



## **CARE LEAVERS AUSTRALASIA NETWORK**

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

**“I know more about Captain Cook than,  
I know about my own Father”**

Geoffrey 80 year old

NSW Care Leaver

# CLANS SUBMISSION TO THE ROYAL COMMISSION ON RECORDS AND RECORDKEEPING CONSULTATION PAPER



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### Consultation Paper

### Records and Recordkeeping Practices

#### Introduction

CLAN would like to thank the Royal Commission Into Institutional Responses to Child Sexual Abuse for the opportunity to respond to this consultation paper. We commend you for addressing the very important issue of records and recordkeeping practices.

As you know, CLAN is the peak advocacy body for children who grew up in orphanages, children's Homes, foster care and other forms of what is now known as 'out-of-home-care'. Our submission, therefore, is focused on records related to that area – which we prefer to call the Child Welfare System. We note that the Commission has reported that around 44 percent of all sexual abuse disclosed in private hearings, was experienced in institutions within the Child Welfare System.

CLAN believes that records of children in the Child Welfare System must be subject to different guidelines and legislation than other organizations working with children such as schools, sporting groups and scouts. Records play a vital role in helping Care Leavers to make some sense of their childhoods and are key in assisting them to form an identity, something which has been taken from them by the Child Welfare System. Records are also one of the most important means by which Care Leavers try to reconnect with their lost parents, siblings and communities. Furthermore, some records from their time in the Child Welfare System hold important information which is often needed when reporting abuse which has occurred or in pursuing civil claims. Records are of the utmost importance to Care Leavers, and will continue to be important to those children who are in Care today. It

is imperative that organisation's working with vulnerable children in the child welfare system are subject to stringent recordkeeping practices to ensure that all children in the future have access to **their own** information, and that all current Care Leavers have access to **everything** that hasn't been destroyed already.

## Historical Records

The creation, maintenance and disposal of historical records in the Child Welfare System has been a disgrace. There have been systematic failures by organisations charged with 'caring' for children at each of the stages your paper has discussed. CLAN deals with many organisations in order to access historical records for Care leavers, and our experience demonstrates that many of them still fail to understand the importance of these records and many do not respond adequately to requests for access.

In regards to the creation of files, CLAN notes that within the Care Leaver records we have accessed as advocates over the past 16 years, it has been extremely rare to see any positive information about children included in the file. For example, one of our CLAN members "G" from NSW was asked what was the most positive thing mentioned about her in her state ward file.

**Her response was that it didn't say she had Venereal Disease or Gonorrhoea.**

Can you imagine the negativity and the types of comments contained within these files if that was the most positive thing in there?

CLAN believes a lot more training needs to go in to writing records and documenting a child's life, not just the negative things within it. As mentioned in the Commissioners paper, the **United Nations Convention of the Rights of the Child** gives every child the right to an identity, not just those brought up with their own biological family, therefore these records play a vital role for individuals to understand their childhood and form an identity. It would contribute to creating some sense of self-worth if something positive was routinely noted. Children should have access to all their important documents, including their creations and achievements, not just notes made about them by caseworkers regarding their time in Care. Whilst some may feel it is too burdensome to do this, it must be remembered it is a **child's right** to this information, not a privilege.

It is widely known that many Care Leavers' records have been destroyed over the years both intentionally and unintentionally like in the Queensland floods. We are also aware that many private Children's Homes kept little to no records, and sometimes even accessing an admission and discharge date can prove difficult. We have many members of our organisation who have not been able to access any information about themselves. These include but are definitely not limited to:

- “R” who was placed in [REDACTED] government Homes has never received any records concerning his time in ‘Care’,
- [REDACTED] was in [REDACTED] Home and was a [REDACTED] State Ward for 6 years and both organisations have no records on him. He doesn’t even know who his parents are.
- M who had only two lines written about her lengthy time in the [REDACTED] Department of Child Welfare System,
- “S” who only received three pages about herself from the [REDACTED] government and was told nothing was kept on her brothers, and no records on her three brothers who was at [REDACTED]. McKillop Family Services have no records on her brothers.
- “G” who only had an admission and discharge date from [REDACTED] a government run Home [REDACTED]
- “V” who had her name changed to [REDACTED] by her foster parents and was known by that name for 7 years. [REDACTED] can’t find any record of her as “V’s” original surname was of Italian in origin. She is consequently missing seven years of records from her time in Care from the Child Welfare Department. As mentioned previously, she too had many negative things mentioned in her records including a letter from her foster carer asking to return “V” in exchange for a different child with lighter skin. (see attachment)
- Many Care Leavers who have tried to get their records from the [REDACTED] have been told that the [REDACTED] do not have any records.
- L who was in [REDACTED] written on his records it states he was admitted [REDACTED] on application from [REDACTED] as the mother died suddenly – she was alive then and only died in late 1970’s
- P applied for her records from [REDACTED] a few years back. Recently she has been to a lawyer seeking compensation for what the cottage house parent did in 1971, P knew there had been a court case when she was 11 yrs old, she remembers the police picking her up at Mittagong and taking her to court. Her lawyer applied for the court documents and only last week this NSW Care Leaver knew the first name of the abuser. The court documents were not contained with her State Ward file.  
Why Not?

T a son of a deceased [REDACTED] State Ward applied for his Father’s State Ward file in it contained a letter from his Grandmother pleading with the Child Welfare Dept to have her son returned to her from the Salvation Army Boys Home in Bayswater the letter is written in [REDACTED] 1936 we were given a copy and had to argue for the original just 2 months ago !

CLAN staffs have been requested to provide 3 forms of ID when applying for certificates from [REDACTED]



- The [REDACTED] Government is the only state department which requires original certified identification to access a state ward file which also places a great financial and emotional burden on care leavers. Many other organisations don't even require certification let alone original documents.
- The [REDACTED] in [REDACTED] is the only private organisation we have come across who also requests original certified identification. The particular Care Leaver who we were requesting this for lives overseas and understandably did not want to part with her original identity documents as these can be the only tie some people have to their childhood or identity. In addition to this, sending original certified identification requires postage, which is quite costly for a pensioner overseas. When our caseworker discussed with the [REDACTED] if there was any way around this, they would not budge, [REDACTED] to accept why it would be an issue. Furthermore, they claimed that it was common practice (when we are very well aware they are the only private organisation to do this) and also questioned our caseworker as to why the Care Leaver had to go through CLAN and could not go directly to them. Our caseworker discussed how hard it is for Care Leavers to deal directly with the organisations who mistreated or abused them. These attitudes are prevalent amongst those working in the sector, and highlight the difficulties we as an advocacy agency are up against, and why Care Leavers don't want to deal with past providers to begin with.
- CLAN applied for state ward files for two Brothers from [REDACTED]. It was taking a long time to get a response, and when CLAN confronted the Department of Families [REDACTED] to question the progress, we were informed that any records post 1993 containing information about child abuse could be withheld due to a specific Act. Once we were told the records were on their way, a few weeks later we were phoned and threatened that there is section in the legislation that allows them to deny access due to the large amount of files, so if we wanted anything not to keep pushing it. Families [REDACTED] refused to release their files in full, on the grounds that they claimed they were too big, and it was too expensive for them to release it. This resulted in CLAN contacting a Federal politician and they having a conversation with the Departments Director and as a result we still had to specify what information was required and 18 months after first requesting them. We should not have to go to a Federal member to get action.
- Similarly, we recently received records for another two South Australian prison inmates after a delay of for about 18 months.
- When our member "I", applied for her [REDACTED] state ward file a number of years ago the only way she was allowed to have access was to go to into a [REDACTED] [REDACTED] office and sit down for half an hour at a time and read it.
- "T" from [REDACTED], found that his files from the same Home had been split up [REDACTED] [REDACTED]. Some were given to [REDACTED] and some are with the [REDACTED] "T" was also after the originals of some documentation including his Baptism certificate and a letter he had written as a

child, but this won't be given without the specification of the original documents in the application. This attitude from a Christian organisation is unacceptable and they should stop putting brick walls in care leavers way.

- The [REDACTED] also refused to give another one of our members "R", his sister's originals which are on file. His sister died and "R" requested the postcards and other letters that were on her file. The [REDACTED] have refused his application, instead only releasing colour copies of these documents.
- Another of our members "T" from [REDACTED] saw that his mother's will was mentioned in his file. When we requested to see it, we were told it wasn't there, and after we CLAN advocated to the Minister and Department the will was consequently found. A copy was given to CLAN to give "T"
- [REDACTED] have started giving some of our members' originals in their state ward files which we applaud, however this needs to become more widespread. On another note, [REDACTED] have recently been finding more records and paperwork which was not released in Care Leavers files. Unfortunately, [REDACTED] have been directly calling some of our members who initially used CLAN's advocacy service to obtain their records, to tell them they are sending these 'new' documents. These phone calls have been received with shock for many individuals and have been a cause of great upset as it is something they were unprepared for. Whilst [REDACTED] have done a good job finding more information for Care Leavers, they must remember it can be quite traumatising to receive these sorts of records about yourself, let alone when you believe that you already possess all your records. [REDACTED] should use intermediaries where possible especially if the applicant has already used an advocate to obtain their records in the first instance.
- CLAN applied for another of our member's state ward records "S", from the [REDACTED] government on 23<sup>rd</sup> March 2016. Not only do you have to specify what information you are seeking (instead of just applying for a whole state ward file), the [REDACTED] government responded to say they did not expect to have the information sent until 7<sup>th</sup> November 2016. This waiting time of over seven months is completely unacceptable.

These are just a snapshot of some of the more recent frustrations which CLAN has dealt with on a daily basis in attempting to access Care Leaver records. We are continually faced with barriers that various organisations put up, usually because they do not properly understand the legislation and guiding principles under which they are releasing information. Furthermore, many seem to lack a basic understanding of the Care Leaver experience and have no empathy for their plight and the importance of records and documentation to the individuals that we work with. Training must be provided to all staff of all organisations to dealing with record keeping. Staff need to be care leaver informed as well as trauma informed. to understand the importance of their job when they are releasing care leavers personal and family information. As said previously, this is not a luxury for Care Leaver's, it should be their **right to access ALL their information in its entirety and not be redacted.**

## Promoting and developing good recordkeeping practices

As evidenced above, it is clear that there have been little to no record keeping practices in the past, let alone good ones. The culture and understanding of records creation, maintenance and disposal needs to change in order for future Care Leavers to have what they should be entitled to – which is an identity. Unfortunately for many older Care Leavers who we have spent years assisting, this may be highly problematic due to records never being created in the first place. If the system placed a greater value on children's wellbeing and their right to an identity, many Care Leavers would not be in the predicament they find themselves in today. Those working with children and those working in agencies in charge of maintaining, releasing and disposing of records need to have a greater understanding of what Care Leavers have gone through and of the importance and value of documentation to them. Understanding is required, not only of the legal consequences of keeping and maintaining good documentation but also of the emotional and psychological effects of good record keeping practices on Care Leavers.

Organisations need to take the lead to make their Staff 'Care Leaver informed' and trauma informed i.e. understand the background and plight of Care Leavers and the meaning of records to them. Hopefully in doing this, many organisations may better understand why Care Leavers want or need their records, and in turn, they may be more likely to reduce unnecessary red tape around releasing records. Furthermore, organisations need to be familiar with the United Nations Convention on the Rights of the Child which Australia is a signatory to and which enshrines all children's right to an identity including those who have been in the child welfare system.

As the Commission knows, recently the Federal Department of Social Services released the publication 'Access to Records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders and Best Practice Guidelines in providing Access to records' which should also be adhered to. Moreover, CLAN has also written our own 'Charter of Children's Rights to Records' which should be read and understood.

Organisations require training in this area in order to understand how to best create records and how to maintain and release them in an understanding, empathic and supportive way. CLAN provides training for many organisations around these issues and educating organisations about Care leaver issues and we would be more than happy to provide training to any Past Providers and record organisations. Unfortunately, the current culture within many of these organisations does not support this outlook, and records are seen as nothing more than pieces of paper that they keep to abide by legislation. There are many other actions organisations could take if they really wanted to understand and learn about the importance and usefulness of records to Care Leavers, some of these things include but are not limited to:



- Visiting the National Orphanage Museum currently located in the CLAN office,
- Subscribing to the CLAN newsletter in order to read the personal stories of Care Leavers and those with the lived experience,
- Abiding by CLAN's charter, the UN CROC as well as the DSS Access Principles and Guidelines,
- Reading *Orphans of the Living*, a great overview of the Child Welfare system in the twentieth century written by CLAN co-founder Joanna Penglase,
- Reviewing the CLAN website,
- For those creating records - having training in all types of abuse documentation not just sexual abuse,
- Reading the various Senate Inquiry and other related Inquiries regarding Care Leavers,
- Accessing more training by professionals regarding the legislation and their interpretation of it in redacting records.

It is also of vital importance that governments play a stronger role in overseeing and promoting recordkeeping. Unfortunately, the community welfare sector and organisations who work with children often claim to be too busy and under-resourced and as such, recordkeeping practices are one of the first things they become lax on. This must not be the case, the consequences are too dire if it does. However, many organisations probably need an incentive to make sure that their recordkeeping practices are up to scratch and this may only come with the introduction of penalties for those who do not abide by certain principles or practices. Governments need to take a stronger role in implementing the principles it has published. There needs to be more accountability and penalties surrounding this area. Specific reporting, and reviewing requirements in recordkeeping should be built in to funding agreements and funding penalties must apply to an organisation that does not meet the standards.

There also should be a sharper focus on educating future workers in the child welfare sector (and any other vocations that work with children) on the importance of good recordkeeping practices. University and TAFE institutions should introduce requirements around learning record keeping practices and making them 'Care Leaver and trauma informed' so as to promote and foster good record keeping practice from the beginning.

It is also of the utmost importance that parents, foster parents and children also contribute to the creation of records. CLAN believes that too many Care Leavers have little or no understanding of what happened with their biological family, which resulted in them being placed in the Child Welfare System. The most common question Care Leavers ask is

Why was I put in an Orphanage / Home?

Similarly, many Care Leavers do not understand why they were 'returned' from foster parents or moved on to another placement, leaving them to feel abandoned all over again and blaming themselves and wondering what they had done wrong. It is imperative that those creating records understand and think of these scenarios and the impact that

instability has on these already fragile and vulnerable children's psychological wellbeing. Therefore, CLAN propose a number of recommendations to address these issues:

1. Biological parents should write a letter that explains why their child has been placed in the child welfare system or has been made a state ward. Whilst this may be hard to enforce, where it can be done, it would contribute to a child's understanding of why they went in to Care.
2. Foster carers should be required to write a letter of explanation if they request a child is removed from their Care. Obviously it will be documented in the caseworker's notes, but having words directly from the foster parent themselves can be quite powerful for a Care Leaver who has spent years wondering what they did wrong. T who received her file in September 2016 read this in her records "foster parents request the removal of the girl" the real reason wasn't not included anywhere No page states "Returned Foster parents" No explanations given
3. Furthermore, all names of Foster Carer's should be released with Care Leaver's files, as they are essentially public servants earning tax payers money. All names should be disclosed and transparent.
4. Anyone who accesses a Care Leavers file for any reason must be recorded, inclusive of Public Service numbers, Ethics approval researches names and details etc. These particulars need to be recorded in the Care Leaver's file.
5. Children must have all life story material documented and included in their file, anything of importance to that child including drawings at school, personal letters or certificates of achievement. These personal records should be securely stored and placed in their file for collection when they leave Care – or at some stage later when they require the information.
6. Children should be given the opportunity at any time to write something to go on their file, whether it be their version of events from an incident or simply a letter to explain how they are currently feeling at a particular placement.
7. Have an independent advocate write a report about the child at least twice a year.
8. Have all formal interviews with a child by caseworkers and other significant adults video-recorded and stored on a USB (or similar technology) for future retrieval.
9. CLAN also believes that all children in Care should also have the ability to assess whether they feel a particular placement is right for them. This may include interviewing the foster parents or being given information about the schools, activities and surrounds that may help influence their decision.

Hopefully these recommendations can be implemented and all children who have spent time away from their biological family in the child welfare system will be afforded the opportunity to form an identity, learn important information about themselves, and also have a chance to hold on to items of importance from their childhood. This is certainly something that the majority of current Care Leavers do not have.

## What records should be created – and how?

CLAN believes that the greatest care needs to be taken in documenting ANY type of abuse, not just sexual abuse. The records need to contain as much information as is available to be documented, the information needs to be factual, and it should be constantly updated so as to include any details of corresponding police reports, charges and details of their investigation. Similarly, if a court case ensues any details of the court case and those involved would also be included. This would mean that a child who may have no memory of the follow up events after abuse will be able to track down information from the police and the courts with much more ease than they currently can.

When CLAN delivered a [REDACTED] State Ward file to a prisoner, it was written in his file that he was **“Living with a paedophile in [REDACTED], Sydney”**.

This type of statement is extremely useful for this Care Leaver if he ever chooses to pursue legal action. It must be equally distressing that a DOCS worker knew that a child in care was at risk when writing the report and did not report it to the police.

Furthermore, Child protection agencies and advocacy groups should liaise with police departments and the DPP’s offices to find out exactly what sorts of information would be the most helpful if a child wants to pursue police charges and court action at a later date.

**Currently in NSW, court information is archived by date not by name** and CLAN have had great difficulty in accessing historical court records on behalf of our members who are not able to pinpoint significant details such as the time period. CLAN also recommends that the person writing the report should include their full name and ID number so as to be followed up with ease if anything requires that to happen in the future.

We also believe that all records should be reviewed by another worker, preferably a senior officer who is able to make sure the right amount of details as well as the correct sort of information is documented in files all the time. We strongly believe that new graduates should not be the ones writing case notes in files, rather they should be working alongside a more senior caseworker who can teach them and guide them through the process for their first year. Furthermore, there may also need to be more focus on the handover between caseworkers. We are aware child protection departments can have high turnover and undoubtedly this has the potential to impact records creation and maintenance. Again it is also important to make sure records cover both positive and negative aspects of a child’s experience and of their life in care. Continual derogatory remarks about a child’s family, wellbeing, attitudes or intelligence do nothing to help anyone. As mentioned previously we also believe it is the job of the funding body to ensure records are up to standard and therefore whether it is something reviewed as part of a contractual obligation in receiving funding or whether others are hired for the sole purpose to focus on records, there needs to be a greater emphasis from the top down. There may indeed at some point in time be

unintended consequences of creating detailed records about child abuse, this however does not negate the fact that these records need to be created for the child's best interests and also in the community's best interests.

With regard to creating records which accurately reflect a child's experience we again support the introduction of a child advocate separate to a 'caseworker'. The advocate's sole purpose is to hear the voice and point of view of the child. Records need to be created frequently by this advocate so that the child's voice is heard on file. Similarly, we have also advocated for all children in care seeing counsellors or psychologists on a regular basis to keep track of their mental health. These reports should also be kept on file.

We believe that ALL children in care should be given the chance to make a statement whether in writing, verbally, or in some other age-appropriate format, about their wellbeing or how they are feeling or adjusting to a situation. We also feel that all interviews with children should be recorded and preferably videotaped. This produces the most accurate account of a child's experience. In terms of removal of children and how this is documented in records, CLAN feel it may be worth considering having photographic evidence of a child's environment, and also if there is abuse, having photographs of their assaults or injuries placed on file. It is important for ALL children to understand what has happened in their lives, both good and bad. The more accurate their records are with first-hand information the more they will be able to make sense of their experience.

When Releasing records and files all workers should have knowledge of the government's own child welfare history

In May 2015 [REDACTED] released a file with incorrect information they stated that [REDACTED] were operated by NGO's these Homes Training Schools were [REDACTED] Government run Homes. The Care Leaver was directed to contact these agencies for his records ?

Also stated on the [REDACTED] files are

"You may find that the records make more sense to you if you begin reading them from the back"!

## Maintaining Records

The maintenance of records is just as important as the creation of records, if they aren't maintained correctly there is no point putting the time and effort into creating them. As mentioned previously in this submission, CLAN have many members who for one reason or another have not been able to access any files. For many people it is because records have

not been stored or maintained correctly and their files have been lost or destroyed over the years. CLAN has been informed this has happened due **to fires, floods, rats, lost**, and so on.

CLAN are aware that improper storage of files in [REDACTED] led to many records being destroyed in the floods.

CLAN are also aware of an issue with [REDACTED] run by the [REDACTED]. There was a court case a number of years ago and we still do not know who maintains the records for this home. We currently do not know where these records are. We have rung the [REDACTED] and [REDACTED] for an update.

There are also cases like [REDACTED] (which the Commission's paper has referred to) where a large amount of files remain unindexed which means that those working to release information do not have access to a large number of files. We do know that [REDACTED] are working on this. This creates problems when many Care Leavers are told by state support services to provide proof of being in 'Care' and these Care Leavers do not have any proof because the state has not maintained their records correctly. Additionally, it also prevents Care Leavers from building an identity, learning about their past and their family history, as well as pursuing criminal charges or civil claims. Whilst we are aware of the situation in [REDACTED], how do we know this is not the case with the many other institutions out there who hold historical records?

A major effort needs to go in to indexing historical records nationwide from both public and private organisations. Whilst this will of course have negative resourcing implications, it is something that must be done. Once indexing is completed, it will also have positive resourcing implications as it will take less time and effort on the other end to find records and files. Workers who may have at one time spent countless hours scouring through records will now only spend a fraction of the time if they are organised and consequently maintained properly. This means less resources will eventually be needed or more will be able to be done with the resources that have been allocated. When indexing, those records which are over 100 years old should not be a high priority. By contrast, records likely to refer to individuals who are alive, it should be prioritised, as all Care Leavers deserve to see their records before they die.

If the file contains reports of abuse of any sort where criminal charges can be or have been laid, they should be flagged with some sort of notification on the front of the file which indicates to any relevant person, who will eventually file it, that it contains information pertinent to abuse. Whilst they should all be indexed alphabetically regardless of content, it will be important in the release stage that the worker understands that this file contains information on abuse.

If an institution closes down, all files should be given to the National Archives of Australia. ALL records should be retrieved from the institution which is closing down and all relevant services must be notified about the relocation of the files. This includes records advocacy services such as CLAN as well as the Child Welfare Agency in the relevant state. If the institution changes ownership but is conducting the same business, it is imperative that they

continue on maintaining the records which are already there, it is part of the job which they took over and an important part of their business.

## Disposal of Records

Firstly, it must be stated that **CLAN does not condone or advocate for any Care Leaver records to ever be destroyed.** As previously mentioned, many Care Leavers have missed out on receiving their files because someone has taken it upon themselves, to arbitrarily destroy files. Care Leavers who have never had a chance to read their files, find out about their biological families, or who have no supportive evidence for a criminal or civil case, let alone proof of being in Care, will tell you the importance of not disposing of records.

**In the 16 years of CLAN's existence, no member has ever approached us advocating for the destruction of their records.**

Advocacy of destruction of records.

CLAN believes, is a tiny minority viewpoint. Whilst we understand that some Care Leavers may feel ashamed or embarrassed about things that are found in their records it should be the workers, the Government, Churches and Charities that should be ashamed. It is important to remember that these records, where they are inaccurate, incomplete or misleading can be challenged under most FOI legislation. CLAN believe that all state governments should release a fact sheet and run workshops for Care Leavers to attend to inform them how to exercise this right. CLAN will be producing a flyer that will encourage Care Leavers to write their version of their childhood and call for it to be placed with their State Ward file. CLAN will progress to producing a flyer to assist Care Leavers to write their version of their childhood and require all state governments to place it on the State Ward files

Furthermore, these records form a part of history. Not only do they contain information about the practices of the time, but they can hold key information for Care Leavers immediate families and descendants. As part of CLAN's casework service, we often apply under FOI legislation for State Ward files and other records for Care Leavers' family members. Many children and grandchildren who approach us, not only want to understand their family history but also want a greater sense of their own identity as well as a better understanding why their parent or grandparent may have behaved or treated them in certain ways. ██████████ would never have found out her Great Grandmother ██████████ was in ██████████, if her records had been destroyed. Just recently ██████ found her second cousin as a direct result of finding her Great Grandmothers records and appearing on ██████████ Radio Show.

In our view, it is extremely hypocritical to say that Care Leavers have the right to access files regarding themselves and their families because they want to form an identity, but at the same time to deny Care Leavers children or grandchildren the same right to learn about their family history.

Many Care Leavers and Child Migrants have come to CLAN extremely disappointed when they have not been able to access their parents' records. Barnardo's policy, for example, excludes the right to anyone but the Care Leaver applying for their records even after the Care Leaver's death. This has caused a lot of distress for the second generation and generations to come. The UN CROC enshrines this right for ALL children not just those raised in the child welfare system. If we destroyed records so descendants of Care Leavers could never access their family history we would be denying future generations of this very right.

CLAN strongly recommends that all records regarding Care Leavers - not just those which contain abuse - be subject to mandatory retention. Currently we feel there is a huge inequity between aboriginal and other Care Leavers in regards to disposal schedules. The Commission's paper outlines that in both NSW and South Australia, Aboriginal records must be kept in perpetuity. CLAN endorses that policy, and strongly recommends that all Care Leavers records should be kept in perpetuity.

As outlined a number of times in this paper, there are a great many reasons for records not to be disposed of, even after 100 years. The abolition of statutes of limitation with regard to child sexual abuse in most jurisdictions, makes it all the more imperative that records be retained. These records can provide important information for those pursuing civil claims and they can also be of great importance in Inquiries such as this Royal Commission into Institutional Responses to Child Sexual Abuse. If records are to be destroyed (we are not convinced that there are good reasons for doing so), destruction should only be permitted according to protocols approved by legislation which must be subjectified to wide public consultation and accountability measures. In the event of a proposed approved destruction, a record should be kept in a formal register with the details of that destruction.

We know that in the past, records have been culled without due process and without regard for the consequences to Care Leavers and their families. Many Care Leavers currently find themselves in situations where they cannot locate any information regarding their childhood or proof of being in 'Care'. If there was a register at least Care Leavers would have proof of being in 'Care', they just unfortunately would have lost all the information that was recorded and of great importance to them. CLAN recommends that state governments compile a register of records that have been culled in the past (what records have been culled and what years), so as to make the information publically available.

## [Accessing records](#)

CLAN have not seen a marked difference in records access and release since the introduction of the DSS Access Principles for Record Holders and Best Practice Guidelines in Providing Access to Records. Some of the key areas that continue to cause concern are:

- The release of full copies of information,
- Lack of access to original documents with the exception of FAC's in NSW,
- Difficulties with proving identity and the use of certified original identity documents,
- Care Leavers having to access redacted information via GIPA and its counterparts which has to be paid for,
- Having to specify what particular information the Care Leaver requires in South Australia and Western Australia instead of the full release of their state ward records.
- Care Leavers in Queensland are only given their State Ward records on CD as the Queensland Government believe it is too expensive to provide a paper copy. As such if a Care Leaver requests a paper copy, they charge 25 cents per page. There are provisions for a waiver but this again involved additional paperwork and is subject to the worker's discretion.
- In certain states since 1993, records are withheld at the discretion of a worker if there is any mention of Child Sexual Abuse. The idea that any Care Leaver is not privy to the details of their own abuse is outrageous.
- Redactions are still common and applied inconsistently. What is redacted at one time is not redacted in another application showing the subjectiveness of individual workers. If redactions are to continue they are not to be completed by inexperienced or trainee workers, and all those who carry out redactions should have to initial them with their ID number to promote accountability. All redactions should be fully explained in plain English so that the applicant understands the reasons for each redaction, and it then informed of their rights to appeal the decision.
- Many Care Leavers are getting blanks and blanks of blank pages in their state ward files. One Care Leaver got 26 blank pages.

It is obvious that the DSS Principles and Guidelines are not yet being adhered to, and often the reasons are that the Principles and Guidelines are at odds with the Australian Privacy Principles (APP's) or related FOI legislation. CLAN feel that the APP's and FOI legislation is not the best legislation to guide those organisations in the child welfare system. The legislation was not designed for the child welfare sector and does not take into consideration issues unique to Care Leavers. CLAN believes that the DSS Principles and Guidelines, underlying the Charter of Rights to Records, should be incorporated into legislation governing the running of all those organisations who work with or have worked with children in the Child Welfare System. This should be nationally consistent legislation which ensures that ALL Care Leavers have the right to full and un-redacted copies of their records free of charge. Care Leavers need access to ALL their information - the good, the bad and the ugly as, it is details about their lives and their history. In no instance should



someone be denied their own information about their own life, especially if it contains ANY sort of abuse.

For legislation and practice to be properly implemented, the government and various child welfare organisations need to invest in training – both on the job and in tertiary institutions, entailing all aspects of records legislation and best practice for release. When accessing records on behalf of Care Leavers, CLAN always provides support to those who request it during this process. Sometimes this involves accessing records on someone's behalf as an intermediary. Sometimes it also involves going through an individual's records with them and providing emotional support at the time. When advocacy services like CLAN are not involved in the access of records and organisations are dealing directly with Care Leavers they need to take a number of things into consideration. Firstly CLAN always strongly advises not sending records around anniversary dates which include Birthdays, Mother's Day, Father's Day, Easter, Christmas and any dates of death wherever these are known. Most state organisations currently direct Care Leaver's to appropriate support services, however ALL organisations releasing records need to make sure they can refer to support services and, if the client is willing, to organise a warm referral for someone to provide emotional support face-to-face or over the phone. It must be remembered though that this is not what all Care Leavers want or need. Whilst we need to take appropriate steps to make sure Care Leavers have adequate support, we cannot compel Care Leavers to seek or receive help. Many Care Leavers feel that reading their records is a private process and prefer to do this in the comfort of their own home by themselves or with a close family member or friend.

Whilst CLAN commends the Royal Commissions attempt to create five proposed principles, we do not wholeheartedly agree with the contents of some of them. Our concerns include the following:

1. ALL records should be appropriately maintained, but especially those consisting of ANY type of abuse, not just child sexual abuse. Records can be used in the future for criminal charges as well as civil actions, and therefore it is imperative that ANY abuse is documented thoroughly and maintained appropriately as it is not just child sexual abuse which can be later charged or sued for.
2. CLAN does not condone the disposal of records pertaining to child welfare in any circumstance. We are suspicious of the motives of those who want to destroy records, and are not convinced that there are any good reasons why Care Leaver records should be destroyed.
3. Similarly CLAN do not believe that any Care Leaver should be restricted from accessing or amending their own information. It is their right to create an identity and all Care Leavers require their records and they help to fill in missing gaps about their own lives. Similarly, we understand that for some Care Leavers the language and the subjectivity of workers who have written in their records can be distressing, and this is worsened when the information is blatantly wrong. There should be no

limitation or exception that prevents any Care Leaver from amending their records in this situation.

4. Lastly CLAN do not believe that the Royal Commissions principles, nor the DSS Principles and Guidelines will be adhered to if there is nothing enforcing their adherence. Legislation needs to be created nationally to ensure all organisations associated with creating, maintaining and disposing of records understand their legal responsibilities and obligations.

## Records Advocacy Service

CLAN are currently the only advocacy service, specifically funded to carry out advocacy for Care Leavers. Whilst the state Find and Connect Services assist Care Leavers to obtain records, we do not see them as an advocacy service. Rather, they are a records retrieval service. Unfortunately, on many occasions, when access requests have been denied, the state Find and Connect services have not advocated for Care Leavers' records or other requested documentation. On a significant number of occasions, CLAN has been told that it is CLAN's job to advocate, and that we are better suited to this than the Find and Connect personnel.

CLAN currently spend a lot of time accessing various records and documentation for Care Leavers. CLAN not only apply for state ward files and other records from non-government children's Homes, but also we attempt to gain access to any other documentation that any Care Leaver requests.

CLAN has obtained police records, war records, court records, birthing records from hospitals, birth certificates, death certificates, divorce papers, marriage certificates, mental health records, coroners reports, autopsy reports, wills, cemetery records, historical newspaper articles, electoral rolls, passenger ship lists, citizenship documents, doctors and psychologists reports and many other things. Furthermore, CLAN lobbied the Minister for Defence to get access to Care Leaver's parent's war service records.

CLAN has been lobbying for access to the Child Endowment records stored in the Australian National Archives in Canberra for many years , access to these records will assist [REDACTED] [REDACTED] and others who the Government and agencies have No records of their childhood, it is bad enough getting incomplete records and information. Imagine being told that the [REDACTED] Government and [REDACTED] do NOT hold 1 piece of paper on you Yet you were in their care for 6 long years !

CLAN go above and beyond to advocate for this information and to ensure Care Leavers are not out of pocket if it can be helped. We do our best to obtain this information whilst advocating for our clients best interests and have on many occasions had to fight for original

documentation and against original certified ID being sent. We are absolutely committed to the principle and practice that serving our client's best interests is our top priority.

CLAN operates as an advocacy service and we always have. We have sixteen years' experience advocating for Care Leavers. Find and Connect services understand this, which is why they refer advocacy issues to us. As such, we strongly believe that CLAN is an existing body already advocating for Care Leaver records, and thus we are designed to continue doing this in the long term. We will continue to do anything in our power to make sure we obtain the best outcome for the Care Leavers.

Governments all across Australia have an obligation to provide children who are, or have been, in the Child Welfare system, with an identity. It is long overdue that legal guardians of these children do the right thing by Care Leavers, and provide them with ALL their family information, no matter the content. The good, the bad and the ugly.

CLAN once again sincerely thanks the Royal Commission for the opportunity to respond to your Records and Recordkeeping Practices consultation paper. Thanks for listening to the brick walls & battles we Care Leavers have encountered when we manage to find the courage to request our records from the State governments or the past providers

We trust you are able to use this information and our suggestions to form recommendations which will allow both current and future Care Leavers greater and easier access to their own records and family history.

Finally we would like to inform you of a National Summit that CLAN has joined in Partnership with the following organisations Child Migrants, Connecting Home, Create Federation University Australia, Monash University & Melbourne University the title is "Setting the Record Straight – For the Rights of the Child." We hope that the Royal Commission will attend, it's 8-9 May 2017 Deakin Edge, Federation Square, Melbourne

**We are the only people in Australian society that has to go to a Government Department in order to get our personal and family history. It is our history and it is our right to have our full history.**



## **CARE LEAVERS AUSTRALASIA NETWORK**

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

**“I know more about Captain Cook than,  
I know about my own Father”**

Geoffrey 80 year old

NSW Care Leaver

**CLANS SUBMISSION TO THE ROYAL COMMISSION ON RECORDS  
AND RECORDKEEPING CONSULTATION PAPER**

