

Exposure Draft

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Charter of Lifelong Recordkeeping Rights for the Child in Care

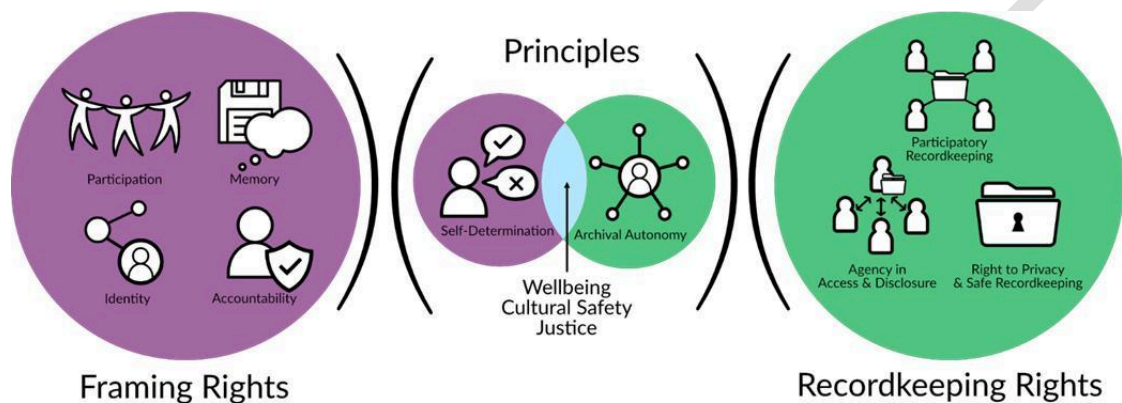


Figure 1. Graphic representation of the Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care designed by Dr Antonina Lewis

In Australia, almost 50,000 children, nearly one in every 100, are in Care. The conceptualisation of the child as a human being with rights and agency is now included in frameworks for child welfare, Indigenous child welfare and Out-of-Home Care.¹ Indigenous Australian children are ten times more likely than their non-Indigenous counterparts to be in Care relative to their numbers in the general population, a situation likened to a new generation of Stolen Children. There are unique human rights issues associated with Indigenous Australian children and young people in the child welfare system. Their removal from their families was and is part of a larger colonial project of dispossession and denial of Indigenous sovereignty.²

Principles and values

The principles and values underpinning the Charter relate to child wellbeing, safety, and self-determination. Human rights, Indigenous human rights connected to First Nations sovereignty, Indigenous Data Sovereignty, and transformative justice.

¹ Australian Institute of Health and Welfare, *Child Protection Australia 2017–18, Children in Out-of-Home Care* (Canberra: Australian Institute of Health and Welfare, 2019), 69–70; Australian Institute of Health and Welfare, 'Data Tables: Child Protection Australia 2017–18', <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data>.

² Australian Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their*.

Warrants

The Charter derives its main testimonial warrant from living experience.

It draws from a substantial evidence base of inquiries and reviews conducted into child protection in Australia, the testimonies of Care leavers, and significant care leaver representation through their participation in research, their autobiographies, memoirs, writings and artwork. Additionally, the Charter derives instrumental warrant from existing human rights statements, for example the UN Universal Declaration of Human Rights 1948, the UN Convention on the Rights of the Child 1989, and the UN Declaration on the Rights of Indigenous Peoples 2007. An extensive and authoritative analysis of warrants is available in [literature review by Dr Nina Lewis](#).

EXPOSURE DRAFT

Framing Rights and Rights in Recordkeeping and Archives for Indigenous and non-Indigenous Children and Young People in Care and Care Leavers

‘every child placed in the custody and control of a welfare agency should absolutely expect that the agency will keep full and accurate records about their Care experience ... and in a contemporary situation the child should participate in the process of making and keeping those records) ‘ (Dr Frank Golding OAM)

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| Framing Rights | Human Rights, Self-determination ³ |
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³ United Nations, General Assembly (2007), United Nations Declaration of the Rights of Indigenous Peoples,

Resolution 61/295, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Commonwealth of Australia, Framework for Governance of Indigenous Data (2024)

<https://www.niaa.gov.au/sites/default/files/documents/2024-05/framework-governance-indigenous-data.pdf>

Findings of the foundational research project funded by the Australian Research Council. The Trust and Technology project explored the recordkeeping rights of Indigenous peoples. It concluded that:

All forms of Koorie archives should be respected and preserved

Family stories, audio-recorded histories, government and other written records - all these are valuable for Koorie people wanting to understand their identity and history. Australian archival institutions are experienced in managing text-based archives. But oral sources of knowledge are often overlooked or not considered worthy of attention. This needs to change.

Koorie people need greater control over their archives.

Many archival records about Koorie people are not owned by them. Koorie people are not alone here: Australians generally do not own information collected about them by governments and other organisations. However, for Koorie people archival records have been instruments of dispossession or family separation. More recently they are playing an important role in restoring family and community connections. It is essential that Koorie people control these records.

Koorie people should be able to challenge ‘official’ records.

Koorie people often don't agree with what 'official' records say about them and their families. They trust family oral histories much more and want to be able to record these alongside the 'official' records – to set the record straight.

See:

S McKemmish, L Russell, S Faulkhead (2011) Distrust in the Archive, *Archival Science* 11: 211-239

Trust and Technology Statement of Principles

https://www.monash.edu/_data/assets/pdf_file/0011/2374166/Statement-of-Principles-relating-to-Australian-Indigenous-Knowledge-and-the-Archives-v2.pdf

Trust and Technology Exposure Position Statement on Human Rights, Indigenous Communities and the Archives,

https://www.monash.edu/_data/assets/pdf_file/0010/2374165/Exposure-Draft-Position-Statement-Human-Rights-Indigenous-Communities-in-Australia-and-the-Archives-v2.pdf

Trust and Technology Final Report

https://www.monash.edu/_data/assets/pdf_file/0008/2373848/Koorie-Archiving-Trust-and-Technology-Final-report.pdf

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| <p>Participatory Rights⁴</p> | <p>Individual right to</p> <ul style="list-style-type: none"> ● participate in decision making/have a voice in all matters that impact you |
| <p>Memory Rights</p> | <p>Individual memory rights to:</p> <ul style="list-style-type: none"> ● remember/forget ● be remembered/be forgotten |
| <p>Identity Rights</p> | <p>Individual rights to:</p> <ul style="list-style-type: none"> ● cultural, family and self-identity, as defined by you ● know who you are, where you belong ● practice your culture ● have one's cultural or community recordkeeping practices recognized in legal, bureaucratic and other processes that depend upon the introduction of records. ● have one's self-identity acknowledged in records about oneself, including, but not limited to name, gender, and ethnicity.⁵ ● have a universally recognized identity document which includes: |

⁴ Inclusive of participation in developing a cultural plan which is a comprehensive record of a child's Aboriginal cultural information. According to Victorian Aboriginal Child and Community Agency (VACCA) (2023). Workers assist the development of individual Cultural Plans by ensuring:

- Each plan is developed with input from the child, family and their Aboriginal community.
- Cultural values, beliefs, practices and personal identity is strongly focussed in the plans
- Connections to Country, family, clan, Community, history, symbolism, cultural expression and events.

<https://www.vacca.org/page/services/children-and-families/children-in-care/senior-advisors-aboriginal-cultural-planning/>

⁵ Rights to recognition of cultural and community recordkeeping practices, and rights relating to records expertise included as a result of the findings of a comparative research study and mappings of the Charter and the *Refugee Rights Framework*

<https://informationasevidence.org/refugee-rights-in-records>), developed by Professor Anne Gilliland and Dr Kathy Carbone.

See:

A. Gilliland and K. Carbone (2020). An analysis of warrant for rights in records for refugees. *Int. J. Hum. Rights.* 4, 483–508

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| <p>Accountability Rights</p> | <ul style="list-style-type: none"> o both parents' names if the father is deceased or otherwise unable to be present at his child's birth, if the mother requests it. ⁶ o siblings' names <p>Individual right to:</p> <ul style="list-style-type: none"> ● hold society, governments and service providers to account for actions that impact on you as an individual or community ● have accurate, complete and reliable evidence of actions that impact on you as an individual or community <p>Individual right to:</p> <ul style="list-style-type: none"> ● Recordkeeping and Archival Sovereignty relating to all records and archives created by or about you historically and currently, including records in organizational and institutional custody⁷ |
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⁶ Rights to identity records include as an outcome of a comparative research study and mappings of the *Charter* and the *Refugee Rights Framework*

<https://informationasevidence.org/refugee-rights-in-records> See:

Carbone, K., Gilliland, A.J., Lewis, A., McKemmish, S., Rolan, G. (2021). Towards a Human Right in Recordkeeping and Archives. In: Toeppe, K., Yan, H., Chu, S.K.W. (eds) *Diversity, Divergence, Dialogue*. iConference 2021. Lecture Notes in Computer Science(), vol 12646. Springer, Cham. https://doi.org/10.1007/978-3-030-71305-8_23

⁷ The IDS Communique on Indigenous Data Sovereignty

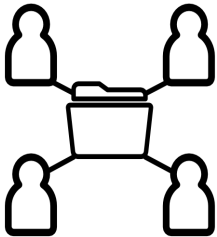
(<https://www.maiamnyriwingara.org>) addresses all individuals and entities involved in the creation, collection, access, analysis, interpretation, management, dissemination and reuse of data and data infrastructure in Australia. It refers broadly to data, records, information or knowledge, in any format or medium, which is about and may affect Indigenous peoples collectively and individually. It also asserts the right of First Nations peoples to exercise ownership, autonomy and governance over their data. Similar protocols have been adopted in other countries with national IDS networks established in New Zealand, Australia, Canada and the United States, with growing interest in the Pacific, Scandinavia and Mexico. Together, the Indigenous scholars, practitioners and activists involved with these networks have advanced the increasing recognition of IDS as an expression and enabler of Indigenous rights, wellbeing and self-determination.

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| <p>Recordkeeping and Archival Sovereignty</p> | <ul style="list-style-type: none"> ● Contemporaneous copies of records created by or about you, including records in organisational and institutional custody ● Repatriation of records from organisations and institutions (originals or digital copies) <p>Individual right to representations of your views and actions that are accurate and complete from your perspective ⁸</p> <p>Note: To actualise these rights would need the following supporting rights:</p> <ul style="list-style-type: none"> ● Disclosure rights relating to institutional recordkeeping and archives that concern you or may impact you individually or as a family ● Rights to have links between your records and records about you held elsewhere |
| <p>Recordkeeping and Archives Rights</p> | |

⁸ These rights are supported by the Australian Indigenous Archives Collective’s Position Statement on the Right of Reply to Indigenous knowledges and Information held in Archives.

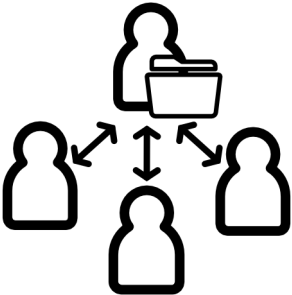
<https://indigenousarchives.net/2021/08/09/position-statement-on-the-right-of-reply-to-indigenous-knowledges-and-information-held-in-archives-released>

⁹ Frank Golding, Antonina Lewis, Sue McKemmish, Gregory Rolan & Kirsten Thorpe (2021) Rights in records: a Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care for Australian and Indigenous Australian children and care leavers, The International Journal of Human Rights, DOI: 10.1080/13642987.2020.1859484 (eprint available at <https://www.tandfonline.com/eprint/6UUQVEHCCVHDPEUTTGHU/full?target=10.1080/13642987.2020.1859484>).

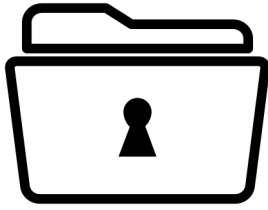
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| | Rights in institutional Recordkeeping and Archives in any form, media or format which are about and may affect you |
| <p>Participatory Rights and Records Creation Rights⁹</p>  | <p>Rights to participate in decision-making about:</p> <ul style="list-style-type: none"> ● Setting frameworks (metadata, classification, categorisation, description), making policies (appraisal, access, disclosure, keeping places), decision making about legal and administrative processes for current and historic records (NOTE: a collective right for community member organisations) ● specify types of records that should be created about you in organizational recordkeeping systems ● 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 <p>Records creation rights to:¹⁰</p> |

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¹⁰As a result of the findings of a comparative research study and mappings of the *Charter* and the *Care Leavers Australasia Network (CLAN) Rights Charter (revised 2020)* Records, Creation Rights have been included in the Charter of Lifelong Rights in Recordkeeping in Out of Home Care and the Care Leavers Australasia Network (CLAN) Rights Charter (revised 2020) (<https://clan.org.au/wp-content/uploads/2020/02/CLAN-Charter-of-rights-to-childhood-records-6323.pdf>). See Golding, F., Lewis, McKemmish, S., Rolan, G. and Thorpe, K. (2021) 'Rights in Records: A Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care for Australian and Indigenous Australian Children and Care Leavers', *International Journal of Human Rights*, 8 Jan 2021 DOI 10.1080/13642987.2020.1859484

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| | <ul style="list-style-type: none"> ● Create your own personal records in organisational settings ● Intervene in/challenge the record (truth telling/right of reply) ● request deletion of a record or deletion of data or metadata about oneself from a record if that record, data or metadata would compromise one's human rights. |
| <p>Rights in Disclosure, Access and Records Expertise in Records and Archives</p>  | <p>Disclosure rights:</p> <ul style="list-style-type: none"> ● Prior to a record about oneself being created, the right to be fully informed about why it is being created, what it will contain, what it may be used for now and in the future, and how it will be secured. ● The right to know that a record about oneself exists, where, why, and who can see it and under what circumstances. ● Knowing and being informed of where your current and historical 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. <p>Access rights relating to:</p> <ul style="list-style-type: none"> ● Lifelong access to your records including those that are still otherwise subject to legal or other closure periods ● Unrestricted intergenerational access rights to records of family members over generations within a 75-year period |

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| | <ul style="list-style-type: none"> ● The right to guaranteed safe, secure, timely and low or no-cost access to relevant records about oneself upon request. ● The right to receive copies of records about oneself, and to specify the form and format of those records, or else to be given a clear explanation as to why one may not. ● The right to transmit or share records about oneself. ● Special accelerated access where circumstances require it <p>Rights regarding records expertise:</p> <ul style="list-style-type: none"> ● 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 ● Right to have access to support or counselling services |
| <p>Privacy and Safe Recordkeeping Rights</p> | <p>Individual and family rights to</p> <ul style="list-style-type: none"> ● Privacy as understood in your culture and worldviews ● Not have your records used for other than their original agreed purpose without consent ● Not have names of family members redacted in records |



Safe Recordkeeping Rights

- Safe and secure recordkeeping infrastructure, processes and systems
- Safe and secure keeping places for records

EXPOSURE DRAFT

ENDNOTES

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