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Royal Commission of Inquiry
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Dear Commissioners

Thank you for the opportunity to provide a submission to the Abuse in Care Royal Commission's investigation of potential changes to redress schemes in Aotearoa New Zealand.

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 submission is based in Australian practice, but we believe the findings of our research have been demonstrated to have international resonance (for example, through reference to broadly similar findings in the UK, Scotland and Canada).

Recordkeeping issues permeate investigation and responses to abuse in care.

Recordkeeping is both part of the problem and part of the solution. Historical practices have left individual abuse survivors at significant social, personal and familial disadvantage, but at the same time existence and release of records, however faulty, can contribute to the healing required for individuals. As part of a redress process, institutions should be required

to seriously address recordkeeping issues, both of the past and actions to counter those past practices in the present and future. Such commitment to improved recordkeeping practice should be transparent and accountable to survivors of past abuse and to children and families currently in care. These significant recordkeeping and archiving issues should be integral to the design of the Redress Scheme (Royal Commission into Institutional Responses to Child Sexual Abuse, 2015). The administration of the Redress Scheme itself must be designed to meet the goals of being survivor focused and trauma informed. There is also a broader approach to recordkeeping that moves beyond addressing specific known problems and radically reforms conditions of individual experience as a part of a package of rights underlying all practice.

Recordkeeping as part of the problem

A succession of international inquiries have highlighted the often patchy and incomplete documentation of the extent of record holdings (O'Neill, Selakovic, & Tropea, 2012; Evans, McKemmish, Daniels, & McCarthy, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, 2016). Often, successive requests for records elicit different responses and/or additional material. If new records come to light, which would change the outcome of an application, the redress system should contain provisions that enable a survivor to re-apply. Survivors have no control over the quality of coverage and responsiveness of institutional archiving systems, and so any redress scheme should ensure that survivors are not once again put at a systemic disadvantage.

Where records have been produced, individuals report delay, distress and frustration about what is documented in their record. A range of issues compound frustration – including insensitivity of recording, the organisation-centric bias to the detriment of the individual documented in the record and redactions blocking out information documented about the individual or their circumstances. Paucity of records, records of poor quality, records unable to be produced or records destroyed, all contribute to frustrating experiences of bureaucratically-oriented redress schemes.

Recordkeeping as part of the solution

Access to records is a component part of an individual seeking formal redress. Inability to access records of the past, or the quality of institutional recordkeeping may compromise an individual's capability to seek formal legal redress. Where the recordkeeping of the past as available to a Survivor acts as a barrier to meet requirements for legal admissibility, the Redress Scheme should provide mechanisms to privilege the Survivor's account. The Redress Scheme should provide justice for those for whom civil litigation is not possible or preferred.

Reclaiming agency over the records relating to individual experience is itself a component of an approach to redress that is not restricted to a legal or financial process. Considerations of redress in this light centre control over the narrative with the individual who can be given rights to how records about themselves are managed into the future. Grounded in language of agency and self autonomy, this approach to recordkeeping is part of a transformative justice approach (Evans et al 2021).

Access to records documenting an individual's time in Care may, in itself, be a part of redress as a mechanism for individuals to acknowledge, reconcile and respond to their past experience.

To best fulfil that role, records should be:

- unredacted,
- presented in context, and
- be provided in a process which enables support by appropriately skilled support or advisory services to assist the individual understand and contextualise the information provided.

Access to individual's records should be unredacted. Reliance on strict legal rules to restrict access is often misunderstood by Survivors, contributing to their negative experiences. Access to personal records through discretionary administrative mechanisms should be enabled rather than strict legislative interpretations which foster risk-averse mechanisms to restrict access. Privacy is always a contextually interpreted concept, and responses which privilege the rights of a third party to privacy, over the individual's should be actively resisted. In the circumstances where an individual is seeking understanding, healing and redress from past actions, their own concerns should outweigh privacy considerations of other people, unless a very compelling case can be made to the contrary. Experience from Australia (McKillop Family Services, 2020; MOUs¹) demonstrate the positive impacts such unredacted and empathetic access practices can have, and in our research across a period in excess of 6 years, no instances of negative impact from 'inappropriate' release of information can be found.

Without making excuses for the practices of the past, an individual should be presented with sufficient information enabling them to understand the practices of the organisation creating the records – how they kept records, who was responsible, what the regulations or organisational processes surrounding organisational or individual roles defined, and what specific markings, abbreviations or shorthand references mean.

¹ A series of Memoranda of Understanding have been established between representatives of the Stolen Generations in Australia, and National Archives of Australia (and subsequently other archival organisations) allowing privileged access to normally restricted personal records. These arrangements date from 2002 and the absence of any incidents of harm or abuse of the system was confirmed with National Archives staff in November 2017.

Given that the representation of their experience in the record may constitute part of the trauma, the provision for a direct personal response needs to include the ability for survivors to respond to institutional records in order to 'set the record' straight or tell their stories if desired (Wilson & Golding, 2015). This should allow for permanent amendments to records (and not simply annotations which may be ignored at an institutions' discretion) and having a say over ongoing access to, and control of, these records.

A reconceptualised approach to recordkeeping as outlined below, 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.

Recordkeeping as part of the Redress process itself

The scheme design needs to be informed by the records experiences of past redress schemes and ensure that increased demands for access to records are adequately resourced. This includes adequate funding of support services to facilitate this often traumatic process for survivors (Green, MacKenzie, Leeuwenburg, & Watts, 2013). Timelines for the scheme need to take into account that gaining access to records can be a lengthy and convoluted process (Royal Commission into Institutional Responses to Child Sexual Abuse, 2016). The experience of the WA Redress Scheme was that arbitrary deadlines, resourcing limitations, and staff burnout resulted in an access backlog (Rock, 2012). This backlog meant that applicants, in some cases, needed to submit applications before receiving their (evidential) records in order to meet the scheme deadline. Such constraints should not be repeated in the NZ scheme.

The design of the Redress Scheme's recordkeeping systems themselves needs to acknowledge the co-creation rights of its records. Survivors are, yet again, being asked to have the intimate details of their lives captured in institutional recordkeeping systems (Wilson & Golding, 2015). Survivors must be given the right to control the further management and use of their stories and records, including long term archiving.

We draw the Commission's attention to the situation with records of the Independent Assessment Process in Canada for survivors of Indian Residential Schools. The decision to archive these confidential records (and, as public records, eventually have them become public) as a matter of course was challenged in the light of the assurances of confidentiality given to claimants throughout the process. After a lengthy court process, in October 2017 the Canadian Supreme Court upheld the rights of claimants to have a say in whether and where their records would be archived. See <http://www.iap-pei.ca/records-eng.php> for more information.

Any scheme design requires up-front clarification as to the long-term disposition of the scheme's records. If the scheme is to adhere to its principle of being Survivor focused, it

must give applicants the choice as to whether details about their sexual abuse will be one day on the public record. We note that this is a highly individual choice, which needs respecting --- neither a blanket ‘permanently seal or destroy records’ (as with the new Zealand Confidential Listening and Assistance Service – see Henwood, 2015), nor ‘preserve all records’ policy is acceptable.

A more fundamental reconceptualised approach

Our research has traced many recommendations made over 30 years from independent, government and statutory inquiries into the treatment of individuals in Care situations. Almost without fail, these inquiries have recommended organisational attention to the creation and access to records. Yet the same issues recur in following inquiries. We believe that doing the same has been demonstrated not to work. Iterative change, as proposed by the recordkeeping principles in the Australian Royal Commission into Institutional Responses to Child Sexual Abuse 2017, have yet to demonstrate significant change in practice.

As a counter proposition, we propose the adoption of a Charter of Lifelong Rights Childhood Recordkeeping in Out of Home Care. The Charter aims to radically change the dynamic around records, embedding recordkeeping rights within a human rights framework enabling assertion of the rights in line with the broader human rights, specifically those articulated in the Convention of the Rights of the Child. We assert that this approach empowers the child, and the adult the child will become, by normalising recordkeeping rights through genuine participation, access to information and control of records about themselves. Details of the Charter and our work can be found at <https://rights-records.it.monash.edu/research-development-agenda/rights-in-records-by-design/recordkeeping-rights-charter/>

For the Setting the Record Straight for the Rights of the Child Initiative
<http://rights-records.it.monash.edu/>

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