proceed with an identical adoption, including requirements to keep children informed in Principle 2. The National Principles minimised focus on recordkeeping, equally a Royal Commission concern for creating child safe organisations, as addressed in its 23 specific records-related recommendations.<sup>1</sup> The role of recordkeeping in holding individuals and organisations to account, the potential to create a lifelong impact on individual's life chances and the systemic nature of lack of attention to records were all illustrated most graphically in the multiple volumes of the Royal Commission's report.

A lack of focus on the foundational role of recordkeeping in the proposed approach has implications:

1. There is no mention of records or recordkeeping in the governance arrangements for a Child Safe organisation. Perhaps it is assumed, but the experience of the Royal Commission identified requirements for clear, persistent and systemic attention to recordkeeping in organisations. Recordkeeping is a core governance issues ensuring the creation and management of evidence of actions for as long as they are needed. Recordkeeping must be encompassed as part of the organisational culture of a Child Safe Organisation, and embedded in organisational culture. The Royal Commission drew very clear conclusions on the importance of robust and reliable recordkeeping as a core component for good governance in organisations seeking to provide Child Safe environments.

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<sup>1</sup> Volume 8, Recordkeeping and information sharing, available at <https://www.childabuseroyalcommission.gov.au/recordkeeping-and-information-sharing>

2. NSW has incorporated recordkeeping into the Charter of Rights for Out-of-Home Care adopted in NSW Family and Community Services – ‘You have the right to ask for any information that is being kept about you, to read your file and to add any information to your file’.<sup>2</sup> This right should be extended to rights to records for all children in order to improve their agency in all decision making, accountability and complaints mechanisms, both contemporaneously with decisions being taken and throughout their life as decisions taken in childhood reverberate over time. Accountability is not solely restricted to compliance within organisational settings, but there is an overarching and lifelong accountability to those affected by actions undertaken within an organisational context.
3. The Office of Children’s Guardian role of monitoring, investigation and enforcement, provided for in section 8A of the proposed legislation, makes it a key stakeholder in good recordkeeping by Child Safe organisations. While emphasis has been placed on the development of specific plans or strategies (such as complaint management), individual isolated reports are not sufficient without reliable records to underpin ongoing accountability. Without a robust, systemic, organisationally supported recordkeeping framework to support individual plans, reports or statistics, the capacity to investigate and to hold organisations to account, both now and over time, will be compromised.

To address these and more systemic issues in the organisations subject to regulation, we recommend:

- At minimum that recordkeeping be included explicitly in the governance standards and guidance issued by your Office. This could be done by adopting the Royal Commission’s recordkeeping principles which provide a minimum base level applicable to organisations across society with responsibilities for child safety. We note the cursory and inadequate attention to recordkeeping in the existing Guidance issued by the Office.
- The Office of the Children’s Guardian should require child safe organisations to adopt a lifelong right to records for children affected by actions undertaken by an organisation.
- The Office of the Children’s Guardian should require those organisations involved with Out-of-Home care provision to adopt and implement a Charter of Lifelong Rights in Childhood Recordkeeping.<sup>3</sup>

As key exponents of recordkeeping rights, we would be pleased to further address any of these issues for the Office of Children’s Guardian.

Yours sincerely

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<sup>2</sup> Department of Family and Community Services, NSW  
[https://www.facs.nsw.gov.au/\\_\\_data/assets/file/0010/384760/Charter\\_of\\_rights\\_13-18\\_GREEN\\_web.pdf](https://www.facs.nsw.gov.au/__data/assets/file/0010/384760/Charter_of_rights_13-18_GREEN_web.pdf)

<sup>3</sup> <https://rights-records.it.monash.edu/research-development-agenda/rights-in-records-by-design/recordkeeping-rights-charter/>

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