

GUIDELINES ON FACILITATING ACCESS TO PHOTOGRAPHS OF CHILDHOOD INSTITUTIONAL CARE EXPERIENCES

Guidelines developed by the Victorian Record Holders Group

Working Group

- A/Prof Joanne Evans (Faculty of Information Technology, Monash University)
- Siobhan McGuinness (Open Place, Relationships Victoria)
- Sharon Guy (Open Place, Relationships Victoria)
- Michaela Hart (Victorian Department of Health and Department of Families, Fairness and Housing)
- Catriona Milne (Uniting Heritage Services)
- Kirsten Wright (Find & Connect Web Resource, University of Melbourne)

With thanks to Eithne Donlon who in her role as Manager, Records, Find & Connect and Coordinated Support at Open Place in 2019, was instrumental in establishing this initiative.



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TERMINOLOGY

Care experienced is used as an umbrella term to encompass the range of communities who have experienced institutionalised Care. It aims to be inclusive of Stolen Generations, Forgotten Australians, Former Child Migrants, Care Leaver and other perspectives,¹ recognising shared but also differing issues for each community.

Institutional Care is also used as an umbrella term

- **Institutional** to cover organisational involvement in removing children from family homes and parental care to grow up under a range of different living arrangements, e.g. orphanages, children's homes, foster care, and other forms of statutory care etc., and
- the capitalised **Care** as a way of noting that what many experienced was far from caring

Record holders is used to encompass all the different kinds of organisations holding records relating to childhood Institutional Care experiences.

¹ A list of different terms used in Australia is available at <https://www.morethanourchildhoods.org/glossary/>

EXECUTIVE SUMMARY

Photographs have been identified time and time again as being of vital importance for those seeking to make sense of childhood Institutional Care experiences, yet there is still a lot of uncertainty and inconsistency around release with varying interpretations of third-party provisions in privacy legislation.

Photographs are often withheld or redacted unnecessarily and in ways that are not in the interests of those seeking access to them and which can cause unintended additional trauma.

These guidelines aim to help organisations and institutions holding photographs relating to childhood Institutional Care experiences make informed decisions about access to the photographs in their custody.

The guidelines advocate for:

1. a generous and caring approach to full access and release of unredacted photographs, in line with legislation, community expectations and rights to identity, memory and accountability for people who experienced Institutional Care as children.
2. Photographs of buildings and grounds to be recognised as important additions to the story that should be made available with maximum access.
3. The acknowledgement that an individual's private information may also be the private information of another individual and should not be subject to third party privacy principles unless related to a serious threat to the life, health and safety of that third party or other related parties.

These guidelines have been developed by a group of record holders, archivists, researchers and other stakeholders with experience in legal, cultural and personal aspects of handling Institutional Care records.

INSTITUTIONAL CARE PHOTOGRAPH HOLDERS CHECKLIST

In summary here is a checklist for organisations holding photographs relating to Institutional Care experiences.

Institutional Care Photograph Holders should

1. Adequately support and fund community-centric, culturally sensitive and trauma informed archives management and access services.
2. Provide un-redacted childhood, built environment, and life story photographs to individuals, and (as appropriate) to families.
3. Make all efforts to identify the children and young people in photographic collections relating to Institutional Care.
4. Seek consent for and document wishes with regards to future access and use of photographs by those in them.
5. Seek to return original personal photographs to individuals, or to families of deceased individuals.
6. Seek to place and repatriate photographs relating to Aboriginal and Torres Strait Islander Peoples under appropriate Aboriginal and Torres Strait Islander management.

INTRODUCTION

The landmark *Bringing them Home Report* in 1997 brought to the attention of the Australian community of the severe limitations of archival and recordkeeping frameworks, processes and systems to meet the identity, memory and accountability rights and needs of those who as children have been caught up in child welfare and protection systems. As illustrated in Figure 1, through a host of inquiries over the past three decades the community is now well aware of the need to make records of childhood Institutional Care experiences more accessible and available.

INQUIRY RECOMMENDATIONS FOR IMPROVED ACCESS TO RECORDS

The recommendations regarding access to records from the inquiries reflect the following key points:

1. Records are vital to identity, making sense of childhood Institutional Care experiences and reconnecting with families, communities and culture.
2. All record holders have a clear and continuing duty of care to provide access to records of childhood Care experiences consistent with inquiry recommendations and community expectations.
3. Rights to access this vital personal information requires nuanced and balanced, rather than limited and restrictive interpretations, of third party privacy principles.
4. Record holders should work together, and engage with impacted communities, to develop and implement common, consistent, fair and safe records access processes and systems.
5. Rights to self-determination for Aboriginal and Torres Strait Islander Peoples should inform the ongoing access and management of records.

Twenty years after the *Bringing Them Home Report*'s plea to make access to records 'easier and less hurtful', Principle 5 of the recordkeeping principles for child safety and wellbeing handed down in Recommendation 8.4 of the [Royal Commission into Institutional Responses to Child Sexual Abuse](#) in December 2017 reinforces the need for recognising and enacting rights to records relating to childhood Institutional Care experiences.

Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.

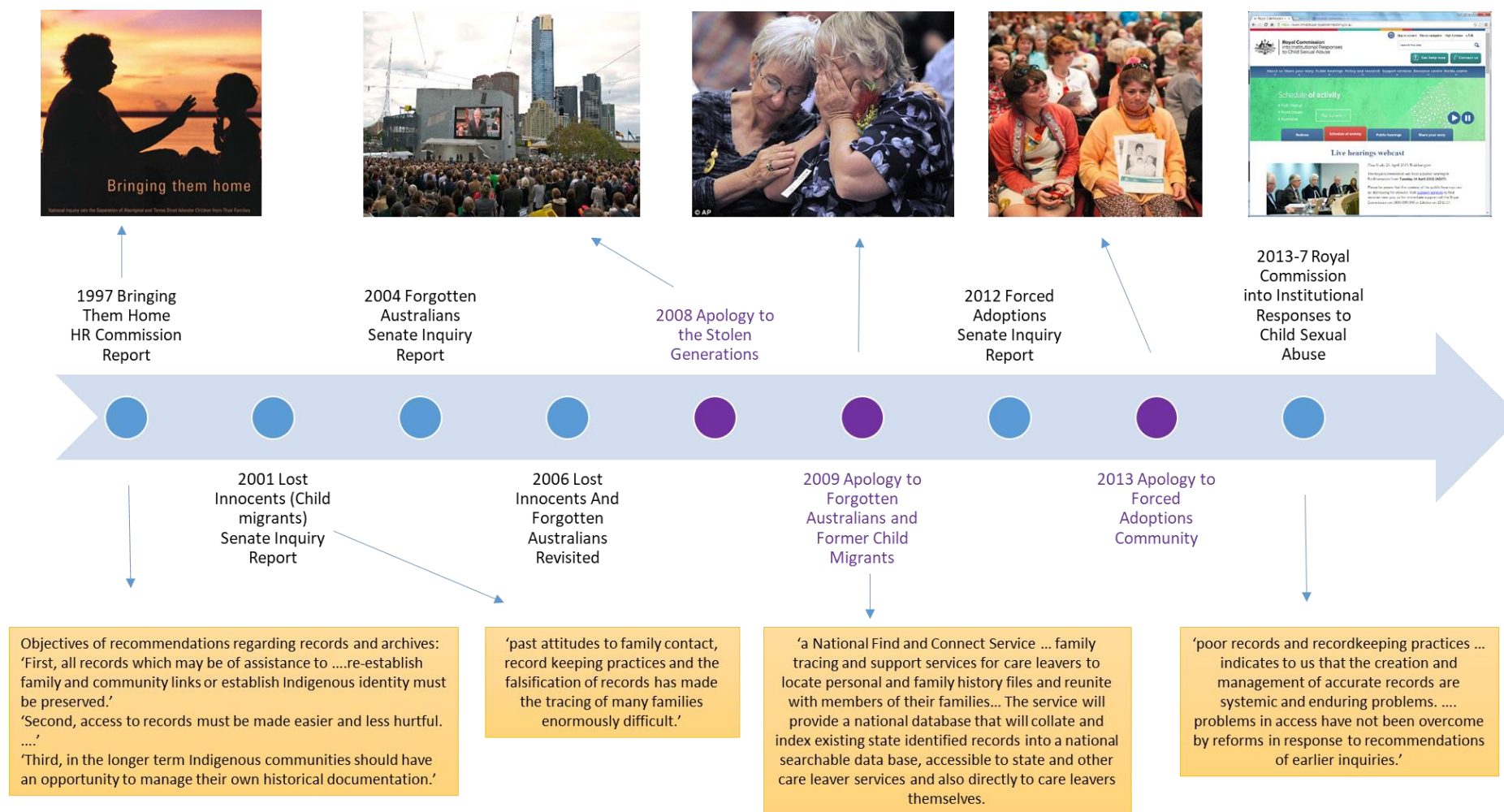


Figure 1: Select Timeline of Key Inquiries, Reports, and Records Access Recommendations

The need for consistent guidelines applicable across agencies to underpin the implementation of this principle is also highlighted in the [NSW Information Access Guideline for Out-of-Home Care Records](#) published in 2019.

There is general acceptance across Australia, both by government and non-government bodies, that a special commitment going beyond legal requirements is needed to facilitate easier access by care leavers to out-of-home care records (p. 7).

Information and Privacy Commission New South Wales. (2019). *Information Access Guideline 8—Care Leavers' access to Out-of-Home Care Records*. <https://www.ipc.nsw.gov.au/information-access-guideline-8-care-leavers-access-out-home-care-records>

BACKGROUND TO THE DEVELOPMENT OF THESE GUIDELINES

Open Place, on behalf of the Victorian Record Holders Advisory Group, developed and ran a *Record Holders Photo Release Survey*, to promote discussion and sharing of ideas and perspectives on this issue in 2019. The survey consisted of a set of fictional scenarios that relate to the kinds of photos held in the archives of past providers of Institutional Care and the differing ways in which they might be released, some straight-forward and others somewhat contentious.

Open Place together with Monash University then ran a workshop in December 2019 to discuss the survey results with an expert panel featuring:

- Mr Sven Bluemmel, Victorian Information Commissioner
- Professor Moira Paterson, information law researcher and educator, Faculty of Law, Monash University
- Dr Mark Howard, Research Fellow, Ethics, Policy and Public Engagement with the Philosophy Program at Monash University.

The desired outcome of the workshop was the development of a shared, endorsed guideline for the release of photographs by Victorian record holders that best supports rights to identity, memory, accountability and connection to family, culture and community.

In the second half of 2020, this work was again picked up by the Victorian Record Holders Group, with a small working group established to progress the idea of these guidelines. Through a series of Zoom meetings, the nature of that guidance was discussed, with the idea that it should be short and succinct and address provision of photographs from a proactive and maximising access perspective.

PROVIDE ACCESS TO PHOTOGRAPHS

These guidelines recommend that holders of records relating to Institutional Care must enable and provide full access to all photos in their original form, without alteration or redaction.

The Find and Connect Web Resource's Information Sheet '[Applying for Records: Your Rights and the Law](#)' provides an overview of the Australian laws (generally freedom of information and privacy) under which access to records of childhood Institutional Care experiences is provided.

While acknowledging the varying legislative frameworks that may apply to different organisations and jurisdictions, these guidelines encourage organisations holding photographs relating to Institutional Care to be aware of and use the discretion that they have to facilitate full access to photos and move away from defensive and risk averse practice. The simple message is:

- **Keep all photos unredacted to preserve their full story and authenticity.**
- **Provide full unaltered and unredacted access to photographs that may be relevant to Institutional Care experiences. This includes photographs of people, as well as buildings and grounds.'**

This is only one aspect of the archives and records management practices that organisations holding records relating to Institutional Care experiences should enact in order to fulfill their obligations as responsible records custodians.

Organisations are encouraged to put in place a full range of policies and practices aimed at building trusted and accountable relationships with those seeking access to photographs, along with other records of childhood experiences.

There is of course more to our sense of identity than the cards that we were each dealt at birth. Nonetheless, most of us who are not care experienced at least get to see all of the cards in our hand, and get the opportunity to play them if we want to.

Iain Matheson. (2021, July 26). Identity. Research Centre for Better Outcomes from Fostering and Residential Care Blog. <https://www.betteroutcomes.org.nz/better-outcomes-blog/identity>

As a working document, we welcome continued commentary and dialog on overcoming the barriers to providing maximum access to photographs to meet the identity, memory and accountability needs for those with childhood Institutional Care experiences.

PHOTOGRAPH HOLDINGS

This guideline advises record holders to establish a clear policy and practice framework around their photographic holdings.

Photographs of childhood institutional Care experiences may be found in

- case files,
- organisational photograph collections,
- film and video recordings,
- other organisational records,
- donated records.

The main focus of these guidelines is on photographs of people. It is anticipated that responsible record holders are no longer engaging in limiting practices and instead freely providing maximum access to photographs of buildings, grounds, etc. given the role they play in helping those with childhood institutional Care experiences connect to their past.

Documentation about photographs varies. In some cases, all the information about who is in a photograph will be documented, in other cases there may be little to no information of who is in a photograph, when or where it was taken, etc.

Many record holders have introduced ways of working with former clients and staff to help identify people in photographs and capture other pertinent information and memories about the moments they capture.

These include

- contacting any known person/people in photos to help identify others that may be in the photo (e.g. current and former staff),
- making photo albums and photo books (e.g. by decades, place, etc.) available for browsing when accessing other records, at reunions, open days, etc.,
- call outs in newsletters for help with identifying people in photographs,
- providing secure links for accessing, viewing and annotating photographs online,
- using facial recognition software (although care must be taken to ensure that biometric information is not being inadvertently handed over to a third-party providers).

These activities also provide an opportunity to gain and document consent for further access and use of the photographs, especially given that many were created without contemporary privacy considerations and consent mechanisms.

Consideration should also be given to ways in which photographs are titled and labelled. As a 2015 blog post from the *Find & Connect Web Resource* explains, photographs created for fundraising campaigns were often staged to present an idealised version of life in the institution.

The majority of photographs on Find & Connect that feature children and young people are quite obviously staged – it was common for institutions to use photos of ‘orphans’ in their publicity or fundraising materials ... It is important to know the context behind these photos – it tells us that what we see in these images is not likely to be a candid snapshot, giving an accurate representation of daily life in a children’s Home. Rather, these images show us how the institution wanted itself to be seen by people on the outside.

O’Neill, C. (2015, June 17). The importance of photos. *Find & Connect Web Resource Blog*.
<https://www.findandconnectwebresourceblog.info/2015/06/the-importance-of-photos/>

These guidelines encourage record holders to

- create and make easily accessible policies and procedures relating to access to records, and photographs in particular,
- reflect the [Aboriginal and Torres Strait Islander Library, Information and Resource Network \(ATSILIRN\) Protocols](#) and seek expert advice on the respectful handling of photographs relating to Aboriginal and Torres Strait Islander peoples (see Appendix C),
- provide summary information about photographic holdings and processes for accessing on the organisation’s website and for inclusion in other directories and finding aids e.g. Find and Connect Web Resource, DFFH Finding Records site, Australian Society of Archives Directory, etc.
- work proactively and collaboratively with former residents and clients to better document photographic collections including rights to update and correct descriptive information and consent for release and future use,
- sensitively manage and provide support for complex cases, and
- put in place processes for the review of decisions that limit or deny access.

Staff and relevant volunteers of Record Holding organisations should also complete the related Australian Society of Archivists training modules to ensure a thorough understanding of requirements, needs and professional expectations for providing access to records of childhood Institutional Care experiences. The key training modules are

- [Indigenous Recordkeeping and Archives course](#)
- [A Trauma-Informed Approach to Managing Archives](#)
- [Better Access to Stolen Generations Records](#)

- [Out-of-Home Care Records Toolkit](#)

Staff in Record Holding organisations should also seek opportunities to work with other record holders to share their knowledge and experiences, benchmark their practices and services, and develop best practice guidelines such as this one.

Record Holding organisations must adequately support staff to access training opportunities and participate in community of practice initiatives.

AUSTRALIAN PRIVACY PRINCIPLE (APP) CONSIDERATIONS

It is clear from the inquiries, the apologies and government investment in records access infrastructure that there is a reasonable community expectation that those with Institutional Care experiences should be able to access photographs and other records of their childhood for identity, memory and accountability purposes in ways that do not cause additional trauma.

The Office of the Australian Information Commissioner's *Australian Privacy Principles Guidelines* is an up-to-date representation of expectations with regards to the handling of personal information by organisations.

Furthermore, The Office of the Victorian Information Commissioner and the Office of the Australian Information Commissioner have confirmed that Out of Home Care Records created prior to 1990 held by past providers are now under the Commonwealth Privacy Act as any contracts with the State Government to provide child welfare services will have expired.

The Australian Privacy Principles (APPs) requires organisations to exercise reasonable care in providing access to personal information to respect and protect the privacy of third parties. However, the APPs also recognise rights of access to personal information that may be the personal information of another individual.

APP12 recognises a right of individuals to access their personal information, 'even if that information is also the personal information of another individual'. (12.13 p. 4)

OAIC. (2019). *Australian Privacy Principles Guidelines*. Office of the Australian Information Commissioner. <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/>

The *DSS Access Principles* advocate for an approach that better recognises that personal information may belong to more than one person and so should not be redacted as personal third-party information.

These Guidelines propose a different view of what constitutes a third party. Here, it is proposed that personal information may belong to more than one person simultaneously: for example, your mother's name and family identification is your mother's personal information, but it is equally your personal information. Using that logic, a great deal of information about family can quite legitimately be released to a Care Leaver.

Recordkeeping Innovation. (2015). Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders, and best practice guidelines in providing access to records (DSS1687.11.15). Department of Social Services. <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access>

While APP 12 provides grounds on which organisations can deny access, it also makes it clear that organisations have the power to provide access where not explicitly prohibited.

While ten grounds on which an organisation can refuse to give access are articulated in APP 12.3 'it is nevertheless open to an organisation not to rely on any such ground and to provide access upon request, unless disclosure is prohibited' (12.33, p. 9)

Grounds for refusing access to personal information include (12.34, p. 9)

- APP 12. 3 (a) 'the organisation *reasonably* believes that giving access would pose a *serious* threat to the life, health or safety of any individual, or to public health or public safety' (emphasis added)
- APP 12.3(b) – 'giving access would have an *unreasonable* impact on the privacy of other individuals', based on 'the reasonable expectation of the other individual about how that personal information will be handled'

In discussing APP 12.3(b) the following example is given – 'if both individuals were present when the personal information was collected, there may be a reasonable expectation that each individual could later access the personal information.' (12.38, p. 10)

Personal information can only be used or disclosed for a purpose other than which it was collected where a valid exemption applies. Consent to secondary use or disclosure is an exemption, as is the reasonable expectation that 'the secondary use or disclosure is related to the primary purpose of collection or, in the case of sensitive information, directly related to the primary purpose (APP 6.2(a))'

Oaic. (2019). *Australian Privacy Principles Guidelines*. Office of the Australian Information Commissioner.
<https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/>

The APPs thus provide a basis on which access to photographs of childhood Care experiences can be provided in the vast majority of cases.

Denial of access or redaction of photographs should only occur where there is

- an **unreasonable** impact on another's privacy and/or
- a **serious** threat to an individual's life, health or safety or to public health or public safety.

The APPs also require organisations to be transparent and open about their handling of personal information. As the Victorian Law Reform Commission noted in a 2017 review of the Adoption Act:

A clear theme of information privacy legislation is that privacy is not the same as secrecy. The principles with which organisations must comply under privacy legislation require openness with the person concerned about the information they handle. Importantly, the person concerned should be made aware of what information the organisation holds, and the purposes for which it may be used and disclosed. (16:57).

Victorian Law Reform Commission. (2017). 16 Access to adoption information. In *Review of the Adoption Act 1984*. <https://www.lawreform.vic.gov.au/publication/review-of-the-adoption-act-1984-report-2/16-access-to-adoption-information/>

PROVIDING ACCESS TO PHOTOGRAPHS

In the interests of supporting the rights of those with Institutional Care experiences to records relating to their childhood, this guideline advocates for a generous and caring approach to accessing photographs.

This guideline encourages record holders to view circumstances that would impact on full release of photographs to Care experienced people as exceptions rather than the rule.

This is in keeping with the spirit of the inquiries and follow up programs and initiatives that those with Institutional Care experiences would be provided with the information and assistance to reconnect with their families and communities and to establish matters of identity and fact.

In the overwhelming majority of cases, redaction of photographs seems disproportionate to the privacy risks, cause stress and re-traumatisation and furthers the discrimination and disadvantage that those with Care experiences suffer.

The Office of the Australian Information Commissioner has advised that a decision to release a photograph of a third party may be made if an organisation can justify their decision based on:

1. The third party is not 'reasonably identifiable' and therefore not considered personal information; and/or
2. The third party would 'reasonably expect' that the photo would be released to the requestor as it relates to the primary purpose of providing Care services to children and documenting their life in Care.

'Reasonably identifiable' does not necessarily imply that redaction of faces is required as one of the considerations is 'whether a reasonable member of the public who accesses that information would be able to identify the individual' - see OAIC. (2019). Chapter B: Key concepts. In *Australian Privacy Principles Guidelines*. Office of the Australian Information Commissioner.

<https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-b-key-concepts/>

Any complaints by third parties about the release of photographs would be investigated by the Office of the Australian Information Commissioner. This would result in a determination and may involve conciliation with the third party.

FULLEST ACCESS

- The fullest access to photographs should be readily provided for those who are in them or who are seeking information about their family and time in Institutional Care.

- Access should also be readily provided to group photographs relating to a person's time in an institution's Care to help to support memories of places, events and childhood friends. It may also enable unknown people in photographs to be identified.
- Wishes regarding the sharing of full names or contact information to facilitate re-connections should be sought, along with consent for further access and use of photographs in which they appear.
- Withholding access or redacting photographs should only be considered where there is a serious threat to life, health or safety or unreasonable impact on the privacy of other individuals that is not able to be resolved.
- In all cases appropriate records must be kept of decision making processes in providing or withholding access to photographs.

RESPONSIBILITIES IF ACCESS IS RESTRICTED

Where record holders consider that there would be a serious threat to life, health or safety or unreasonable impact on the privacy of other individuals, in providing access to photographs then they should

1. Seek consent to release photographs unredacted.
2. Explore whether objections can be resolved through mediation and/or additional support.
3. Document the decision making regarding the grounds on which access is refused or limited.
4. Clearly explain the reasonings for any redactions and provide support to the requestor.
5. Provide a mechanism for seeking a review of grounds on which access is refused or limited.

ACCESS PROCEDURES

It is recommended that access procedures be as personable, flexible and adaptable as possible to accommodate a range of wishes, preferences and needs. They should be designed from a trauma informed perspective, and it should ultimately be the choice of the requestor as to whether and the kind of support that they might require.

Ways to build trust and openness can be reflected in the way that questions are asked and information is presented. For example

- Here are some things it would be helpful for us to know to provide support to you.
- Here are some things we have done to make ourselves a safer place for you.

Good communication processes should be put in place to proactively advise a requestor of the status of their request and provide them with options regarding receiving photographs rather than routinely sending out unannounced.

Content warnings that might apply to general release, should be applied in a nuanced and considerate manner, remembering that the photographs are documenting the personal childhood experiences of the requestor.

DETAILED GUIDELINES

The following provides further detailed guidance on how the fullest access to photographs for those with childhood Institutional Care experiences can be facilitated.

The advice in this section reflects the guidelines in

- Morizzi, M. (2014). *Guide to the Access and Issue of "Forgotten Australians" Client Records (records pre 1989)*. Lentara UnitingCare. <http://web.archive.org/web/20150311031850/http://www.lentarauc.org.au/wp-content/uploads/2012/09/Records-Access-Guide-2014.pdf>
- Recordkeeping Innovation. (2015). *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders, and best practice guidelines in providing access to records* (DSS1687.11.15). Department of Social Services. <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access>

A first distinction to make is whether the photograph is a personal record of the individual or family rather than one that an organisation has created of their activities.

A. FAMILY OR INDIVIDUAL PHOTOGRAPHS

Consideration	Fullest Access	Reference
Is the photograph a family or individual photograph of the person making the request (i.e. a personal or family photograph that is on a client/case file)?	<ul style="list-style-type: none">• Provide the original photograph to the requestor, and make an appropriate file note.• Ask permission to keep a copy on file and if granted make a copy of a suitable quality for future access• Record any wishes regarding access in the future by other family members.	APP 12.3
Is the photograph a family or individual photograph of other family members related to the person making the request (e.g may be a family photograph on a sibling's client/case file)?	<ul style="list-style-type: none">• Likely that siblings, parents and other family members would reasonably expect access to be provided, where not disclosing sensitive information, and in support of family reunification.• Provide a copy of the photograph to the requestor with associated family information.	APP 6.2a

<p>Is the photograph of an adopted person or their family?</p>	<ul style="list-style-type: none"> • Provide in accord with the provisions of the Vic Adoption Act 1984 to release identifying information to adult adopted people, natural parents, adult children of adopted people and other family members. • For more information, see https://www.vic.gov.au/past-adoption 	<p>Vic Adoption Act 1984</p>
<p>Is the photograph of Aboriginal and Torres Strait Islander peoples?</p>	<ul style="list-style-type: none"> • Seek advice and apply cultural protocols in returning to individual, family and community. • For more information, see https://www.archivists.org.au/events/event/indigenous-recordkeeping-and-archives 	

B. ORGANISATIONAL PHOTOGRAPHS

Consideration	Fullest Access	Reference
Has the photograph been published? e.g. photos in annual reports, newsletters and brochures, newspapers, etc.	<ul style="list-style-type: none">• Records in the public domain are not subject to privacy restrictions.• Provide a copy to the requestor, along with any known publication information.	
Does the photograph include Aboriginal and Torres Strait Islander peoples?	<ul style="list-style-type: none">• Apply agreed cultural protocols regarding access• For more information, see https://www.archivists.org.au/events/event/indigenous-recordkeeping-and-archives	
Does the photograph include people other than the person making the request?	<ul style="list-style-type: none">• Provide a copy to the requestor with the full names of any staff, visitors, dignitaries, etc. along with full names of other children in the photograph that are known to the requestor or have consent to provide, subject to cultural (see 4) and sensitivity issues (see 7)• Otherwise provide first names of other children as a reasonable expectation that these would be disclosed, given that a person would know the names of people they grew up with.	APP 6.2a

	<ul style="list-style-type: none"> Ask for consent to provide their name to other children in the photograph, and contact information if wishing to connect. 	
<p>Is the person making the request not in the photograph but it is relevant to their time at the institution? (e.g. photographs taken to illustrate institutional life, celebrations, special functions, visits, etc.)</p>	<ul style="list-style-type: none"> Consider providing a copy to the requestor with the full names of any staff, visitors, dignitaries, etc. along with names of other children in the photograph that have consent to provide. Access to photographs that do not contain people should be unrestricted. 	APP 6.1a APP 6.2a
<p>Is the photograph of a known abuser with the requestor?</p>	<ul style="list-style-type: none"> This should not be grounds for refusing access to the photograph by the requestor, but it should be handled sensitively. Notify the requestor, discuss their wishes regarding access or provision of copies and provide appropriate support Ask for and record their wishes regarding providing their name, etc. to other children in the photograph and for future use of the photograph. 	
<p>Are there are any copyright considerations?</p>	<ul style="list-style-type: none"> Provide the requestor with information about the copyright holder subject to the Copyright Act 1968. 	

Investigation of any third-party complaints relating to the release of photographs for APP entities would be undertaken by the Office of the Australian Information Commissioner (OAIC).

If a past provider makes the decision to release a full copy of a photograph including several children to a requestor and a third party makes a complaint then there will be an investigation by OAIC. This may result in a determination and/or conciliation with the third party.

A decision to release a photo of a third party may be made if the organisation can justify their decision based on:

1. The third-party is not 'reasonably identifiable' and therefore not considered personal information; and/or
2. The third-party would 'reasonably expect' that the photograph would be released to the requestor as it relates to the primary purpose - the provision of Institutional Care services to children and the documenting of their childhoods.

PROACTIVE ACCESS FOR FAMILY OF CARE EXPERIENCED PEOPLE

Current practice provides access to information for family members on provision of documentation that shows their relationship to the relative in question, or a death certificate if deceased.

As indicated in the detailed guidelines above, record holders should provide former residents and clients with the option to have their wishes recorded regarding future access by family and descendants. Recording this means that the agency will be in a position to readily provide family with information/photographs of the person in question into the future.

OTHER ACCESS CONSIDERATIONS

DIGITISATION PROJECTS

Digitisation projects have great potential to enhance the accessibility of photographic holdings, but they need to be undertaken with the rights and needs of the appropriate Institutional Care experienced individuals and communities at their core.

Digital heritage and digitized historical photographs in particular are now considered to be key resources for building Aboriginal history and identity, challenging oppressive state narratives and strengthening communities.

Lydon, J. (2017). Indigenous Uses of Photographic Digital Heritage in Postcolonizing Australia. *Photography and Culture*, 14(3), 269–296. <https://doi.org/10.1080/17514517.2021.1927369>

Key considerations

- Design any digitisation project with the input of impacted individuals and communities.
- Ensure appropriate cultural protocols are observed for digitisation that involves photographs relating to Aboriginal and Torres Strait Islander communities. See for example Terri Janke's [First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries](#).
- Be open about any complex privacy considerations and the ways in which decisions are taken, reviewed and negotiated regarding digitised photographs and online access.
- For the online publishing of photographs, develop a clear and 'user-friendly' takedown statement and process which emphasises access rights and

benefits rather than restrictions. See for example [NSLA's Takedown: Position Statement and Guidelines](#).

- Do not perpetuate the 'uncritical reproduction of historical language' (Wright, 2019) and have a clear policy about the descriptive metadata that accompanies digital reproduction of photographs, particularly in the public domain. See for example the Flnd and Connect Web Resource's [Language Policy: The Words We Use](#).

... being transparent about the decisions made behind the record—how it came to be in a collection, why it was digitised and by whom, who decided to describe it in a particular way: much of the information not currently publicly provided—can be extremely useful for users to better understand the hows, whys, and whos of a record and a collection.

Wright, K. (2019). Archival interventions and the language we use. *Archival Science*, 19(4), 331–348.
<https://doi.org/10.1007/s10502-019-09306-y>

MEDIA REQUESTS

Requests by the media for photographs relating to childhood Institutional Care should be handled with the rights and needs of the appropriate Institutional Care experienced individuals and communities to the fore.

Photographs that have not been made available to those in them or connected family should never be provided in response to a media or other third-party research access request. We hope that it is obvious that this would be unfair and insulting.

Again, these guidelines advocates working with the impacted individuals and communities to document their wishes with regards to the future use of photographs in which they appear.

Description accompanying photographs released to the media should be appropriately contextualised so as not to perpetuate harmful, pejorative or offensive language.

Conditions of initial use and further reproduction should be provided.

EXHIBITIONS

There is great potential for the use of photographs in exhibitions to increase the general public's knowledge and understanding of childhood Institutional Care experiences - with appropriate care and consideration.

Use and reproduction of photographs in exhibitions relating to childhood Institutional Care should be handled with the rights and needs of the appropriate Institutional Care experienced individuals and communities to the fore.

Working with impacted individuals and communities in the design and development of photographic exhibition materials is key to showing respect and appropriately dealing with community concerns, particularly around re-traumatisation issues.

This may include considering the use of content and trigger warnings carefully so as not to perpetuate paternalism or infantilisation, but with a due regard to the impact of traumatic childhood experiences and memories.

The use of photographs in online exhibitions should demonstrate the care and respect paid to those with childhood Institutional Care experiences, as discussed in the Digitisation Projects section.

PRIVACY AND DECEASED INDIVIDUALS

While at present the *Privacy Act 1988 (Cth)* does not provide protection for the private information of deceased individuals, these guidelines recommend treating the photographs of childhood Institutional Care experiences with respect for a deceased individual and their family.

However, as with the living, individual privacy rights need to be balanced against the access rights of other children and young people in any photograph of Institutional Care experiences.

In the ALRC's view, the protection provided by the Privacy Act is analogous to the protection provided by legal duties of confidentiality that, unlike a right to sue for defamation, do survive the death of the individual. The provisions recommended in this chapter are intended to ensure that living individuals are confident to provide personal information, including sensitive information, in the knowledge that the information will not be disclosed in inappropriate circumstances after they die. The provisions are also intended to protect living relatives and others from distress caused by the inappropriate handling of a deceased individual's personal information and to provide a right of access to that information for family members and others where such access is reasonable.

Australian Law Reform Commission. (2008). 8. Privacy of Deceased Individuals. In *For Your Information: Australian Privacy Law And Practice* (ALRC Report 108). Australian Law Reform Commission. <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/8-privacy-of-deceased-individuals/>

PRACTICE EXAMPLES

This is a working document and we would like to enlarge it with practical examples.

Please share any scenarios - either what may have experienced or what would like to see here - by either completing this feedback form or by contacting joanne.evans@monash.edu.

APPENDIX A: WHY ACCESS TO PHOTOGRAPHS MATTER

So much has been written about why childhood records and photographs in particular are important to those with Institutional Care experiences, and what record holders should be doing to facilitate access.

For Aboriginal and Torres Strait Islander people in particular, we have known since the 1991 Royal Commission into Aboriginal Deaths in Custody of the importance of access to records for those taken from their families and communities.

11.7.21 It is important that Aboriginal people who desire to do so should be assisted in re-establishing their community and family links to those from whom they were separated as a result of past government policies.

Royal Commission into Aboriginal deaths in custody. (1991). Royal Commission into Aboriginal Deaths in Custody: National Report (Volume 2). Australian Government Publishing Service.
<http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/cth/AURoyalC/1991/2.html>

The *Bringing them Home Report* began the chapter on access to personal and family records highlighting the words of Commissioner Patrick Dodson

Access to knowledge can assist: to reinstate pride in family experiences; enhance a stronger sense of identity; re-establish contacts with family members; reaffirm interaction with broad family networks; revive and maintain Aboriginal traditions ...; understand the historical background of contemporary personal issues ...; re-claim ownership of material pertaining to family life; develop resources ... and enhance research skills (Patrick Dodson quoted in the National Report of the Royal Commission into Aboriginal Deaths in Custody Volume 2 on page 78).

Human Rights and Equal Opportunity Commission. (1997). *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Human Rights and Equal Opportunity Commission. <http://www.humanrights.gov.au/publications/bringing-them-home-report-1997>

The *Lost Innocents* and *Forgotten Australians* reports reiterated the fundamental importance of access to records in the search for identity and family reconnection.

9.99 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 happy memories of birthdays. (p. 282).

9.105 The Committee considers that an adequate response to those pursuing their history must include the following. First, all records relating to care leavers need to be indexed and cross-referenced. This would enable relevant records to be quickly accessed and all material held to be made available to the care leaver, including any photographs or other memorabilia. This is an expensive and time-consuming task, but the Committee considers that there is a moral obligation to ensure that all surviving information is made available. It is part of the continuing duty of care. (p. 283-4).

9.111 Care leavers should be extended the most flexible interpretation of both Freedom of Information legislation and privacy principles in order to access all personal information and to facilitate reconnection with family (p. 285).

Senate Community Affairs References Committee. (2004). *Forgotten Australians: A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children*. Commonwealth of Australia.
http://www.qph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index

APPENDIX B: WARRANTS FOR ACTION

In this appendix we bring together the key warrants informing the need for these guidelines and the generous, caring and proactive approach it advocates.

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

These guidelines aim to provide advice on the release of photographs to enact Principle 5 of the recordkeeping principles for child safety and wellbeing handed down in Recommendation 8.4 of the Royal Commission into Institutional Responses to Child Sexual Abuse in December 2017.

Recommendation 8.4 Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.

Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.

Individuals should be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.

Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report: Volume 8 Recordkeeping and information sharing* (Vol. 8). Attorney-General's Department, Australian Government.
<https://www.childabuseroyalcommission.gov.au/recordkeeping-and-information-sharing>

NATIONAL INQUIRY INTO THE SEPARATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN FROM THEIR FAMILIES

These guidelines are also aimed at helping organisations to ensure that the specific needs of Aboriginal and Torres Strait Islander people in accessing their photographs are met in a culturally sensitive and trauma informed manner, to meet the minimum access standards recommendations of the *Bringing them Home Report*.

Minimum access standards – Recommendation 25: That all common access guidelines incorporate the following standards.

1. The right of every person, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same.
2. No application fee, copying fee or other charge of any kind to be imposed.
3. A maximum application processing period to be agreed by the Records Taskforce and any failure to comply to be amenable to review and appeal.
4. A person denied the right of access or having any other grievance concerning his or her information to be entitled to seek a review and, if still dissatisfied, to appeal the decision or other matter free of charge.
5. The right of every person to receive advice, both orally and in writing, at the time of application about Indigenous support and assistance services available in his or her State or Territory of residence.
6. The form of advice provided to applicants to be drafted in consultation with local Indigenous family tracing and reunion services and to contain information about the nature and form of the information to be disclosed and the possibility of distress.
7. The right of every person to receive all personal identifying information about himself or herself including information which is necessary to establish the identity of family members (for example, parent's identifying details such as name, community of origin, date of birth).
8. The right of every person who is the subject of a record, subject to the exception above, to determine to whom and to what extent that information is divulged to a third person.

Human Rights and Equal Opportunity Commission. (1997). *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Human Rights and Equal Opportunity Commission. <http://www.humanrights.gov.au/publications/bringing-them-home-report-1997>

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

The *Bringing them Home* recommendations built on and further developed the recommendations of the Royal Commission into Aboriginal deaths in custody for access to records as an essential part of healing, restitution and reconciliation.

Recommendation 53:

That Commonwealth, State and Territory Governments provide access to all government archival records pertaining to the family and community histories of Aboriginal people so as to assist the process of enabling Aboriginal people to re-establish community and family links with those people from whom they were separated as a result of past policies of government. The Commission recognises that questions of the rights to privacy and questions of confidentiality may arise and recommends that the principles and processes for access to such records should be negotiated between government and appropriate Aboriginal organisations, but such negotiations should proceed on the basis that as a general principle access to such documents should be permitted.

Royal Commission into Aboriginal deaths in custody. (1991). Royal Commission into Aboriginal Deaths in Custody: National Report (Volume 2). Australian Government Publishing Service.
<http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/cth/AURoyalC/1991/2.html>

ACCESS PRINCIPLES FOR RECORDS RELATING TO FORGOTTEN AUSTRALIANS AND FORMER CHILD MIGRANTS

These guidelines are also aimed at helping organisations to act in accord with the Australian Government's Department of Social Services' *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders and best practice guidelines in providing access to records* (DSS Access Principles) released in 2015 as part of the suite of Find and Connect Services and Projects that followed from the November 2009 National Apology to Forgotten Australians and Former Child Migrants.

Records Access Principles

Principle 1: Maximum provision of access to records

Principle 2: All information about themselves, and core identifying information about close family

Principle 3: Copies of records

Principle 4: No Fees or charges for access to records containing personal information

Principle 5: Time limits to respond to requests for records

Principle 6: Ability to seek review or appeal a decision

Principle 7: Records will be provided in context and applicants alerted to possible causes of distress

Principle 8: Right to know about support and assistance services

Principle 9: Care Leavers may annotate records to tell their story and express their wishes to limit access to records

Principle 10: Applicants entitled to use the Find and Connect Services and their other support services to assist

Principle 11: Records Holders will work collaboratively to enhance access

Principle 12: Government state or territory records holders are the repository of last resort

Recordkeeping Innovation. (2015). *Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders, and best practice guidelines in providing access to records* (DSS1687.11.15). Department of Social Services. <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access>

In December 2021, the Council of Australasian Archives and Records Authorities published a guideline 'to show what success looks like' for record holders in implementing Principles 1, 2, 9, 10 & 11'. See Council of Australasian Archives and Records Authorities. (2021). Maximising Access to Care Leavers' Records. Council of Australasian Archives and Records Authorities. <https://www.caara.org.au/wp-content/uploads/2022/04/Maximising-Access-To-Care-Leavers-Records-Version-1.1.pdf>

CHARTER OF LIFELONG RIGHTS IN CHILDHOOD RECORDKEEPING IN OUT OF HOME CARE

Developed by a research team led by Monash University Professor Sue McKemmish as part of the ARC funded, Rights in Records by Design project, the [Charter of Lifelong Rights in Childhood Recordkeeping in Out of Home Care](#), draws on many of the above warrants to establish a set of lifelong recordkeeping rights for those who have, had and will experience childhood Institutional Care.

These interconnected recordkeeping rights, derived from human and childhood rights to identity, memory, participation, accountability, safety and wellbeing relate to

- Participatory recordkeeping - including rights to participate in the frameworks, processes and systems that create, capture, organise and pluralise records.
- Agency in access and disclosure - including rights to know where records relating to one's childhood Institutional Care experiences are held, with minimal barriers to access.
- Rights to privacy and safekeeping - including rights to consent to further and future use, and for safe keeping spaces accountable to individual and community needs and expectations.

Barbara Reed has also led the development of [a practical toolkit](#) to guide the implementation of the Charter. This incorporates a Best Practice Recordkeeping Guide for providers of out-of-home care services and a set of 11 practice advices that summarise and explain key considerations, suggest practical, implementable actions and provide links to further resources.

APPENDIX C: RESPONSIBLE STEWARDSHIP OF PHOTOGRAPHS RELATING TO ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

These guidelines highlight the need for holders of photographs and other records relating to Stolen Generations and other Aboriginal and Torres Strait Islander Care leavers to put in place policies and procedures to provide access in culturally sensitive and trauma informed ways.

Ultimately those holding such photographs and other records should be working towards repatriation, the third objective of the *Bringing Them Home Report*.

Third, in the longer term Indigenous communities should have an opportunity to manage their own historical documentation. For those communities which desire it, copies of relevant records collections should be provided to Indigenous repositories within established privacy principles.

Human Rights and Equal Opportunity Commission. (1997). *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*.

<http://www.humanrights.gov.au/publications/bringing-them-home-report-1997>

CULTURAL COMPETENCY TRAINING

Cultural capability and respectful relationships are key to developing policies and processes for the management of photographs relating to Aboriginal and Torres Strait Islander peoples.

As well as engaging appropriately with local community providers of cultural competency training, AIATSIS has partnered with the Department of Prime Minister and Cabinet and Department of Social Services to produce and provide the [Core Cultural Learning](#) suite of online interactive modules.

As well as investing in cultural competency training by local or other specialist providers, holders of photographs and other records relating to Aboriginal and Torres Strait Islander peoples should complete the Australian Society of Archivists training modules to better understand the role of access to records in supporting healing journeys for individuals and families affected by removal policies.

- [Indigenous Recordkeeping and Archives course](#)
- [Better Access to Stolen Generations Records](#)

It is important that the archival and recordkeeping community acknowledge the hurt and harm practices can cause and seek appropriate ways to address them.

ICA 2019 TANDANYA ADELAIDE DECLARATION

The 2019 Tandanya-Adelaide Declaration from the International Council on Archives' provides impetus for the development of respectful relationships and decolonising practices.

This Declaration recognizes that the successful cultural engagement of public archival representatives and Indigenous communities occurs within a safe and ethical environment of respectful encounter where diverse cultural heritage authorities may freely express and negotiate the values and assumptions that will guide an understanding of the past embodied in materials of memory; ceremony, cultural tradition and social protocol must inform this social engagement of knowledge keepers

International Council on Archives. (2019). *Tandanya Adelaide Declaration*.
https://www.ica.org/sites/default/files/tandanya_adelaide_declaration_eng.pdf

For example, the National Archives of Australia has created a set of protocols, [Our Way Aboriginal and Torres Strait Islander Protocols](#), to demonstrate their commitment to and guide their implementation of the Tandanya Declaration.

INDIGENOUS ARCHIVES COLLECTIVE RIGHT OF REPLY

The 2019 [Indigenous Archives Collective Position Statement On The Right Of Reply To Indigenous Knowledges And Information Held In Archives](#) provides record holders with a set of principles for enabling Indigenous peoples to assert rights to family, community and cultural knowledge. As well as rights to know, this also includes the critiquing and re-figuring of practices and systems to support multiple cultural protocols and address description and other biases.

Indigenous Archives Collective Position Statement On The Right Of Reply Principles

THE RIGHT TO KNOW – Without an authoritative source to identify where relevant material is to be found, further rights, such as the right of reply, cannot be activated.

PARTICIPATION – Activation of the materials held in organisations seeks to assist Indigenous peoples achieve outcomes that they define.

CULTURAL SAFETY – All initiatives to activate Indigenous people's rights in data, information and records about them should be undertaken to ensure the cultural safety of participants and knowledge.

CONSENT – Every opportunity for engagement with Indigenous peoples should be taken to support Indigenous peoples control of their information, knowledges and representations.

INSTITUTIONS AS FACILITATORS, NOT OWNERS – Prioritise institutional support of Indigenous rights to manage Indigenous material according to culturally appropriate means.

ADVOCACY – Continual advocacy is required to prioritise the rights of Indigenous peoples in the management of cultural material.

Indigenous Archives Collective. (2019). *Indigenous Archives Collective Position Statement On The Right Of Reply To Indigenous Knowledges And Information Held In Archives*.

<https://indigenousarchives.net/indigenous-archives-collective-position-statement-on-the-right-of-reply-to-indigenous-knowledges-and-information-held-in-archives/>

ATSILIRN PROTOCOLS

These more recent statements build from the [ATSILIRN Protocols](#) which since 1995 have provided a good practice framework for engaging with Aboriginal and Torres Strait Islander people in the communities which libraries, archives and information services serve, and handling materials with Aboriginal and Torres Strait Islander content.

The ATSILIRN protocols emphasise the need for Aboriginal and Torres Strait Islander participation in governance structures and in the design and implementation of policies and processes. For photographic holdings this may include

- developing ways in which cultural and intellectual property rights of Aboriginal and Torres Strait Islanders are recognised and respected,
- consulting with Aboriginal and Torres Strait Islander peoples at local, state/territory and national levels in relation to description, particularly in dealing with offensive content and labels, and in enabling community description and annotation,
- enhancing access with use of appropriate tools for documenting geographic, language and cultural connections (for example consider using [AIATSIS's Pathways Thesaurus](#)),
- being able to flag secret, sacred or sensitive information and associate these with appropriate access protocols in physical and digital environments, and
- enabling repatriation and community control.

ATSILIRN Protocols

They are a guide to good practice which will need to be interpreted and applied in the context of each organisation's mission, collections and client community. ...

The Protocols should enable you as an information professional to make sound judgments regarding appropriate responses to any issues, or provide you with some ideas about where to go for assistance if more expertise is required.

ATSILIRN. (2012). *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*.
<https://atsilim.aiatsis.gov.au/protocols.php>