

Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation Paper on Records and recordkeeping practices: submission from the Find & Connect web resource

17 October, 2016

Thank you for the opportunity to make a submission on the Consultation Paper about Records and Recordkeeping Practices. The activities of the Royal Commission into Institutional Responses to Child Sexual Abuse have highlighted the critical importance of records and recordkeeping to responses to child sexual abuse, as well as the particular importance of records to Care Leavers (people who experienced 'care' in children's institutions or in the contemporary Out of Home Care system), whether or not they are survivors of child sexual abuse.

This submission is based on our experience working on the national Find & Connect web resource since 2011 (and prior to that, the Who Am I project in Victoria), and our broader professional experience as archivists and historians. The Find & Connect web resource, funded by the Federal Government, was launched in November 2011. The website is based on a model developed by the Who Am I project (2009-2011), funded by the Australian Research Council in Victoria.¹ Both projects were inspired by the recommendations relating to recordkeeping in the 2004 Senate report into Australians who experienced institutional care as children.² The Find & Connect web resource (www.findandconnect.gov.au) is the main public output of years of sustained research by the team, based on an action research methodology which depends on participation with a number of key stakeholder groups, including Care Leavers, support services, record holding organisations, academics and policy makers.

Our years of experience working in this field have seen some positive changes and improvements: the Find & Connect web resource has grown to consist of over 16,000 interconnected pages with information about the history of children's institutions, past

¹ More information about the Who Am I? project and its research outputs are available here: <http://www.cfecfw.asn.au/know/research/sector-research-partnership/partnership-projects/out-home-care/who-am-i>.

² 'Forgotten Australians': a report on Australians who experienced institutional or out-of-home care as children, 30 August 2004. Available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index.

providers, legislation and information about the records of institutional care, distributed across a network of organisations and cultural institutions. More broadly, public awareness of and conversations about institutional care, historical abuse and the needs of children and young people in out-of-home care have been transformed since the Federal Government's apology in 2009. Today, largely thanks to the advocacy of Care Leavers, many record-holding organisations have greater awareness of the significance of the records in their custody and the importance of making them available.

Despite these gains, the enduring and systemic problems related to records and recordkeeping continue to have a negative impact on the well-being of thousands of people, and pose a significant barrier to achieving justice and ensuring accountability, as the Consultation Paper demonstrates. Recommendations about how to improve recordkeeping and access to records that date back to the 'Bringing them home' report in 1997 have still not been implemented in any coordinated way across the network of organisations holding records.

It is our view that the 'principles' as presented in the Consultation Paper will not result in any significant improvements to this current situation. The principles cannot provide solutions to long-standing, systemic issues or address the failings of existing recordkeeping frameworks. This is largely because the proposed principles, and the Consultation Paper more broadly, use the framework of the records life cycle, a legacy model which in itself is part of the problem.

We note that a number of previous submissions made to the Royal Commission have called for nothing less than a transformation of systems, based on new conceptual modelling, if we are ever to address the failings of the existing frameworks, processes and systems. Monash University has called for a new model, 'designed around a rights framework from the outset', and the Australian Society of Archivists recommended 'radical transformation of current recordkeeping' and that institutions adopt a new access model which privileges the right to access for Care Leavers.³

We believe that the way forward needs to adopt the model of the records continuum (discussed below), where multiple parties have rights, responsibilities, needs and perspectives on records. We believe that discussions about records and recordkeeping need to shift away from ideas of ownership and risk, and towards frameworks that support the (lifelong) rights of the child, and are guided by principles designed to uphold these rights.

Systems transformation and cultural change are complex, long-term processes. This does not mean that in the short to medium term, steps cannot be taken to tackle the systemic and enduring problems identified in the Consultation Paper on records and recordkeeping

³ Monash University submission to the Consultation Paper on Institutional Responses to Child Sexual Abuse in Out of Home Care, April 2016. Australian Society of Archivists, Statement re Out of Home Care, 11 April 2016, available at: <http://www.archivists.org.au/about-us/submissions>.

practices. We believe the most vital step is to shift the perspective away from the institutions and record holding organisations, and to approach the issues from the perspectives of Care Leavers and people whose lives are so significantly affected by the failings of current recordkeeping systems and approaches to accessing records. The evidence given by Forgotten Australians and recent Care Leavers to the public hearings for Case Study 24 are an excellent place to start. The transcripts demonstrate the enduring impact of the legacy of poor recordkeeping practice, and they also show just how important it is for Care Leavers to be able to access their records, and be able to understand why they were in out-of-home care:

MS FURNESS: Did anyone tell you why?

JONO: No. To this day I was never told by a worker why I was there, which is a very dangerous thing for a young person, because they start making it up.

TASH: They start blaming themselves.⁴

The efforts of governments and record-holding institutions to meet the needs of Care Leavers need to be based on openness and compassion and put the wellbeing of Care Leavers first. Decisions about records management (most importantly, decisions about releasing information in records) need to move away from questions of ownership and consideration of organisational risk, and instead adopt a rights-based framework.

There are a number of existing documents which can guide institutions to adopt archiving and recordkeeping practices that are survivor- and Care Leaver-centred. In particular, we note that the International Council on Archives adopted the Principles of Access to Archives in 2013 which assert that:

- Both public and private entities should open their archives to the greatest extent possible (Principle 1)
- Institutions holding archives make known the existence of the archives (Principle 2)
- Institutions holding archives adopt a pro-active approach to access (Principle 3)
- Institutions holding archives ensure that victims of serious crimes under international law have access to archives that provide evidence needed to assert their human rights and to document violations of them, even if those archives are closed to the general public (Principle 6).⁵

In Australia, national and state standards also exist that provide guidance about records and recordkeeping for children and young people in out-of-home care, including the National Standards for Out-of-Home Care and the New South Wales Child Safe Standards for Permanent Care. The Who Am I project (mentioned above) has developed a suite of

⁴ Public Hearing, Case Study 24 (day 142), Sydney, 29 June 2015, pp.14647-8.

⁵ Principles of Access to Archives (2013), available at <http://www.ica.org/en/principles-access-archives>.

resources to guide recordkeeping practices that support the identity needs of children and young people in out-of-home care.⁶ These include a video featuring two Care Leavers (one from the era of institutional care and one who left care much more recently) speaking about the importance of records to them.⁷ This five-minute video has been an invaluable resource for our team members and we have used it in many presentations, workshops and meetings to ‘set the scene’ and raise awareness about the importance of records.

Frank Golding, representing the Care Leavers Australasia Network (CLAN) has published a draft Charter of Rights to Childhood Records, which provides that

The historic records should now be held in archives principally in order to help the ‘subject’ person make meaning of the circumstances of their childhood; and/or to connect, if still possible, with family and community; and/or to seek redress and other remedial action for abuse or neglect, where relevant.⁸

Perhaps the most important document available to guide Australian practice in providing access to records is the landmark publication: ‘Access to Records by Forgotten Australians and Former Child Migrants’ (Department of Social Services, 2015).⁹ We believe that the principles and guidelines set out in this document offer the clearest way forward for institutions holding childhood records wishing to implement the recommendations from the 2001 and 2004 Senate reports. The principles are the result of an exhaustive consultation process involving a diverse group of stakeholders. The (non-binding, aspirational) principles aim to ‘maximise the amount of information available to Forgotten Australians and Former Child Migrants and to create greater consistency in conditions under which the information is made available’. The principles and guidelines are also highly relevant to records relating to historical child sexual abuse.

The Consultation Paper invited submissions about how the Access Principles have been applied in practice. Our view is that, to date, resources have not been directed towards raising awareness about the existence of the principles, let alone towards helping organisations to implement them. We urge the Royal Commission to recommend that the Access Principles be endorsed by all relevant record-holding organisations.

⁶ See Making Records Meaningful, available at <http://www.cfecfw.asn.au/know/research-and-evaluation/sector-research-partnership/partnership-projects/out-home-care/who-am-i>.

⁷ ‘Who am I’, available at <https://vimeo.com/53568782>.

⁸ Frank Golding, ‘A charter of rights to childhood records’, December 2015, available at <http://frankgolding.com/a-charter-of-rights-to-childhood-records/>

⁹ Access to records by Forgotten Australians and Former Child Migrants, June 2015, available at <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access>.

In this submission, the Find & Connect web resource team has come up with a set of alternative principles to guide archiving and records management practice in the short to medium term.

The four principles proposed by the Find & Connect web resource team (and discussed in more detail below) are:

The creation and management of records by institutions that provide services to children must comply with international archives and records management standards and relevant Australian laws. The creation and management of these records must also be compatible with the best interests of the child.

Institutions must provide information to the public about the childhood records in their custody, including records that are closed to public access, and including any known details about records that have been destroyed or lost.

Institutions with childhood records in their custody must adopt a trauma-informed approach to the management of records, especially to the provision of access.

Decisions about access to childhood records (including 'third party information' in files), notwithstanding the existence of various state and federal laws, must aim to provide as broad and complete access as possible, in accordance with a framework that recognises the rights of the child, the right to know, and the vital importance of these records to meet lifelong identity, memory and accountability needs.

Some thoughts about the life cycle versus the continuum

As noted above, the Consultation Paper adopts a model of the records life cycle, a model with inherent problems and theoretical limitations. The life cycle model is not able to provide solutions to systemic and enduring issues, as this model is itself part of 'the problem'.

The life cycle model imposes artificial distinctions between 'current' and 'historical' records; it conceptualises records as moving neatly through separate stages until they eventually become 'archives', or, they 'die' at the end of the life cycle; it conceptualises records in a way that privileges the records creators and custodians, and marginalises other

stakeholders; it is concerned with records as physical entities and is operationally focused; records and recordkeeping are seen as the domain of archivists and records managers.¹⁰

An alternative to the records life cycle model is the records continuum. Within the continuum model, the demarcations are blurred - between records creator and records user, between the various phases in a record's 'life', between records managers and broader societal processes. The continuum consists of four dimensions, and all records exist in each of the dimensions simultaneously.

The Royal Commission's reliance on the life cycle model for the Consultation Paper is hardly surprising, given that archival and records management policies and practices, in Australia and internationally, are firmly entrenched within the life cycle model. This is despite the fact that the records continuum originated in Australia in the 1990s.¹¹ The records continuum remains largely theoretical, taught to information science students and written about by archival science academics, but has had little impact on practice within organisations, the Find & Connect web resource being a notable exception.

We provide this very quick overview of the theory here because we believe that the model of the records continuum offers new ways to approach the enduring problems and vexed issues discussed in the Consultation Paper. Crucially, the continuum model removes the false distinctions between past, present and future, and between separating discussions about 'historical' and 'contemporary' records. To quote Frank Golding:

'... survivors of sexual abuse, even when it occurred decades ago, hardly ever think of that experience as "historical". Many of them attest to the fact that the past is always with them. Many of them have come forward to the Commission precisely because they think there is something to be learned from their "historical" experience. They don't want the lessons of the past to be ignored'.¹²

The Consultation Paper about the records relating to child sexual abuse provides a compelling demonstration of how the (traumatic) past lives on in the present, and how the contemporary situation is entangled in the legacies of the past.

Perhaps most importantly, in the 'fourth dimension' of the continuum, records have social, cultural and collective memory properties. The continuum model acknowledges that records have multiple purposes, and changing value over time. In the continuum, records

¹⁰ Sue McKemmish (1997). 'Yesterday, Today and Tomorrow: A Continuum of Responsibility', available at <http://www.infotech.monash.edu.au/research/groups/rcrg/publications/recordscontinuum-smckp2.html>.

¹¹ See Frank Upward (1996), 'Structuring the records continuum part one: post-custodial principles and properties', *Archives and Manuscripts*, 24(2): 268-285.

¹² Frank Golding, submission to the Royal Commission's Consultation Paper on Out-of-home care, 11 March 2016, p.4, available at <http://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/making-institutions-child-safe/out-of-home-care/submissions>.

can have different value and meaning for multiple stakeholders, beyond the creators and custodians of the records.¹³

Compliance with laws and human rights frameworks

Principle:

The creation and management of records by institutions that provide services to children must comply with international archives and records management standards and relevant Australian laws. The creation and management of these records must also be compatible with the best interests of the child.

We came up with this principle as an alternative to Principles 1-5 proposed in the Consultation Paper. Clearly, there is already a range of laws and standards in place that require records (and not only those ‘relevant to child sexual abuse’) to be accurate, complete, appropriately maintained and only disposed of subject to law or policy. (Although, as Paterson and Castan have demonstrated, the system in Australia has serious shortcomings when it comes to enforcement and compliance, and this has a profound effect on survivors of child sexual abuse wishing to get redress). In an article from 2016 examining the legislative frameworks governing records management in Australia, they conclude that the laws are ‘well overdue for careful and specific reforms’.¹⁴)

The records of institutions providing services for children (particularly institutional or out-of-home care) are so crucial that the standards need to go further than the general laws. As Leonie Sheedy recently said in a radio interview, ‘Nobody else in Australia goes back to a government department to find out about their family, except Care Leavers.’¹⁵ These vital records must also be compatible with the best interests of the children, as the Consultation Paper acknowledges.

We agree with Frank Golding’s assertion that the best interests of the child and the rights of the child extend over time, and should still apply even though that child has reached adulthood.¹⁶ We believe that, on top of laws, standards and policies, instruments including the United Nations Convention on the Rights of the Child should govern records and recordkeeping practices of institutions providing services to children. The Joinet-Orentlicher Principles, which include the Right to Know (including knowing what is in archives) are also

¹³ See Barbara Reed (2005), ‘Beyond perceived boundaries: imagining the potential of pluralised recordkeeping’, *Archives and Manuscripts*, 33(1): 176-98.

¹⁴ Moira Paterson and Melissa Castan. ‘New rules and recordkeeping: Supporting redress for survivors of child abuse’. *Alternative Law Journal*, Vol. 41, No. 1, 2016, p. 43 - 47.

¹⁵ See ‘Transcript – Recordkeeping under Royal Commission spotlight’, Find & Connect web resource blog, 12 October 2016. Available at <http://www.findandconnectwrblog.info/2016/10/transcript-recordkeeping-under-royal-commission-spotlight/>.

¹⁶ Frank Golding, ‘A charter of rights to childhood records’, December 2015, available at <http://frankgolding.com/a-charter-of-rights-to-childhood-records/>.

relevant in this context. Recently, human rights frameworks have been found to be useful when applied to issues of records management and data retention in the scientific community, as a way to address the tensions between ‘seemingly competing rights and responsibilities’, and to develop a shared set of values and norms.¹⁷

A proactive approach to access and documentation

Principle:

Institutions must provide information to the public about the childhood records in their custody, including records that are closed to public access, and including any known details about records that have been destroyed or lost.

This principle is closely linked to the aims of the Find & Connect web resource, as a way of making information available about the distributed collections of records of the systems of institutional care in Australia. In 2009, the website’s starting point was the information already published by government departments and past provider organisations about records in their custody. A team of state-based historians then embarked on three years of research and consultation to develop hundreds of entries about other collections of records, held by government and non-government organisations around the country. Since 2015, the Find & Connect web resource has continued to grow, as new information about records continues to be discovered.

The information on Find & Connect draws on a range of resources: feedback from the public and from support services, interaction with past providers and record holders, and research by team members. The web resource would be even more comprehensive if record holding organisations could adopt a more proactive approach to documenting the records in their custody.

It is clear that, since the announcement of the Royal Commission in late 2012, many institutions have devoted a significant amount of resources towards improving the documentation of their historical records. This work has undoubtedly helped organisations to respond to requests from the Royal Commission, and hopefully respond to requests for information from former clients and residents and their legal representatives. However this attention paid to historical records has not resulted in a significant amount of new information being made publicly available, on the Find & Connect web resource or elsewhere.

¹⁷ See for example Theresa L. Harris and Jessica M. Wyndham, ‘Data Rights and Responsibilities: A Human Rights Perspective on Data Sharing’. *Journal of Empirical Research on Human Research Ethics* 2015, Vol. 10(3) 334–337.

We submit that if institutions and record-holding organisations could proactively provide the Find & Connect web resource with up-to-date information about the contents of their collections, this would result in significant benefits for Care Leavers and support services. (As an added bonus, making such information available would also be in compliance with Australian Privacy Principle 5 'Notification of the collection of personal information').

We believe that it is important for organisations to be open about what records they hold, as well as what records have been lost or destroyed. As Leonie Sheedy said in the public hearing for Case Study 24:

'We should not be giving people false hope that their records will be there. If they could tell us which years have been destroyed, then that would save a lot of heartache and a lot of waiting for people'.¹⁸

There is a notable good practice example from the Department of Health and Human Services in Victoria. In response to an Ombudsman's report from 2012 which raised significant concerns about the storage and management of records relating to state wards, the Department embarked on a 'ward records plan'. One outcome of this plan, not specifically called for by the Ombudsman, will be the publication of new finding aids and guides to the records held by the Department. This project is an implicit acknowledgement of the systemic problems of the Department's life cycle-based approach to records management and documentation, and its inability to meet community needs. Their new finding aids, influenced by records continuum thinking, transcend those barriers and will be releasing valuable knowledge to the community.

'Indexing' of records is another way that organisations can adopt a proactive approach to documentation. The Federal Government has funded two rounds of the Records Access Documentation Grants program, to provide resources so that non-government organisations holding records about institutional care can improve their documentation. (The RAD2 Grants program is open at the time of writing this submission, with applications due by 20 November 2016.) These grants are conditional on the organisation providing a description of the records in their custody, to be published on Find & Connect.

The National Archives of Australia provides another recent good practice example of proactive documentation. In response to growing public interest and the advocacy of Care Leavers, the NAA made the listing of records relating to child endowment a high priority, and last week, uploaded new information about 566 files (in Series A885) to its RecordSearch database. This documentation work has made hundreds of files relating to children's institutions discoverable, and accessible to the public.

¹⁸ Case Study 24 public hearing, 29 June 2015, pp.14704-14705.

Trauma-informed records management

Principle:

Institutions with childhood records in their custody must adopt a trauma-informed approach to the management of records, especially to the provision of access.

The Find & Connect web resource made a submission in 2015 to the paper about Redress and Civil Litigation. The Royal Commission had proposed that ‘trauma-informed care training for institutional representatives who interact with survivors may well be of considerable assistance in ensuring that they have a good understanding of child sexual abuse and its impacts. It can also ensure that they do not do any further harm’ (p.102). In our response, we agreed with the Royal Commission, and added that trauma-informed practice should also be part of the way organisations provide training in records management. Mike Jones has written about the relevance of trauma-informed practice to the archival profession, stating that ‘archivists need to be aware of the effects of complex trauma, and how for survivors of abuse, records can be key to a person’s identity, healing and achievement of justice’.¹⁹

We note that the submission from the Child Migrants Trust on redress and civil litigation is an excellent discussion of the secondary trauma that can occur when Care Leavers apply to access their records from past providers.²⁰ Organisations need to be aware of the retraumatisation that can occur as a result of policies and practices around access to records, such as strict requirements about providing identification. Even the envelope that records are sent in can be of huge significance to Care Leavers.²¹

One important journal article not referenced in the Consultation Paper is by Wilson and Golding in *Archival Science*, about the ‘affective ramifications’ of accessing records as adults. This article also calls for the direct participation of Care Leavers in projects related to archives and records, so that the subjects of the records have agency, and everyone can learn from their unique insights.²²

¹⁹ Mike Jones, ‘What would trauma-informed archival practice look like?’, November 2014, available at <http://www.mikejonesonline.com/contextjunky/2014/11/04/trauma-informed-archives/>.

²⁰ Child Migrants Trust, ‘Redress and Civil Litigation’, March 2015, available at <http://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/redress/submissions-on-redress-and-civil-litigation>.

²¹ See Opening Presentation by Vlad Selakovic at a Who Am I workshop, available at <https://www.findandconnect.gov.au/ref/vic/objects/D00000344.htm>.

²² Jacqueline Z Wilson and Frank Golding (2016), ‘Latent scrutiny: personal archives as perpetual mementos of the official gaze’, *Archival Science*, vol 16, no 1, pp.93-109.

An understanding of complex trauma within record-holding organisations will help to raise awareness about the vital importance of records to survivors of abuse and to Care Leavers and provides another useful framework to guide complex decisions about access to records.

Maximum access to records

Principle:

Decisions about access to childhood records (including 'third party information' in files), notwithstanding the existence of various state and federal laws, must aim to provide as broad and complete access as possible, in accordance with a framework that recognises the rights of the child, the right to know, and the vital importance of these records to meet lifelong identity, memory and accountability needs.

'Why should we not be able to know where our parents resided in 1927 or 1964? You know, we're a signatory to the United Nations Rights of the Child and governments have an obligation to provide an identity, yet they get away with all this redaction, every single day'.²³

As stated above, the Department of Social Services published the Access Principles in 2015. This document aims to maximise the amount of information that organisations can make available to Care Leavers applying for their records, in line with the recommendations of the 'Forgotten Australians' report, the 'Lost Innocents' report and the 'common access guidelines' first proposed in the 'Bringing them home' report of 1997.

We do not believe that the Royal Commission's principle about access to records (Principle 5) will lead to any significant improvement of the situation for Care Leavers or survivors of abuse. Every record-holding organisation, in the government and non-government sectors, believes that they are providing access to records 'in accordance with law'. We recommend that the Access Principles, and their compassionate, liberal interpretation of the laws, be adopted by all organisations holding relevant records.

In particular, we commend the discussion about 'third party privacy' in the Access Principles, and the document's 'different view of what constitutes a third party'. The principles define 'personal information' broadly, to include information about close family members.

'Having been deprived of family connections through no fault of their own, and by practices of the past which are no longer applied to current children in care, the details in records may offer the only information available to them

²³ Leonie Sheedy, transcript of Case Study 24, p.14703.

about identity and family of origin ... The irony is that the more an individual already knows ... the greater the information they are deemed able to see without violation of the third party rules'.²⁴

The Access Principles demonstrate the value of the records continuum when conceptualising records and recordkeeping and the many issues impacting on Care Leavers and survivors of child sexual abuse. Records do not simply 'belong' to organisations, rather, a range of individuals and communities have a stake in records. This current Royal Commission provides a clear demonstration of how records exist in dynamic and entangled fabrics. The uses, meanings and significance of records change over time, and seemingly insignificant records can have profound impacts long after the end of their 'life'.

We note that important, socially-engaged research about records and recordkeeping is currently underway, particularly the Future Fellowship project led by Dr Joanne Evans at Monash University ('Connecting the disconnected: designing socially inclusive, integrated, archival and recordkeeping systems and services'). We also would like to take the opportunity to draw the Royal Commission's attention to the upcoming National Summit in Melbourne on 8-9 May 2017, organised by the *Setting the Record Straight: For the Rights of the Child Initiative*.

Our submission does not provide any simple solutions to the many 'wicked problems' set out in the Consultation Paper. However we believe that our alternative principles, based on frameworks of rights and continuum thinking, provide an approach to tackling these issues in ways that address injustices and barriers, and privilege the rights of survivors and Care Leavers.

²⁴ Access Principles, 2015, p.21.