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Commission of Inquiry into Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings

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Dear Commissioners

Thank you for the opportunity to provide a submission to the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings (Commission).

### **About us**

The Monash University led, [Rights in Records By Design](#) project brings together archival and recordkeeping, social work and early childhood education researchers at Monash University and Federation University. The project involves collaboration with Care experienced people and those affected by poor or non-existent recordkeeping practices. This Australian Research Council supported research seeks to fundamentally redesign and reimagine recordkeeping and archival systems to support responsive and accountable child-centred out-of-home care and as an enabler of historical justice and reconciliation.

One project stream is the development of a [Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care](#). The development of the Charter is an outcome of the [Setting the Record Straight for the Rights of the Child Summit](#) held in May 2017 in conjunction with project partners CREATE Foundation (national peak consumer body representing the voices of children and young people with an out-of-home care experience), Connecting Home (a service for Stolen Generation), Care Leaver Australasia Network (CLAN) and the Child Migrants Trust; and is supported by a reference group of Young Care Leavers. It follows from and extends CLAN's [Charter of Rights to Childhood Records](#), aimed at informing and supporting the fundamental lifelong role of records for Care experienced people.

## **Our response to the Commission**

This response looks to contributing to the Commission's Information Paper, Part B: Improving the Tasmanian Government's Approach to Allegations and Incidents of Child Sexual Abuse in Institutional Contexts, and in particular to the exploration of the following questions:

- How adequate or effective have the Tasmanian Government's reforms been in response to the RCIRCSA?
- What issues does the Tasmanian Government face in improving its response to child sexual abuse, and what factors may support or limit change?
- What else can and should be done to better protect children from sexual abuse in institutional contexts. To remove barriers to the reporting of abuse, to improve the response to reports or information about abuse, and to address or alleviate the impact of child sexual abuse on victim-survivors and the Tasmanian community?

## **The role of recordkeeping**

Records are fundamental enablers of action. They document facts, reflect the interpretation of events and in situations of conflict, become instruments through which organisational power is exercised. Records can disempower individuals documented in the records by enabling organisations and individuals in situations of power to control how individuals are represented in the record, what is recorded, who is controlling the narrative in the records, and how the records are shared or withheld. Recordkeeping is a key accountability mechanism to enable review of individual and organisational action or inaction over time.

The empowering of children, and their future selves, to participate in and control their personal narratives about their experience is a key component of active engagement, participation and agency. Participation leads to better decision making and outcomes, protects children by providing them with information, and strengthens accountability (EU-UNICEF 2014).

## **Lack of change in recordkeeping since the Royal Commission**

We note the terms of reference for the Commission, and the clearly stated intent in the Information Paper, not to repeat ground covered by the Royal Commission into Institutional Responses to Child Sexual Abuse 2017, (RCIRCSA). Our interest is in recordkeeping, and RCIRCSA addressed recordkeeping in Volume 8, Recordkeeping and Information Sharing of its Final Report. In that report a statement of general recordkeeping principles supporting the creation of 'full and accurate' records was proposed.

Since the publication of the RCIRCSA report the Australian Human Rights Commission incorporated some areas of recordkeeping into their [National Principles for Child Safe Organisations](#). Individual states, including Tasmania, have since largely adopted the RCIRCSA statement of Child Safe Principles, however, recordkeeping remains largely unchanged. The result of this is that while specific legislation has been introduced to enhance Child Safe Principles, recordkeeping has largely been reduced to supporting the complaints process. Managing complaints is certainly important, but this fails to address the recordkeeping issues which are an underlying component of so many of the RCIRCSA recommendations (investigations, monitoring, reporting, complaints, improved access to information, information and data sharing). Many of these underlying components creating the environment for children's safety are dependent on robust and reliable recordkeeping as a prerequisite. At present there have been no fundamental shifts in approach or culture around recordkeeping in Tasmania or in other jurisdictions, although we can point to some incremental improvements in isolated organisational practice.

The issues of recordkeeping have been clearly recognised by the RCIRCSA. We contend that recognising recordkeeping problems is not enough. Our research has traced many recommendations made over 30 years from independent, government and statutory inquiries into the treatment of individuals with experience of the child protection systems usually those who have been removed from family and placed into institutional 'Care' (Lewis, 2020). Almost without fail, these inquiries have recommended organisational attention to the creation and access to records. Yet the same issues recur in following inquiries.

Commissioners for Children and Young People have regularly noted the absence of records, or poor quality recordkeeping inhibiting their capacity to effectively investigate individual circumstances and systemic problems. These findings are echoed internationally (for example, through reference to broadly similar findings in the UK, Scotland and Canada).

Following the RCIRCSA, recordkeeping regulators (largely the state and territory government archives) have taken action to extend retention periods for records documenting childhood abuse. Following the endorsement of RCIRCSA of the [DSS Best Practice Principles for Access to Records](#), the recordkeeping regulatory agencies are collectively looking to issue a further statement on enabling access to records. However these actions are addressing records already in existence and essentially address improving practice on records of the past. This emphasis tacitly positions recordkeeping issues as things of the past. But the problem is not one of the past. Current systems and current workplace practices require active change so as not to perpetuate the identified problems. There has been little to no noticeable change to recordkeeping practices supporting children in situations of abuse, in Care or under the protection of the State systems. Indeed, an argument could be raised that data is increasingly being weaponised against vulnerable children and families where automated tools are being introduced without appropriate safeguards (Byrne, Day & Raftree 2021).

We believe that doing the same has been comprehensively demonstrated not to work. Iterative change, as proposed by the recordkeeping principles proposed by RCIRCSA, have yet to demonstrate any significant change in practice. The recommendations on recordkeeping are largely being treated as if they are business as usual. They are failing to have an impact in practice and we cannot point to any shift in recordkeeping practice equivalent to that being adopted through jurisdiction and organisational adoption and action on Child Safe Standards.

### **Rights based approach**

As an alternative, we propose changing the foundational approach to recordkeeping through the adoption of a Charter of Lifelong Rights in Childhood Recordkeeping Rights, which repositions recordkeeping as a core and enforceable set of rights for children. Our work has developed one such Charter (attached) specifically aimed at children in Out-of-Home Care to address this significant cohort of vulnerable children, but we believe that the practice changes it advances will positively impact all children.<sup>1</sup>

Posited in terms drawn from international human rights frameworks, the recordkeeping rights seek to address the recordkeeping fundamentals required before the defined rights and actions identified in UN Conventions can be practically effected. The principles and values underpinning the Charter of Lifelong Rights in Childhood Recordkeeping relate to child wellbeing and safety, self determination, linked to archival autonomy and agency. The recordkeeping rights specified in the Charter are essential enablers for the exercise of rights enshrined in the UN Convention on the Rights of the Child. They include participatory, identity, memory and accountability rights along with specific recordkeeping rights. Recordkeeping specific rights focus on participation (agency about the recordkeeping about oneself), record creation (enabling children's participation in what records are created about them and how they are represented in records), disclosure (rights to know what records exist, where they are kept and ), access (lifelong access to records about oneself, and the ability to exercise agency around who is able to access records) and rights to records expertise (having records contextualised, interpreted and challenged).

Endorsement of recordkeeping rights will change recordkeeping practice which in turn will fundamentally alter the way organisational responsibilities are undertaken. Reinforcing the ongoing and fundamental importance of reliable and trustworthy records reflecting the rights of the participants in the records, not only privileging the organisation in the transaction is part of a larger transformation in practice needed to protect children over time. Reinforcing the ongoing importance of recordkeeping to human rights is critical at a time when technology is transforming organisational practice. The rights of the individual

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<sup>1</sup> We note that there are unique human rights issues associated with Aboriginal and Torres Strait Islander children and families, and we are commencing a co-designed project to explore the necessary evolution of the Charter of Lifelong Rights in Childhood Recordkeeping to reflect specific Indigenous community requirements.

child and the collective community must be clearly articulated to avoid the potential to weaponise data and information against vulnerable children.

### **Practical and transformative recordkeeping**

Recognising that transformation in organisational recordkeeping takes time and organisational commitment, we have produced a range of tools to assist. The first is a Toolkit for implementation of recordkeeping rights (available to the Commission on request). This illustrates pragmatic changes to practice that are achievable now to commence implementation of the rights to childhood recordkeeping. This Toolkit is being tested in practice in service-based organisations.

The development of a prototype for a distributed recordkeeping, [MySSy](#) is an app interfacing with multiple organisations recordkeeping systems, creating a child-centred and child controlled record is available to assist in re-imagining alternative recordkeeping futures.

A reconceptualised approach to recordkeeping, will reposition records into the future as part of the solution as well as acknowledging their role as part of the problem of the past.

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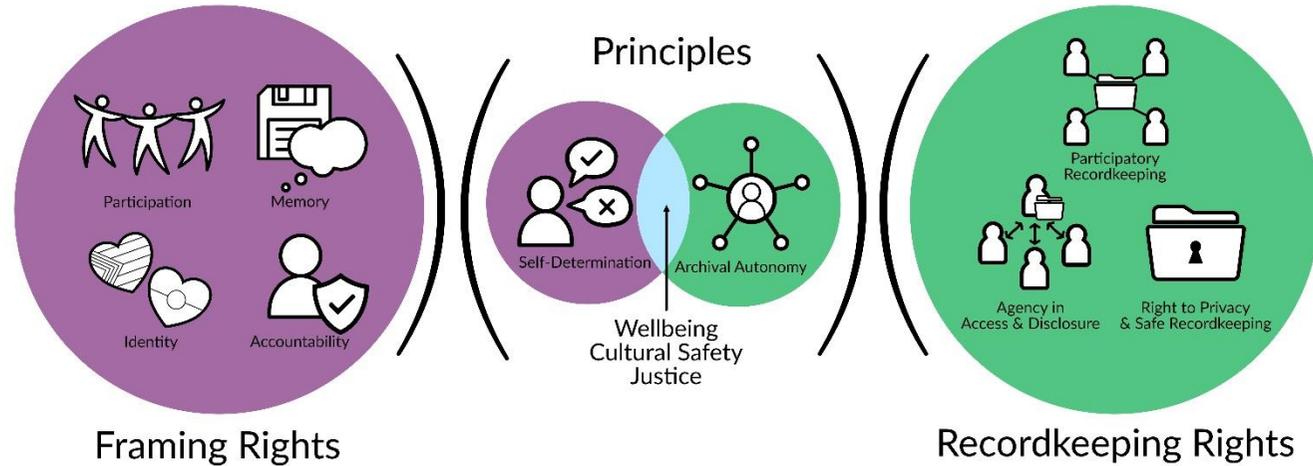
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# The Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care



The **Charter of Lifelong Rights in Childhood Record-keeping in Out-of-Home Care** focuses on the critical, lifelong and diverse information and recordkeeping needs of Australian children and adults who are experiencing, or have experienced Out-of-Home Care. The principles and values underpinning the Charter relate to child well-being and safety, self-determination, linked to archival autonomy, agency, and child safety.

The Charter applies while a child or young person is in Care and throughout the duration of their life, supporting child safety principles, the well-being of children and young people in Care and meeting the lifelong information needs of Care leavers and Stolen Generations, including those relating historical justice and redress.



## Framing Rights



### Participatory Rights

Individual right to:

- Participate in decision making/have a voice in all matters that impact you

Collective right to:

- Participate in developing frameworks, legislation, policies and processes that impact the collective



### Memory Rights

Individual and collective memory rights to:

- Remember/forget
- Be remembered/be forgotten



### Identity Rights

Individual and collective rights to:

- Cultural, family and self-identity
- Know who you are and where you belong
- Practice your culture
- Have your cultural or community recordkeeping practices recognized in legal, bureaucratic and other processes that involve records creation
- Have your self-identity acknowledged in records about you, including, but not limited to name, gender, and ethnicity



### Accountability Rights

Individual and collective right to:

- Hold society, governments and service providers to account for actions that impact on you as an individual or community
- Governance frameworks and accountable systems that support transparent decision making based on accurate, complete and reliable evidence

## Recordkeeping Rights



### Participatory Rights and Record Creation Rights

Rights to participate in decision-making about:

- Setting recordkeeping and archival frameworks (metadata, classification, categorisation, description), making policies (appraisal, access, disclosure, keeping places), decision-making about legal and administrative processes (NOTE: a collective right for community member organisations)
- Deciding how your records are used and who has access to your records
- Determining how long to keep records, and in what form
- Deciding to delete records about you

Records creation rights to:

- Participate in decisions about what types of records that should be created about you in organizational recordkeeping systems
- Create your own personal records in organisational settings
- Intervene in/challenge the record (truth telling/right of reply)



### Privacy & Safe Record-keeping Rights

Privacy Rights:

- Individual and collective privacy as understood in your culture and worldviews
- Not to have your records used for other than their original agreed purpose without consent

Safe Record-keeping Rights:

- Safe and secure recordkeeping infrastructure, processes and systems
- Safe and secure keeping places for records
- Accountable recordkeeping systems that provide accurate, complete and reliable evidence of actions that impact on you as an individual or community



### Rights In Disclosure, Access and Records Expertise in Records and Archives

Disclosure rights relating to:

- Knowing and being informed of where your records are held, including restricted files
- Being informed about the type(s) of records held about you;
- Being informed of when and why others are given access to your records;
- Knowing when and why records about you are destroyed.

Access rights relating to:

- Lifelong access to your records
- Receive copies, timely and low-cost access
- Special accelerated access where circumstances require it
- Having a say in intergenerational access
- Consenting to access and use of your records by others

Rights regarding records expertise:

- The right to be provided, and at no cost, with the index terms or other metadata necessary for locating and retrieving records about oneself
- The right to request and be provided with a records advocate or other expert in locating, introducing and challenging records
- The right to have a records expert testify regarding the historical and bureaucratic circumstances surrounding the creation, management, reproduction, translation and reliability of records about oneself