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By email:

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Dear Commissioners

Consultation Paper on Records and Recordkeeping Practices

I congratulate the Royal Commission on the production of this comprehensive consultation paper.

As a foundation member of CLAN (Care Leavers Australasia Network) and an active member of the Committee of Management, and as a former ward of the state in Victoria, I have a great deal of direct personal experience in this area.

However, I am writing this submission as a personal contribution. CLAN will submit a considered response to the consultation paper following further discussions by its Committee of Management.

Yours sincerely

Frank Golding

Preliminary remarks on conceptual issues in the Consultation Paper

1. The Consultation Paper (the Paper) frames the discussion through the twin concepts of 'records as core business' and 'records as in the best interests of the child'. It also provides a fair assessment of the state of the art in recordkeeping practices, and raises a range of important issues that need to be resolved. It is important to note, however, that the Paper is problematic at a conceptual level in a number of ways. The first of these is a consequence of the Terms of Reference of the Royal Commission (the Commission) imposing significant arbitrary constraints on the scope of the Paper.

1.1 The limitation to sexual abuse leads to an unnecessary and artificial focus on recording matters relating to sexual abuse, whereas records should be about the whole child and all the important events and circumstances that describe, explain and interpret the child's life within the institution. The Commission has conceded the impact of that restriction.¹ There are cogent reasons for the Commission to take a broader view of records, which I will discuss later in my response.

1.2 By contrast, the Commission is also well aware of problems created by the broad definition of institution in its Terms of Reference.² The institutions encompassed vary enormously in, among other things, their purpose, histories, type of services, size, levels of regulation, and their management and governance practices. It follows that, beyond the level of broad principle, it will be difficult to offer advice about records that is relevant to all.

1.3 A recently released report commissioned by the Commission describes a simple typology of closed and open systems that may be useful in the context of records.

In a closed system, a child's life in the institution is strictly controlled by a single authority and its delegates. The child may have very little contact with people outside the institution, and may have fewer stable attachment relationships that provide support, foster resilience and allow for safe disclosure of adverse events such as child sexual abuse. In contrast, in an open system

¹ See *Redress and Civil Litigation Report*, 2015: 5, 100.

² ...provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families' Royal Commission Terms of Reference at: <https://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>

*the child's contact with the institution is just one component of his or her life, the child potentially has secure attachments outside the institutional context, and it is easier for the child to sever ties with the institution.*³

1.4 When the state legally assumes all rights and obligations *in loco parentis*, especially the duty to take all reasonable care for the full-time safety and well-being of children, it gives unto itself lawful authority to act on the child's behalf by making all medical, legal, educational decisions and other matters affecting the child's day-to-day upbringing—including protecting the child from harm at all times. It follows that the records that should be kept about these 'locked-in' children must necessarily be vastly different from those kept about a child who voluntarily attends a sporting club or a community organisation on a sessional or casual basis.

1.5 Records are especially important for wards of the state. The Paper rightly points out that the deprivation is not just about sexual abuse:

For those who grew up away from their families, the absence of the records of childhood that many people take for granted, including birth certificates, photographs, artworks, school reports and medical histories, can have catastrophic effects. Many victims and survivors have told us that, without typical childhood records and mementos, they feel lost, isolated, incomplete, and that their childhoods were meaningless or insignificant (p.10).

1.6 Survivors hope their childhood records will help them reach back into a strange past where birthdays, anniversaries, christenings and other family occasions were never celebrated. A past where personal identity was formed without family stories handed down by parents and other relatives. Disconnected from family and community in their childhood, and often experiencing low self-esteem and poor sense of identity, Care Leavers apply for their 'file' expecting to find detailed, accurate records about their time in 'care' and the answers to questions about their childhood, e.g. Who put me into 'care'? Why? Where were my parents? What became of my brothers and sisters? Who visited me? What medical treatments and vaccinations did I receive? Did I have school reports and certificates? Why was I transferred to other placements? What sort of child was I? What became of the friends I grew up with? Who were the staff who were

³ Jan Breckenridge & Gabrielle Flax, Support Services for Victims and Survivors of Institutional Child Sexual Abuse, 2016: 19.

supposed to look after me? Will there be any reports about the way I was treated? In short, the records represent a repository of hope that they will find answers to questions that have nagged away at them, all the years of their adulthood.

1.7 But many Care Leavers are profoundly disappointed, even shocked and sometimes re-traumatised because:

- Some records have been destroyed or can't be found
- Many have large gaps in information, meaning it is not possible to create a coherent story
- Many statements are inaccurate or misleading
- Official records are almost entirely negative. Far from finding milestones and achievements as they grew older, they discover the content is almost always about children as problems and are often insulting, demeaning, or downright hostile
- The entries in Care Leaver records are often cold, distant and lacking in empathy
- They were written by officials for an official audience—never for the family or the child in later life
- Children are observed, not included in the records. The voice of the Care Leaver is nowhere to be heard—many don't recognise themselves and their life story.⁴

1.8 It should be remembered that when we discuss records, we are not just referring to ward files and/or cards.⁵ After first entering the welfare system, the vast majority of state wards and all non-wards were sent to a non-government institution or a succession of institutions including foster care. Sometimes, former wards and others discover they have to find records from numerous institutions. The Find and Connect web resource has made it easier for many Care Leavers—in cases where they know all the placements they had as children—to discover who holds their records.

⁴ For ways in which records re-traumatise Care Leavers see: Jacqueline Z Wilson & Frank Golding, Latent scrutiny: personal archives as perpetual mementos of the official gaze, *Archival Science*, Vol. No. 1: pp 93-109.

⁵ Only a little over a half of all children in OOHC were wards - the rest were placed in care 'voluntarily' by parents or family members. Their records at the admission stage, at least, may be different from those of wards.

1.9 The admission file should contain—but often does not—basic details such as the age (preferably with a birth certificate), names of parents and last-known address or contact details, and siblings and date of admission and expected date of exit, and a record tracking any transfers to other placements.

1.10 If there were changes in a child's status, e.g. being fostered out or adopted, there should be separate records for each status. There is some confusion—and variations in rules across the jurisdictions—in regard to the rights to records of people whose legal status changed while they were in OOHC. A national approach is needed.

1.11 In addition to these basic documents, there could be many other records that would help Care Leavers understand their time as a child. These include:

- Family and sibling files. Information about a family may have been consolidated on one sibling's file and not placed on other siblings' files
- Children's court (or family court) orders
- Correspondence with the department to and from parents or carers, to and from institutions, and to and from Victorian Government offices
- Admissions, discharges and movement registers and cards
- Visitor books and records of holiday placements
- Records of payments of child support, including child endowment and other financial records
- Records of incidents, investigations and resolutions
- Inspector's reports where the agency employed inspectors
- From institutions you'd expect some of the above plus other supervision documents like handover documents; note books of Superintendent/Matron/Directors/CEO; punishment registers; photographic collections; reviews of individual progress; educational reports from schools; medical/health reports; counselling or social worker reports; minute books of committees of management.

2. The Paper fails to address some fundamental questions relating to rights about personal records. The United Nation's Convention of the Rights of the Child (1989) declares the right of the child to an identity (Article 8), the right to maintain contact with parents (Article 9), the right to have a say in decisions that affect them (Articles 12-13), and a great deal more besides.

The Convention should influence the making of records and access to them. There are, as well, some Australian declarations that the Royal Commission should consider.

- Among these are National Standards for out-of-home care, which were agreed across the national child protection community in 2011. Standard 10 states:

Children and young people in care are supported to...have their life history recorded as they grow up...to help them recall the people and events that have shaped their lives.

- Several States of Australia have issued formal charters about the rights of children that are germane to the issue of records. The Victorian Charter for children in Out-of-Home care (2013), for example, accords the child the right to 'have a say and be heard', 'to be provided with information' and 'to know information about me will only be shared in order to help people look after me'.
- CLAN has drafted a Charter of Rights to Childhood Records, which it is pursuing through workshops and conferences. High on the agenda is the retrospective application to Care Leavers of the right of the child to contribute to the making of the record and the right of the child to share ownership of the record once it is made.

2.1 In my many years of accessing records and helping countless others to do so, I have not yet met a person who knew, as a child, that records were being compiled about them, their siblings and their parents. In that sense, these records were secret dossiers. It follows that Care Leavers were never given the opportunity to contribute to their personal record—so what now passes as an account of their childhood is a one-sided and often misleading narrative. It has become clear to Care Leavers that the writers of records never imagined that the subject of their writings might one day read what was written about them and their families. The makers of records could write opinions masquerading as facts without being made accountable for their value judgements. It is not too late to learn the importance of involving children in contributing to their own story.

2.2 In the comparatively short period that Care Leavers have had (sometimes limited) access to 'their records', many records holders have made it clear that ownership lies with the institution. Care leavers may have copies of documents, but they are left in no doubt that the

concept of 'my file' is wrong-headed. This again raises the question in Care Leavers' minds: what's the point in archiving historic personal records about them which they can't have full access to? If there is a purpose, it certainly is not to meet the identity needs of the 'subjects' of the records. A special case can easily be made for letters from parents and photographs which carry so much emotional meaning for Care Leavers that it would be churlish for records holders to insist that they must keep the originals while giving the Care Leaver only a copy.

3. In what follows I confine my remarks largely to closed institutions. For convenience, I retain the sub-headings and numbering of questions found in the Paper.

Principle 1: Creating and keeping accurate records is in the best interests of children.

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

Culture is not perhaps the best word to use in this context. If good records and recordkeeping practices should be in the best interests of the child—and there can be little doubt about that—then these practices must be seen as part of the core business of institutions. What might once have been regarded as a desirable expectation should now be regarded as an essential requirement, not a matter of choice or a desirable option when or if they have the time. Institutions must allow no exceptions.

This is even more imperative in the case of state wards because the state, having legally appropriated the role of parents, gives unto itself the right and duty to act in the best interests of the child by making all the key decisions that parents would otherwise make. The state, *in loco parentis*, is duty bound to be accountable should any harm be suffered by a child while in out-of-home care. This accountability cannot be exercised without systematic and comprehensive records.

Cultural change in this context is premised on recordkeeping being seen as a non-negotiable requirement of the institution with a senior officer in each institution being responsible for quality performance, as part of the job. Other aspects of cultural change related to quality control are noted in what follows.

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

Staff in institutions, and potential staff in pre-service training, need to be convinced of the long-term significance of records—and framing record making as a core part of the job would make the point in a telling manner. Institutions should be encouraged to employ peer tutors from representatives of ‘best-practice’ institutions along with workshops run on the ‘Knowledge Diamond’ model developed by Melbourne University’s Professor Cathy Humphreys in the Who Am I? Project and which is being further developed by the Routes to the Past project at that University. There is no one best training program, but the collaborative approaches developed in the aforementioned projects demonstrate the value of learning from a variety of perspectives, including from the ‘subjects’ of the records.

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

All government funding ought to be conditional on meeting written requirements in this area, as part of funding agreements with agencies. Governments should also take a lead in negotiating and setting standards. The full value of government funding for developmental projects is often not gained because the findings are not followed up with a clear and practical dissemination plan and regular review of progress.

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

Children can and should have the right to make a contribution to their record as it develops (see my remarks at 2.1-2.3 above). I just add here that, in many instances, there would be therapeutic benefits to be gained in having children participate in making records about their experiences. This can be done in a range of creative ways other than by written documents.

In many cases, parents are not available to contribute to records; but this goes to the broader question of how OOHC agencies manage to keep parents in the loop of involvement with their ‘locked-in’ children. I see no reason why, having lost custody of their children, parents should not be provided with regular reports of the progress of their children. Nor should they be debarred forever from being to ask questions about how their children are faring. The impact of historic attitudes to ‘bad’ parents—keeping them at arm’s length and treating them with contempt—was often another way of punishing the child. Care Leavers were often told, sometimes maliciously, that their parents

did not love them, were dead, or were bad people. Parents and children should be encouraged to write or message one another, and, having due regard for privacy, this communication should be part of the evolving record. It is important for children in OOHC to keep alive the prospect of future reunion or reconnection with their family. The records that are created in 'care' may become an important resource to that end.

Principle 2: Accurate records must be created about all decisions and incidents affecting child protection

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?

Accurate records must be created about all decisions and critical incidents affecting child protection, not just sexual abuse. The principle should be extended to all forms of child nurturing—including positive experiences. It goes without saying that records should be clear, objective and thorough and should be created as close as possible to the time that the incidents they document occur. There should be no secret dossiers; every entry on a record should be signed by the author and dated. As an additional safeguard, any contentious file notes or reports, such as suspicions about grooming, inappropriate behaviour, breaches of institutional codes of conduct, and the like, should be signed off, as well, by the supervisor of the person writing the report.

This also goes to ***Question 8: How institutional records can be monitored to ensure they are accurate.*** Serious incidents of the type mentioned above that warrant a second signature should lead to an investigation by an executive member of the institution. The outcome of all such investigations should be reported in writing with a copy to be included in the personal record of the child. See also my later comments in relation to the need for a sixth principle.

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

There is a body of literature about this matter. One of the most useful stems from the Who Am I? (WAMI) Project directed by the University of Melbourne, which ultimately morphed into the national Find and Connect website resource. The WAMI project was funded by the Australian Research Council, the Victorian Department of Human Services, a wide range of CSOs, together with organisations representing the interests of Care Leavers. The project

examined the role played by records and archives in the health, wellbeing and construction of identity of young people in care and of adults who were in care as children. It developed a range of practical ideas for the involvement of children both in the creation of records and in the decisions that affect them.

The WAMI? Project developed a number of recommendations focused *inter alia* on:

- the current fragmentation of a child's record especially when the child is involved in a number of placements, as many are; and
- collaborative recording involving child as well as officers.

The Project rightly concluded that, while the focus of practitioners should be on the current needs of children and young people in care, that should be balanced with an awareness of the identity needs of the person in the longer term.

The Commission will also be aware of the work of CREATE and others in this area.

9. *Whether there may be any unintended consequences arising from requiring institutions to create accurate and detailed records relating to child sexual abuse*

While unintended consequences of the type mentioned in the Paper may arise, that is no good reason to justify not requiring institutions to create and maintain accurate and detailed records of children in 'care'. In principle, a person reading their own records in years to come should experience no surprises about its contents.

Principle 3: Records relevant to child sexual abuse must be appropriately maintained

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

The question of resources to complete the tasks that should have been completed years ago is a red herring. Institutions, especially those funded by state governments, and those state governments themselves, should not be rewarded with additional funds to do what they should have done as part of their routine work. ***And in relation to Question 11***, in catching up with outstanding indexing and processing of applications for access to records, first priority should certainly be given to the records of elderly and frail Care

Leavers many of whom still don't know who their parents were and the circumstances of their separation. Second priority should be given to all applicants whose requests are now out-of-time in terms of FOI rules about timelines.

It is a matter of concern that some agencies have implicitly or explicitly indicated that, in this matter, they have made special efforts to meet the requirements or expectations of the Royal Commission. It should not require the prospect of being embarrassed before a royal commission to generate action that should have taken place long before that. I am sure that the Commissioners would not like to think that agencies that hold records acted to index them and then to provide records to Care Leavers only because the Commission was 'coming to town'. I would hope that the Commission will make recommendations that would have the effect of minimising the likelihood of historical records and archives being allowed to fall into disarray and disorder in the future.

Having said that, it should also be stated that good progress has been made when governments do apply additional resources. In Victoria, for example, the Department of Health and Human Services has made considerable progress towards archiving and indexing ward records and related collections where a serious backlog had existed due to historic neglect. A revamped Careleavers Records Team is now operating, and Care Leavers look forward to further improvements in searches and access services.

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 has been an area of remarkable sloppiness in the past. State departments have not exercised due diligence when funding agencies for the care of children in the matter of making records and they have been negligent in supervising the transfer or disposal of records when these agencies closed. The principle of 'constructive ownership' should apply: that is, that any agency that is funded by the state to care for children must create and maintain records and these records become and remain at last resort the property of the state. Protocols covering all records should be put in place that ensure that, in the event of closure, records are required to be transferred to an authorised central repository able to guarantee their security such as a public records office, a state library or the state department itself.

Principle 4: Records relevant to child sexual abuse must only be disposed of subject to law or policy.

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

Some individuals would like to see their records burned or otherwise destroyed, especially when they contain hurtful or damaging comments. This is not a large number: the Paper cites one prominent Care Leaver who was putting a personal view to that effect. However, destruction is a drastic, irreversible course of action, and could be regretted in the future not only by the 'subject' of the file but also by descendants who might want to understand their family members after the death of their ancestor. Moreover, changes to redress schemes and civil litigation laws cannot be forecast with any certainty, and it could be a matter of considerable consequence to a person whose file has been destroyed acting under a set of suppositions that is later rendered unsound by change over time.

If records are destroyed, that should be an informed decision by the individual, and not a general policy to be implemented by the system. My considered opinion is that there are alternatives to be preferred. For example, the subjects of personal records do have rights under State and territory FOI and privacy legislation to challenge inaccurate, incomplete and misleading personal statements found in their files. Care Leavers can require a record holder to incorporate their version of events and this can be extended to the incorporation of counter-narratives outlining versions of important events even events that were not recorded at all. More encouragement should be given to Care Leavers to exercise their right in this manner; this option is rarely exercised, often because they do not know their rights and are not told about it by records holders.

Secondly, records holders should enable a Care Leaver to generate a statement to be attached to the front cover of their personal record to the effect that they want their privacy protected and that they do not give consent to publication of any matter within the file.

Furthermore, historians and sociologists who research and quote from historical personal records are almost always governed by ethics protocols which insist on de-identification of personal records and the use of other privacy principles. These policies could be applied more universally.

Sigmund Freud made a living peering for truth in other people's minds, but perversely destroyed his personal papers in a pre-emptive strike against any would-be biographer (*Autobiographical Study*). Experience shows that personal mysteries are often a catalyst to biographical research.

18. Should institutions maintain registers of what records they destroy, when and upon what authority?

This is a no-brainer in that such registers would serve as an accountability mechanism to prevent destruction for malevolent purposes such as getting rid of evidence that may be needed in litigation or redress schemes. Moreover, destruction even for less malevolent motivation can unwittingly frustrate the search for identity and family connections.

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

The publication⁶ was developed using broad consultation processes. The Principles and Guidelines represent aspirations of a majority of the 'records community' in terms of maximising the information available to Care Leavers and promoting greater consistency in the ways that public and private institutions that hold records respond to access requests. The publication addresses recommendations of the *Lost Innocents* and *Forgotten Australians* reports, especially the move to a more compassionate interpretation of legislation to facilitate the widest possible release of information to Care Leavers.

The document has much to commend it, but is by no means perfect. The consultation processes were managed skilfully but bureaucratic interests and records holders tended to outweigh the interests of Care Leavers. Consequently, in my view, the document does not give sufficient consideration to the question of the existing discretionary powers which governments possess to grant access to records without rigid interpretations of legislated rules. Likewise, the document does not give sufficient attention to the question of ownership of personal records or to the relationship between the writers of records and those who read them into the future.

As to the take-up of the Guidelines and Principles, it is probably too early to tell. The anecdotal evidence runs both ways. Some agencies have reviewed their policies and practices to move in the direction of the principles and

⁶ *Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing access to records: Principles and Guidelines* (Commonwealth Department of Social Services, 2015).

guidelines. On the other hand, the peak advocacy and support group, CLAN, for example, is still receiving complaints from some members who have been frustrated by continued long delays, seemingly arbitrary redactions, and insensitive interactions at the point of delivery. Too much still seems to depend on the skills, training and attitudes of particular gatekeepers on each particular encounter. Some agencies continue to appoint inexperienced staff to these roles and there is a high turnover of staff in some cases. Too much turns on the goodwill of agencies and on individuals within agencies. There is still too much variability and inconsistency in practice. The Principles and Guidelines, although not perfect, should be supported at Ministerial level in each State and Territory and the senior authority in church and other non-government agencies.

If I am right about that, there is a case for more training—and including significant input from Care Leaver advocates—and the development of the sixth principle (below).

22. Should the Privacy Act 1988 (Cth) 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, can small private institutions that care for or provide services to children be encouraged to 'opt-in' to the Australian Privacy Principles scheme?

Many bureaucrats are risk-averse and fret too much about the possibility of breaching existing FOI and Privacy legislation. Some FOI officers are all-purpose officers and are not familiar with the history and needs of Care Leavers. They err very much on the side of the institutional record holder and are not compassionate or generous in handling requests for personal information from Care Leavers many of whom are not highly literate or articulate in pressing their case.

I have felt for many years that the application of generic legislation like FOI and the Australian Privacy Principles to Care Leaver access to records is a wrong-headed approach to the problem. This body of legislation was not conceived and implemented with a Care Leaver clientele in mind—and is therefore not sufficiently nuanced. If we must have legislation governing access to records, let it be legislation that is purpose-built in style of rights to records under adoption legislation. However, it would be preferable to develop and use an agreed instrument such as the DSS Guidelines and Principles.

In the meantime, much can be done to improve the way existing laws are interpreted and presented to Care leavers applying for their records. For example, where redactions are made under FOI law, it is often the case still

that a marginal note will simply state a clause of the relevant act (e.g. in Victoria, s33(1)) which means nothing to the vast majority of Care Leavers. It would be much better to give a specific reason in plain English why a part of a record is withheld or redacted. This would possibly have an additional benefit: the decision maker would be required to explain the way in which she is interpreting the clause in the legislation, and is not glibly citing the number of the sub-clause as if that's the end of the matter.

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

It defies understanding that agencies and government departments would create and store personal records about children in their 'care'; and then, years later, charge fees for those children, as adults, to have access to them.

24. What steps should institutions take to ensure that individuals have appropriate support when reading and interpreting records with potentially distressing content?

There is much to be said for offering counselling or related support for Care Leavers in these circumstances. However, this must not become a 'one-size-fits-all' procedure. Some Care Leavers prefer to have a family member or a fellow Care Leaver or advocate with them when they gain access to their records. Others prefer to deal with the matter personally and directly. I have personally experienced a compulsory 'counselling' session which I found condescending and patronising, and altogether unhelpful. Many Care Leavers do not want counselling provided by the agency which traumatised them when they were children.

25. Should nationally consistent standards for redaction be established; and what should those standards be?

The short answer to this question is that a nationally consistent standard should be along the lines that there should be no redactions at all except where the record holder forms a reasonable belief that the release of information about a third party could lead to serious harm to that third party. In many cases, record holder adopt a knee-jerk reaction: if any third party is mentioned, information about that third party is always redacted whether it is reasonable to do so or not. This is sometimes applied even when the third party is a close relative of the person seeking access to their personal records. Care Leavers who make applications for personal information usually do so for

the very purpose of finding out about their family from which they were arbitrarily separated in their childhood. In this context, it is reasonable to assert that information about close relatives such as parents, siblings and other direct family members is the personal information of the applicant. In this particular respect, I endorse the Principles and Guidelines on redactions.⁷

26. How can public and private institutions be better educated about the proper application of third party privacy exceptions?

Workshops using actual cases with the consequences of good and bad decisions about redactions are highly recommended. These cases should be presented by Care Leavers or their advocates who are in a position to demonstrate, for example, the successes of family reunions that follow the release of third party information, or, in contrast, the frustrations experienced in situations where redactions caused personal hardship and further trauma.

Periodic in-house reviews of decisions—using round-table peer discussion—is another means of assessing whether decision making is consistent and fair.

A sixth principle

28. Is a sixth principle directed at enforcing the initial five principles required?

It is disappointing to note that while the Paper frames record making and recordkeeping as 'core business' of institutions, it does not unequivocally support a sixth principle to address enforcement of good recordkeeping practices. While everyone acknowledges that institutions vary considerably in scope, size and purpose—and, of course, recordkeeping processes should be appropriate to the situation, as suggested in **Question 29**—it is unthinkable that some institutions, as defined by the Commission's Terms of Reference, would not be required to establish and maintain records about the children they serve and the adults who work for them. At a minimum level, any institution that receives public funding—or is awarded tax exempt status—should be regulated as to the records they are required to make, keep and provide from time to time for accountability purposes.

Suggested support - Records advocacy services

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

⁷ *Access to Records by Forgotten Australians and Former Child Migrants* (Commonwealth Department of Social Services, 2015).

CLAN, the national peak body representing and advocating on behalf of Care Leavers, together with Find and Connect and the service providers funded under it in each jurisdiction already provide a records advocacy service to Care Leavers. CLAN has potency in that it is an organisation of Care Leavers for Care Leavers run by Care Leavers. Applicants can be assured that their interests are paramount—and will not be compromised.

The national Find and Connect program is excellent conceptually—and should continue to be supported—but the services in the respective jurisdictions vary in quality and user take-up.⁸ The variability relates to a range of factors including problems relating to:

- auspicing, sponsorship or hosting relationship with past providers and the degree of independence from these past providers
- geographical location and ease of access for users
- the way the services are promoted
- rapid turnover of staff and the inadequate training of new staff and retraining of older staff
- values of service operatives—some maintain a welfare-dependency model and others aim to encourage self-empowerment
- lack of transparency and consistency in respect of entitlements and expectations
- capacity of services to deal with peak loads
- lack of Care Leaver engagement in decisions about the way service is delivered.

It should also be noted that providing records access services is just one of a range of services provided by the Find and Connect services. In some places, it is not necessarily the main service provided. Moreover, records made and archived for Care Leavers in closed institutions are—and should be—significantly different in design, scope, and purpose; and the reasons for accessing them are worlds apart from those in open institutions. Therefore, to apply it as a model for extension to other kinds of institutions would be inappropriate.

Additional notes

Many Care Leavers want more than access to the records of their childhood. They want and need to know and to tell the truth to others about the past. In the vast majority of cases, the official records do not supply a coherent

⁸ See Australian Healthcare Associates, *Evaluation of the Find and Connect Services: Final Report*, Australian Government Department of Social Services, 2014.

narrative that meets that need. What is required is a process of building up a counter-narrative that is richer and more psychologically satisfying.

I commend to the Commission the work of the University of Melbourne's Routes to the Past Project⁹ which it is pursuing in partnership with CLAN and the Dulwich Centre Foundation in South Australia. David Denborough, of the Dulwich Centre, encapsulates the thinking behind the project in a working paper entitled 'Narrative Justice Charter of Story-telling Rights'. Article 1 of that Charter states that: 'Everyone has the right to define their experiences and problems in their own words and terms.' The widespread acceptance of that right and other articles of the Charter—together with those enunciated in CLAN's Charter—could transform the traditional OHHC records regime.

The Commission may be aware that Monash, Melbourne and Federation Universities in partnership with CLAN and other stakeholder bodies are planning a National Summit of all stakeholders entitled *Setting the Record Straight: For the rights of the child*. The Summit is scheduled to take place in Melbourne on 8-9 May 2017. It is to be hoped that the Royal Commission will have completed a report on records and recordkeeping well before that time so that it will be available as a key resource for participants at the Summit. I have no doubt the planning group will contact the Commission formally.

⁹ The contact person is Dr Cate O'Neill in the eScholarship Research Centre at the University of Melbourne.