

Leveraging Human Rights Frameworks for Care Recordkeeping

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01

A Human Rights Based Approach

A human rights-based approach recognises that 'unequal power relations and social exclusion deny people their human rights' and seeks to directly overcome this imbalance.

This approach is based on respect for the fundamental dignity and humanity of all people and is framed in terms of justice and rights'. (Bell & Allain 2022)

02

International Covenant on Civil and Political Rights

Based in the inherent dignity of the person

- Art 1 Self-determination (for First Nations children particularly see UNDRIP)
- Art 14 Right to equality before the law
- Art 17 Right to be free from arbitrary or unlawful interference with his privacy, family, home or correspondence,

03

Convention on the Rights of the Child

- Article 9 rights of the child in out-of-home care, including requirement that decisions are made in the best interests of the child.
- Article 12 Views of child are to be included in decision-making in accordance with age and maturity of the child. Child shall be given opportunity to be heard in judicial review and other administrative proceedings affecting the child either directly or through a representative

Children should therefore have input on records

04

International Covenant on Civil and Political Rights

Article 12 right to the highest attainable standard of physical and mental health
Article 15 right to take part in cultural life

05

Charter of Rights and Responsibilities (Victoria)

- Implements International Human Rights Treaties
- Section 38 obligation on public authorities as decision-makers
- Rights of children under s 17
- Right to fair hearing in s 24 – where records are used in evidence then the impact of one-sided rights



06

Conclusion

There is no universal definition of a human rights-based approach. Nevertheless, such approaches are grounded in sustainable development discourse and tend to have a number of common elements, namely: (a) the participation of rights-holders in decision-making processes; clear links to human rights; accountability for duty-bearers with respect to human rights; (b) respect for principles of equality and non-discrimination of rights holders; (c) the empowerment of rights-holders to understand and enjoy their human rights, and participate in decision-making and the formulation of laws, policies, and practices that impact upon them; and (d) transparency for all stakeholders involved.

- A central component of a human rights-based approach is that it re-frames persons experiencing complex challenges such as children in care, invasions of privacy or interference with family rights as rights-holders. This moves beyond seeing these persons as mere victims, and instead transforms them into autonomous human rights-bearers, empowered to see their rights realised. So understood, a human rights-based approach seeks to 'promote, protect and fulfil human rights' in practice and enable the integration of international human rights norms, standards, and principles into the development of law, policy, and practice at a domestic level.

Related Literature

'Human Rights Based Approach', Swedish International Development Cooperation Agency (Web Page) <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>>; Bell and Allain, 'Homelessness and Human Rights in Australia' in Paula Gerber and Melissa Castan (eds), *Critical Perspectives on Human Rights Law in Australia* (Thomson Reuters, 2022) vol 2, 241, at 266. Evans, J., Paterson, M., Castan, M., Purtell, J., & Ballin, M. (2024). Participatory and proactive: Real-time rights-based recordkeeping governance for the alternative care of children. *Records Management Journal*. <https://doi.org/10.1108/RMJ-11-2023-0069>