



**Response to Royal Commission into Institutional Responses
to Child Sexual Abuse's *Consultation Paper on Records and
Recordkeeping Practice***

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Introduction

Open Place welcomes the opportunity to respond to the *Consultation Paper on Records and Recordkeeping Practices*.

Open Place is the Victorian Support Service for Forgotten Australians. It commenced service in January 2010 following significant lobbying and advocacy work from Forgotten Australians themselves. Open Place receives funding from the Victorian Department of Health and Human Services and the Commonwealth Department of Social Services. Open Place provides a range of services which includes records, family searching and family reunion, counselling, support and Royal Commission support. It provides an outreach service to regional and rural parts of Victoria. It is based in Richmond, an inner suburb of Melbourne, with a well-used drop in and activities centre. It also services 13 social and support groups across Victoria.

Forgotten Australians are the survivors of institutional care, which was the standard form of out of home care in Australian for much of the twentieth century. The *Inquiry of the Senate Community Affairs Reference Committee, Forgotten Australians* (Senate Report, 2004), estimated that more than 500,000 children have experienced life in an orphanage, Home or other forms of out of home care in the last century in Australia.

The Senate Report noted that they had:

....received hundreds of graphic and disturbing accounts about the treatment and care experienced by children in out of home care....their stories outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault...neglect, humiliation and deprivation of food, education and healthcare.

The Senate Report also made a number of recommendations about the importance of records for searching for identity and noted the inadequacy of the systems and support available to those seeking their records. Many of these recommendations have been followed up. There is now a national wide Find and Connect service provided to assist Forgotten Australians with accessing their records. There have been improvements to State and some agency practices. Much remains to be done. This response will, within the context of the Consultation paper, comment on the current gaps and inadequacies of current record access and record support practices.

Open Place has a specialist Records team that work alongside Forgotten Australians in gaining access to institutional records and then providing support (if requested) when the record is provided. Open Place has experience of the practice of all historic record holders in Victoria and with some organizations in other parts of Australia. It is this knowledge and experience gained, by working alongside Forgotten Australians that informs this submission.

Overview

This response will direct itself to three issues:

1. Who owns the record?
2. How can a restorative approach be introduced that responds to the untruths, omissions and harshness contained in many historic records?
3. How can records be properly amended and annotated?

Some of the questions raised by the *Consultation Paper* will be dealt with through the lens of these three questions. Open Place will also argue that the task of maintaining accurate records goes beyond the responsibility of addressing, identifying and preventing sexual abuse within institutions. To those who have experienced (or have/will experience) out of home care records are the only means of connecting with significant childhood and family events. The Senate Report sums this up in the following terms:

The search for identity is crucial for Forgotten Australians (care leavers). For many, being in care has meant the loss of family and connection with their place of origin. Forgotten Australians (care leavers) do not have the mementos of childhood that are taken for granted by most Australians: school reports; photographs; and memories of happy birthdays.

Who owns the record?

Open Place asserts three fundamental principles that must frame the practice of record release. Open Place is aware that these principles may, at times, be contested by our record holding agencies, running counter to commonly held views about ownership of records and the application of privacy principles. These asserted principles may be regarded as aspirational; however it is the view of Open Place that these principles must remain at the forefront of thinking when records are being prepared for release. Work needs to be done to move these principles from their aspirational status to that of accepted practice

1. Moral ownership of the records (as distinct from legal owner) belongs to the child/adult who the record is about. This is their story, their history, their identity.....
2. Issues of privacy and exercising the responsibility of privacy sits with the moral owner of the record.
3. The moral owner of the record is no longer a child. The owner of the record is an adult and must be treated as an adult. Notions of protecting the vulnerable are patronizing and paternalistic. Support may be needed but lack of support is not an excuse to redact material

Moral ownership

A recurrent theme for Forgotten Australians getting their records is bewilderment and anger at the fact that others have read their record and then have determined what should or should not be released. Forgotten Australians regard themselves as the “owner” of their records. The record describes their early life, the reasons for them coming into care and some details of family connection. It is for many incomprehensible that these matters should be scrutinized by someone from the agency that created the record and then, seemingly arbitrarily, redact aspects of this record.

Effectively what this means is that the moral owner of the record must always ask someone else for access to their personal story and history. This makes it difficult for those who were in care to claim a normative life history that is available to those who were not in care. Ultimately it is about the exercise of power. In the past agencies, for better or worse, exercised great power over children in their care. This power is still being exercised today by controlling the release of information about the child’s past.

It is for this reason that Open Place asserts that “moral ownership” must be seriously considered by all record holders when preparing records for release.

The most common complaint Open Place hears from Forgotten Australians in relation to access to their records is dismay and outrage that they are not considered the owner of the record. Forgotten Australians, not unreasonably, protest at the power of an institutional/former care provider employee to read their record and then decide what should or should not be included in the file record that is ultimately released to the Forgotten Australian

Management of privacy

The Forgotten Australian who is seeking to exercise his/her moral ownership of their record must understand and agree with their privacy responsibilities that they may be required to exercise on the release of their records. Information contained in their record is information that may have materially affected the wellbeing and circumstance of the child. This may include information about third parties. It is common in redaction practice for this third party information to be deleted from the record seeker’s released record. In this context privacy takes second place to personal history that is part of the child’s life.

Implementation of this principle may require an interpretation of the States and Territories’ Privacy Acts that has yet to be tested. It may also require that record seekers undergo some instruction in the purpose of the privacy principles so that their responsibilities in relation to this information are clearly understood. The Senate Report (2004) recognised that Forgotten Australians and Former Child Migrants have been deprived of family connections by past practices and that the records may offer the only information available about identity and family.

The Senate Report supported the recommendation made in *Lost Innocents* (about former child migrants) that *all organizations holding recordsmake these records available immediately and unconditionally* (p.281). This provision would allow as much information as possible about individuals and their families to be made available. On the assumption that people growing up in the care of their parents generally know the factual details of their family members, factual details about family members are considered to constitute an individual's personal information. In this context, 'family' is broadly defined to include parents, grandparents, siblings and half-siblings, aunts, uncles, cousins and step relations of all kinds. The Information Privacy Principles provide the principle of 'reasonableness' to govern the release of personal information.

It is pertinent that the Consultation Report (p.21) notes that *Life histories (life story books) are records that are made for and with the participation of the child, who is the ultimate owner.*

Where and how is the distinction drawn between what is owned and by whom?

Status of record seekers

As indicated above, the Forgotten Australians seeking their records are adults. Forgotten Australians in terms of accessing their records should be treated just as adoptees and returned servicemen/women; the records are provided as they are, without redaction and without the sense of paternalism (the institution still knows best) that pervades so much of the redaction practices of record holders, even today.

How can a restorative approach be introduced that responds to the untruths, omissions and harshness that is contained in many historic record

With increased public awareness of issues relating to historical institutional care, more people are seeking access to records about themselves and their family members. Records may fill gaps in knowledge; verify memory, support identity and connection to family. Records seekers may wish to verify memories of events, or support applications for redress.

Past record-keeping was designed to serve the needs of the institution, not children. The creators of these records may not have understood that the children they were writing about might read the records as adults. There are many problems with historical records. They were often incomplete records of a child's life in care. Some records cover many children rather than individuals. Many records include inappropriate or judgemental comments. Records may be fragmented or in a mess, unlisted, or boxed in large quantities making individual files hard to find. Some are in unknown locations; many have been destroyed. Sometimes records have been lost or cannot be found. If the original organisation is no longer in existence, it may require considerable knowledge of organisational context to find relevant records. Not all record holders have yet archived their historical records. What can be produced is often a mix of information from records that still exist, at times including mundane information, erroneous statements, judgemental and potentially distressing content.

Some records seekers may have high expectations of what their records will reveal. They may expect to find a specific file on them as an individual that will answer their particular questions. In many cases, expectations will be disappointed. Little information may be

available. Positive, normal life events tended to attract little documentation, so there may only be negative comments in surviving records. Records may present a very different picture from records seekers' childhood memories. Organisations may report that records were destroyed by accident or according to an approved destruction authority current at the time; individuals sometimes find such explanations unconvincing. Records seekers have diverse responses to reading their files. In the best outcomes, life-long questions can be answered and 'ghosts laid to rest'. However, the experience is often mixed. Records can provoke a range of complex emotions and open old wounds. Records seekers may feel angry about content they see as untrue, or at the lack of material about themselves. Records often evoke much sadness about childhood experiences. The process is particularly sensitive where a records seeker's experience in 'care' was traumatic; or where people seek access to their files at a time of particular vulnerability in their adult lives.

A restorative approach requires that the record holding agency approach the task of record search and release with compassion (what will it be like to receive information about a childhood that may not mention brothers and sisters, positive experiences and/or overlooks issues of abuse and neglect?), imagination (how can the release of this information that is potentially distressing be best done?) and practical tailored support (if requested) that may develop into a relationship, over time, that may mediate the inadequacies of the record.

A restorative approach requires skilled practitioners who have learnt their practice art from the "lived" experience of Forgotten Australians or who are Forgotten Australians. These are practitioners, who know child welfare history and how the childhood experience of institutionalization has carried over into adulthood. Practitioners need knowledge and skill in working with developmental trauma, patience and good listening skills.

Record searching and record release is not an administrative task and it must be separated in an agency from the business of managing allegations of past abuse.

The recently released **Principles of Access to records (DSS)** is an excellent piece of work (even though it does not deal with the contested issue of ownership of the record). However it does contain sensible and practical suggestions for improving the record release practice of institutions. Simple things like:

- Provide a plain English summary that also outlines how records will be set out
- Presentation that shows time and care has been taken in the task of record searching. Where redactions occur the reason for this is stated (not just the "legal" reason but an explanation that relates to content). Refer p.37 of *Consultation Paper*
- Source of record provided eg Admission register. Acknowledge that records may have come from a variety of sources
- Choice provided as to how records are to be handed over
- If records are being mailed, do so earlier in the week so time is given for contact for support can be made.
- Provide a covering letter informing of support (Ideally this should already be done). Suggest that a phone call will be made as a follow up.

How can records be properly amended and annotated?

Records contribute to the history of the child welfare system, to an institution and to an individual. Despite the fact that the record is directly about his/her childhood, in terms of

power and influence, the individual is hopelessly outgunned. He/she may have to leap through hoops with every agency having a slightly different process in place for gaining records. There is still the sense of the agency being the giver and the recipient being the receiver. Open Place agrees with the *Consultation Paper's* (p.40) noted inconsistencies in "law and practice" that abound with the record accessing process; in particular Open Place note the opaqueness associated with the record seeker's ability to amend and annotate the record history.

Forgotten Australians and Former Child Migrants do have the right to annotate their records to identify errors or to present their own point of view. They can also restrict access to the records for other family members during their lifetime if they so wish.

All record holders need to have in place a transparent system of record amendment and annotation. This needs to be explicitly stated in the letter the record seeker receives with their records. The letter needs to state "that there may be matters recorded (or not recorded) that you wish to amend, correct or put on the record (if not contained in the record). Please contact....to discuss this or speak with your local advocacy service (contact number provided)."

There is no silver bullet to the issue of how amendments and annotations are made; an approach must be tailored to each individual. Amendments and annotations will take time and may be painful to create. Some record seekers will be prepared to do this with the assistance of the record holder, some may have the capacity to do it alone (and with family assistance), and some will seek out the support and direct assistance of a support service such as Open Place. Some will be overwhelmed by the enormity of their task. How to rewrite a childhood when one's own literacy skills are limited?

This activity will be resource and time intensive. However the record holding agency must provide an expectation that such an undertaking is entirely reasonable and will be supported by the record holding agency. The cost of this should be borne by the State (if child a ward) and by the 'care' agency (*Question 24*)

Other comments

Some of the comments below relate to other issues experienced by Open Place in its records work and to a number of the questions posed by the *Consultation Paper*.

- Lack of uniformity and consistency in record release practices. Despite the value of *Access Principles for Record Holders*, these remain an aspirational only. In Victoria there are "rolls-royce" services well-resourced and sympathetic to the needs of Forgotten Australians, other services are poorly equipped through training and resources to provide anything other than a minimal administrative response. These principles and practice guidelines need to remain at the forefront of record release practice. A simple way of ensuring this is have this requirement written into each CSOs funding and service agreement. (*Question 19*)
- Records of out of home care institutions that close or chose no longer to store and archive historic records (*Question 13*) need to become the responsibility of the State. This will reduce the number of locations of records all of which have slightly different access arrangements.
- *Question 23* (fees). Open Place holds the very strong view that no charges should be required for accessing records or certificates relating to identity and family searching. The cost should be borne by both the State (if the child was a ward) and

by the “care” agency; it is the responsibility of a parent to provide a child with a record of their childhood and their formal certificate of identity and belonging.

- *Question 25.* The issue of redaction is fraught. Open Place has made it clear that the issue of redaction is superseded by the issue of “moral ownership”. Open Place is aware that this is an aspiration but all record holding agencies must begin with the position that “this is the child’s record and we will assume that the adult will get everything in it unless it is specifically contrary to law; there is no reason for the information to be contained in the file (eg information about another child wrongly filed)”. The principle must be consistently applied and there must be an adjudication that is transparent and accessible quickly to the record seeker. At the moment there is no transparency and every record holding agency may be applying the law differently.
- *Question 27* (third party privacy). Education about third party privacy must begin with the lens that this record is about and belongs to the child. The question to be asked: is the child in another setting likely to know this information eg mental health of their mother, suicide of a brother? If the answer is “yes” then the third party privacy is waived.
- *Question 29* (hold OOHC service providers to a higher standard). This is an issue of “purpose”: what is the purpose of the record? For OOHC services a record is more than a tally of attendance at events, of badges gained and of laps swum. The OOHC record is about the 24 hour care; perhaps indefinitely of a vulnerable child/young person (vulnerable by their very state of being away from their family) and how this care is provided and how the child both presents and responds to this care. The current standards and obligations of OOHC record keeping must be maintained and importantly maintained in a context of practice that sees record keeping as part of the therapeutic care team approach. Records have meaning and this must be congruent with practice.
- *Question 30* Record advocacy services (Find and Connect in “out of home care”) have a role to play as enablers and as advocates. The monitoring task belongs to a separate statutory authority.

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