

# Rights in Records for Children in Out-of-Home Care

Belinda Battley

This year has seen the establishment in New Zealand of a Ministry for Vulnerable Children, Oranga Tamariki. It is a tenet often quoted that a society is judged by the way it treats its most vulnerable members. As archivists and recordkeepers, how will we be judged as the managers of records about those vulnerable members of our society who are now, or who have been in, out of home care?

Records have power to provide evidence for accountability and justice, but also have power to control those recorded as subjects.<sup>1</sup> There is a growing interest in archival communities in the social justice or human rights aspects of archives and recordkeeping,<sup>2</sup> leading to the International Council on Archives (ICA) publishing a *Universal Declaration on Archives* in 2011, which recognised, amongst other points, the vital necessity of archives for protecting the rights of citizens. This awareness of the power in records combined with revelations of a long history of appalling abuse of children who were in “care” has led to a call for a shift in the balance of control over records between the institutions who were responsible for the welfare of those children, and the children who suffered abuse at the hands of those meant to care for them, advocating for “archival autonomy” for the subjects of records.<sup>3</sup> The question of who owns records, and what this means for those recorded in them, has real and powerful consequences for identity and justice for those who were in care and are unable to gain access except by applying to the very institutions which were responsible for their care as children.

The Archives and the Rights of the Child research programme based in Melbourne, Australia, “aims to bring researchers across a range of disciplines together with community and practice advocates to re-imagine recordkeeping and archiving systems in support of responsive and accountable child-centred out-of-home care and as enablers of historical justice and reconciliation”.<sup>4</sup> The impetus for this research included the Australian government’s official apology to forgotten Australians and former child migrants, the *Bringing them Home* report on stolen generations of Aboriginal children and an ongoing Royal

Commission on child sexual abuse in State and other institutions. New Zealand has unfortunately also heard much testimony of abuse of children in institutions. A Confidential Listening and Assistance Service<sup>5</sup> was set up to at least provide a little help to individuals who had been in State care before 1992, but the terms of reference were very tight, and it could not carry out a broader investigation or make official recommendations. This service has now closed and so far there has been no promise of a called-for Royal Commission into systemic problem. Clearly there is a need for a coming-together of stakeholders here, as in Australia, to discuss what recordkeeping professionals could do to help protect the rights of vulnerable children.

Amongst the activities of the programme in Australia a national summit, *Setting the Record Straight for the Rights of the Child*, was held in Melbourne in May 2017. It brought together “participants from community, advocacy, government, and research organisations to discuss how to transform the way records of childhood out-of-home care are created, captured, managed, accessed and archived”.<sup>6</sup> Although the Australian experience can provide much useful transferrable information about the needs and possibilities in this area, in New Zealand the different cultural context, including history, institutions, legislation, cultural understandings and expectations could lead to different issues and suggestions for future actions. My connection with this Australian initiative is that I am currently a PhD student at Monash University (though I am based in Auckland), and one of my supervisors, Dr Joanne Evans, was one of the main organisers of the Melbourne Summit. I decided to organise a similar workshop for New Zealand in the hopes of beginning a similar conversation in the New Zealand recordkeeping community.

This paper describes the background to the workshop, some of the outcomes and thoughts on what it has suggested about what we could consider doing next as an archival and recordkeeping community.

### **Background to the Workshop: Australia**

In October 2016 I attended the Australian Society of Archivists conference in Parramatta. The conference included a session on “care-leavers”, adults who had been in care as children. Frank Golding and Bonney Djuric of the Care Leavers Australasia Network (CLAN) provided first-hand testimony regarding the significance of recordkeeping decisions for their own experiences. Frank spoke about people being re-traumatised by the lack of information kept about their childhood: what remained was nearly all negative, often insulting, demeaning and hostile. Where

were the photographs, certificates of achievements, school reports and medical records kept from most childhoods? He spoke also of the CLAN Charter of Rights to Childhood Records, which included the right of a child to contribute to the making of the record (See Appendix 1 for the full Charter). All of the speakers in the session noted the power of records to not just create and record wrongs, but also as instruments for accountability, empowerment and redress. Records that had been created with no thought to their ever being seen by those about whom they were written could be reclaimed and repurposed for redress if agency in the records could be broadened to include those caught up in and harmed by the records and the regimes that created them. Summed up by Sue McKemmish of Monash University, who set out Principles for setting the record straight for the rights of the child, the session was inspiring and hopeful.

These principles were essentially those noted in the Summit website:<sup>7</sup>

“Children who experience out-of-home care need quality recordkeeping and archiving systems to

- develop and nurture their sense of identity and connectedness to family and community;
- account for their care experiences, and
- prevent, detect, report, investigate, and take action against child neglect and abuse.”

In the discussion afterwards, which included plans for the national summit, Bonney noted the value of holding events at a local level, such as coffee mornings, so that people who were not focused on archives could gain awareness and access to the records they wanted and needed, and individuals could be empowered by sharing knowledge and skills.

Bonney Djuric took a group from the conference on a tour of the Parramatta Female Factory, a girls’ home she had lived in as a teenager. The Home and its setting seemed almost a caricature of itself, with circling bats and cawing crows as twilight fell on the looming brick buildings. Bonney is chief instigator and manager of the Parramatta Female Factory Precinct Memory Project, a “social history and contemporary art project centered on the historic institutions of the Parramatta Female Factory Precinct connecting past to present by engaging those who once resided in these institutions to actively participate in how they are remembered and empowering them to determine how the site might be used in the future.”<sup>8</sup> Visiting the former Home gave me a better understanding of the feeling of powerlessness and fear inspired by such institutions, as well

as the urge to create graffiti, as Bonney explained the scratches on the doors of the seclusion rooms were often the only record the girls had of their time at the Home that they had created themselves.

### **Planning for the New Zealand Workshop**

In December 2016 I heard an interview on RNZ with Rosslyn Noonan, who said a Commission of Inquiry into abuse of children in care is essential, as the large number of people coming forward to the Confidential Listening and Assistance Service showed that clearly there were systemic issues that needed to be investigated. She noted that although there had been an earlier report on problems around children in care, the recommendations had largely not been taken up. As a member of ARANZ and an archivist working in an institution which held records of institutions responsible for the care of children I was aware we had been having and hearing conversations for some years about children's experiences with records and the many problems they face with regard to access and lack of documentation. I realised that the work being done in Australia on rights in records for children in out of home care, and adults who had been in care, was also needed in New Zealand, so I organised a one-day workshop for February 2017, which was hosted by Rosslyn Noonan at the Centre for Human Rights Research at the University of Auckland, with financial support from ARANZ, since many ARANZ members have records relating to children that have been in care in their holdings. Members of the Records Continuum Research Group based at Monash University, who were visiting New Zealand for a writing retreat at the time, assisted with the planning and helped run the workshop. Joanne Evans is part of that group and spoke at our workshop about the Australian experience, while Elizabeth Stanley, although not present, allowed us to use excerpts from her book detailing her research into childhood abuse in New Zealand state care.<sup>9</sup> These excerpts, sent to all participants before the workshop, helped those of us without direct experience begin to understand some of the issues involved.

The workshop brought together recordkeeping and archives professionals taking care of records of children in out-of-home care, archival researchers, experts in human rights law, advocates for people who have been in care as children and others with an interest in this area, and, most importantly, people who had been in care themselves. We agreed before the workshop that all could choose to speak without being identified, but that we would summarise our findings and make them more widely available. The aim of the workshop was to begin a national conversation regarding child-centred and rights-based recordkeeping

and archiving frameworks, policies, processes and systems. We did not expect to come up with quick solutions at the workshop, but to start the discussion and think about what the next steps might be.

### **My Experience of the Workshop**

The care leavers who attended were very generous in sharing their stories, as revisiting past trauma can be a traumatic experience in itself. Their stories helped all of us without their experiences better understand the human impact of recordkeeping decisions about creating, sharing, destroying, denying access to, and redacting records. After the workshop, I emailed all of the participants with notes of the main points as I had understood them:

1. Care leavers may find that the only personal records that exist of their childhood are held by government departments, who often choose to redact much (or most) of the personal information about the people they were surrounded by in childhood - and these redactions are inconsistent. As one person said, care leavers are the only group in society who have to go to a government department to find records of their childhood. Withholding of records of a care leaver's childhood is experienced as abuse or torture: "a beating that leaves no marks".
2. The records may be complete in terms of legislative requirements, but not in terms of what the children need and want to know (for example, family history, educational achievements, photographs, medical history...)
3. Care leavers noted the impact of insensitive, disrespectful interactions when records were handed over. Many care leavers experience accessing the records of their time in care as a new trauma. Support needs to be in place.
4. Care leavers accessing records find that information is often misleading, inaccurate, and incomplete. Sometimes libellous statements are made about the child, birth parents or siblings. Often many or most records have disappeared.
5. Many care leavers' files contain little or nothing but negative comments
6. Care leavers need to be able to add retrospective statements to information held about them, to provide their point of view
7. Children in care should be allowed to make statements at the time about how they are feeling, with photographic / video / sound recordings in support, particularly in cases of abuse.

8. The average length of time before historic childhood abuse comes to light is more than 22 years, which means current retention and disposal schedules for records need to be revisited, particularly with regard to staff records and police complaints.
9. Lack of coordination between agencies is a big problem for care leavers and their advocates trying to find records.
10. When government agencies are developing retention and disposal schedules, most people are unaware of this so are unable to comment, although legally this is their right. Need a mechanism to ensure advocates for all interest groups, but particularly vulnerable groups, are consulted effectively.
11. People looking for records of their time in care need to know what to ask for and where to look. It is very difficult to get all of the information needed. If wanting to follow up regarding abuse suffered, it is very difficult to get staff records - may need to file a case in court. However, may not want to go through a court proceeding.
12. Legislation relating to records of children in care, as well as adopted children and those born with assisting technologies, needs to acknowledge, meet the needs of and address the rights of those most affected, the children themselves. Perhaps what is needed is an overarching standard relating to what records must be kept about all children in care.

A central issue that kept coming up was that of agency in records: The children the records are about and the agencies gathering the information both see the records as theirs. Some of these records relate to multiple children, so there are multiple potential holders of rights. However, only the agencies are asked permission if others wish to access, create, destroy or use these records.

The sense of lack of trust and respect often felt between the agencies and care leavers means that having control over the records kept by the agencies that managed their care is problematic, particularly but not only when abuse was involved.

I found it very helpful to hear the steps that people are already taking to address these issues, especially in the Australian examples, but also in the ways individual archivists can make it easier for people to access and make sense of the records they need, for example by making an effort to discover more about the institutions where the children lived, and about the other related institutions who might also have records, and by becoming aware of the potential issues regarding the records they hold.

## **Preliminary Outcomes**

The most immediate outcome of the workshop was the beginning of a community of interest in this area in New Zealand. One of the attendees discussed the upcoming “Children, Young Persons and Their Families Legalisation Bill” which was calling for submissions, so several groups attending, including ARANZ, decided to make a submission to ensure the Bill covered child-centred recordkeeping requirements. (Our written and oral submissions are attached as appendices 2 and 3). We determined that ongoing work was needed to bring the recordkeeping needs of children in care to wider attention, and this work is just beginning. Changes in policy, legislation and professional and organisational culture will be needed to address the needs identified, so there is much work to be done in this area.<sup>10</sup>

One aspect of the needs for access to records that relates directly to our skills as recordkeeping professionals is the need to find out where the records are. In Australia, the “Find & Connect” initiative works to both help people find the records they need but also connects them with support networks. Although we so far have no funding for a similar initiative in New Zealand, I recently visited the University of Melbourne office of Find & Connect and they offered advice and support for us as we look into beginning a related service here.

In May 2017 I was able to attend the “Setting the Record Straight” summit in Melbourne, and was able to see first-hand both the steps that were beginning to be taken to ensure that children in care had their life-story recorded and accessible, and yet the long way that still needed to be travelled until the needs and rights around recordkeeping for all children in care and care-leavers were met: records were still being used as weapons against children and care-leavers, with babies taken from new mothers as they had a “history of being in care” and therefore by definition must be inadequate parents unless they could prove otherwise; a boy wrongly recorded as being of subnormal intelligence denied education until he was an adult able to organise it for himself (and successfully completed a University degree); people denied access to their records for reasons of third-party privacy only to discover that researchers had been granted full access, including personal details. Recordkeeping about children in care was seen as an issue of power and control, where private troubles had become a public issue, and public issues led to private troubles.

Some of the main themes that came out of that Summit were the need for collaboration in developing policies and processes; the need for all stakeholders to be involved in policy-setting rather than it being

an “elite sport” taken over by lawyers, politicians, government and other institutions; the central importance of rights in records – to be an agent, not just a subject – for identity and justice; a suggestion that an independent body should ensure and perhaps provide access; a note that “third party privacy” is often overused, misused and misunderstood, preventing access which should have been allowed; and the statement that the basic expectation should be access to all records about oneself. There was also a warning that although records managers should show “moral courage” in addressing injustices when they find them, it should not be left to relatively powerless records managers and archivists in large institutions to take on all the burden and risk of going against ingrained institutional policies, but rather we should work towards a societal expectation of agency in records for children in care, and for people who were in care as children.

At the Summit, Justice Jennifer Coate, Commissioner of the Royal Commission into Institutional Responses to Child Sexual Abuse (2016) talked about the 5 high level principles on recordkeeping for children in care developed as an outcome of the Commission:

1. Creating and keeping accurate records is in the best interest of children.
2. Accurate records must be created about all decisions and incidents affecting child protection.
3. Records relevant to child sexual abuse must be appropriately maintained.
4. Records relevant to child sexual abuse must only be disposed of subject to law or policy.
5. Individuals’ rights to access and amend records about them can only be restricted in accordance with law.

Clearly there is still much work to be done on this in New Zealand. Specific recommendations ARANZ made on behalf of its members are set out in the Written Submission attached as Appendix 2. If we can work together to lobby for improvements to policy, legislation, regulation, organisational culture and professional understanding of rights in records, perhaps we as archivists and recordkeepers can feel more confident that the future will judge us as having done our part in looking after the most vulnerable in our society.

**Endnotes**

1. Ketelaar, E. "Archival temples, archival prisons: Modes of power and protection." *Archival Science* 2, (2002): 221–238
2. Caswell, M. "Defining human rights archives: introduction to the special double issue on archives and human rights." *Archival Science* 14:3–4 (2014): 207–213. <https://doi.org/10.1007/s10502-014-9226-0>.
3. Evans, J., S. McKemmish, E. Daniels and G. McCarthy. "Self-determination and archival autonomy: Advocating activism." *Archival Science* 15 (December 4, 2015): 337–368.
4. Monash University. Archives and the Rights of the Child Research Programme: About the Initiative. 2017. Accessed 14 May 2017 at <https://rights-records.it.monash.edu/about-the-initiative/research/>.
5. Confidential Listening and Assistance Service (n.d.) [Website]. Accessed 17 May 2017 at [http://www.listening.govt.nz/web/RCCMS\\_cla.nsf/weblivehome/\\$first?open](http://www.listening.govt.nz/web/RCCMS_cla.nsf/weblivehome/$first?open).
6. Evans, J. Setting the Record Straight for the Rights of the Child. Join us for the National Summit (2017). Accessed 14 May 2017 at <https://rights-records.it.monash.edu/summit/>.
7. Monash University . Setting the Record Straight for the Rights of the Child. National Summit 8-9 May 2017. [Website]. Accessed 14 May 2017 at <https://rights-records.it.monash.edu/>.
8. Parragirls (n.d.) About PFFP Memory Project. Accessed 10 May 2017 at <http://www.parragirls.org.au/Memory-Project.php>
9. Stanley, E. *The Road to Hell: State Violence Against Children in Postwar New Zealand*. (Auckland: Auckland University Press, 2016).
10. As a consequence of our submission, the Bill was amended to include the subsection, "s.477(1)(fa)(iv) the creation and maintenance of records for a child or young person recording important matters in their life (including significant life events and significant achievements) occurring while they are in care, and the provision of access to those records for the child or young person", which passed into law on July 13, 2017.

## APPENDIX 1

### Care Leavers Australasia Network (CLAN)

### A Charter of Rights to Childhood Records (2016)

#### PREAMBLE

##### Whereas:

Many Australian children, through no fault of their own, were placed in orphanages, children's Homes, foster 'care' and other forms of institutions that replaced their homes and families and isolated them from ordinary community life; and

Many children left such 'care' angry, ashamed, confused about their identity, often not understanding the reasons for their separation from family because no one explained their situation, wanting to re-connect with their families and communities wherever that was still possible, and carrying many unresolved burdens resulting from the physical, emotional and sexual abuse and neglect that were inflicted on them; and

Any records that were made and archived in those circumstances may represent the only documented account of the person's time in such institutions; and

The historic reasons for creating these childhood records are now, by the passage of time, redundant.

And recognising that the Australian government is a signatory to the United Nations Convention on the Rights of the Child (1989) which among other things:

Affirms that in all actions concerning children, whether undertaken by public or private social welfare institutions, the best interests of the child shall be a primary consideration; and

Requires governments to respect a child's right to know their parents and the right of the child to preserve his or her identity and family ties; and

Requires governments to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis; and

Affirms the right of any child temporarily or permanently deprived of his or her family environment to special protection and assistance provided by the State; and

Affirms that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

## CHARTER OF RIGHTS

Therefore, by ethical extension of the rights of the child to the adult the child has become, and in response to the contemporary needs of former institutionalised children, it is declared that:

1. The historic records now held in archives are there principally for the purpose of helping the 'subject' person make meaning of the circumstances of their childhood; and/or to connect, if still possible, with family and community; and/or to seek redress and other remedial action for abuse or neglect, where relevant.
2. Archivists, record-holders and support workers must expedite all requests for access to personal records. Special consideration should be given to the frail, elderly, and those involved in litigation or redress claims.
3. Under no circumstances should a request for records be influenced by consideration of any real or perceived conflict of interest in providing records. There should be no secret dossiers on children in 'care'.
4. In some cases, the records have been lost, others are incomplete, and many are found to be inadequate. Therefore, in addition to historic personal files and case notes, archivists and other support personnel have a duty to search for and identify other archived records that are relevant to the person's childhood experience to assist in providing a more complete narrative.
5. Many childhood records are partial; many contain statements that are inaccurate or misleading; and many include personal judgments or opinions and use language that is offensive. Archivists and records holders have a duty to inform the person of the right to challenge the records, and should encourage them to submit alternative relevant material for inclusion on the record.
6. Record holders have a duty to assist the 'subject' person interpret the record with issues like historical context and technical terminology.
7. The childhood records in archives are ultimately the property of the person who is the subject of the records. Originals should be provided and copies kept in archival collections.
8. The subject of the records (or, if deceased, that person's closest living blood relative or by agreement another blood relative) has the right to determine who should have access to those records and the terms of that access.
9. In acknowledgement of the importance of childhood records into the future, all agencies and organisations that take children into their custody from this time forward must create an official record comprising key documents including the child's birth certificate, the

names and last-known addresses of members of the child's family, any court orders or documents related to the reasons for the child's placement, all medical and educational histories, the names of all people who visit the child during their time in custody, all documents related to transfers to other institutions including foster families and any other official documents that relate to the child's time in 'care'.

10. All agencies and organisations that take children into their custody from this time forward should encourage such children to contribute to their official records, and as well, to help them to create a personal collection of items such as relevant photographs of people, events and places that are central to their time in 'care', objects of significance to their time in any 'care' facility and any personal or descriptive accounts written by the child.

## APPENDIX 2

### Written Submission

Belinda Battley and Elizabeth Charlton

[N.B. This submission has been abridged. The full submission can be viewed at <https://www.aranz.org.nz/Site/publications/submissions/default.aspx>]

#### TO THE SOCIAL SERVICES SELECT COMMITTEE

#### *Submission on the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill*

ARANZ Council is concerned that the rights of children in care and adults who have been in care as children to accurate, complete and accessible information about their time in care are not sufficiently protected by the provisions in this Bill.

The following comments relate to the current experience of adults who have been in care and are suffering continuing trauma due to issues regarding lack of access to information about their time in care. Note that a “care leaver” is defined as an adult who was in care as a child.

1. Care leavers may find that the only personal records that exist of their childhood are held by government departments, who often choose to redact much (or most) of the personal information about the people they were surrounded by in childhood - and these redactions are inconsistent.. Withholding of records of a care leaver’s childhood is experienced as abuse or torture: “a beating that leaves no marks”.
2. The records may be complete in terms of legislative requirements, but not in terms of what the children need and want to know (for example, family history, educational achievements, photographs, medical history...)
3. Care leavers accessing records find that information is often misleading, inaccurate, and incomplete. Sometimes libellous statements are made about the child, birth parents or siblings. Often many or most records have disappeared.
4. Many care leavers’ files contain little or nothing but negative comments
5. Records are often distributed between several or many different agencies, making it difficult both for care leavers and for archivists or records managers to locate them when needed.
6. Care leavers are required to approach the agency that provided their care in order to obtain the records relating to their time in care. This can be problematic, particularly in cases where abuse was involved.

### **Recommendations from the Workshop**

1. Care leavers and children in care need to be able to add retrospective statements to information held about them, to provide their point of view.
2. Children in care should be allowed to make and record statements about how they are feeling, with photographic / video / sound recordings in support, particularly in cases of abuse.
3. Current retention requirements for records relating to children in care need to be revisited, particularly with regard to staff records and police complaints, as individuals may not feel confident to act on abuse for many decades after it has happened.
4. Legislation relating to records of children in care, as well as adopted children and those born with assisting technologies, needs to acknowledge, meet the needs of and address the rights of those most affected, the children themselves. People who were in care as children have the right to records that support their identity, including records relating to their biological parents, siblings, education, medical history, information about the places they were in care, the identity of the people looking after them, and other life events of significance to the child. An overarching standard of what types of records should be created and kept by care providers, and who should have control over access, creation, management and destruction is needed. This standard needs to be based on the needs of the child.

### **Related Policy and Legislation**

#### **Australian examples**

Australia is making considerable advances relating to rights in records for people who have been in care as children. For example, a model for managing the records of children in care can be seen in the New South Wales standards for statutory out of home care ([http://connectingcarersnsw.com.au/wp-content/uploads/2015/03/Outofhomecare\\_standards\\_2013.pdf](http://connectingcarersnsw.com.au/wp-content/uploads/2015/03/Outofhomecare_standards_2013.pdf)).

Details of Standard 16 “Documentation and Recordkeeping”, reproduced from page 19 of the document:

#### *Objective*

Children and young people have a record of their time in care.

*Standard*

Children and young people have a permanent record of their histories which contains all relevant documentation

*Legislation*

Children and Young Persons (Care and Protection) Act 1998

Sections: 14, 142, 149B-K, 160, 162, 165, 167-170, 245,

Chapter 16A, 248

Children and Young Persons (Care and Protection) Regulation 2012

Clauses: 8, 13, 14, 37(a), 42, 65

Schedule 3 – Clause 4

*Key messages*

- An accurate record of their time in care can assist children and young people understand their history and develop a sense of identity
- Omissions and inaccuracies in record keeping contribute to flawed decision making
- Good record keeping is an integral component of casework practice

*Assessment Criteria*

1. All available information, documents and records about a child or young person are collected and maintained
2. Records pertaining to a child or young person and their family are maintained in a safe and secure manner for the time specified in the relevant legislation
3. Children and young people have access to their information when requested
4. Children and young people are provided with support when accessing information about their personal and family histories
5. When leaving care, young people are provided with the original of their identity documents and life story materials and copies of other documents.

The 1997 report on the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families ([https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)) listed the following recommendations regarding records and archives:

“First, all records which may be of assistance to Indigenous people seeking to re-establish family and community links or establish Indigenous identity must be preserved.

Second, access to records must be made easier and less hurtful. This involves improving access procedures, ensuring culturally appropriate access and involving the counselling and support assistance of Indigenous family tracing and reunion services.

Third, in the longer term Indigenous communities should have an opportunity to manage their own historical documentation”.

In Australia, government funding has allowed for the development of a service called “Find and Connect” (<https://www.findandconnect.gov.au/>), a central point where information about orphanages, children’s homes and other institutions throughout Australia is available for people wishing to find their own records and related support services. Developing a similar resource in New Zealand would support the rights of people who have been children in care to have access to information which preserves their identity, enables them to participate more fully in society and also allows them to seek justice for abuse they suffered as children. Although the development of this resource is not part of this legislation it is important that the need for this resource is taken into consideration when designing the aspects of this bill relating to records.

### **International Obligations**

In further support of this submission, ARANZ wishes to draw the attention of the Select Committee to Article 8 of the United Nations Convention on the Rights of the Child:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Ensuring appropriate recordkeeping occurs will assist in fulfilling New Zealand’s obligation to this Convention.

### **Conclusion**

ARANZ Council recommends that new clauses are added to the Bill requiring that:

1. All available information, documents and records about a child or young person are collected and maintained, including but not limited to birth certificate, medical, educational, and other life events
2. Records pertaining to a child or young person and their family are

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maintained in a safe and secure manner for the time specified in the relevant legislation

3. Records relating to the identity of staff caring for children and the institutions responsible for their care are maintained and are accessible to the child and the adult care leaver they become
4. Care leavers and children in care have the right to add retrospective statements to information held about them, to provide their point of view.
5. Children in care have the right to make and record statements about how they are feeling, with photographic / video / sound recordings in support if the child wishes, particularly in cases of abuse.
6. Children and young people and care leavers have access to their information when requested
7. Children and young people and care leavers are provided with support when accessing information about their personal and family histories
8. When leaving care, young people are provided with the original of their identity documents and life story materials and copies of other documents.

## APPENDIX 3

### Oral Submission

Elizabeth Charlton (presenter) and Belinda Battley

I am here to speak further to the written submission lodged by ARANZ regarding the lack of provisions in this Bill for child-centred recordkeeping.

The report of the Confidential Listening and Assistance Service ([https://www.dia.govt.nz/diawebsite.nsf/Files/Confidential-Listening-and-Assistance/\\$file/Confidential-Listening-and-Assistance-Service-Final-Report-Some-Memories-Never-Fade.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Confidential-Listening-and-Assistance/$file/Confidential-Listening-and-Assistance-Service-Final-Report-Some-Memories-Never-Fade.pdf)) gave examples of how participants felt and why it is crucial that the collection of documentation is planned for the children whose care will be determined by this bill to avoid those children making the same comments in the future.

On p.30 is a comment that there were no records kept of attendance at Health Camps and that there was no way of finding out any information about their time there. This is also applicable to one of our members who is much younger than many of the participants who used this service. Although a few records of Health Camps do exist, these are very patchy and it is hard for people even to work out where to start looking for them, or whether after so much effort in searching they will find anything, or be given access to them.

The records may be complete in terms of legislative requirements, though it seems in many cases they are not, but not in terms of what the children need and want to know: for example, family history, educational achievements, photographs, medical history, and other records about their childhood that are so much more readily available to most of us who have grown up with our biological families.

The main comment which strengthens the need to have adequate documentation of a child's life in care is on page 31 where participants indicated that they are confused over their identity, and who they really are, especially when links with family were lost. In particular, knowing their whanau connections is of vital importance for Maori. These connections form the basis of their identity and standing in Te Ao Maori, the Maori world. Their needs are intensified instances of all children's needs.

At the workshop our Association held in February where care-leavers and archivists discussed issues relating to recordkeeping for people who have been in care, lack of access to records, or the apparent destruction

of records, was identified by care-leavers as being experienced as an assault on themselves and their right to their own identity. Their ability to reconnect with their childhood experiences, their biological family, foster siblings, places they had stayed, and cultural history was strongly compromised, and it was extremely difficult to seek justice for previous wrongs as names were redacted from the limited records provided, staff records had been destroyed or were heavily redacted and records about complaints they had made had also been destroyed. Archivists at the workshop described the frustration they felt through an inability to locate or discover what had happened to the records being sought by their clients, as well as the frustration of providing access to the records through the agency that created them, which then apparently made extensive redactions to the little information that was available before providing them to the person who had been in care.

As a country, we can learn from and adapt the sterling work which has come from the several Australian inquiries into out-of-home care. As part of this process, committee members may be interested in attending the Australian National Summit, "Setting the Record Straight for the Rights of the Child" to be held in Melbourne in early May.

## Conclusion

We would like to see included a specific section in the Bill which addresses recordkeeping as it relates to the child in care:

- *Whose record:* The need to clarify who has control/agency to create, correct, annotate, grant access and destroy these records – if these are personal records relating to the child, the child will have a very strong personal interest in them, in their accuracy, in how long they are kept and in who gets to read them
- *Types of record:* That a portable personal record (e.g. a life story) be specifically included so that children who have been in care have the same access to information about their childhood that other children do, including information about positive life events, education, medical history, the places they lived and stayed and their companions in childhood. This should stay with the child, and be given to them when they are no longer in care.
- *Coordinating point for records:* The need for a "one point of contact", a central place to locate and manage records, preferably by an independent body from the agencies that managed the services for the children in care
- *Specific provisions for access to records:* The requirement that not

only should people who have been in care have access to records relating to that time, without redaction of information from those records unless for very strong reasons of risk to personal safety of others, but also that they should be given access in a sensitive manner, with support available such as counsellors when required.