

**Rights in Records: A Charter of Lifelong Rights in Childhood
Recordkeeping in Out-of-Home Care for Australian and Indigenous
Australian Children and Care Leavers**

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Frank Golding

My interest in the history of institutionalised child welfare arose from when, at the age of two, I was charged with the offence of being ‘without sufficient means’ and outposted to various foster families and institutions. With the aid of scholarships, I became a teacher and principal in state schools, then worked in teacher education and as a principal policy officer in the Victorian Education Department in the area of social justice and student welfare, and head of the state’s child migrant education program. Later I managed equal opportunity units at Deakin and Victoria Universities. I am a Life Member of the peak body Care Leavers Australasia Network (CLAN) and have participated in national projects related to Care leavers and in formal inquiries into out-of-home Care run by the Senate of Australia, the Victorian Parliament, and the Royal Commission into Institutional Responses to Child Sexual Abuse. As a researcher and author, I have presented at national and international conferences. I am a PhD candidate at Federation University Australia. In 2018, I was awarded the Order of Australia Medal (OAM) for service to child welfare and social justice.

Antonina Lewis

My working life includes ten years hands-on experience as a practicing archivist and fifteen months as manager for the Find & Connect web resource, a data portal and archival outreach site that aims to better the standard of information justice available to the estimated 500 000 children who were placed into institutional ‘care’ in Australia during the 20th century. After this, I moved into research, joining a participatory research program at Monash University investigating lifelong rights in recordkeeping. This included co-creating public exhibitions with care-experienced collaborators, as well as working on the Rights Charter discussed in this paper. I hold a Bachelors degree in creative arts and a PhD in cultural theory, and have received several archival publications honors including Mander Jones Awards for solo and collaborative works, and the 2019 Hugh A. Taylor prize.

Sue McKemmish

I am an Australian descendant of the Scots and Irish peoples who came to Victoria in the early days of the colony. I have been immersed in archives for four decades as a professional and an academic. When I worked for the National Archives, I became aware of the impact of dispossession and colonisation through the lens of Victorian

colonial and state Aboriginal Affairs records. Joining Monash in 1990, my research focused on Records Continuum theory, recordkeeping metadata, and smart information portals. More recently, I have focused on community-centred, participatory archives and rights in records in social justice and human rights contexts, and inclusive, reflexive research design and practice.

Gregory Rolan

I am currently a post-doc research fellow in the AiLECS Lab, having worked on the Rights in Records by Design project at the Centre for Organisational and Social Informatics at Monash University. I returned to study following a thirty-year career in IT and obtained my PhD in recordkeeping informatics. My research comprises conceptual modelling in recordkeeping informatics and participatory recordkeeping systems design and implementation. More recently, I have begun investigating the application of data-science techniques to recordkeeping informatics. I have published widely including *Archival Science*, the *Records Management Journal*, and *Archives and Manuscripts* and have been the recipient of various writing awards.

Kirsten Thorpe

My research interests relate to Indigenous self-determination in libraries and archives. I have led numerous projects that have involved the return of historic collections to Indigenous peoples and communities and I am an advocate for a transformation of practice to center Indigenous priorities and voice in regard to the management of data, records, and collections. A major focus of my work has been opening up spaces for Aboriginal and Torres Strait Islander people to engage in archive and information spaces, particularly with records documenting trauma such as those that relate to Stolen Generations survivors. These experiences laid the foundations to push for a transformation of theory and practice to accommodate Indigenous ways of knowing, and to enable Indigenous representation in places where peoples voices have been silenced. My PhD research at Monash University centres on Indigenous cultural safety and decolonising practices in Australian library and archives. My family are Worimi people from Port Stephens in New South Wales.

Rights in Records: A Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care for Australian and Indigenous Australian Children and Care Leavers

This paper introduces the *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care*, centred on the critical, lifelong and diverse information and recordkeeping needs of Australian and Indigenous Australian children and adults who are experiencing, or have experienced Out-of-Home Care. The Charter is underpinned by the findings of two community-centred research projects, the Australian Research Council-funded *Rights in Records by Design*, 2017-2020 (applying a Rights by Design approach and co-design methodologies to rights-based recordkeeping systems in Out-of-Home Care), and the *Indigenous Archiving and Cultural Safety: Examining the role of decolonisation and self-determination in libraries and archives* doctoral project, 2018-2020 (focusing on Indigenous self-determination and cultural safety in the context of archives and libraries). It also draws on foundational research on the recordkeeping rights of Indigenous Australians undertaken in the Australian Research Council-funded *Trust and Technology* project, 2006-2010. The principles and values underpinning the Charter relate to child wellbeing and safety, self-determination, linked to archival autonomy and agency, and Indigenous Sovereignty and cultural safety. The development of the Charter is core to a *National Framework for Recordkeeping for Childhood Out-of-Home Care*, a major outcome of the 2017 *National Summit on Setting the Record Straight for the Rights of the Child*.

Introduction

We acknowledge that each Care experience is unique. This paper presents research findings centred on the insights of Care Leavers and Care-experienced individuals who have shared their personal stories. In their recording, these testimonies keen and amplify. We pay equal respect to those whose voices have not been heard - to the experience of all who choose not to share their stories, who do not have the words or opportunity, or who did not survive to convey them.

The *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* (the Charter) is a work-in-progress that addresses the critical information and recordkeeping

needs of children and young people in Care, and Care leavers (who have exited the Care system) of all ages.¹ Such recordkeeping rights underpin a variety of human rights relating to children and their adult selves, including the *United Nations Convention on the Rights of the Child 1989*, positioned within the broader context of both the *UN Declaration of Human Rights 1948* and the *UN Declaration on the Rights of Indigenous People 2007*.² Similarly, the *United Nations Guidelines for the Alternative Care of Children 2010* detail measures to protect and uphold these human rights in the context of Out-of-Home Care.³ The Charter is framed by this broader context of human rights, Indigenous human rights linked to Indigenous sovereignty, social justice,⁴ and historical justice.⁵

In Australia, almost 50,000 children, nearly one in every 100, are in Care. The conceptualisation of the child as a human being with rights and agency is now included in frameworks for child welfare, Indigenous child welfare and Out-of-Home Care.⁶ Consequently, the rights of children in Care are referenced in national standards, state legislation and charters, and other local instruments. However, despite instances of exemplary care services provision, this conceptualisation is often not realised in policies and practice, and does not impact broadly on Out-of-Home Care, Indigenous child welfare, or their flawed recordkeeping and archival systems.

Moreover, Indigenous Australian⁷ children are ten times more likely than their non-Indigenous counterparts to be in Care relative to their numbers in the general population, a situation likened to a new generation of stolen children.⁸ There are unique human rights issues associated with Indigenous Australian children controlled in the child welfare system. As discussed later in this paper, their removal from their families was and is part of a larger colonial project of dispossession and denial of Indigenous sovereignty.⁹

Over the last 25 years, a series of inquiries has highlighted the failure of information and recordkeeping systems to meet the immediate and ongoing identity, memory, cultural, accountability and information needs of those caught up in child welfare systems in the 20th and early 21st centuries¹⁰. Their reports have emphasized a pressing need for the design of information and recordkeeping systems that enable children in Care to exercise the rights set out in the United Nations Convention on the Rights of the Child (1990). For example, in its various public statements and in its multi-volume final report, the 2017 *Royal Commission into Institutional Responses to Child Sexual Abuse* invoked the discourse of children's rights, and, importantly, rights in recordkeeping.¹¹

The development of the Charter draws on three community-centred research projects: the Australian Research Council-funded *Rights in Records by Design*, 2017-2020; the *Indigenous Archiving and Cultural Safety: Examining the role of decolonisation and self-determination in libraries and archives contexts* doctoral project, 2018-2020; and the foundational research on the recordkeeping rights of Indigenous Australians undertaken in the Australian Research Council-funded *Trust and Technology* project, 2006-2010. Together their findings provide evidence of the failure of recordkeeping to meet the critical needs of children and young people in Care and Care leavers. They demonstrate that actualisation of child rights in the Care sector depend in part on articulating and implementing complementary and lifelong rights in records.

We begin this article by introducing and contextualising the Charter with an overview of its aims together with the activities and transdisciplinary research that led to its development. We then provide a perspective on colonial structures and practices at the core of egregious recordkeeping that failed children and families over generational

timescales, and explain how these persist as a contemporary issue. This is followed by a discussion of rights and sovereignties impacted by such recordkeeping. Having provided this background, we then turn to the Charter in more detail and provide an example of the warrant analysis involved in its creation. Finally, we conclude with aspirations for the Charter.

Background

In 2017 the Australian *National Summit on Setting the Record Straight for the Rights of the Child* brought together Care leavers, Stolen Generation (Indigenous Australians removed from their families) survivors, support and advocacy groups, service providers, social workers, educators and researchers, lawyers, records managers, and archivists to speak, share knowledge, and plan for advocacy, action, and research over the next decade. For the first time, these key stakeholder communities joined to set an agenda for the transformation of recordkeeping and archiving in the child care sector, centred on the linchpin of recognising, respecting and enacting multiple rights in records.¹²

The Summit was convened by Monash University in partnership with Care Leavers Australasia Network (CLAN), an advocacy and support group for older Care leavers; the Child Migrants Trust, an advocacy and support service for child migrants/deportees from Britain and its colonial posts; Connecting Home, a service for the Stolen Generation; the CREATE Foundation, the national consumer body representing children and young people with Care experience; and researchers from Monash University, Federation University Australia, and the University of Melbourne.

[Insert Figure 1 here]

Participants imagined the transformational shift illustrated in Figure 1; moving from

organisation-centric records of control and surveillance towards child-centred recordkeeping frameworks, policies and systems co-designed with children, young people, their families, and advocates. Indigenous Australian participants emphasised the role recordkeeping should play in truth-telling and connecting to their rich heritage and country.¹³

In this way, the keynote speakers, discussion panels, and the living experience of participants in the Summit provided the impetus for developing a *National Framework for Recordkeeping for Childhood Out-of-Home Care*. Together with child-Safe principles, a network governance model, a formal child advocacy role, and socio-technical design of lifelong living archives, the framework includes this Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care as a core component.¹⁴

The main objective of the Charter is to ensure participatory recordkeeping for children and young people in Care that would document their lives; develop a sense of identity and belonging; and keep them connected with family and community. It articulates lifelong rights in recordkeeping for children in Care and Care leavers to address their questions about who they are, where they come from, and why they are in Care. The Charter is supported by ongoing documentation of an evidence-based warrant for rights-based participatory recordkeeping in the sector.

Theoretical underpinnings

The development of the Charter draws on broad, Records Continuum-based conceptual understandings of records and recordkeeping. Of particular relevance are Continuum concepts of recordkeeping, records, archival autonomy and the archival multiverse. In the Continuum view, recordkeeping:

encompasses a range of intertwined recordkeeping and archiving processes and activities Their purposes include the roles that recordkeeping plays in and through spacetime in governance and accountability, remembering and forgetting, shaping identity and providing value-added sources of information. In classificatory terms ‘recordkeeping’ in this usage subsumes records management and archival administration. It also encompasses the personal and corporate recordkeeping activities undertaken by individuals in their everyday lives, in families, work or community groups, and in organisations of all kinds.¹⁵

Records, as representations of human activity take many different forms. They may be spoken, inscribed, or performed. They are created and kept because they ‘have value to individuals, organizations, and/or societies – “whether that be for a nanosecond or millennia”’.¹⁶ The Continuum definition of records includes archival records that are preserved through time because they have ongoing value and use. Thus society’s Archive in the very broadest sense includes ‘oral and written records, literature, landscape, dance, art, the built environment and artefacts’ insofar as they provide traces of social, cultural and organizational activity, that evidence and memorialize individual and collective lives.¹⁷ Records are also embodied in people and embedded in Country,¹⁸ ‘living archives’ transmitted and accessed through storytelling and performance using speech, dance, art, music and song.¹⁹

Continuum definitions are much broader than many narrow and binary understandings of records and archives found in traditional Western records management and collecting archival institutions. Rather than being premised on strictures that focus narrowly on government and corporate records and which prioritise the needs of those entities in design of recordkeeping systems, repositories, and policies, Continuum recordkeeping deliberately expands these definitions and broadens the remit of archival theory to resonate with the idea of an archival multiverse defined as:

the pluralism of evidentiary texts, memory-keeping practices and institutions, bureaucratic and personal motivations, community perspectives and needs, and cultural and legal constructs with which archival professionals and academics must be prepared, through [practice], graduate education and through research and development, to engage.²⁰

Contributing Research

Research on the Charter of Rights is being undertaken in two complementary projects. The Australian Research Council-funded *Rights in Records by Design* project (2017-2020) uses participatory methodologies to engage Care leavers at different life stages. It is inherently transdisciplinary, incorporating historical and contemporary analysis of the child welfare system and Out-of-Home Care, exploration of the emergence of child rights; and the role of recordkeeping and systems design in their actualisation. In particular, the evidence base for the Charter was established using warrant analysis to identify and analyse authoritative sources for human and recordkeeping rights. The term ‘warrant’ in this case refers to a literature-based justification for a practice-based discourse or conceptualisation.²¹

This project involved the development of a proof-of-concept *Lifelong Living Archives for Childhood Out-of-Home Care*, co-designed with young Care leavers. This prototype demonstrates how to develop a rights-based, distributed, participatory, and adaptive recordkeeping and archiving systems can enable children and young people in Care to have a greater say in their records, and Care leavers to have greater control over their ongoing management, access, and use.²²

The doctoral project, *Indigenous Archiving and Cultural Safety: Examining the role of decolonisation and self-determination in libraries and archives*, aims to identify what it means for Indigenous Australian people to be culturally safe in relation to these institutions and practices²³. Cultural safety may be defined as

an environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning, living and working together with dignity and truly listening.²⁴

Framed by Indigenous standpoint and decolonial theories, and Indigenous critical perspectives, this research uses the narrative methods of Yarning and autoethnography, engaging with both sector leaders and members of Aboriginal and Torres Strait Islander communities to give voice to Indigenous Australian aspirations within libraries and archives.²⁵ The project contributes critical insights into the unique issues relating to Indigenous Australians with living experience of Care, including the Stolen Generation.

Both projects draw on the foundational research on the recordkeeping rights of Indigenous Australians undertaken in the Australian Research Council-funded *Trust and Technology* project, 2006-2010. Major deliverables of this project include a Final Report on the research findings, a Statement of Principles relating to Australian Indigenous knowledge and the Archives, and a Position Statement on Human Rights, Indigenous Communities and Australian Archives.²⁶ The Position Statement recommends a suite of rights in records to support the United Nations Declaration of the Rights of Indigenous People 2007 and self-determination for Indigenous Australians.

Key to all of these research streams is the identification and analysis of authoritative sources that provide testimonial and instrumental warrant of specific import to the lifelong rights of Australian and Indigenous Australian children experiencing Care, including their continuing rights on exiting care and through adulthood. In determining authoritative sources of warrant in our research, we deliberately position living experience (evidenced through documented testimony) as a primary site of expertise.²⁷ Testimonial warrant may be contained within other sources of warrant, including submissions, hearings, and reports of inquiries and royal

commissions; oral histories and cultural materials; and research findings. Instrumental warrant is established through existing rights instruments and statements; legislation, policies and regulatory standards; and inquiry recommendations.

British Colonialism in Australia

The *National Framework for Protecting Australia's Children 2009–2020* envisions a transformation of Out-of-Home Care achieved through the introduction of child-centred care frameworks, policies and systems.²⁸ Our research has found that a major obstacle to this transformation is the persistence of colonial constructs of the child in the sector,²⁹ including the criminal and neglected child, and the view that Indigenous Australian children form 'a child-race in need of state-sponsored, protective custody, and re-education'.³⁰ The devastating effect of colonisation on Indigenous Australians and the long shadow of colonial Australia in child welfare generally persist to the present day.³¹ Classist, heteropatriarchal, sexist and racist colonial constructs continue to influence policy and practice in the Care sector. They are both evidenced and 'embodied in the form and content of records and archives, as well as in the principles and values embedded in recordkeeping and archival systems'.³²

For the past twenty-five years, a torrent of survivor testimony of maltreatment continues to be exposed in the mass media, generating public outrage and often leading to formal inquiry at the state or federal level. A recent example of this, the 2017 *Royal Commission into Institutional Responses to Child Sexual Abuse*, is one in a long line of official inquiries to hear evidence of how profoundly recordkeeping and archival systems have failed Out-of-Home Care and Care leavers, Stolen Generation survivors, Forgotten Australians and British Child Migrants.³³

The commission found systemic problems in the Care sector, including an inability to protect children from physical, sexual and emotional abuse; neglect of education and health; wilful separation of children from their families, and refusal of parental visiting entitlements; lack of privacy and deprivation of personal possessions; stripping children of identity, including changing their names without consent; and obstinate refusal to let the children have any say in the decisions that affected them at critical points in their progress through state care, including in outsourced agencies run by churches and charities. In each of these cases, absent, inadequate, or malicious recordkeeping was found to lie at the heart of these systems of abuse.

In too many cases, whole childhoods spent in Care went largely undocumented. Where records were created and archived, the churn and fragmentation of administrative and operational change created a hotchpotch of recordkeeping with historical records being dispersed across an array of organisations over time: state libraries, government archives, government departments, and non-government organisations.³⁴ Many Care providers (including churches, religious orders, and charities) protected perpetrators, while continuing to control the records needed by Care leavers to bring their perpetrators to justice. Organisational witnesses at inquiry hearings frequently referenced lost or missing records to excuse their failure to account to inquiries for their historic actions.³⁵

Even when records are located, Care leavers are often denied access or receive heavily redacted copies. When records are released, in some instances Care leavers discover they have brothers and sisters that they didn't know about, or letters from family members that were never passed on. Many find the substance of their dossiers confronting, factually inaccurate, or misleading. All too often subjective personal judgments appear in language that is disrespectful. Some are re-traumatised by their

records and the process of gaining access to them.³⁶ It apparently never occurred to those writing sensitive personal accounts of children in Care, or designing the administrative systems in which they are held, that such records might one day be read by the children who were being documented—or by the adults those children would become.

Hierarchies of value, dynamics of power, and modes of control associated with the colonial era remain prevalent within institutions ‘where children had little value, were voiceless, had few rights, were readily dismissed and were not considered worthy of any privacy or respect’. The *Royal Commission into Institutional Responses to Child Sexual Abuse* reported that these themes were broadly consistent throughout the 20th century and in the present day.³⁷

The Impact of Colonisation on Indigenous Australians

The impact of colonisation was devastating for Indigenous Australians. British ownership of Australia was established through the racist and ethnocentric denial of Indigenous peoples – later developed into the false claim that the continent was *Terra Nullius* – an empty land belonging to no one.³⁸ This claim denied the sovereignties of over 250 distinct Aboriginal language groups and nations with their own systems of governance, stories, traditions, and histories spanning over 65,000 years. The colonial project led by the British included ‘deliberate acts of genocide’ aimed to ‘exterminate and exploit not only Indigenous Peoples but their pristine life-sustaining lands and waters’.³⁹

The removal of children from their families and communities became a tool within the colonial project to destroy Indigenous Australian kinship systems; to separate children from their families, communities and countries; and assimilate them into white

Australian culture in order to deny them their Indigenous identity and ability to continue practicing culture. This systematic process began initially through the coercion of the church, and later through 'protection' legislation that regulated the movements of Indigenous Australian people onto missions and reserves, as well as removing children from their families and communities into institutional care. Specific acts and legislation in each colony, state, and territory controlled and continue to control the lives and livelihoods of Indigenous Australian peoples.

Today, Indigenous peoples' colonisation continues through 'white possession' and ongoing denial of sovereignty⁴⁰ as well as through continued violations of human rights. Growing rates of Australian Indigenous child removal from their families are part of a continuation of the colonial project of dispossession and 'possessive logics' that reproduce and reaffirm 'the nation-state's ownership, control, and domination'.⁴¹ Child removal policies designed into the 20th century to 'breed out Indigeneity'⁴² created the Stolen Generation as collateral damage in an insidious form of racial and cultural genocide.⁴³ Similar policies continue today resulting in more Indigenous Australian children in Out-of-Home Care than ever before, and a new stolen generation.⁴⁴

The ongoing categorisation of all Indigenous Australian children as being 'at risk' perpetuates a deficit construct of Indigenous Australian culture, rather than acknowledging the traumatic impact of colonisation that 'current laws, practice and policy do not address'.⁴⁵ This trauma comprises both 'historical trauma', where there is a 'remembering of events in the mid of an individual or the life of a community', as well as 'intergenerational trauma' where second and further generations of survivors of traumatic events can be transferred from the first generation of survivors.⁴⁶

Recordkeeping as a Weapon of Colonialism

As with the general Care sector, government recordkeeping was central to the implementation of the oppressive laws, practices and policies that denied Indigenous Australians their countries, their identities, cultural heritage and languages, suppressing the practice of culture, and breaking transmission lines, especially in the more populated south-eastern part of Australia.

Government and private recordkeeping has been a powerful weapon in Indigeneity was diminished through racist and culturally offensive caste-based classification systems, the privileging of the perspectives of the ‘owners’ of the records, and consequent silencing of Indigenous Australian voices.⁴⁷ In Native Title processes, where Indigenous people are required to provide evidence of ongoing connection to land, the often sparse written record or text is considered more complete or reliable than oral evidence provided by Indigenous Australian people themselves. This ‘racially and culturally biased’ recordkeeping privileges colonial power structures and ‘white expertise’.⁴⁸ Moreover, ‘the fragmentation and dispersal of official records of and about Indigenous people mirrored their displacement from their Country and dispersion in all but the remotest communities’.⁴⁹

Recordkeeping practices continue to disenfranchise Indigenous Australian people. Recordkeeping systems are failing to support the contemporary needs of Stolen Generations survivors and their descendants in relation to access to records. Indigenous Australian people face similar challenges to that of other children who experienced Care with the additional complexities around navigating the impacts of colonisation, structural racism, over-policing, and state intervention. Whereas past policies of child removal enacted in earlier ‘protectionist and assimilationist periods of the late

nineteenth and twentieth century' can be clearly recognised as being constructed in relation to institutional racism, it is now 'more subtle and not always obvious'.⁵⁰

Rights and Sovereignties

Formalising recordkeeping rights associated with Out-of-Home Care is a core mechanism for creating safety nets and empowering people to use them. Moreover, upholding the rights of Care-experienced individuals with complex intersectional identities requires additional supports be made available to establish environments of cultural safety and build capability for participation.

Child Rights in Out-of-Home Care

Constructs of the child as a human being with rights and agency are increasingly being leveraged in human rights and social justice contexts. Examples of this include: the movement to transform the child welfare system; the campaigns waged by Care leavers to redress the abuse and neglect of children in out-of-Home Care; and Indigenous Australian communities seeking to uphold the *Aboriginal Child Placement Principles for Care* contexts ("to enhance and preserve Aboriginal children's connection to family and community and sense of identity and culture"⁵¹) in the context of the *United Nations Declaration on Indigenous Human Rights 2007* and Indigenous sovereignty.

Increasing attention to Care-sector rights benchmarks and standards from the 1990s onward,⁵² together with the assertion of rights by stakeholder communities,⁵³ set the scene for the wave of inquiries into child protection in Australia and elsewhere. In Australia, these inquiries, ranging from the 1997 *Bringing them Home*⁵⁴ Inquiry to the 2017 Royal Commissions into *Institutionalised Responses to Child Sexual Abuse*⁵⁵ and the *Protection and Detention of Children*,⁵⁶ were conducted at State and Federal level. They documented substantial evidence of widespread maltreatment which amount to

breaches of the rights of children in institutional care.⁵⁷ The *Royal Commission into Institutionalised Responses to Child Sexual Abuse* findings emphasized the critical relationship between quality recordkeeping and child rights:

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.⁵⁸

In 1989 the United Nations issued the *Convention on the Rights of the Child*⁵⁹ which specified both protective and empowering rights that have particular relevance for children who are deprived of their families. These include:

- A right to be treated with respect and given special care, and opportunity for full physical, emotional, intellectual, and social development. (Articles 6, 20, 24, 28);
- A right to know your family and maintain contact with them, and to have an official record of your name and identity (Articles 7-9); and
- The right to have your living arrangements inspected and assessed regularly, to have privacy, and to be protected from all forms of violence, including arbitrary detention and cruel punishments, drug abuse, child labour, and sexual exploitation (Articles 16, 19, 25, 34, 36, 37).

Contemporary derivatives of the convention such as Children's Charters now exist in every jurisdiction in Australia and nationally in the form of National Standards for Out-of-Home Care, however their implementation has been sporadic.⁶⁰ For example, although a Care Plan is a legislative requirement in all jurisdictions, regular surveys of Australian children in Care conducted by CREATE Foundation still indicate that the

majority know nothing about their plan and, of those who do, one third reported having ‘little or no involvement’ in its preparation.⁶¹ These proportions are worse when Care-involved children and young people were asked about their Cultural Support Plans, Education Plans, and Leaving Care Plans.

In many discussions about the Convention, the overarching principle is the ‘best interests’ of the child (Article 3). Arguably, these can only be attained in practice if exercised in conjunction with a child’s right to express his or her views freely in all decisions affecting them, to have their views taken seriously (Article 12) and to have them documented as part of the decision-making process.

The United Nations Committee on the Rights of the Child has long argued that there is no tension between children’s welfare or best interests (Article 3) and their right to participation (Article 12). They are complementary: participation is not only a right in itself; it is the methodology through which the best interests of the child are achieved. We have learned that participation is not a simple panacea. It requires time, support, and resources. Children's ability to form and express their opinions develops with age and opportunity and, therefore, the level of a child’s participation in decisions must be appropriate to the child's level of maturity. Before children can participate in a process, they must first learn how to participate.⁶² They will become better at participation when given meaningful, not tokenistic, opportunities to learn and reflect. They need recurring authentic occasions, not just special occasions. As well, they need all the relevant information, including access to their records, to help them form opinions about their current and future status.

For example, at a practice level, case files and data records often represent the composite picture of how a young person – and their best interests – are viewed for the

purposes of making protection or placement decisions and other care assessments. Consequently, it is vital that individuals at the heart of these living documents have avenues to shape, inform, and make amendments to the official record as a way of exercising archival autonomy, manifesting dignity of risk, and claiming agency over the first impressions and lingering perceptions cast by official records.

Indigenous Human Rights, Sovereignty and the Rights of the Child

Although Australia eventually became a signatory to the *United Nations Declaration of the Rights of Indigenous People 2007*, without formal treaties or instruments to negotiate rights and conditions, Indigenous Australian people have been unable to exercise self-determination in relation to their culture, land and language. In 2017, a group of Indigenous leaders, elders, and delegates joined together to discuss constitutional recognition of Indigenous Australian people. Spearheading a process of truth-telling, the group led discussions around the need for a constitutionally enshrined ‘First Nations Voice’ to Australia’s Federal parliament.

The resulting *Uluru Statement from the Heart* bears powerful witness to the desire of Indigenous people to gain full rights of self-determination, with the rights and aspirations of children at its core:

With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia’s nationhood. Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness. We seek constitutional reforms to empower our people and take a rightful place in our own country. When we

have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.⁶³

The Uluru statement also called for a *Makarrata* Commission to develop a national conversation around Australia's long 65,000-year history, including the recent histories of dispossession and colonisation. The *Makarrata* component is significant – this Yolngu concept (Arnhem Land, Northern Territory) 'captures the idea of two parties coming together after a struggle, healing the divisions of the past. It is about acknowledging that something has been done wrong, and it seeks to make things right'.⁶⁴ The *Uluru Statement* positions Indigenous sovereignty as 'a spiritual notion', an acknowledgement that Indigenous Australian people have deep attachments to the land, and to ancestors, noting that sovereignty 'has never been ceded or extinguished' and that it 'co-exists with the sovereignty of the Crown'.

Indigenous Australian children caught up in the child welfare system require participative, child-centred recordkeeping systems that incorporate cultural considerations, engage with family and community, and provide structures that support truth-telling to acknowledge the ongoing impacts of colonisation.⁶⁵ Recordkeeping systems need to be transformed to enable a plurality of perspectives, incorporating the needs of the child while also enabling broader family and community information needs.

For example, these systems would capture and maintain information that relates to Indigenous identity connected to community and Indigenous nation's unique sovereignty. They would enable a sense of belonging to a community, and recognition of the expansive histories of those communities through millennia to the present day. This would enable a fuller view of the child in relation to the histories of forced removals and the role that these histories had in intergenerational trauma. Transformed

recordkeeping systems would also enable support for Indigenous peoples' cultural safety to ensure that Indigenous worldviews and cultural connections to land and communities are considered as core components of a child's rights. There is real potential for rights-based recordkeeping systems to impact the cultural safety of Indigenous Australian people. Rather than recordkeeping systems creating trauma triggers, they can serve as tools to support healing, recovery, and wellbeing; rebuilding and connecting families and communities; and providing evidence for land claims and redress.

The Charter

[Insert Figure 2 here]

A graphical representation of the Charter is depicted in Figure 2. The rights in recordkeeping specified in the Charter apply both while a child or young person is in Care and throughout the duration of their life. These rights in recordkeeping support a broader architecture of lifelong identity, memory, accountability, and participatory rights, which are also articulated in the Charter. It validates the existence of individual, collective, and contested rights (held by multiple stakeholders in records and recordkeeping), while deliberately focusing on the rights of those who experience the Care system who require additional protections to participate meaningfully in decision-making and policy that impacts their lives.

Accordingly, the Charter is centred in principles and values of child safety and wellbeing;⁶⁶ the ongoing best interests of the child in a lifelong context;⁶⁷ cultural safety; social and historical justice; and self-determination linked to archival agency and autonomy. This last concept is defined as 'the ability for individuals and communities to participate in societal memory, to have their own voice, to become participatory agents

in recordkeeping and archiving'.⁶⁸

As illustrated in Figure 2, rights in records and recordkeeping have been identified in relation to framing rights: lifelong identity, cultural, memory, accountability, and participatory rights in the broader context of human rights, social justice, and historical justice. The Charter has identified a broad spectrum of recordkeeping rights which would reposition children in Care and Care Leavers from 'passive, powerless subjects of records' to 'active participatory agents in recordkeeping'⁶⁹ in decision making about what records to create and keep; what records are of continuing value; what metadata needs to be captured to document their multiple contexts; whose rights need to be taken into account in determining disclosure, access, and use policies; and what perspectives need to be addressed in access pathways. Therefore, the Charter is designed to:

- Support the critical and thus far largely unmet information and recordkeeping needs of Australian and Indigenous Australian children in Out-of-Home Care and Care leavers;
- Strengthen the human rights of the child in Care and Care leavers through rights in recordkeeping, given the role that records and recordkeeping regimes play in self-determination and participation, identity, connection to family, community and culture, evidence, memory, transparency, and accountability; and
- Strengthen the voices of children in Care and Care leavers in decision-making that affects them, including decision-making about recordkeeping itself.

Details of the framing and recordkeeping rights are included in Appendix 1. In the next stage of Charter development, we are working with key stakeholders, including partners and participants in the *2017 National Summit on Setting the Record Straight for the Rights of the Child*, on a validation process, and advocacy plan. The next steps involve

endorsement of the final version of the Charter by partners, stakeholder communities and service providers; advocacy for recordkeeping rights to be included in national and state laws, standards, charters and guidelines; and working with service providers on implementation toolkit to support inclusion of the rights in their policies and strategic planning.

The Warrant for Lifelong Rights in Childhood Recordkeeping

The Charter identifies specific recordkeeping rights relating to participation, access, disclosure, and privacy. They support child safety principles,⁷⁰ the wellbeing of children and young people in Care, the cultural safety of Indigenous Australian children in Care, and meeting the lifelong information needs of Care leavers, including the evidence base for historical justice and redress. Our research into sources of warrant for the Charter acknowledges human rights and child protection instruments that are specific to Indigenous peoples, and to Indigenous Australian children, and the role these mechanisms play in keeping strong connections between kin, country, community, and culture; recognising Indigenous Sovereignty (including Indigenous data sovereignty); and shaping environments of cultural safety.

To date, our warrant-related research has:

- Identified the values and principles that underpin the Charter;
- Proposed seven key lifelong rights in childhood recordkeeping in Out-of-Home care;
- Collated and analysed instrumental and testimonial warrants for our four ‘framing rights’ - *Identity, Memory, Accountability* and *Participation* - in the context of *Human Rights* discourse and Australian policy and reform instruments relating to institutional or other forms of Out-of-Home care, both historic and contemporary;

- Collated and analysed instrumental and testimonial warrants for specific recordkeeping rights in three key areas of: *Participation; Access and Disclosure (including proactive disclosure); and Privacy and Safe Recordkeeping;*
- Articulated the particular significance of each of these seven Charter rights for children who experience Out-of-Home Care; and
- Identified relevant evidence gaps (for example, affirming social and reparative functions of collective memory rights, and also making explicit the case for memory rights as individual rights necessary to cognitive, emotional and psychosocial development and wellbeing).

Prioritising the inclusion of living experience acknowledges that Care-experienced individuals can speak with direct authority on the ways in which recordkeeping affects the exercise of their rights leading up to, during, and after Care. This is critical for understanding the continuing implications of Out-of-Home Care recordkeeping on wellbeing and life outcomes. In relation to Australian Indigenous children and Care leavers we have prioritised inclusion of resources produced by Indigenous organisations and authors as being the best expressions of knowledge regarding the rights and experiences of Indigenous Australian children. As a benchmark in this respect, we draw particular attention to the 2019 *Family is Culture* review of the Indigenous child protection system in NSW.⁷¹ A summary mapping of the Charter against some of the key sources of testimonial warrant can be found in Appendix 2.

Instrumental warrants that have been analysed include United Nations instruments, the reports and recommendations of inquiries, advocacy reports; research publications; legislation and legislative review; and high-level policy frameworks and practice standards, including the Australian Commonwealth government's *National Framework for Protecting Australia's Children 2009–2020*; associated *National*

*Standards for Out-of-Home Care; and Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines.*⁷² As well, we have looked at Australian State- and Territory- based Charters of Rights for children and young people in Care; and Codes of Conduct across a number of professions where the views, participation, and rights of children are paramount. A summary mapping of the Charter of Lifelong Rights in Recordkeeping on Out-of-Home Care against some of the key sources of instrumental warrant can be found in Appendix 3.

Example Warrant Analysis: Participatory Rights

The Charter supports a transformative approach to participation, in which individuals who experience Out-of-Home Care are meaningfully involved in how decisions about that Care are made and documented through time. The Charter also supports the rights of individuals to exercise control over records that represent significant events in their lives, in particular the right to informed consent regarding how information contained in those records is disclosed to others.

The CLAN's *Charter of Rights in recordkeeping*⁷³ is a key source of warrant for the Charter. It includes a particularly strong warrant for participation. From a historical perspective, this right manifests as challenging historic records considered to be inaccurate, misleading or out-of-date, and submitting alternative relevant material for inclusion on the record. Moreover, Care leavers are encouraged to write and publish their own memoirs independently of officially archived accounts to generate multiple perspectives on the narrative of events in Care. Within contemporary Care, this right supports a co-authorship principle whereby children in Care are encouraged and supported to contribute to the making of records about themselves.

Secondly, CLAN advocates for greater personal control over existing records. As expressed in the CLAN Charter, this encompasses the right to know who is accessing your file, and a right to veto readers who do not have your permission to read it. Thirdly, CLAN asserts an ownership right through the full and unredacted access to all documents and the repatriation of originals, not copies, of all personal documents such as family letters and photographs. This principle of ownership is probably the least acceptable proposition in the CLAN Charter among current service providers and records holders, because it challenges the very essence of traditional recordkeeping and archiving culture and history. Ultimately, Care leavers continue to advocate for the right to take full possession of their record.

In terms of international warrant, the *UN Convention on the Rights of the Child 1990* (framed by the *United Nations Declaration of Human Rights 1948* and the *Declaration of the Rights of Indigenous Peoples 2007*), identifies child participation as one of its fundamental values. It is both a free-standing right and one of the Convention's four guiding principles (participation; non-discrimination; the best interests of the child; and life, survival and development).

Although designed for development contexts, the Participation Module in the *UNICEF Child Rights Toolkit: Integrating Child Rights in Development Cooperation* is a best practice definition equally applicable in the Care sector:

Participation can be defined as an on- going process of children's expression and active involvement in decision- making at different levels in matters that concern them. It requires information- sharing and dialogue between children and adults based on mutual respect, and requires that full consideration of their views is given, taking into account the child's age and maturity.⁷⁴

In the Charter, lifelong participatory rights include framing rights and specific recordkeeping rights. Participatory recordkeeping rights are articulated as the right to:

- Create your own records, life history;
- Decide or consent to what is recorded about you in organisational systems;
- Decide or consent to who has access to your records;
- Intervene in the record (right of reply/setting the record straight);
- Determine how long to keep records, and in what form; and
- Be involved in framework setting, policy making, decision making, legal and administrative processes that impact your life, including recordkeeping.

At a general level, the UNICEF Child Rights Toolkit provides a rationale for why child participation and participatory rights are critical:

- Participation leads to better decision-making and outcomes: Adults do not always have sufficient insight into children's lives to be able to make informed and effective decisions when designing legislation, policies and programmes for children;
- Participation serves to protect children: Children who are silenced and passive can be abused by adults with relative impunity. Providing them with information, encouraging them to articulate their concerns and introducing safe and accessible mechanisms for challenging violence and abuse are key strategies for providing effective protection;
- Participation strengthens accountability: Participation is central to a process of building accountability and promoting good governance. It is a means through which governments and other duty bearers can be held to account. Investment in building children's capacities for and commitment to active participation will contribute towards the creation of more transparent and open government.⁷⁵

Participation rights in decision-making about recordkeeping is encompassed by

UNICEF's definition of and rationale for participation generally. Rights-based, child-centred recordkeeping is an essential enabler of better decision making; the creation of safer environments for children; and accountability and transparency.

Testimonial warrant for participatory rights

Strong testimonial warrant for recordkeeping rights for older Care leavers is found in the submissions and findings of major inquiries, for example relating to Stolen Generation survivors, British Child Migrants, the Forgotten Australians and Institutional Responses to Child Sexual Abuse;⁷⁶ the journal papers and memoirs of Care leavers; and research findings.⁷⁷ As discussed above, these sources testify to the often crushing impact on Care leavers of historical and current poor recordkeeping practice.

Participatory rights more broadly find clear testimonial warrant in the comments of Care-experienced young people. Among recent sources for example are reports produced with extensive input of Care-involved and Care-experienced individuals by the Commissions for Children Young People in Victoria and West Australia, and by the NSW Office of the Advocate for Children and Young People.⁷⁸ The first two of these in particular include a range of statements from children and young people regarding their experiences of participation in case planning (mostly negative, but sometimes positive), and their ability to take action when they have safety issues or other concerns in relation to their Care situation.

The CREATE Foundation's annual report cards on the performance of the Out-of-Home Care sector also offer a significant source of testimonial warrant for participatory rights, representative of children across all Australian States and Territories.⁷⁹ They provide compelling evidence of the desire of children and young people in Care to 'have a voice', to be heard and for their voice to make a difference.

Throughout the Rights in Records by Design Project, we have heard from many Care leavers advocating for explicit rights in records. These include rights to participate in making decisions about recordkeeping itself, proactive disclosure and access rights, and the right of reply, including the right to add to or annotate an existing record – ‘to set the record straight’. In spite of a shift to child-centred approaches to child wellbeing, safety and protection, our research findings provide evidence of ongoing significant failures in recordkeeping and archives systems that put the interests and needs of the organisation first.⁸⁰ The prototype *Lifelong Living Archives for Childhood Out-of-home Care*, co-designed with young Care leavers, has demonstrated how the application of Continuum and rights-based approaches completely change the dynamics of information infrastructure, creating affordances for truly person-centred systems.⁸¹

In the foundational *Trust and Technology* project, similar themes emerged from 80 interviews with Indigenous people living in the State of Victoria, including members of the Stolen Generation. Many viewed all ‘official’ records that relate to them as *their own* records, as opposed to institutions and organisations that house and control these records.⁸² This project found that policies, processes and systems in Western recordkeeping and archival traditions are based on institutional constructs and values relating to control, access and privacy within knowledge and evidence paradigms that are fundamentally different from, and possibly irreconcilable with, the epistemologies within Indigenous communities – for example, recognising individual but not collective rights.⁸³

Drawing on the testimonial warrant from the interviews and human rights instrumental warrants, the Trust and Technology project developed a *Statement of Principles* relating to ownership and rights over Australian Indigenous knowledge held in institutional archival records. The complementary *Position Statement on Human*

Rights, Indigenous Communities and Australian Archives likewise recommends a suite of rights in records to support the *United Nations Declaration of the Rights of Indigenous People 2007* and self-determination for Indigenous Australians, including the Stolen Generation.⁸⁴ There is a considerable degree of overlap between the warrant-based rights in records identified in the Statement and the Charter.

Instrumental warrant for participatory rights

This instrumental warrant is extensive at the framing rights level of the Charter, and is supported to a lesser extent at the recordkeeping level. This warrant is most often positioned as aligning with the *United Nations Convention on the Rights of the Child*, where participation is both a free-standing right (Articles 12 and 13) and identified in the surrounding literature as one of four core principles for the Convention.

For Indigenous Australian children and Care leavers, the wider rights base within the *United Nations Declaration on the Rights of Indigenous people (UNDRIP)* is a compelling, but as yet unrealised warrant for action to support participation, including recordkeeping. Article 8 specifies that Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture (8.1). Article 8.2 requires States to provide effective mechanisms for prevention of, and redress for a broad range of rights violations: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

The UNDRIP Articles, and statements developed through the *Trust & Technology* Project address these areas of protecting the unique cultural rights of Indigenous Australian peoples and children. The *Indigenous Archiving and Cultural Safety* doctoral project will further develop frameworks for recognising Indigenous rights in records based on principles of self-determination and the recognition of Indigenous sovereignty in Australia.

In relation to all children in Care, the United Nations *Guidelines for the Alternative Care of Children* provides a strong warrant for participation rights, stating that the assessment, planning and review underpinning decision-making on Care ‘should involve full consultation at all stages with the child, according to his/her evolving capacities, and with his/her parents or legal guardians’, with all parties concerned to be provided with the necessary information on which to base their opinion.⁸⁵ The UN *Guidelines for Alternative Care* make explicit provisions regarding recordkeeping practice by providers of Care (Articles 109 and 110), and warrant for participatory rights in recordkeeping (Article 100, participation in life story work; and Article 111, making records available to children and guardians as key sources of information and an evidence base for decision making). Participatory rights are also warranted in Article 99 of this instrument, which calls for young people with previous Care experience to be involved in the design of feedback and complaints mechanisms.

Instrumental warrant for participatory rights within Australia is enshrined in Standard 2 of the *National Standards for Out-of-home Care*, which specifies that children and young people should participate in decisions that have an impact on their lives.⁸⁶ As part of the *Aboriginal and Torres Strait Islander Child Placement Principle*,⁸⁷ children, parents and family members are entitled to participate in all child protection decisions affecting them regarding intervention, placement and care,

including judicial decisions. In relation to State government child welfare legislation, the Queensland and New South Wales laws are examples of best practice legislation that establishes a right for children and young people to participate in decisions affecting their life (having regard to the child's age or ability to understand). Charters of Rights for children and young people in Out-of-Home Care have been developed within all State and Territory legal frameworks, Some Charters explicitly include participation in decision making about their Care, but generally do not include explicit rights in records as a crucial foundation for exercising their participation rights more generally. The standout exception is the NSW legislation and *The Charter of Rights for Children in Out-of-Home Care* which specifies rights to:

be told why you are in care and to keep a record of your time in care (#2);
ask for any information that is being kept about you, to read your file and to add any information to your file (#3).⁸⁸

Participative rights of children, young people, and families are also warranted by a swathe of inquiry recommendations, including (but not limited to): Recommendation 53 of the *Protecting Victoria's Vulnerable Children Inquiry 2012*; Recommendations 5 and 25 of the *Senate Inquiry into Out-of-Home Care 2015*; and Recommendations 6.5.2 and 6.14b of the *Royal Commission into Institutional responses to Child Sexual Abuse*.⁸⁹ Outside government, the Victorian Koori Youth Council report *Ngaga Dji (Hear Me)* establishes 'Youth Participation' as principle 2; and the Victorian report *In Our Own Words* (CCYP) covers participation in Findings 6-14 & 28, leading to Recommendation 4 (listening and responding to the voice of children and young people).⁹⁰ Most of these warrants relating to participation in decision-making do not explicitly extend to recordkeeping. A notable exception and exemplar is Recommendation 4 of the *In Our Own Words* report which provides for recordkeeping participation, calling for the

development of tools including ‘paper-based and digital resources that can be used by practitioners during home visits to promote the inclusion of children and young people’s views in decision making’ and to provide ‘ways to record [children and young people’s] views effectively and include them in practitioners’ assessment of planning decisions.

Conclusion

The *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* is primarily a response to advocacy by or on behalf of Australian and Indigenous Australian children in Out-of-Home-Care, Care Leavers, Forgotten Australians, Stolen Generation survivors and British Child Migrants. It is grounded in their perspectives and living experiences as expressed in testimonies, advocacy and through research findings. The Charter recognises that colonisation has cast a long shadow in the child welfare sector in Australia and that negative, deficit, sexist and racist constructs of the child have persisted into the 21st century. It acknowledges the unique issues that are associated with Indigenous Sovereignty relating to recordkeeping and archival autonomy for Indigenous Australian children controlled in the child welfare system, recognising that the removal of Indigenous Australian children from their families was and is part of a larger colonial project of dispossession and denial of Indigenous sovereignty and connections with kin and culture.

Our research has found that there are still relatively few instruments directed toward (or coming from within) the Out-of-Home Care sector that conceptualise recordkeeping systems as sites of holistic practice and lifelong affect. A rights-based child protection system that is supportive of the participation and wellbeing of children in care and in later life requires the design of recordkeeping systems that are inclusive of, but also move beyond, evidence and accountability measures. Promoting recordkeeping as part of the process by which children construct their worldview and

social bonds; and recognising how organisation-centred recordkeeping serves as a contributing factor in structural disempowerment are critical to creating systems that will be capable of upholding the recordkeeping rights, and enabling the broader rights, of children and families.

Inquiry findings in jurisdictions across Australia make visible a clear pattern showing existing child protection recordkeeping systems as not fit-for-purpose on either technical or human levels evidencing the need for more holistic, continuum-informed, child-centred and rights-based recordkeeping systems. However, practical recommendations for implementing reform still largely focus on remedying discrete failings within recordkeeping practice, rather than suggesting truly systemic reform in how recordkeeping functions and purposes are imagined.

Similar research has been conducted by Gilliland and Carbone on the rights in records in actualising the human rights of refugees, using both instrumental and testimonial warrants. They have also found that exercise of human rights is significantly impeded without recognition of individual rights ‘in and to records’ and have developed a platform of proposed refugee recordkeeping rights.⁹¹ We are currently engaged in a comparative study of our two efforts to identify synergies and differences. In future we hope that international collaboration and research will be conducted in partnership with other communities who are disenfranchised or disempowered across multiple and diverse settings. The eventual goal would be the inclusion of an individual and collective warrant-based Right in Records, Recordkeeping and Archives as a Human Right addressing archival autonomy, participatory recordkeeping; disclosure and access; and privacy and safe recordkeeping places.

As a society, we can learn from past mistakes and we can apply that learning to current and future recordkeeping practices for the increasingly large numbers of

children in, and coming into Out-of-Home Care. We can no longer assume that, without improvements in carer recruitment, training, professional development, supervision and accountability, care givers will understand that recordkeeping is a core duty because it is in the best interests of the child. Nor can we assume that everyone involved in caring for children believes that children have rights. Much of the evidence for the Care sector adduced by inquiries from *Bringing Them Home* to the *Royal Commission into Institutional Responses to Child Sexual Abuse* make that clear. The case for participation in making records must be made, and reiterated, enshrined in law, and grounded in common practice. Our hope is that a clear recordkeeping rights framework grounded in the testimonial warrant of living experience will support the actualisation of the human rights of those Australians and Indigenous Australians who are currently in Care and those who are Care leavers.

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The doctoral project, *Indigenous Archiving and Cultural Safety: Examining the role of decolonisation and self-determination in libraries and archives* is funded by an Australian Government Research Training Program (RTP) Scholarship. It is being conducted with ethics approval from the Monash University Human Research Ethics Committee (Approval 19421) and through negotiated consent protocols with participants.

The *Trust & Technology* project was conducted with ethics approval from the Monash University Standing Committee on Ethics in Research Involving Humans (Approval 2003/685) and through negotiated consent protocols with participants.

The Imagined Archives project that operated alongside the Rights in Records by Design research across 2017-2019, and their pre-cursor, the Find and Connect web resource, have benefited from the emotional, intellectual, professional, and artistic generosity of many individuals who shared their time and knowledge, on or off the record.

¹ The term Out-of-Home Care encompasses a variety of alternative accommodation arrangements currently including foster care, kinship care, residential and group homes, independent living arrangements, and other forms of placement. Historically the term covers institutional Care including orphanages and children’s homes. We acknowledge that this term is not the preferred terminology of all persons with lived Care experience. We use the capitalized term Care ‘to denote the ironic connotations of manifestly uncaring treatment, without continually enclosing the word in quotation marks’ – see J. Wilson and F. Golding, ‘Latent scrutiny: Personal archives as perpetual mementos of the official gaze’, *Archival Science* 16, no. 1 (2016): 93–109. The term Forgotten Australians refers to survivors of the estimated 500,000 children who found themselves in institutional or other Out-of-Home Care throughout the 20th century. This is not a term embraced by all survivors. The terms Lost Innocents and child migrants refer to an estimated 7,000 unaccompanied children (essentially deportees from their country), who were brought to Australia from the United Kingdom and Malta under a variety of approved schemes from 1900 to the early 1970s. Many were removed without their parents’ knowledge or consent and ended up put to work as labourers in remote and harsh institutions. See also Australian Parliament, Senate Community Affairs References Committee (SCARC) *Forgotten Australians: A Report on Australians who Experienced Institutional or Out-of-Home Care as Children* (Canberra: Community Affairs References Committee, 2004) http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index (accessed May, 2020); Senate Community Affairs References Committee (SCARC), *Lost Innocents and Forgotten Australians Revisited: Report on the Progress with the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports* (Canberra: Commonwealth of Australia, 2009) http://www.aph.gov.au/binaries/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/report/report.pdf (accessed May, 2020).

² United Nations General Assembly, *United Nations Convention on the Rights of the Child* (New York: UN, 1989); United Nations General Assembly, *United Nations Declaration of Human Rights* (New York, UN 1948); United Nations Commission on Human Rights (UNCHR), *United Nations Declaration on the Rights of indigenous peoples (UNDRIP)* (New York: UN, 2007) http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed May 2020)

³ United Nations General Assembly, *Guidelines for the Alternative Care of Children* (New York: UN 2010)

⁴ Although it is often taken for granted, social justice is an elusive, often contested, term. Its principles and practice can best be understood in specific contexts (David Miller, *Principles of Social Justice*, (Cambridge Ma.: Harvard University Press, 1999): ix). In respect of out-of-Home Care, its origins are embedded in social work (Janet L. Finn & Maxine Jacobson, ‘Social Justice’ in *Encyclopedia of Social Work* (2013) doi: 10.1093/acrefore/9780199975839.013.364). One approach emphasises equal access to opportunities and rights (National Pro Bono Resource Centre, ‘What is Social Justice?’ Occasional Paper #1 (Sydney: University of New South Wales, 2011)). Applied to the out-of-Home Care sector, that approach focuses on ensuring that people are not excluded from life opportunities such as health care and education simply on a basis of their status—in this case as children disconnected from their family. It is argued that equality of access to opportunities and rights cannot be achieved without a fair and transparent process of decision-making. This process would, in turn, entail a systemic responsibility to build individual’s capacity to take up opportunities for participation and to exercise their rights.

At a macro-political level, the core values that underpin social justice are said to include: achieving fairness, and equality of outcomes and treatment; recognising the dignity and equal worth and encouraging the self-esteem of all; the meeting of basic needs; maximizing the reduction of inequalities in wealth, income and life chances; and the participation of all, including the most disadvantaged (Gary Craig, ‘Poverty, Social Work and Social Justice’, *The British Journal of Social Work*, 32, Issue 6, 1 (September 2002): 669–682, doi: 10.1093/bjsw/32.6.669).

Some assert that social justice is not a set of outcomes, but a process. The elements of the process include working towards fair (re)distribution of resources, opportunities, and responsibilities; challenging the roots of oppression and injustice; empowering people to exercise self-determination and realize their full potential; and building social solidarity and community capacity for collaborative action (Center for the Study of Social Policy, ‘Key Equity Terms and Concepts: A Glossary for Shared Understanding’ (Washington, DC: Center for the Study of Social Policy). <https://cssp.org/resource/key-equity-terms-concepts/> (accessed May 2020)).

In Australia, the concept of social justice is central to social work. Leaders in the field perceive social justice both “as a guiding principle with a moral imperative” and “as a structurally-based concept involving notions of power and connections with human rights” (Sandra Taylor, Anthea Vreugdenhil, & Mara Schneiders, Social Justice as Concept and Practice in Australian Social Work: An Analysis of Norma Parker Addresses, 1969–2008, *Australian Social Work*, 70:sup1, (2017): 46–68, DOI: 10.1080/0312407X.2014.973554). As a guiding principle, social justice is associated with three sets of constructs: structural stratification, inequality,

marginalisation, and stigma; oppression, powerlessness, and empowerment; and human rights.

⁵ Social justice is closely related to movements for historical justice aimed at redressing wrongs of the past; the harms of which endure for groups of people. Historians have made significant contributions to historical justice including drawing attention to pasts that have been largely forgotten; highlighting silences and absences in the representations of past injustices; and providing critical analyses of processes of memorialising and historicising historic wrongs (Klaus Neumann, 'Historians and the yearning for historical justice', *Rethinking History*, 18:2, (2014):145-164, DOI: 10.1080/13642529.2013.867682).

Historical justice is closely related to transitional justice which refers to the development and implementation of measures that have occurred in a range of countries in order to redress the legacies of large-scale human rights abuses (ICJT (International Center for Transitional Justice) (New York,(2020) <https://www.ictj.org/about/transitional-justice> (accessed May, 2020)). Transitional justice campaigns have been conducted in diverse contest including war crimes, ethnic cleansing, racial segregation, dispossession of Indigenous lands, and latterly, child sexual abuse and exploitation. Depending on the context, justice measures may include criminal prosecutions, truth commissions, judicial inquiries, institutional and legal reforms, and reparations programs. Historical justice and transitional justice share common features including the recognition of the dignity of individuals, acknowledgment of violations and their redress; and the aim to prevent criminal abuses happening again (ICTJ).

In regard to historical out-of-Home Care, Kendrick and associates conceptualise historical measures as either or both acknowledgement—including access to records, survivor narratives and testimony, apologies, and commemorations; and accountability—including prosecutions of abusers, compensation, and the provision of counselling, medical, educational, and vocational support. (Andrew Kendrick, Moyra Hawthorn, Samina Karim, & Julie Shaw, (2015), 'Scotland. Historic Abuse in Care and Human Rights' in *Apologies and the Legacy of Abuse of Children in 'Care': International Perspectives*, eds. J. Sköld and S Swain, (London: Palgrave Macmillan, 2015):177)

⁶ Australian Institute of Health and Welfare, *Child protection Australia 2017–18, Children in Out-of-Home Care* (Canberra, Australia: Australian Institute of Health and Welfare, 2019): 69-70; Australian Institute of Health and Welfare, *Data Tables: Child Protection Australia 2017–18* <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data> (accessed May 2020).

⁷ We use the term 'Indigenous Australian' to refer to Aboriginal and Torres Strait Islander people, and acknowledge the diversity of peoples and communities within this definition.

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APPENDIX 1 Framing and Recordkeeping Rights

[Insert Table 1 here]

APPENDIX 2 – Summary Mapping of Sources of Testimonial Warrant

Explanatory notes:

- i) The purpose of this table is to illustrate representative sources of existing testimonial warrant for rights articulated in the Charter.
- ii) The table presents a selection of Australian investigations (conducted by or for a range of government, statutory and NGO organisations) where published reports include quoted statements from the testimony of care-experienced individuals.
- iii) Additionally, we have indicated the example of Lost Innocents and Forgotten Australians Revisited (LIFAR), for which testimony provided by care-experienced persons in the form of public submissions (as distinct from private hearings) is available to freely access, although not directly cited in the final report.
- iv) We note that publicly available submissions for sources other than LIFAR may similarly expand the remit of their testimonial warrant.
- v) We clarify that investigations listed in this table may warrant additional rights to those assigned here through their findings and recommendations, and restate the purpose of this table is limited to illustrating testimonial warrant for the Charter.

[Insert Figure 3 here]

APPENDIX 3 – Summary Mapping of Sources of Instrumental Warrant

[Insert Figure 4 Here]