

Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse: Consultation paper on Records and Record Keeping Practices

Background

I am an historian with two decades of experience working in the area of child welfare history. My most significant involvements in this field include:

- Interviewer for the Bringing Them Home Oral History Project of the National Library of Australia [NLA]
- Researcher and writer of *Finding your own way: a guide to records of children's homes in South Australia* (Nunkuwarrin Yunti of SA, 2005)
- Research Historian for the Children in State Care Inquiry in SA also known as the Mullighan Inquiry
- Interviewer for the Forgotten Australians and Former Child Migrants Oral History Project of the NLA
- State-based historian for the Find & Connect web resource project for South Australia and the Northern Territory
- Consultant Research Historian – Find & Connect Support Service & Post Adoption Support Service
- Research Historian and mentor for project to research, advocate for and establish a Memorial to Children who died in State Care and are buried in West Terrace Cemetery in Adelaide
- Research Historian Link-Up SA – salaried position 2 days per week

I am providing the above outline as a guide to how and where I have developed an interest in and concern about Records and Records Access for anyone who has experienced Out of Home Care [OOHC].

Below I have responded below to the majority of the questions/issues raised in the consultation paper. Given the limited time I have had available to provide this submission, I have left the response to the question blank where I have no specific suggestions or comments.

1. How institutions can build and foster cultures that promote and recognise good records and recordkeeping practices as being in the best interests of the child

Just last Friday, 21 October 2016, I presented a paper to the Records and Information Management Professionals Association [RIMPA] about the importance of records and information to people who have experience OOHC. It was something completely new and it was very well received. Many of the audience were in records management roles in non-government organisations. I shared stories of the impact on individuals of situations where records have been destroyed, heavily redacted or where no records were ever kept. I also tried to give an indication of the wide range of types of records that can provide keys to a person's story. I believe that this kind of presentation to organisations is critical. It would be even better if it was presented by a Care Leaver or member of the Stolen Generations. This kind of presentation allows staff members of organisations to realise the personal impact of record keeping. This needs to be something that is not just a one-off but is a regular part of induction so that people start new jobs completely aware of why they need to keep good and accurate records. During the Find & Connect web resource project we often held Stakeholder meetings with representatives from record holding organisations and past care providers where a Care Leaver started the proceedings by sharing their story of accessing records. This provided a powerful and very personal reminder to records holders of the importance of records.

2. What training staff and volunteers in institutions need to help them understand the importance and significance of good records and recordkeeping practices

I think it would be valuable as mentioned above to include in training and/or induction of staff and volunteers, stories from, and/or presentations by, people impacted by poor records management. Outlining simple, consistent and easy to follow procedures in relation to record-keeping is also required. People are more likely to do something if they recognise the importance of it and it is not another onerous task they need to do on top of their other responsibilities.

3. What role governments may play in promoting good institutional records and recordkeeping

Governments could take a lead role in providing of expert advice and funding. The current Records Access Documentation Project grants administered by the Commonwealth Department of Social Services are a great initiative but the amount is just a starting point for most organisations. Governments should also lead by example by funding large scale indexing projects for their own records.

4. What role children, parents and others may play in helping institutions develop, share and monitor their recordkeeping practices.

Institutions and organisations should listen to the children currently in care or who are receiving services and to those who have experienced care or services in the past to really hear and understand what they need.

5. What records relating to child sexual abuse should be created by institutions that care for or provide services to children, and what type of language and detail should be used

I have no specific information to add here except for stressing the importance of

- accuracy and clarity
- inclusion of dates, places and names of individuals involved and of those recording the information
- avoiding derogatory and offensive language that would cause distress to someone who applied for this record in the future.

6. What training or assistance institutions and their staff or volunteers might need to enable them to create accurate records relevant to child sexual abuse

Taking advice from and undergoing training provided by organisations that work with survivors of abuse and listening to survivors themselves so that they are aware of the importance of what is recorded and the accuracy that is required for it to be of value.

7. How children's views and experiences can be accurately reflected in records about their childhoods and decisions affecting them

Listen to the children. Allow them to take part in the creation of records about them from the very beginning. Recognise from the moment that records start to be kept *about* a child that they are also records being created *for* that child, so she/he can understand what happened to them.

8. How institutional records can be monitored to ensure they are accurate

Develop easy to follow policies and procedures around accurate record keeping and ensure that when a new staff member or volunteer goes through an induction that they understand what is

required of them with regard to record keeping. Include file audits and spot checking to ensure that these procedures are being followed.

9. Whether there may be any unintended consequences arising from requiring institutions to create accurate and detailed records relating to child sexual abuse (for example, creating records that may be discoverable by other parties in legal proceedings, potentially to the detriment or distress of individuals discussed in those records).

This may occur but I believe it is a case of the good outcomes outweighing the bad. Being told there is no information at all related to an incident of abuse can be far more damaging than being provided with detailed information. People recording information do need to use appropriate language and carry an awareness that their records may be accessed in the future.

10. What the resourcing implications of requiring institutions that hold large volumes of un-indexed historical records to index their files are.

There are huge resourcing implications in the initial phase but this does not mean that they should not be implemented. Governments need to provide adequate funding for these indexing projects to be undertaken. Once they are completed, they will actually save time and resources as information will be able to be found and provided with much greater ease. Numerous inquires have recommended better access to records including indexing projects but only a few have been actually implemented.

11. Whether and how indexing of historical records should be prioritised (for example, prioritising records of elderly care leavers, or de-prioritising files of over 100 years of age)

Historians of child welfare such as the State-based historians for the Find & Connect project or other researchers with support services and archivists within State Records should be approached to provide information about records they believe would be of the most value to be indexed. In South Australia for example, the Minutes and correspondence files of the State Children's Council and the Children's Welfare and Public Relief Board which cover a large portion of the 20th century should be indexed immediately. Similar records in other states and territories should also be indexed to provide information to elderly and middle aged Care Leavers and their children. The South Australian AIMS database [Aboriginal Information Management System] which indexes correspondence files of the Aborigines Protection Board and its successors as well as a recent indexing project conducted by Northern Territory departmental archivists in relation to Children's welfare records are clear examples of the value of these projects and could be used as examples/precedents. Records which may relate and provide information to members of the Stolen Generations should also be indexed as a priority to respond to recommendations of the almost 20 year old Bringing Them Home report.

There are some non- government organisations such as the United Aborigines Mission [UAM] and the former Umeewarra Mission (at Davenport in SA) who should be encouraged and assisted to initiate indexing and fair access projects as they hold records of great significance to members of the Stolen Generations and their families.

12. How records relevant to child sexual abuse should be indexed to allow them to be easily located, retrieved and associated

It is not only records relating to sexual abuse that need to be indexed, it is everything relating to children's experiences particularly in Out-of-Home Care. Where information relates to abuse this could also be indexed and "red-flagged" in some way. The AIMS system and the NT departmental indexing templates allow for multiple names, locations and other matters to be indexed. The AIMS database has the capacity to indicate where material is sensitive.

13. What should happen to the records of institutions that close, or change ownership or function before the expiry of any record retention period.

This is an absolutely critical area that needs to be addressed. Having been involved with the *Finding your own way project* and the Find & Connect web resource project, I am aware, as are historians across the country, of records that should exist. In many cases, however there is no clear record or pathway to find out where they have ended up, whether they have survived or whether they were ever kept. A large part of the research and liaison in these significant projects was conducted to identify what happened to records. Often large organisations just don't know. For example Anglicare in SA was unable to provide any information about its later cottage homes, when they opened, when they closed, where they were located, what records were kept and where they are now.

Another problem that arises from change of ownership or discontinuation of an organisation is that "Orphan Records" are created. These include records collections such as those created by the United Aborigines Mission and Umeewarra records mentioned under question 11. These collections now have no formal organisation(s) or bodies to continue to manage, care for and provide access to records. The records have ended up in the control of individuals who are connected with the former organisation. Decisions about those records are therefore often made by one person with no resources. These individuals, often out of a lack of knowledge or because of risk aversion, choose to shut the door on records rather than work towards open and fair access.

14. Whether and how the views of individuals discussed within institutional records could be canvassed and represented in decisions concerning disposal

This could easily be achieved through liaising with Link-Up Services and the Find & Connect Support Services in each state and territory. These agencies could assist with canvassing the views of their current and past clients who are members of the Stolen Generations and Care Leavers. These views are very varied from Caroline Carroll who was quoted in your paper who would like to see all of her records destroyed to others who would like all to be made completely available to everyone.

15. How long records relevant to child sexual assault should be retained, and under what (if any) circumstances should they be destroyed

In my view, these critical records should never be destroyed. As noted in your paper, it often takes survivors of abuse many years to reach the point at which they can disclose abuse and in the process reach a place where they have the courage to apply for access to records. In the future descendants of survivors of abuse may also seek access to records about parents and grandparents.

In addition during the Mullighan Inquiry the only way to understand the faults in the system that allowed for sexual abuse to occur was to be able to access information about past incidents of abuse and how they were recorded and handled. In doing so, patterns can be discovered as well as recurring problems and issues that are continually raised but never fully addressed.

16. What implications abolition of statutory limitation periods for civil claims by victims and survivors of child sexual abuse may have for record retention practices

This feeds into question 15 – records need to be kept in perpetuity so that an individual can apply for them whenever in the journey of their life they reach the point where they want to

find answers. This can happen when a person who grew up in institutional care enters an aged care institution and finds that it brings forth memories, or when someone is nearing the end of their life and is seeking closure. The mantra should be that “it is never too late.”

17. Whether the records of all institutions that care for or provide services to children should be subject to mandatory retention periods, what impact this may have, and how those impacts can be mitigated

Yes they should be. There needs to be consistency across government and non-government care and service providers. Non-government organisations often have partially developed records management policies and procedures and the entire system of records management and archiving can fall on the shoulders of one person, in some cases, a volunteer. Governments need to fund and provide resources to assist these organisations to meet established standards of recordkeeping. Governments because of past mistakes, have spent millions of dollars on inquiries, apologies and redress schemes. Both Commonwealth and State/Territory governments need to allocate a significant amount of money to records management, preservation and access. They need to develop and set minimum standards and principles and then provide resources to organisations to implement them. We can spend millions to build infrastructure to support an Olympic Games for the benefit of athletes and spectators but we never spend similar amounts on building a system that looks after and allows access to children’s records.

18. Whether institutions should maintain registers of what records they destroy, when and upon what authority.

Yes they absolutely should. I cannot express the immense importance of this. Over the last 20 years I have been trying to find records to assist people in putting the pieces of their stories together. I have heard so many stories of “fires” which are used to explain why records appear not to exist. One of the practices we followed with the Find & Connect project was to encourage organisations to be completely open and honest about what happened to records and even to say that they do not know because no record of destruction was kept. An example is the records of the Kate Cocks Babies Home in SA. See <https://www.findandconnect.gov.au/ref/sa/biogs/SE00754b.htm>

Part of the minimum standards set around these records should be that all organisations must document what records are destroyed, why, how, when and by what authority. No records should be destroyed if they provide any information that might be relevant to someone who was in care as a child or where services were provided to a child or family by an organisation.

19. How the Access Principles for Records Holders and Best Practice Guidelines in providing access to records have been applied in practice

As far as I am aware, this thorough and perceptive document is not widely referred to by organisations. In South Australia I have found myself distributing the document and telling organisations about it. I recently met with an Accredited FOI officer in Families SA who was aware of the document but has specifically chosen to ignore it in his redevelopment of procedures in his department. I believe that this document needs much wider circulation and that the Commonwealth and State Governments need to use it as the basis of setting and legislating for more sympathetic records access.

20. Whether they have resulted in simplified and more open access processes

Sadly I have not seen any changes in SA records access as a result of these Guidelines.

21. Whether and how they might be adapted to apply to access to the records of all the institutions within our Terms of Reference.

They could easily be used as the basis for developing a fairer system of records access. I have suggested to the author of the guidelines Barbara Reed that it would be valuable to establish Records Taskforces in each State and Territory to promote these guidelines and to work with organisations to develop their own policies based upon them. The Commonwealth and State/Territory governments would need to commit resources and funding to the guidelines being adapted and adopted in multiple organisational settings.

22. In relation to inconsistent laws and practice, whether the Privacy Act 1988 (Cth) should be amended so the Australian Privacy Principles relevant to access and amendment apply to all private institutions that care for or provide services to children; or, alternatively, how small private institutions that care for or provide services to children can be encouraged to 'opt-in' to the Australian Privacy Principles scheme

I have not had time to address this but I am certain that amendments to many pieces of legislation relating to Privacy and Access should be made a priority in order to provide consistent and fair record keeping practices and access to records.

23. In relation to fees and charges, whether requests to access records created by institutions about children with whom they have engaged should be free of fees and charges, and, if so, what resourcing implications this may raise for record holders

I believe they should be free of charge. Link-Up SA and its umbrella organisation Nunkuwarrin Yunti of SA Inc has developed Memorandums of Understanding with a range of record holders. These MOUs include an agreement to waive all fees associated with locating, retrieving and copying records related to clients of Link-Up. Some of the Link-Ups in other areas of the country also have these kinds of MOUs. Clients of the Find & Connect Support Service and the Post Adoption Support Services in each State and Territory can also have fees waived.

People who apply for records on their own behalf without working through a support service should be entitled to the same fee waivers. This would require the government to subsidise the cost of this service for these people.

One of the areas where fee reductions and fee waivers for people who experienced OOHC as children would be extremely valuable is Birth, Death and Marriage records. Anyone who wants to apply for any institutional records is required to provide these documents to prove their identity and their relationship to parents and other relatives. There is a significant cost to individuals and to Support Services in applying for these documents.

24. In relation to access grants, what steps institutions should take to ensure that individuals have appropriate support when reading and interpreting records with potentially distressing content

The Find & Connect Support Services were established as part of the overall Find & Connect project which included the web resource with which I was involved. After the first three years funding to these services was halved meaning that staff numbers and hours were drastically reduced. Link-Up too must re-apply for its funding every three years. The caseworkers and counsellors that work for these organisations are the key to making sure there is Supported release of documents that might contain distressing content. Other institutions who are likely to be releasing sensitive material whose clients do not qualify for Link-Up or Find & Connect services also need to employ a staff member who can be trained appropriately to take on

Supported Releases of records. The Find & Connect web resource employed historians in every state and territory who could provide context and background information about legislation and other matters which assisted to explain why records were written in the way they were in the past. Again funding cuts to these critical services impact upon people who apply for and receive records.

25. In relation to redactions, whether nationally consistent standards for redaction should be established; and what those standards should be

Yes, consistent national standards across government and non-government record holding agencies should be established. These should over-ride State Freedom of Information Legislation. The beginnings of these standards are contained in Barbara Reed's *Best Practice Guidelines* document (pages 23-31). Unfortunately without a nationally consistent procedure individual agencies and even individual staff members can decide subjectively what to redact and what to leave in. Individual staff members can interpret clauses in FOI legislation in whatever way they decide to do so. One of the Clauses in SA FOI legislation which has recently been interpreted in the most restrictive way possible by Families SA is the following:

Documents affecting personal affairs *Clause 6 (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).*

As far as I can see there is nothing in the legislation itself to define what *unreasonable disclosure* is so it is up to the agency to define this phrase. A consistent national definition and agreed standards for redaction across the country (based on the *Best Practice Guidelines* document) would prevent these individual interpretations from occurring.

26. In relation to refusal of access and amendment, whether existing exceptions are appropriate in the context of records relevant to child sexual abuse. I have had no time to look into this

27. In relation to third party privacy, how public and private institutions can be better educated about the proper application of third party privacy exceptions.

This relates to question 25 – there needs to be a consistent, standard interpretation of these exceptions so that they are not interpreted subjectively by each and every record holding agency.

28. Whether a sixth principle directed at enforcing the initial five principles is required

I think this would be a good move.

29. Whether it would be necessary or appropriate to adopt a two-tiered approach to the enforcement of recordkeeping practices, whereby certain institutions (such as OOHC service providers and schools) are held to a higher standard than others (such as local sports clubs).

A two-tiered approach is probably necessary. There needs to be a set of basic record-keeping principles and requirements that all organisations are required to follow. These record-keeping principles should be directed at ensuring that information about children that is required for their safety (recording critical incidents etc) and to record their involvement in the life of the organisation is kept. As local sports clubs and other not-for-profit community organisations are generally volunteer run, record keeping is in the hands of a secretary or other elected committee members, who are all volunteers, any practices that are too onerous or time-consuming are unlikely to be followed consistently. OOHC service providers and schools are involved with more essential and critical parts of the life of a child and are likely to be keeping more sensitive and personal records.

For this reason, their practices need to follow very strict high standards of keeping, preserving and allowing access to records.

30. Whether a records advocacy service would be useful for victims and survivors of child sexual abuse in institutional contexts

With the assistance and provision of specialist knowledge about records from historians, archivists and record keepers, Link-Up caseworkers and Find & Connect Support Service workers are able to become strong advocates for records access. However they are limited in time as it is not their core role. I believe a Records Advocacy Service for anyone who was in OOHC or separated from family in some way or is a survivor of abuse of any type would be extremely valuable. In my role as Research Historian over a number of projects, in all my liaison with record holders through the *Finding your own way* and the Find & Connect projects, in my role with Link-Up in developing Memorandums of Understanding and simply as an historian who believes in social justice, I refer to myself as a Records Advocate. I have developed strong relationships with many record holders and I continue to attempt to break down the barriers and open dialogue with those that are less forthcoming such as the UAM. In my contact with the Department I continually push for fairer records access and for any further innovations in provision of records which might make it easier, less distressing and more fulfilling for people seeking records. I continually advocate for indexing projects. A lot of this work I have done on a pro-bono basis or as an addition to the work I am paid for. I would love to see a fully funded Advocacy service developed.

31. What powers, functions and responsibilities a records advocacy service should have

As Link-Up caseworkers, Find & Connect Support Service and Post Adoption Support Service workers do, a records advocacy service should be able to locate and apply for records on behalf of clients. It should not duplicate or interfere with the work of the existing services but provide a service for those that don't fit the required criteria. The service should also assist and empower, with skills and knowledge, clients who wish to find and apply for records themselves. The service should develop MOUs with record holders to allow for easier access to records and waiving of fees.

I also believe a Records Advocacy Service could further develop guidelines for Records Access and work with organisations to set up fair records access. It could provide education and training to organisations around the importance of records access. There needs to be a sea change in this area. In the 20 years I have worked in this field I have seen organisations become more restrictive and risk averse. It is time for them to turn around and become more open and empathetic.

32. Whether there are existing bodies or agencies that may be suited to delivering records advocacy services.

As mentioned above, Link-Up, the Post Adoption Support Service, the Find & Connect Support Services and previously before funding cuts, the State-based historians for the Find & Connect web resource all provided records advocacy services. All of these, except for the now defunct State-based Historians, provide services to clients who fit the criteria required by the organisation. The State-based historians in contrast would answer queries about records that came through the web resource and provide advice to inquirers. Something like this could be developed and built upon to provide information, advice and then further assistance and advocacy for anyone who was seeking records.