

## Submission form for the Proactive and Informal Release of Information in the Victorian Public Sector Discussion Paper

### About this form

The Office of the Victorian Information Commissioner (**OVIC**) is seeking agencies' views on its discussion paper on proactive and informal release of information in the Victorian Public Sector.

OVIC encourages agencies to use this form when making a submission. This form contains space to provide comments on the questions listed in the discussion paper, and space for other general feedback.

More information on the proactive and informal release discussion paper can be found on OVIC's website [www.ovic.vic.gov.au](http://www.ovic.vic.gov.au).

### Collection of personal information

You are not required to provide any personal information in order to make a submission to OVIC's discussion paper. All fields on this form relating to personal information are optional. Where you choose to provide personal information, OVIC may use it to provide you consolidated feedback on the submissions we receive, seek clarification on your submission or follow up with you where you have indicated you wish to be involved further in OVIC's work. If you choose to provide personal information, we ask that you do not include this information anywhere other than the designated fields on this form.

If you choose to make your submission by email, we may be able to identify you from your email address. If you prefer to remain anonymous, you can post your submission to OVIC.

OVIC will not disclose your personal information without your consent, except where required to do so by law. You may contact OVIC to request access to any personal information you have provided to us by emailing [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au).

For further information on how OVIC handles personal information, please review our privacy policy [here](#).

### Publication of submission

OVIC intends to publish submissions received on the discussion paper but will not do so without prior consent. Please indicate below whether you would like your submission to be made public in full, public with personal information removed, or not made public.

Please indicate below if this submission can be published:

<input checked="" type="checkbox"/>	Publish in full	<input type="checkbox"/>	Publish but do not include personal information	<input type="checkbox"/>	Do not publish
-------------------------------------	-----------------	--------------------------	---	--------------------------	----------------

## Information about who is making this submission

All fields below are optional.

Name:	[REDACTED]
Email:	[REDACTED]

If you are making this submission on behalf of an agency or organisation please identify below.

Agency / Organisation:	
------------------------	--

This submission is made by a:

<input type="checkbox"/>	Public sector agency subject to the FOI Act	<input type="checkbox"/>	Private organisation / Not for profit
<input type="checkbox"/>	Public sector agency outside of Victoria	<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Member of Parliament	<input checked="" type="checkbox"/>	Other

## Participating in future work with OVIC

A reason for seeking submissions on the discussion paper is to identify future work for OVIC in relation to the proactive and informal release of information in the Victorian public sector.

Please indicate below if you would be interested in participating in future OVIC work, events, or provide additional information to OVIC regarding proactive and informal release in your agency.

If you are interested in being involved in OVIC's work further, please provide your name and contact details in the fields above so we can contact you.

- I am interested in participating in a future OVIC event (for example, a roundtable discussion on proactive and informal release).
- I am interested in being involved in future OVIC work in relation to proactive and informal release.
- I am willing to provide additional information about my agency's proactive and informal release practices (for example, a proactive and/or informal release policy).

## Completing this form

To complete this template, insert your response to individual questions, or provide general comments on proactive and/or informal release in the space provided.

## Submitting this form

Submissions must be provided to OVIC by **5pm, Friday 1 May 2020**. You can make a submission by:

- **Emailing** your submission to [policyteam@ovic.vic.gov.au](mailto:policyteam@ovic.vic.gov.au)
- **Posting** your submission to:  
Policy team  
Office of the Victorian Information Commissioner  
PO Box 24274  
Melbourne VIC 3001



1 May 2020

## **Submission on *Proactive and Informal Release of Information in the Victorian Public Sector Discussion Paper*.**

### About the Rights in Records by Design ARC Discovery Research Project

Providing access to records of childhood experiences is a significant issue for any state child welfare and protection system. Over the past few decades, through tireless advocacy from Care leaver communities, a series of inquiries has highlighted the lifelong impacts this childhood recordkeeping (or the lack of it) has on the social, emotional and psychological health and wellbeing of those with Care experiences<sup>1</sup>. In particular, these inquiries have documented the battles many Care leavers go through to gain access to personal information about their childhoods from government agencies and service providers under FOI regimes.

The *Archives and the Rights of the Child Research Program* is a transdisciplinary research agenda investigating how multiple and lifelong rights in records and recordkeeping can be recognised, respected and enacted in Care systems utilising digital and networking technologies<sup>2</sup>. It brings together researcher from a range of academic, community and organisational contexts, and from a variety of disciplinary perspectives to tackle this complex problem using participatory research and design methodologies (see <https://rights-records.it.monash.edu/research-development-agenda/>). It is an example of giving voice and agency to those with Care experiences in research to address their recordkeeping needs.

The program incorporates a range of interconnected and complementary research projects, including an Australian Research Council Future Fellowship, *Connecting the Disconnected: Co-Designing Integrated and Inclusive Recordkeeping and Archival Networks* (2015-2018), doctoral research on *Transforming Archival Systems Design for Interoperability* (2014-2017) and *Early Childhood Recordkeeping Literacy* (2014-2019), the Australian Research Council Discovery Project, *Rights in Records by Design: Transforming Recordkeeping Systems for Children in Out-of-home Care* (2017-2019), and *The Imagined Archive for Childhood Out-of-Home Care* (2017-2018). The research

---

<sup>1</sup> Senate Community Affairs References Committee, 'Lost Innocents and Forgotten Australians Revisited: Report on the Progress with the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports' (Commonwealth of Australia, 2009), [http://www.aph.gov.au/binaries/senate/committee/clac\\_ctte/recs\\_lost\\_innocents\\_forgotten\\_aust\\_rpts/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/report/report.pdf); Senate Community Affairs References Committee; Senate Community Affairs References Committee, 'Lost Innocents: Righting the Record - Report on Child Migration' (Commonwealth of Australia, 30 August 2001), [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/1999-02/child\\_migrat/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/1999-02/child_migrat/report/index); Human Rights and Equal Opportunity Commission, '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, 1997), <http://www.humanrights.gov.au/publications/bringing-them-home-report-1997>; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 8 Recordkeeping and Information Sharing*, vol. 8, 17 vols (Attorney-General's Department, Australian Government, 2017), <https://www.childabuseroyalcommission.gov.au/recordkeeping-and-information-sharing>.

<sup>2</sup> Joanne Evans, Sue McKemmish, and Greg Rolan, 'Critical Approaches to Archiving and Recordkeeping in the Continuum', *Journal of Critical Library and Information Studies* 1, no. 2 (2017), <http://libraryjuicepress.com/journals/index.php/jclis/article/view/35>.

agenda embodied in these projects is linked to the 2017 *Setting the Record Straight for the Rights of the Child National Summit*. This event brought together stakeholder communities to develop a ten-year research, development and action agenda to transform recordkeeping and archiving for childhood Care around recognizing, respecting and enacting multiple rights in records.<sup>3</sup>

Key findings of our research include the imperative to provide full access to records through processes that facilitate rather than obstruct. Of particular importance is proactive disclosure, as lack of information of the existence of records is a major barrier to finding personal records. Without person-centred full access to records, it is not possible for those with care experience to exercise their human rights, find evidence relating to maltreatment, family link-ups, redress and bringing perpetrators to justice, or challenge historic records where they are deemed to be inaccurate, misleading or out-of-date, and to submit alternative relevant material for inclusion on the record.

In response to these findings, we are currently researching a world first Charter of Lifelong Recordkeeping Rights for Childhood Out-of-Home Care (including rights to full access and pro-active disclosure) and its translation into a recordkeeping rights engine – a technical demonstrator of how recordkeeping rights in Care systems could be dynamically enacted, negotiated and monitored. This research is part of imagining future digital systems for Care capable of real-time, proactive and transparent accountability to the principles of provision, protection and participation in the best interests of the child enshrined in the United Nations Convention on the Rights of the Child, and for upholding rights to dignity, autonomy and identity in the Universal Declaration of Human Rights.

## Our Submission

The Rights in Records by Design Research Project welcomes the opportunity to comment on the *Proactive and Informal Release of Information in the Victorian Public Sector Discussion Paper*.

We commend the Victorian Information Commissioner for highlighting the need to make public sector information as accessible as possible, and discussing the role proactive and informal release mechanisms could play in providing greater access and in reducing expense.

In this submission, we would like to highlight the relevance of such an approach to those seeking access to records of childhood Care experiences.

A multitude of submissions and testimonies from the Care Leaver community have repeatedly told of how the reliance on generic FOI processes in Victoria can make access to childhood Care records a fraught, frustrating, long drawn out, expensive and re-traumatising experience.

Investigations and inquiries have repeatedly shown the Victorian public sector failing to meet obligations to provide information promptly and inexpensively to Care Leavers, a community significantly impacted upon by the rules and practices of agencies involved in the delivery of past and present child welfare and protection services.

For example the 2012 investigation by the Victorian Auditor General into FOI found that the then DHS 'seriously misinterpreted elements of the Act ... exploiting some of the most vulnerable members of society'.<sup>4</sup>

More recently the Royal Commission into Institutional Responses to Child Sexual Abuse recorded that

---

<sup>3</sup> Setting the Record Straight for the Rights of the Child Initiative, 'Setting the Record Straight for the Rights of the Child Strategic Plan' (Setting the Record Straight for the Rights of the Child Initiative, August 2017), [http://rights-records.it.monash.edu/wp-content/uploads/2018/02/Strategic\\_Plan\\_Final\\_Amended.pdf](http://rights-records.it.monash.edu/wp-content/uploads/2018/02/Strategic_Plan_Final_Amended.pdf).

<sup>4</sup> Victorian Auditor General, 'Freedom of Information' (Victorian Auditor-General's Office, 18 April 2012), 34, <https://www.audit.vic.gov.au/report/freedom-information>.

Lack of support and guidance, excessive delays, prohibitive costs, inconsistencies in law and practice, refusal to release records and redaction of records were all raised with us as issues affecting survivors' personal wellbeing and ability to hold institutions to account.<sup>5</sup>

Heavy-handed redaction under FOI processes particularly fails to take into account the personal nature and context of these records and the role they play in supporting the identity, memory and accountability needs of those with Care experiences. This runs counter to the key first principle of maximum access in the 2015 *DSS Access Principles and Best Practice Guidance for records relating to Forgotten Australian and Former Child Migrant communities* (subsequently taken up as a recordkeeping principle for child safety and wellbeing in recommendations from the Royal Commission into Institutional Response to Child Sexual Abuse) that

Records Holders will enable maximum information to be available to Forgotten Australians and Former Child Migrants about themselves, their family, identity and connection; circumstances surrounding placement in care; and details of time in care.<sup>6</sup>

For those most recently under the care and protection of the state as a child or young person, then overly bureaucratic FOI processes and redaction practices also contradict *National Standards for Out of Home Care*.<sup>7</sup> These recognise rights to have life histories recorded (Standard 10) as part of developing identity and connection to family and community. Rights to participate in the decision making that impacts on their lives (Standard 3) also encompasses an inherent right to equitable access to information about their Care experiences. Not being able to access this personal information, both whilst in Care and also on leaving, can contribute to poorer life outcomes and ongoing discrimination and disadvantage.<sup>8</sup>

CLAN, the Care Leavers' Australasian Network, has been at the forefront of arguing for rights to full access to records of childhood Care experiences. Frank Golding has written of the denial of natural justice and procedural fairness when records are withheld or redacted.<sup>9</sup> This has led to CLAN developing a *Charter of Rights to Childhood Records* to underscore the importance of these records in piecing together fractured and fragmented childhoods, to connect with family and to hold institutions to account for childhood abuse and neglect.<sup>10</sup> The Charter lays claim to the rights of Care leavers to have ongoing access to and control over their personal information, as part of the accountabilities and duties of government child welfare and protection departments and other providers, to those who were placed in their 'care'.

We draw the OVIC's attention to reforms in this area in other states that take advantage of proactive and informal release mechanisms for these records. Queensland has used administrative access

---

<sup>5</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:39.

<sup>6</sup> Recordkeeping Innovation, 'Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders, and Best Practice Guidelines in Providing Access to Records' (Department of Social Services, June 2015), <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>.

<sup>7</sup> Department of Families, Housing, Community Services and Indigenous Affairs, 'An Outline of National Standards for Out-of-Home Care' (Department of Social Services, 2011), <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/an-outline-of-national-standards-for-out-of-home-care-2011>.

<sup>8</sup> Joseph J. McDowall, 'Out-of-Home Care in Australia: Children and Young People's Views After Five Years of National Standards' (CREATE Foundation, December 2018), <https://create.org.au/publications/2018-create-report/>.

<sup>9</sup> Frank Golding, "'Problems with Records and Recordkeeping Practices Are Not Confined to the Past": A Challenge from the Royal Commission into Institutional Responses to Child Sexual Abuse', *Archival Science* 20, no. 1 (2020): 1–19, <https://doi.org/10.1007/s10502-019-09304-0>.

<sup>10</sup> Frank Golding, 'A Charter of Rights to Childhood Records', *Frank Golding* (blog), 7 December 2015, <http://frankgolding.com/a-charter-of-rights-to-childhood-records/>

provisions in their Right to Information legislation to provide access to ‘time in care’ information free of charges, particularly to facilitate applications to the Forde Redress scheme.<sup>11</sup>

New South Wales has released an Access Guideline advocating that it is in the public interest to use the maximum discretion available in their Government Information (Public Access) legislation to allow for release and to limit redaction. They note that

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.<sup>12</sup>

Can Victoria follow these leads and demonstrate commitment to meeting the lifelong identity, memory and accountability needs of those with Care experiences with dignity, empathy and respect of their rights to embrace pro-active disclosure and enable full access to the records of their childhoods?

Prepared by

[Redacted]

Faculty of Information Technology  
Monash University

Telephone [Redacted]

Mobile [Redacted]

Email [Redacted]

---

<sup>11</sup> Department of Communities, Child Safety and Disability Services, ‘Right to Information’, 2018, <https://www.communities.qld.gov.au/gateway/about-us/right-information>.

<sup>12</sup> Information and Privacy Commission New South Wales, ‘Information Access Guideline 8 - Care Leavers’ Access to Out-of-Home Care Records’ (Information and Privacy Commission New South Wales, July 2019), <https://www.ipc.nsw.gov.au/information-access-guideline-8-care-leavers-access-out-home-care-records>.