Setting the Record Straight for the Rights of the Child

Submission to Senate Standing Committee on Community Affairs on Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill, February 2018

About the Initiative

The Setting the Record Straight for the Rights of the Child Initiative has been established to advocate for the recordkeeping rights of those who experience childhood out of home care. It has been formed in partnership with key community advocacy organisations – Care Leavers Australasia Network (CLAN), the Child Migrants Trust, Connecting Home, and the CREATE Foundation – and allied research units – Federation University Australia's Collaborative Research Centre in Australian History (CRCAH), Monash University's Centre for Organisational and Social Informatics (COSI) and the University of Melbourne's eScholarship Research Centre (ESRC). It brings community partners together with recordkeeping researchers and practitioners to explore how to transform recordkeeping and archiving to better respect, represent and enact multiple rights in records. The Initiative convened a National Summit at Federation Square in Melbourne on the 8-9 May 2017 to build a collaborative community and develop a ten year strategic plan for overcoming the systemic and enduring problems with recordkeeping and archiving that the Royal Commission into Institutional Responses to Child Sexual Abuse once again highlighted.

See http://rights-records.it.monash.edu.au for more information.

Submission

The Setting the Record Straight for the Rights of the Child Initiative welcomes the opportunity to comment on the proposed *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017*.

We believe that there are significant recordkeeping and archiving issues that need to be addressed in the design of the Redress Scheme to meet the stated goals of being survivor focused and trauma informed.

1. The scheme design needs to be informed by the records experiences of past redress schemes and ensure that increased demands for access to records are adequately resourced. This includes adequate funding of support services to facilitate this often traumatic process for survivors (Green, MacKenzie, Leeuwenburg, & Watts, 2013). Timelines for the scheme need to take into account that gaining access to records can be a lengthy and convoluted process (Royal Commission into Institutional Responses to Child Sexual Abuse, 2016). The experience of the WA Redress Scheme was that arbitrary deadlines, resourcing limitations, and staff burnout resulted in an access backlog (Rock, 2012). This backlog meant that applicants, in some cases, needed to submit applications before receiving their (evidential) records in order to meet the scheme deadline. Such constraints should not be repeated in the national scheme.

2. A succession of inquiries, the latest being the Royal Commission into Institutional Responses to Child Sexual Abuse, have highlighted the often patchy and incomplete documentation of the extent of record holdings (O'Neill, Selakovic, & Tropea, 2012; Evans, McKemmish, Daniels, & McCarthy, 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, 2016). Often, successive requests for records elicit different responses and/or additional material. This situation, taken together with the provision for institutions to choose whether or when they opt in, means that the proposed limitation of only one application per person is troubling. If new records come to light, which would change the outcome of an application, then a survivor must be allowed to re-apply. Survivors have no control over the quality of coverage and responsiveness of institutional archiving systems, and so they should not be once again put at such a systemic disadvantage.

3. The design of the Scheme must also ensure that the fullest access to records be given to survivors in light of the recordkeeping principles outlined in the Royal Commissions Into Institutional Responses to Child Sexual Abuse's final report (2017). Additionally, given that the representation of their experience in the record may constitute part of the trauma, the provision for a direct personal response needs to include the ability for survivors to respond to institutional records in order to 'set the record' straight or tell their stories if desired (Wilson & Golding, 2015). This should allow for permanent amendments to records (and not simply annotations which may be ignored at an institutions' discretion) and having a say over ongoing access to, and control of, these records.

4. The design of the Redress Scheme's recordkeeping systems themselves needs to acknowledge the co-creation rights of its records. Survivors are, yet again, being asked to have the intimate details of their lives captured in institutional recordkeeping systems (Wilson & Golding, 2015). Survivors must be given the right to control the further management and use of their stories and records, including long term archiving.

   We draw the Committee's attention to the situation with records of the Independent Assessment Process in Canada for survivors of Indian Residential Schools. The decision to archive these confidential records (and, as public records, eventually have them become public) as a matter of course was challenged in the light of the assurances of confidentiality given to claimants throughout the process. After a lengthy court process, in October 2017 the Canadian Supreme Court upheld the rights of claimants to have a say in whether and

where their records would be archived. See http://www.iap-pei.ca/records-eng.php for more information.

Provisions in Part 4-2 Protecting Information seem to only deal with the operational use of records in making and acting upon determinations. Hence, the situation in relation to these records and the Commonwealth Archives Act requires up-front clarification as to the long-term disposition of the scheme's records. If the scheme is to adhere to its principle of being survivor focused, it must give applicants the choice as to whether details about their sexual abuse will be one day on the public record. We note that this is a highly individual choice, which needs respecting --- neither a blanket 'permanently seal or destroy records' (as with the new Zealand Confidential Listening and Assistance Service – see Henwood, 2015), nor 'preserve all records' policy is acceptable.

5. We would advocate for the development of a Recordkeeping Rights charter through consultation and co-design with survivor advocacy organisations as part of the establishment of the Redress Scheme.

6. Finally, we note the limitation of the proposed Redress Scheme to only deal with sexual abuse in institutional contexts. We join with many others in reiterating the need for redress for all members of the Stolen Generations, Former Child Migrants, Forgotten Australians and Care Leaver communities who have experienced other forms of abuse and neglect while in institutional or other forms of out of home 'care' as children.

Prepared by

Associate Professor Joanne Evans and Dr Greg Rolan
Centre for Organisational and Social Informatics (COSI)
Faculty of IT
Monash University
PO Box 197
Caulfield East 3145

For the Setting the Record Straight for the Rights of the Child Initiative
http://rights-records.it.monash.edu/

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