Reframing Practice to Activate Human Rights

The Charter of Lifelong Rights in Childhood Recordkeeping in Out of Home Care (=Alternative Care)

Section for Local, Municipal and Territorial Archives, ICA December 2022

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https://www.monash.edu/it/clrc
We acknowledge the First Nations peoples who are custodians of the unceded land of Australia which always was, always will be Aboriginal land. I am speaking to you from the land of the Gadigal people of the Eora Nation. We pay respect to Elders, past present and emerging, and to all First Nations and Indigenous peoples here today.
The Charter of Lifelong Rights in Childhood Recordkeeping in Out of Home Care in Australia

- Context:
  - Why a Charter of Rights?
  - What is the problem?
- Is it a world-wide problem?
- How does the Charter address the problem?
- Overview of the Charter
- Implementation toolkit
- Impact and future directions
The Context: Why a Charter of Rights?

‘Axiomatic principle: every child placed in the custody and control of a welfare agency should absolutely expect that the agency will keep full and accurate records about their experience in Care and in a contemporary situation the child should participate in the process of making and keeping those records.’

Dr Frank Golding OAM
What is the problem? Australia’s journey to address rights of children in Care

**National:**
- Stolen Generations, 1997
- Child Migrants, 2001
- Children in OoHC 2005 & 2008
- Royal Commission 2017

**State-based inquiries**
Ongoing inquiries and reports into aspects of children in out-of-home Care

**Coordinated action**
Cross jurisdictional actions

**2021**
National Strategic Framework for Information Sharing

**2018**
National Child Safe Standards

**2017**
Royal Commission Institutional Responses to Child Sexual Abuse

**2012-13**
Child protection national minimum data set

**2009**
Lost Innocents & Forgotten Australians revisited

**2005**
Forgotten Australians Children in out of home Care

**2001**
Lost Innocents Child Migrants

**1997**
Bringing them Home Stolen Generations

**Today**
1 in 100 non Indigenous children and young people; 1 in 16 First Nations children and young people
What is the solution?

“good records and recordkeeping practices are integral to the realisation of many of the rights of children enshrined in the United Nations Convention on the Rights of the Child... In particular, the creation and management of accurate and detailed records is fundamental to children’s rights to identity, nationality, name and family relations. The rights of children to be protected from all forms of physical, mental and sexual abuse are promoted by good records and recordkeeping.”

Royal Commission into Institutional Responses to Child Sexual Abuse 2017

• UN Universal Declaration of Human Rights 1948
• UN Convention on the Rights of the Child 1989
• UN Declaration on the Rights of Indigenous People 2007
• UN Guidelines for the Alternative Care of Children 2009
Is it a world-wide problem?

The problems identified in the Australian context are present in many countries around the world. Children and young people impacted include:

- Working class children in the UK, Ireland, and Scotland
- First Nations and Indigenous children in Scandinavia, Canada, NZ
- Children displaced by war in eg Poland, Spain, Ukraine
- Children affected by (legal and illegal) trans-national adoption
- The left-behind children in China
- The Timor Leste children taken back to Indonesia by Indonesian soldiers
- Refugee children separated from their parents worldwide
- Donor conceived children
Setting the Record Straight For the Rights of the Child

https://rights-records.it.monash.edu/summit/summit-outcomes/
The Charter – a summary

Framing Rights
- Participation
- Identity
- Accountability
- Memory

Principles
- Self-Determination
- Archival Autonomy
- Wellbeing
- Cultural Safety
- Justice

Recordkeeping Rights
- Participatory Recordkeeping
- Agency in Access & Disclosure
- Right to Privacy & Safe Recordkeeping
### Framing rights:

<table>
<thead>
<tr>
<th>Participation</th>
<th>Memory</th>
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<tbody>
<tr>
<td>Rights to participate in decision making/have a voice in all matters that impact on you</td>
<td>Individual and collective memory rights</td>
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<td>Collective community right to participate in developing frameworks, legislation, policies and processes that impact them</td>
<td>Rights to remember/forget</td>
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<td></td>
<td>To be remembered/forgotten</td>
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</table>

<table>
<thead>
<tr>
<th>Identity</th>
<th>Accountability</th>
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<tr>
<td>Rights to cultural, family and self identity; to know who you are, where you belong and to practice your culture</td>
<td>Rights relating to holding society, governments and service providers to account for actions that impact on you as an individual or community</td>
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Creating records about you in organisational settings, creating your own personal records

Deciding or consenting to what is recorded in organisational and archival systems about you

Deciding or consenting to how your records are used and who has access to your records

Intervening in/challenging the record (right of reply/setting the record straight/truth telling)

Determining how long to keep records, and in what form

Cultural, self identity and family rights in records

Refusal and deletion rights
Disclosure and access rights in records and archives

- Right to lifelong access to your records (including rights to receive copies, timely and low cost access and special accelerated access where circumstances require this)
- Right to have a say in intergenerational access
- Right to know and be informed of where your records are held
- Right to understand the types of records held about you
- Right to be informed of when and why others are given access to your records
- Right to consent to use of your records by others
- Right to know when and why records about you are destroyed
- Rights regarding records expertise:
  - find, locate, interpret and advocate
<table>
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<tr>
<th>Privacy and Safe Recordkeeping Rights</th>
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<tr>
<td>• The right to individual and collective privacy as understood in your culture and worldviews</td>
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<td>• The right not to have your records used for other than their original agreed purpose without consent</td>
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<tr>
<td>• The right to safe and secure recordkeeping infrastructure, processes and systems</td>
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<td>• Safe and secure keeping places for archival records</td>
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<td>• Personal recordkeeping rights:</td>
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<tr>
<td>• The right to a secure personal recordkeeping/archival space</td>
</tr>
<tr>
<td>• The right to a safe, secure, and trusted infrastructure for managing, preserving and transmitting your records</td>
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Endorsement

- Council of Australasian Archives and Records Authorities
- NSW Information Commissioner
- NSW Privacy Commissioner
Implementation Toolkit

BEST PRACTICE GUIDE

Best practice examples aligned to specific charter rights

PRACTICAL ADVICE

1. Child Protection and Recordkeeping – Overarching Issues
   - Consent
   - Age Appropriate
   - ‘Best Interest of the Child’
   - Safety and Wellbeing
   - Competing Rights

2. What records are made about a child
3. How information in records will be used or shared
4. Recording the Child’s view on managing their records
5. Creating child centred records
6. Selecting Apps

7. Recordkeeping and Lifestory resources
8. Recordkeeping expert advisor
9. Access to records
10. Talking back to the record
11. Destroying records
# Summary implementation recommendations

## Out-of-Home Care
**Implementation Strategies for Recordkeeping Regulators**

Records kept for and about children in Out of Home Care have an impact for a lifetime. Empowering children to participate in decision making and recordkeeping, to know about and have free access to records throughout their time in Care and at any time in their life can significantly affect lives. Recognising this, Recordkeeping Regulators can constructively engage with all layers of the child protection system to enable child-centric recordkeeping.

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<th>#</th>
<th>Endorse/Adopt</th>
<th>Develop</th>
<th>Pilot</th>
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<tr>
<td>1</td>
<td>Endorse and promote the Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care. The Charter provides a mandate for recordkeeping and maintains a child-centric approach.</td>
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<td>2</td>
<td>Endorse and promote Best Practices Guidance for Service Providers - within and between jurisdictions.</td>
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<td>3</td>
<td>Support implementation of Best Practice Toolkit. The Toolkit addresses consistency of practice and identifies achievable improvements to practice.</td>
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<td>4</td>
<td>Develop, in conjunction with peer organisations, National Standards on Recordkeeping for children in Out-of-Home Care aligned to Child Safe Standards. Consistency and focus on child-centred recordkeeping.</td>
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<td>5</td>
<td>Develop jurisdictional arrangements for ensuring long-term retention of service provider records.</td>
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<td>6</td>
<td>Develop model recordkeeping contract clauses for service providers of OOH. Service providers must contractually bind requirements for recordkeeping, during and after contract terms.</td>
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<td>7</td>
<td>Work with partner organisation to pilot implementation of national standards. Provide proactive support to early adopting service providers.</td>
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<td>8</td>
<td>Work with Children and Young People sector Regulators to develop audit methodology for recordkeeping for children and young people.</td>
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<td>9</td>
<td>Practical guidance on maintaining records through technology system change. Service Providers need practical assistance to ensure reliable records across systems changes.</td>
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## Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care
**Implementation Strategies for Children and Young People Commissioners or Regulators**

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

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<td>2</td>
<td>Include recordkeeping in all reviews and monitoring of services. Child-centred recordkeeping is a key component of all services. Incorporating recordkeeping in all reviews and monitoring activity ensures ongoing attention to recordkeeping is adopted in practice.</td>
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<td>3</td>
<td>Incorporate recordkeeping into existing Charters of Rights for Children and Young People. Update existing Charters to include, at minimum, a reference to children’s rights in records.</td>
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<td>4</td>
<td>Ensure contracts for service provision and care include lifelong recordkeeping rights for children. Advocate for inclusion of recordkeeping in any recordkeeping model contract clauses and monitor their implementation in practice.</td>
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<td>5</td>
<td>Ensure recordkeeping is explicitly addressed in practice manuals, guidance to contracted service providers, services. Recordkeeping should be clearly specified and embedded in practice at all levels of the child protection system.</td>
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<td>6</td>
<td>Conduct recordkeeping audits on departments and Contracted Service Providers. Working with Recordkeeping Regulators to develop practical audit methodologies enhances effective reviews of practice.</td>
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<td>7</td>
<td>Audit arrangements to ensure that records will be accessible for the child’s lifetime. Attention to life-long accessibility of records reinforces requirements beyond current systems.</td>
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<td>8</td>
<td>Call out recordkeeping deficits where they impede either reviews or rights of children and young people. Explicitly referencing recordkeeping deficiencies or good practice in reviews keeps recordkeeping visible as a protective mechanism for children and young people.</td>
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Implementation experience – CAFS Ballarat

- CAFS is a service provider agency across a range of services including child protection, out of home Care
  - Proactively addressing a contentious past by transforming current practice
- Led by Dr David McGinniss, Australian Catholic University
- Training sessions for front line service staff
- Enthusiastic reception with staff eager to improve practice
- Immediate implementation question – why limit this to practice in out of home Care? It applies to practice across all services.

Future Directions – Guidelines for Regulators – Recordkeeping and Children’s Commissioners
Influencing Policy/Legislative Reform
Charter of Lifelong Rights in Childhood Recordkeeping in Out of Home Care

Addressing the critical, lifelong and diverse information needs of Australians who have, or are experiencing, out-of-home care.

This research was a response to the advocacy of care leavers, and the organisations that serve and champion them. It focuses on driving transformational changes in childhood recordkeeping.

The project’s genesis was the 2017 Summit on Setting the Record Straight for the Rights of the Child.

The Charter

Download the PDF Charter and learn more about its background, foundations and priorities.

Endorsements

View the organisations that support, endorse and leverage The Charter.

Toolkit and outcomes

Use our practical strategies and advice to uphold best practices in recordkeeping for out-of-home care.
How relevant is the Charter of Lifelong Rights In Childhood Recordkeeping to other countries and jurisdictions where children and young people are displaced or in Alternative Care?

What role can/should archival institutions play in relation to Recordkeeping and Archival Rights for Children and Young People?

THANK YOU