Setting the Record Straight for the Rights of the Child

Submission to Joint Standing Committee on Oversight of the Implementation of Redress Related Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse
August 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 implementation of redress related recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

We do however begin in expressing our disappointment at the inherent unfairness of a redress scheme that is limited to child sexual abuse. 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.

We also join with others in recommending the removal of current exclusions

a) regarding Australian citizenship or permanent residency, so that all Former Child Migrants who endured sexual abuse in Australian institutions have access to the Redress Scheme, and
b) for those with criminal histories that make them ineligible to apply. Institutional sexual abuse is abhorrent for every child who has had to suffer it. The Redress Scheme should enact that fundamental principle.

In our February 2018 submission to the Senate Standing Committee on Community Affairs on the legislation for the Commonwealth Redress Scheme (Setting the Record Straight for the Rights of the Child 2018), we also highlighted some of the recordkeeping and archiving issues to address in the implementation of the Redress Scheme to meet the stated goals of being survivor focused and trauma informed. It is vital that the process of applying for redress should not replicate existing power imbalances and cause additional re-traumatisation.

Our first concern is to ensure that backlogs in documenting and providing access to records does not adversely affect survivors' ability to apply for Redress and/or receive the appropriate compensation. Increased demands for access to records must be adequately resourced, along with the funding of support services to facilitate this often traumatic process for survivors.

Federal, state and territory governments have all agreed to the set of recordkeeping principles for child safety and wellbeing recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Recommendation 8.4). Recordkeeping principle 5 states that:

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

We ask that this committee inquire into where access to records may be having any adverse impact on redress application, along with whether institutions are providing adequate mechanisms as part of direct personal responses for setting institutional records straight and having a say over their ongoing access and control.

Our second concern is with the recordkeeping of the Redress Scheme itself. We repeat here the issues raised in our February 2018 submission regarding the need to acknowledge survivor's co-creation rights in the design of the Scheme's processes. 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. Applicants are being asked once again to hand over the intimate, sensitive and personal details of their abuse and its impacts. While assurances of confidentiality have been given, there is no explanation of the long-term fate of these records.

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.

We ask that this Committee investigate the mechanisms that have been put in place for the long-term disposition of the Scheme's records. We advocate for these to be survivor-focused, providing applicants with 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.

Our third and final concern is with the lack of survivor community engagement in the detailed design of the Redress Scheme. One of the features of the *Royal Commission into Institutional Responses to Child Sexual Abuse* was this deep engagement in the establishment and implementation of the Commission's processes with survivor advocacy organisations, contributing to the quality of its outcomes. We ask that this Committee investigate how the survivor focused principle has been implemented in the design of the Redress Scheme's processes and systems, to identify the barriers to the kind of community collaboration and co-design that many were expecting in its formation.

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