



Correction

Article title: Towards Transformative Practice in Out of Home Care: Chartering Rights in Recordkeeping

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When the above article was first published online, the appendices were incorrectly tagged as supplementary material and were missing in the published version. Below are the missing appendices that have been added at the end of the updated version of the article:

Appendices

Appendix 1. A Charter of Rights to Childhood Records



(Revised 19 October 2020)

CLAN's Charter is consistent with the four Framing Rights of the proposed National Charter of Lifelong Rights

- - Participation
- - Memory
- - Identity and
- - Accountability

The Charter is an ethical extension of the rights of the child to the adult the child has become, and a response to the current needs of people who were institutionalised as children. Rights are

warranted on the contemporary rationale for retaining historic personal records in archives, namely to help the person the record is about to exercise their right to:

- Make meaning of the circumstances of their childhood
- Connect, if still possible, with family and community
- Seek redress and other remedial action for abuse or neglect and
- Regain control over the records made about them in their childhood.

The CLAN Charter includes 10 rights grouped under three headings:

- - Participatory rights
- - Access and disclosure rights and
- - Privacy and safe recordkeeping rights.

Participatory Rights in Recordkeeping

Right 1: The right to a comprehensive and authentic record

- Personal records should have contained key documents including—but not limited to—the person's birth certificate, the names and last-known addresses of members of the person's family, any court orders or documents related to the reasons for the person's placement, all medical and educational histories, the names of all people who visited the child during their time in custody, all documents related to transfers to other institutions including foster families and reports of all incidents, responses and decisions affecting child safety and wellbeing. Where there are gaps in the record, the agency has a duty to try to rectify the situation.

Right 2: The right to additional support where historic records have been lost, are incomplete, or inadequate.

- Archivists and other support personnel have a duty to search for and identify other archived records that may be relevant to the person's childhood experience to assist in providing a more complete narrative.

Right 3: The right to contribute to the record

- Children placed in the custody of institutions and agencies should have been informed of their right to contribute to their record, and to be helped to create a personal collection of items such as relevant photographs of people, events and places that were central to their time in 'care'. This right was usually not respected.

Right 4: The right to challenge, correct or complete childhood records

- When a record is incomplete, inaccurate or misleading, contains gratuitous personal judgments or opinions and uses language that is offensive, the person the record is about has the right to challenge, amend, add to, or complete the record, and archivists and records holders should inform them of this right and encourage and support them to exercise this right.

Right 5: The right to control the use of personal records

- Given that historical childhood records were made without the consent and knowledge of children in 'care', the person the record is about has the right to refuse to have those records released to others if there is a credible fear that doing so will compromise their human rights or those of others.

- The person the record is about has the right to make their wishes known as to intergenerational access to their records. This right should be respected but should not nullify the competing right of others with a valid claim to access the record into the future.

Agency in Access and Disclosure

Right 6: The right to know what records have been made and archived.

- Agencies holding records should be proactive in disclosing what records they hold.

Right 7: The right to full access

- Full access must be given unless contrary to law. Where a record is withheld or redacted, the decision-maker should give specific explanations and the person requesting the record has the right to appeal such decisions.
- No request for records should be influenced by consideration of any real or perceived conflict of interest or administrative difficulties.
- Originals of personal documents such as family letters and photographs should be provided to the person, and copies kept in archival collections.

Right 8: The right to timely access through informal or administrative processes.

- Archivists, record-holders and support workers must expedite all requests for access to personal records using the maximum flexibility available under the law. Special consideration should be given to the frail, elderly, and those involved in litigation or redress claims.
- Legacy systems that operate with inefficient and outmoded finding, indexing, digitising, and cross-referencing tools should be resourced to remedy their deficiencies.

Right 9: The right to support in accessing, interpreting and understanding personal records

- Persons seeking personal records should be assisted to interpret the record with issues like historical context and unfamiliar or technical terminology.
- Persons seeking personal records have the right to request and be provided with a records advocate or other expert in locating, understanding and challenging records

Privacy and Safe Recordkeeping Rights**Right 10: The right to privacy and to safe and secure storage and handling of personal records**

- Personal records should only be used for the purposes set out in the Framing Rights (above) except where the subject of the records gives their informed consent for other uses.
- Persons seeking personal records have the right to a safe, secure, and trusted infrastructure for managing, preserving, certifying, and transmitting their records
- No records should be destroyed or otherwise disposed of except in accordance with the law.

Appendix 2. Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care

Exposure Draft 22042021
Specification of Framing Rights and Rights in Recordkeeping and Archives in Charter of Lifelong Rights in Recordkeeping in Out of Home Care

Framing Rights: Human Rights, Self-determination and Archival Autonomy

Participatory Rights	Individual right to <ul style="list-style-type: none"> ● participate in decision making/have a voice in all matters that impact you Collective right to <ul style="list-style-type: none"> ● participate in developing frameworks, legislation, policies and processes that impact the collective
Memory Rights	Individual and collective memory rights ¹ to: <ul style="list-style-type: none"> ● remember/forget ● be remembered/be forgotten
Identity Rights	Individual and collective rights to: <ul style="list-style-type: none"> ● cultural, family and self-identity ● know who you are, where you belong ● practice your culture ● have one's cultural or community recordkeeping practices recognised in legal, bureaucratic and other processes that involve records creation ● have one's self-identity acknowledged in records about oneself, including, but not limited to name, gender, and ethnicity.²
Accountability Rights	Individual and collective right to: <ul style="list-style-type: none"> ● hold society, governments and service providers to account for actions that impact on you as an individual or community ● governance frameworks and accountable systems that support transparent decision making based on accurate, complete and reliable evidence

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¹Implementing this right involves the development of principles and protocols that address issues relating to:

- the right to be forgotten by others as far as it affects accountability or the rights of others in the short or long term
- balancing the right of the individual to forget and the rights of others to remember/be remembered
- the need to ensure transparency relating to participative appraisal decision making involving a range of individual and collective stakeholders, while acknowledging the rights of and individual in their personal record
- ensuring the individual has access to expert advice on the potential consequences of destroying a record, e.g. redress schemes are often launched many decades after abuse occurs, so decisions made by an individual to destroy a record at the time of the abuse may affect rights of redress in years to come.

²As a result of the findings of a comparative research study and mappings of the *Charter* and the *Refugee Rights Framework* developed by Professor Anne Gilliland and Dr Kathy Carbone, rights relating to recognition of cultural and community recordkeeping practices, and acknowledgement of self-identity in records have been included in the AJ Gilliland and K. Carbone, 'An analysis of warrant for rights in records for refugees', *International Journal of Human Rights*, vol. 4, no. 4, 2020, pp. 483–508.

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Recordkeeping and Archival Autonomy/
Sovereignty as a Human Right

Individual and collective Right to Autonomy³ in relation to
Recordkeeping and Archives that concern you or may
impact you individually or as part of a collective

Truth-Telling and Speaking Back Rights

To actualise these rights would need supporting rights:

- Disclosure rights relating to institutional recordkeeping and archives that concern you or may impact you individually or as part of a collective
- Rights to repatriation of records from organisations and institutions—collective and individual rights
- Right to have records held in trust by archival institutions in accordance with your terms and conditions
- Rights to have links between your records and records about you held elsewhere
- Right to have records held in trust by archival institutions in accordance with your terms and conditions
- Collective right to share in allocation of national and state archival resources

Recordkeeping and Archives Rights:

Rights in institutional Recordkeeping and Archives in any form, media or format which relates to you or may affect you individually or as part of a collective

Participatory Rights and Records Creation Rights

Rights to participate in decision-making about:

- Setting recordkeeping and archival frameworks (metadata, classification, categorisation, description), making policies (appraisal, access, disclosure, keeping places), decision making about legal and administrative processes (NOTE: a collective right for community member organisations)
- Deciding how your records are used and who has access to your records
- Determining how long to keep records, and in what form
- Deciding to delete records about you

Records creation rights⁴ to:

- Participate in decisions about what types of records should be created about you in organisational record-keeping systems
- create your own personal records in organisational settings
- Intervene in/challenge the record (truth telling/right of reply)
- refuse to participate in the creation of a record about you if there is a credible fear that doing so will compromise one's human rights or those of others.⁵

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³Defined as the ability for individuals and communities to participate in societal memory, to find their own voice, and to become participatory agents in recordkeeping and archiving for identity, memory and accountability purposes: J Evans, S McKemmish, E Daniels and G McCarthy, 'Self-determination and Archival Autonomy: Advocating Activism', *Archival Science*, vol. 15, no. 4, 2015, p. 337

⁴As a result of the findings of a comparative research study and mappings of the *Charter and the Care Leavers Australasia Network (CLAN) Rights Charter (revised 2020)* Records Creation Rights have been included in the Charter

⁵Examples will be provided in the Implementation Kit for the Charter currently under development. It will be essential for expert advice to be available to anyone wishing to refuse to participate given the potential unforeseen risk of harm, e.g. because evidence not available for redress.

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Rights in Disclosure, Access and Records Expertise in
Records and Archives

Disclosure rights relating to:

- Knowing and being informed of where your records are held, including restricted files
- Being informed about the type(s) of records held about you;
- Being informed of when and why others are given access to your records;
- Knowing when and why records about you are destroyed.

Access rights⁶ relating to:

- Lifelong access to your records
- Receive copies, timely and low-cost access
- Special accelerated access where circumstances require it
- Having a say in intergenerational access
- Consenting to access and use of your records by others

Rights regarding records expertise⁷:

- The right to be provided, and at no cost, with the index terms or other metadata necessary for locating and retrieving records about oneself
- The right to request and be provided with a records advocate or other expert in locating, introducing and challenging records
- The right to have a records expert testify regarding the historical and bureaucratic circumstances surrounding the creation, management, reproduction, translation and reliability of records about oneself

Privacy and Safe Recordkeeping Rights

Privacy Rights

- Individual and collective privacy as understood in your culture and worldviews
- Not to have your records used for other than their original agreed purpose without consent

Safe Recordkeeping Rights

- Safe and secure recordkeeping infrastructure, processes and systems
 - Safe and secure keeping places for records
 - Accountable recordkeeping systems that provide accurate, complete and reliable evidence of actions that impact on you as an individual or community
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⁶Note: implementing access rights may involve balancing competing rights in a participatory process.

⁷As a result of the findings of a comparative research study and mappings of the Charter and the *Refugee Rights Framework*, rights regarding records expertise have been included in the Charter.

The online version of this article has been corrected.