

Dr Cate O'Neill Accessing the records of the Forgotten Australians: learning from the human rights context to improve archival practices and restorative justice

Summary: *This paper positions the access barriers facing Forgotten Australians wishing to access records from their time in institutional 'care' within a global human rights context. Unlike in other countries (such as Canada with its Indian Residential Schools Truth and Reconciliation Commission) the context and rhetoric of human rights has been of minor importance in policy initiatives that seek to address the plight of Forgotten Australians, and others who experienced institutional 'care' as children. I will argue that this context and the global instruments including the Convention of the Rights of the Child (1989) and the ICA's draft principles of access to archives (2011) offer new ways to improve the archival practices of government and non-government record holding organisations, to achieve justice for Forgotten Australians.*

The term 'Forgotten Australians' refers to the thousands of people who experienced institutional 'care' as children during the twentieth century. Senate inquiries reports in 2004 and 2009 stressed the importance of archival records to Forgotten Australians for reasons of establishing identity, reuniting with family, coming to terms with the past and providing evidence of past abuses and wrongdoing. Other inquiries in Australia since 1997 into child migration, the separation of Indigenous children from their families and communities, and into forced adoptions, all came to similar conclusions about the wrongs committed against these children, and the vital significance of archives and records.

In this paper I will discuss how these inquiries, their reports, and the policy responses by governments and past providers of 'care' have not directly engaged with the discourse and rhetoric of international human rights. Unlike similar movements in other countries, there has been a reluctance for Australian governments to offer financial compensation for those who have been wronged, with reparations instead emphasising processes of acknowledgement, restitution and rehabilitation.

This paper will discuss the policy responses that accompanied the national apology to Forgotten Australians and Former Child Migrants in 2009, including the Find & Connect web resource, a project I've been working on since 2010.¹ This project is fertile ground for an exploration of the importance of archives and records to Forgotten Australians, and the challenges that face the archivists and historians responding to traumatic and historically contentious events.

Archives - After the Apology

In November 2009, some five years after the 'Forgotten Australians' report was tabled (and 8 years after the inquiry into child migration), the Australian government issued a formal apology. It was accompanied by the announcement of a package of new policies for Forgotten Australians and

¹ The Find & Connect web resource was launched in November 2011. www.findandconnect.gov.au

Former Child Migrants, under the name 'Find and Connect'. This is one policy area in Australia where archivists, records managers, historians and other 'memory professionals' are closely involved. The vital importance of records and archives to people who experienced institutional 'care' is well accepted in Australia. As well as the Find & Connect web resource, the government funded an oral history project, a museum exhibition and a grants program to help organisations improve their management of records. Despite these initiatives, Forgotten Australians continue to face significant barriers when trying to locate and access records, and for many there is a sense of dissatisfaction, nearly 3 years down the track from the 2009 apology. There are still significant access barriers to the records of the Forgotten Australians – much time has been spent talking about or actually developing directories and name indexes to improve accessibility, and these have been of some benefit. The inadequacy of the various existing privacy and freedom of information laws to meet the information needs of Forgotten Australians is widely acknowledged. Yet debates about how to balance the rights of individuals to access their own records with others' right to privacy have been going round in circles for many years. On the whole, record-holding organisations – both government and non-government – have failed to take significant action to improve the management of the records of Forgotten Australians. There is a sense that the scale of the problems - the legacy of decades of poor practice, the sheer magnitude of the task, and of course the lack of resources - is overwhelming.

In this paper, I will consider whether repositioning the situation of the Forgotten Australians within the global human rights context offers new possibilities for the management of their archival records, and for their struggle for justice and reparation. This context also necessitates repositioning the traditional role of the archivist as the objective, impartial custodian of the neutral by-products of administration. In the words of one South African archivist:

We archivists believe, that as guardians of government and personal records, we are responsible for preserving the documents that bear witness to the disappeared, the imprisoned, the tortured and the assassinated wherever in the world human rights are obliterated.²

Struggles over remembering the Forgotten Australians

The approach that I am proposing involves seeing the records of Forgotten Australians as evidence of human rights violations. As I will discuss, this is not a straightforward proposition in Australia, where the history of institutional 'care' is in a dynamic process of being constructed, negotiated, contested and shaped, by many players. Within the 'community' of Forgotten Australians – which

² Gabrielle Nishiguchi, quoted in the ICA Human Rights Working Group newsletter, February 2008, http://www.unesco.org/archives/hrgnews/_stacks/hrg0_022008.html

incidentally is a term rejected by many people who grew up in institutions – there is contestation about how 'their' past is to be remembered and commemorated. The narrative of Forgotten Australians as victims of human rights violations is seen by some as 'negative commemoration' which privileges the voices of 'victims' and marginalises those who see their childhood in 'care' differently.³

This contestation about the truths and narratives of 'care' in Australia is the landscape in which we are working to develop the Find & Connect web resource. The goal is to acknowledge this complexity, and to build a web resource that is able to encompass conundrums about history, truth, rights and wrongs – while at the same time being a practical and meaningful knowledge base for all sorts of users.

Forgotten Australians and human rights

Australia ratified the Convention on the Rights of the Child on 17 December 1990, an instrument which declares a child's right to education, and to be protected from economic exploitation, right to access health care and to be protected from sexual exploitation and sexual abuse. The Convention also states that the child who has been abused, neglected or tortured has the right for her or his recovery to take place in an environment which fosters the health, self-respect and dignity of the child. The wrongs suffered by Forgotten Australians, as set out in the Senate report of 2004, can be seen as violations of the rights set out in this Convention, lending more weight and urgency to their claims for reparations.

In 2005, the United Nations High Commission on Human Rights affirmed that access to archives plays a vital role in 'learning the truth, holding persons accountable for human right violations, claiming compensation, and defending against charges of human rights violations'.⁴ Such international declarations and principles about archives' relationship to human rights offer the potential for new perspectives on the vexed issue of access to records, which as I have mentioned remains a major problem for Forgotten Australians. The ICA's Draft Principles for Access to Archives are of relevance to repositioning this issue in a global context. Principle 1 declares that 'the public has the right of access to public bodies. Both public and private entities should open their archives to

³ On 'negative commemoration', see Deborah Posel, 'History as confession: the case of the South African Truth and Reconciliation Commission', *Public Culture* (2008), 20:1, p.122. A recent Australian example is the media coverage in July 2012 about a proposal to establish an orphanage museum in the rural city of Geelong, Victoria. Comments posted on an article demonstrate the views of those who oppose this form of commemoration, and instead argue for the 'right to forget'. See http://www.geelongadvertiser.com.au/article/2012/07/12/336941_news.html

⁴ International Council on Archives, Committee on Best Practices and Standards, Working Group on Access, 'Principles of Access to Archives', draft 2011-05-26, p.10. available at <http://www.ica.org/9400/news-events/principles-for-access-to-archives-give-your-opinion-now.html>

the greatest extent possible'. Principle 6 is also crucial, stating that records that provide evidence needed to assert human rights and to document violations of them' must be preserved, 'even if those records are closed to the general public'. The acceptance of the ICA principles will bolster the calls from care leavers for more liberal interpretations of privacy legislation and for past providers of 'care' to open their collections to greater public scrutiny.

This year, an organisation called CLAN (Care Leavers of Australia Network) made a submission to the 60th session of the United Nations Committee on the Rights of the Child in Geneva. In this submission, CLAN requested that the UN acknowledge 'that Australian children in "care" had their human rights violated'. Drawing on submissions made to the Senate inquiry in 2004, CLAN provided examples of widespread physical, sexual and psychological abuse in Australian institutions, evidence of forced labour, and inadequate provision of education and health-care.



Fig 1: members of CLAN protesting outside Victorian Parliament House

The submission to the UN Committee demonstrates a shift in CLAN's campaigning from the local to the international context. Despite the achievements of CLAN and many other organisations and individuals, of finally receiving a national apology in 2009 and the announcement of federal 'Find and Connect' funding for various reparations, many Forgotten Australians are frustrated that the government did not implement the Senate's recommendations for a national reparations fund or a

Royal Commission into child abuse.⁵ The slow progress in providing Forgotten Australians with priority access to health, education and aged care services, as well as improved access to records have also led advocates to take their campaigns to the international stage.

Australian reparations

This shift to the global invites comparisons between Australia's response to the Forgotten Australians report, and similar inquiries into the treatment of children in other countries. Australia's failure to provide a reparation package that includes financial compensation distinguishes it from countries like Canada, Ireland, Norway, and Sweden. The government's rejection of the Senate's recommendation for it to establish a national redress scheme was justified by the claim that 'all reparations for victims rests with those who managed or funded the institutions, namely state and territory governments, charitable organisations and churches'.⁶

Only 3 of the 8 Australian states and territories have provided some form of redress for care leavers – Tasmania, Queensland and Western Australia. A discussion of these schemes is not possible in this paper, however, it is worth noting that the WA Redress scheme which ran from 2008-2011 was highly controversial. The maximum payments announced at the outset of the scheme in 2008 were halved in a shock announcement in 2009.⁷ Many complained that Redress WA led to re-traumatisation of applicants, and that the government's refusal to accept late applications led to injustice. In the two largest states, Victoria and New South Wales, governments have consistently ruled out redress and compensation schemes, meaning that care leavers are forced to individually fight their cases in the justice system. In my home state, the Victorian Government solicitor requires claimants to provide information such as the exact date on which they were abused, the precise nature of the abuse, details of any complaints they made about the abuse and specify the precise date when they began to suffer injury, loss and damage.⁸ This is a terrible burden for claimants. The lack of a redress scheme in Victoria lends even more importance to the archival traces of a child's time in 'care' – the records play a huge part in the case a person is able to build. Leaving aside the

⁵ Senate Community Affairs Reference Committee, 'Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children', 30 August 2004, see Recommendations 6 and 11. available at

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/inst_care/report/index.htm

⁶ Government response, tabled in the Senate, 10 November 2005. available at

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/inst_care/index.htm

⁷ 'Outcry at cut in abuse compo', *The West Australian*, 29 July 2009.

⁸ 'Details required on decades-old abuse', *The Age*, 10 November, 2008,

<http://www.theage.com.au/national/details-required-on-decadesold-abuse-20081110-5lpz.html>

issue of the shortcomings of most records kept by care provider organisations – either as evidence of abuses committed, or as a basis for constructing identity and coming to terms with the past – the use of records in legal action has contributed to an environment where organisations are extremely risk-averse and defensive in terms of providing access to records. For many organisations, the risk of litigation and having to pay out damages is top of mind, rather than any principles about an individual's right to access records about them.

The Australian response has been distinct not only for its resistance to redress and financial compensation, but also in its difficulty making formal apologies for past wrongs. In its response to the *Forgotten Australians* report in 2005, the Howard government stated that 'it would not be appropriate for the Australian Government to issue an apology for a matter for which it does not have responsibility' although it did express its 'sincere regret' for the plight of these children. The same government's dogged refusal to issue an apology to the Stolen Generations after the *Bringing them home* report of 1997 caused great division between Indigenous and non-Indigenous Australia.⁹ The Stolen Generations had to wait until there was a change of government to receive their apology in 2008. One year later, the Rudd government apologised to Forgotten Australians and Former Child Migrants. The policy mechanisms introduced by the Australian government in the wake of the 2009 apology avoided the issue of compensation, falling instead into the basket of rehabilitation and restitution.

In Australia, there seems to be a general reluctance to look at the past treatment of children through the prism of international human rights. The Senate reports into the *Forgotten Australians* very rarely use the term 'human rights' – instead they refer throughout to the 'human cost' of child abuse and neglect, to the 'human suffering' caused by past practices, and to the 'human need for identity'.

Archives in the age of testimony

CLAN's submission to the UN makes a strong case for the human rights of Forgotten Australians to be acknowledged, a case made by drawing on over 500 submissions which were made to the Senate Inquiry of 2004. These submissions, now available as electronic documents through the Parliament

⁹ According to Tom Calma speaking in 2007, the *Bringing them home* report was met with a 'dogged silence of the federal government on this most fundamental of elements in a national process of healing and reparation'. See *Ten Years Later: Bringing them home and the forced removal of children*, Indigenous Law Centre and HREOC Conference, Sydney, 28 September 2007, available at http://www.hreoc.gov.au/about/media/speeches/social_justice/2007/aust_gov_responses_to_bthr.html

of Australia website,¹⁰ are a remarkable archival collection worthy of its own separate paper. Many of the submissions from individuals invoke notions of human rights, and call for recognition and justice:

I hope that every state ward and any child that's spent time in the so called care of the child welfare department speaks out and tells of the horrific treatment they received at the hands of these staff employed to care for us ... Someone must be made accountable. It must be recorded and known that nobody needs to be treated in such a dreadful manner ... I hope that you can compile all our stories and know it's a piece of Australia's history that is so shocking it needs to be looked at closely and questioned.¹¹

The stories in these submissions are highly emotional and often confronting. The process of giving this testimony had a huge emotional impact for many people. As one submission says:

It has taken me much effort to document this story, and many times I have had to stop, cry , and regain myself, to offer this insight as a positive gesture to raise awareness and consciousness for people to read, study and consider as a testimony of this era, and to support all the other testimonies submitted to this inquiry.¹²

The Senate committee spoke of the power of this testimony in its report: 'Without doubt this inquiry has generated the largest volume of highly personal, emotive and significant evidence of any Senate inquiry'.¹³ The Senate has learned from the experience of the 2004 inquiry, with its new procedure of providing support to people making submissions to the inquiry into forced adoptions.

The traumatic stories in this archive turn the received wisdom about the history of child welfare on its head. The testimony contradicts the narratives in official, institutional histories, or the 'facts' as represented in official records. Many submissions directly engage with archival issues, and eloquently consider issues of identity construction. Some submissions comment on other people's testimonies – with the documents made available on the web through the Parliament website, people making submissions were able to read each other's stories – another interesting feature of this archive.

Today, testimony plays a central role in inquiries to uncover past wrongs and abuses. Posel has written about the paradoxical emergence of truth commissions and other such inquiries, at the same time as postmodern theory has destabilised the notion of there being an objective 'truth'. In

¹⁰ Inquiry into Institutional Care: Submissions received by the committee as at 17/03/05, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=clac_ctte/completed_inquiries/2004-07/inst_care/submissions/sublist.htm

¹¹ Submission 271, Inquiry into Institutional Care

¹² Submission 369, Inquiry into Institutional Care

¹³ 'Forgotten Australians' report (2004): p. 4.

such inquiries, Posel writes that 'individual stories are documented as the core of an official record of a troubled past'.¹⁴

Some historians have raised concerns about the instability of authority, truth and objectivity in this 'age of testimony'. Bain Attwood writes that individual story-tellers have 'come to be regarded as the most authentic bearers of truth about the past, indeed as the embodiment of history ...', posing a challenge to the historical discipline and the way it creates authoritative narratives about the past.¹⁵ Other commentators complain about how the 'politics of regret' privilege 'victim narratives' over other stories, leading to people with a different view being silenced and marginalised.¹⁶ And some go so far as to describe 'victim narratives' as fabrications, in a world where people are encouraged to 'flaunt suffering' to get attention, not to mention financial gain.¹⁷

These archives of traumatic personal testimony raise real challenges for historians, as well as for archivists. By its nature, trauma is hard to keep at a distance. Indeed, inquiries like *Forgotten Australians* exist because of the persistence of traumatic history in our present. The 'traditional' stance of the archivist, as an impartial and objective guardian of records of the 'past' is not appropriate when the records document the violation of human rights. It is impossible to not be affected by the emotion and power of testimony. Archivists working in this space need to strike a balance between proximity and distance.¹⁸

Improving access through the Find & Connect web resource project

In an article about the records of Norwegian war children from 2005, Valderhaug proposed a model of 'archival justice' that involves archivists 'encountering the stranger' – the user of the archives who is looking for documentation of injustice committed against themselves.¹⁹ The ICA Access Principle 5 acknowledges there are many categories of these strangers to the archives (giving examples of adoptees seeking information about birth parents and victims of human rights violations), and stating that 'the equal right to access archival records is not simply equal treatment but also includes the equal right to benefit from the archives'. As Valderhaug asserts, achieving this equality requires special measures on the part of archivists.

¹⁴ Posel, p.121

¹⁵ Bain Attwood, 'In the age of testimony: the Stolen Generations narrative, "distance" and public history', *Public Culture* (2008) 20:1, p.75

¹⁶ Mark Smith, 'Victim narratives of historical abuse in residential child care: do we really know what we think we know', *Qualitative Social Work*, (2010) 9: 316

¹⁷ Frank Furedi, 'History as therapy', 5 March 2008, available at <http://www.spiked-online.com/index.php?site/article/4721>.

¹⁸ Attwood was writing about the role of public historians in the age of testimony when he called for an approach that negotiates between 'historical distance and historical proximity', p.78

¹⁹ Gudmund Valderhaug, 'Memory, justice and the public record', *Archival Science*, (2001) 11: 21

One of our aims working on the development of the Find & Connect web resource, is to create a digital public knowledge space that in some way fulfils this role of the archivist, as an important intermediary between 'strangers' and the records they want to access. However, the web resource is not simply for Forgotten Australians, and it is not only written for those who see their childhood as abusive and traumatic. It is a resource for all people who have experienced institutional 'care' in Australia as children – Forgotten Australians, Former Child Migrants, members of the Stolen Generations, people with intellectual disabilities. Not all users come to the website looking for evidence of abuse in 'care'. People visit the website for all sorts of other reasons, and the resources on Find & Connect perform the role of 'touchstones', cues that generate new memories and stories.²⁰

Find & Connect is also an important resource for the organisations that hold the records, many of whom continue to provide out of home 'care' today. In Australia, the records of the 'care' system are widely distributed, held by government and non-government organisations, and governed by a confusing range of access regimes and managed by a range of people with varied professional expertise in archives. The web resource is a way of mapping what we know about this complex collection of records, and it can be used to help convince record-holding organisations that openness and transparency should be their default position when it comes to access, rather than the risk-averse approach which is taken by many (particularly some church-based) organisations. The Find & Connect web resource can 'showcase' the collections of organisations who are willing to be open, and demonstrate how this can be of great benefit to the organisation and its image, as well as to the individuals whose lives are documented in these records.

Other important stakeholders in our project are family members of care leavers, students, historians, genealogists, and many other users that we have not even conceived of. This diverse group of stakeholders, all with different perspectives on the past, mean that we have to create a web resource that is capable of conveying multiple truths and narratives and to manage the complexity and contestation of this area of Australia's history.

As the national editor of the web resource, I personally am convinced that this history is one of widespread, systematic abuse of many children and the violation of human rights. This position informs my approach to my work on the web resource, however this position is not incompatible with producing a public knowledge space that also has relevance and meaning to people who take a very different view of the past. The historians working on content development are informed by the

²⁰ Laura Millar, 'Touchstones: considering the relationship between memory and archives', *Archivaria* 61, 105-126.

idea of contrapuntal history,²¹ where the 'truth' about a particular place or person or policy is the result of many voices, perspectives and stories. We include testimony alongside other archival resources, such as institutional histories, newspaper articles, photographs, objects and academic studies.

The content of the web resource is shaped by the email feedback that we receive from the public - indeed, this feedback plays a role in the generation of content. To reach our stakeholders, on the project we hold two workshops each year in every state and territory, to bring together a range of stakeholders to get their opinions on the Find & Connect web resource, and to generate discussion on broader issues relating to archives. Access to records is always an important topic at these consultations. Our state-based historians also engage with stakeholders to seek their contribution in content development, and to encourage record-holding organisations to adopt a proactive approach to access (ICA's Access Principle 2).

As mentioned earlier, many organisations can be overwhelmed by the magnitude of the task of bringing their records into order and thus making them accessible: How do we make the right call on balancing a person's right to access with another's right to privacy? What about all those photographs in those boxes? And all that stuff in that room that probably has got information about children in our 'care' but we haven't had a chance to look at it yet? These are the types of questions that can paralyse record-holding organisations (not to mention the prospect of being sued by former residents). Less-than-perfect documentation and control of a collection leads many organisations to not make *any* information available to the public about what records are in their custody.

Find & Connect is very much a 'work in progress' and a 'living resource'. It will never be finished, but we know that however incomplete our information is, it is still of great value. We encourage organisations to work with us to develop an open, transparent description of the records they hold, even if the organisation is not yet in a position to provide access to them. The relevant access conditions can be set out on Find & Connect, and in language that makes sense to Forgotten Australians. As the draft ICA Principles acknowledge, 'the description of closed archives promotes public confidence in the archival institution and in the archives profession, for it enables archivists to assist the public in tracing the existence and general nature of closed records and learning when and how they will be available for access'. Principle 10 states that archivists need to be participants in the decision-making process on access. Our project takes this further, in attempting to engage archivists,

²¹ Charles Maier, "Overcoming the Past? Narrative and Negotiation, Remembering and Reparation: Issues at the Interface of History and the Law," in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey (Lanham, MD: Rowman and Littlefield, 2003), p.301.

care providers, record holders and consumers in the discussions and decision making processes about access to records.

Conclusion

In Valderhaug's 2005 article, he poses the question: 'How should archivists react when approached by people asking for records documenting injustice, when they know that these records may or may not exist?'.²² In a way, the Find & Connect web resource project is trying to answer this question, and formulate a new approach that engages a wide range of stakeholders, many of whom were formerly 'strangers to the archives'. It is an approach that embraces the multiple users and multiple meanings of archives in the pluralised world. Approaching the archives of the Forgotten Australians as part of this much wider context offers new perspectives on the access barriers and archival issues affecting this group, and brings the archival profession into their campaign for justice and recognition.

²² Valderhaug, p.20