

Oral History Recording Agreement *Explanatory Notes for Interviewers*

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1 GENERAL

Recording oral history involves a complex mix of legal and ethical responsibilities and relationships that require careful thought, discussion and documentation to ensure that the objectives of the interview can be met without causing harm to interviewees or people referred to in oral history recordings. The appropriate time to address these issues is in the pre-interview stage, before anything is recorded.

These Explanatory Notes provide guidance for Interviewers. They should be read in conjunction with the [Code of Ethical and Technical Practice](#) that underpins all oral history work and is especially relevant to the *Recording Agreement*.

1.1 THE RECORDING AGREEMENT

The *Recording Agreement* is at the heart of the recording process. The Form contains the Interviewee's instructions regarding access to their recording, and the uses that may be made of it. Commissioners and Interviewers agree to these terms when they sign the form.

A *Recording Agreement* should be signed for all oral history interviews to ensure the oral history is usable. Signatories are the Interviewee, Interviewer, and Commissioner.

1.2 ROLE OF INTERVIEWER

The Interviewer's role is to obtain informed consent to the *Recording Agreement* by all signatories. This is crucial to future use of the recording.

Understanding and addressing everybody's interests and rights – legal and moral – is part of the Interviewer's ethical responsibilities in the *Code of Ethical and Technical Practice*.

Try to agree on plans for use and archiving before beginning a recording and make sure that allowance is made for any appraisal and review processes by the Repository – the place where the recording is to be kept and archived.

The most helpful approach is to talk about what the Interviewee, Interviewer, Commissioner and Repository want to be able to do with the recording, and to make agreements to suit. See the NOHANZ document – *FAQ's about Completing the Recording Agreement* on the NOHANZ website for ways to approach different scenarios.

RECORDING AGREEMENT FORMS

The *Recording Agreement* is approved by NOHANZ and endorsed by the Alexander Turnbull Library. Use only the approved form available here:

<http://www.oralhistory.org.nz/resources.html>

Contact nohanzexec@gmail.com if you would like to personalize the header of the *Recording Agreement* eg. using a logo or project name. Do not change the rest of the form; even small changes could have unintended consequences.

Contact the Repository or seek advice if you are making a recording in unusual circumstances and have concerns about how to apply the *Recording Agreement*.

1.3 INTRODUCING THE RECORDING AGREEMENT FORM TO INTERVIEWEES AND COMMISSIONERS

The first step in an oral history project is to make the Commissioner aware of the *Recording Agreement* and the obligations it entails. Discuss and agree on archiving and placement, and check with the planned Repository – see Placement below.

Introduce the *Recording Agreement* to the Interviewee at the outset, usually at the preliminary meeting. Explain each element of the form. See Headings below. Leave a copy of the form with the Interviewee. Explain that after the recording you will be asking them to sign the form.

In rare cases it is not possible to have a separate preliminary meeting. In these cases ensure that the *Recording Agreement* is properly introduced to the Interviewee in advance of the recording, for example by addressing it in a phone conversation and providing the Interviewee with a copy of the *Recording Agreement* by post or email.

1.4 ON THE DAY OF THE RECORDING

Make an audio record stating that you and the Interviewee have discussed the purpose of the recording and the arrangements for archiving, and mention that you will be asking the Interviewee to sign the *Recording Agreement* after the recording. The best place for this is after the recording identification on the first file.

Suggested wording:

“Before we go any further I want to confirm that you understand that this material is being recorded for archival purposes primarily, for the [name of Oral History Project]. The recording will be held at the [name of Repository, location of copies if applicable]. Access to, and use of your interview, will be subject to the conditions agreed by you in the *Recording Agreement* that we will sign at the end. Are you happy about that and willing to continue?”

Avoid recording spoken restrictions but if any are mentioned at any stage during the recording ensure the signed *Recording Agreement* is consistent or explains the spoken words. For example, an interviewee may say during a recording “Make sure you don’t publish that” but then on reflection, and after discussion, signs the *Recording Agreement* with no restrictions. Use the **Notes** section of the *Recording Agreement* to make clear what has taken place and avoid later confusion about any conflict between the statement in the recording and the signed *Recording Agreement*.

1.5 COMPLETING THE RECORDING AGREEMENT FORM

Complete the *Recording Agreement* and give copies to everyone involved as soon as possible after the recording. This is very important.

Correct mistakes by crossing out and initialing changes. Do not use correction fluid, tape etc as this disintegrates with time and the correction can be lost.

Complete all pages of the form and have all parties sign and date it in the *Signatures* section. Provide a copy of the completed form to all signatories and anyone who receives a copy of the recording.

Interviewers should ensure the signed *Recording Agreement* reflects the wishes of the Interviewee and the agreements reached. Be aware that despite any restrictions and the best intentions, human error can still occur in the management of recordings. Repositories may also be subject to legal proceedings seeking disclosure of recordings. In the well-known Boston College case, law enforcement agencies sought access to oral history recordings for use in connection with prosecution of crime. **Oral historians are advised to be cautious about recording any material that could result in a criminal prosecution and to seek advice in any project where this might be an issue.**

For help with particular aspects of the *Recording Agreement* see below.

1.6 PROCESSING THE INTERVIEW

1.6.1 Accompanying material

The *Recording Agreement* that is signed immediately after the recording covers “the recording of my interview and accompanying material”. Much of the accompanying material may not have been fully identified or created at this point.

In order to ensure that the Interviewee has provided a fully informed consent explain to the Interviewee what accompanying material you will be depositing. This may include: biographical details, abstract, summary, Interviewer’s notes.

If practicable it is advisable to show Interviewees any accompanying material containing personal information before it is deposited (or delivered to a Commissioner). Repositories find it helpful to know whether this step has been taken.

1.6.2 Delivering the Interview

Supply the original *Recording Agreement* to the Repository and a copy to the Interviewee and the Commissioner for storage with the recording and future reference. Ensure that a copy of the *Recording Agreement* accompanies any copies of the recording. Ensure that the Commissioner, Interviewee and Repository are aware of the location of copies of the recording.

2 NOTES ON COMPLETING THE *RECORDING AGREEMENT* FORM SECTION BY SECTION

2.1 NAMES OF PEOPLE INVOLVED IN THE ORAL HISTORY

2.1.1 Full name of Person Interviewed

Ask the Interviewee to confirm the correct spelling of their name and preferably to write their own name on the *Recording Agreement*. This provides one definitive spelling of the Interviewee's name for archival purposes.

Sometimes the Interviewee is known by several names. In this case also record somewhere in the interview documentation:

- Alternative names by which the Interviewee is known (for cataloguing purposes) and
- The Interviewee's preferred name.

2.2 NAME OF PROJECT

(Recommended.) The Repository will use the project name in its catalogue. A logical, consistent and meaningful name helps researchers to find the recording. The name also helps to explain the purpose of the recording. If no name is provided the Repository may assign a name.

Options for single interviews:

- "Oral history interview with [interviewee name]"

Options for multiple interview projects:

- "[ABC topic oral history project]"
- "Oral history interviews by [ABC interviewer]"

NB. The project name can be changed at a later date.

2.3 DATE OF INTERVIEW

Single session interview: Date of Recording

Multi session interview:

- Submit one *Recording Agreement* to Repository
- Insert all interview dates on the *Recording Agreement* or write “Recordings made between x date and y date”.

2.4 COMMISSIONER

The Commissioner is the person who causes the recording to be made.

The Commissioner can be:

- The Interviewer if no other party is involved
- An individual, perhaps a friend or family member of the Interviewee, or even the Interviewee themselves
- An organisation such as a trust, community group, collective or legal entity eg. a commercial organisation, corporation or Government department.

Commissioners must observe the Interviewee’s restrictions but may impose additional restrictions on an interview or project, eg. some projects may require the Commissioner’s consent for access.

Remember that commissioning organisations are subject to change and reorganisation. The organisation that commissions a recording may be taken over, evolve or cease to exist during the life of an oral history recording. Bear this factor in mind if copies are to be held by the Commissioner and if Interviewees are signing over rights to Commissioners.

A note about projects undertaken with grants such as an Oral History Award.

An organisation that provides funding for an oral history project is not usually the “Commissioner”. The NZ Oral History Awards are administered by the Ministry for Culture and Heritage which monitors progress with projects funded by Awards but MCH is not a party to the projects.

2.5 SECTION 1: PLACEMENT

As part of preliminary discussions before beginning the recording it is the Interviewer’s responsibility to:

- Identify where the recording will be held – see the NOHANZ document *Selecting a Repository and Privacy Principles* at <http://privacy.org.nz/a-thumbnail-sketch-of-the-privacy-principles/>
- Identify how many copies of the recording and accompanying material will be made, who will hold them, and for how long and discuss the responsibility for all holders of the oral history to comply with the signed *Recording Agreement*.

- Explain the Accompanying Material. These documents – including the abstract, biographical details and photographs – are also covered by the *Recording Agreement*. Note that Accompanying Material is created before, during and after the interview. See below under PROCESSING THE INTERVIEW for handling material created after the interview.

If the recording is to be archived the Interviewer should:

- Contact the Repository to discuss its requirements for appraisal/submission and, where available, guidelines for deposit
- Establish responsibility for submitting the recording and/or make arrangements for interim placement if it is to be archived at a future date
- Check the correct name for the Repository
- Check how long the Repository will retain the recording. Not all archives accept recordings in perpetuity. You may need to agree a procedure to be followed if the Repository can no longer hold the recording (eg. return to Interviewee, return to Commissioner, gift to another Repository)
- Check what information the Repository will require and how it will be catalogued/made available. Repositories can be expected to catalogue all their holdings, including ones that are restricted. Some knowledge of how a recording will be catalogued is an advantage.

Recordings are made for a range of reasons that may include “archival purposes”. This need not be the only, or main, reason for the recording. Record extra information about the purpose of the recording in the **Additional Information** section of the *Recording Agreement*.

Interviewers are not repositories – however it is good practice for an Interviewer to retain a copy of the recording and accompanying material at least until final delivery to the Commissioner and/or deposit in the Archive. Record this on the *Recording Agreement*.

Where Interviewers are on commission, recording on behalf of another person or organisation, retaining copies of the recording and accompanying material may be in breach of the terms of the commission.

Interviewers have responsibilities under the Privacy Act 1993 – in particular Principles 5 and 9 – to ensure personal information about Interviewees is held securely and only for as long as is necessary.

2.6 SECTION 2: ACCESS

Tick “Yes” if the Interviewee is willing for anyone to listen to their recording and view the accompanying documents (listening/viewing access).

Tick “Yes” does not signify agreement for use of the material, only access.

Location for access should be discussed. Some repositories, for example the Alexander Turnbull Library, have facilities for interloan to other institutions. Establish whether the Interviewee agrees to this. If not, delete the words “or at a location approved by the commissioner”.

Tick “No” if the Interviewee is not willing to allow listening/viewing access without their written permission. Note: on rare occasions Interviewees will not want Commissioners to access their recordings. Explain this possibility to Commissioners before making a recording.

If “No” is ticked a “Release Date” or “Review Date” must be completed – see below.

2.6.1 Release Date

Restrictions do not automatically lapse on death of an interviewee. It is imperative to specify a release date for a restriction to ensure that the recording can be used at a specified future time.

“Release Date” is when the restriction ends. If possible agree a specific date for release. A release “after my death” or “x years after my death” may be difficult for a Repository to administer.

2.6.2 Review Date

Use “Review Date” if the Interviewee is unsure whether or for how long to impose a restriction and is willing to revisit the question at a specified later date. Listening/viewing access will be restricted until the “Review Date”. If the material is requested after that date the Repository will contact the Interviewee to decide whether the restriction should continue. If this option is ticked Interviewers need to provide the Repository with contact information for the Interviewee.

Check with the Repository if there are questions or issues about review or release dates, or about restrictions.

2.6.3 Embargoes

In rare cases an Interviewee does not wish any access to their recording for a stated period – ie. the recording and accompanying material are held by the Repository but are closed for access and use and the Interviewee does not wish to be consulted about requests for access. It is advisable to consult the Repository before signing a *Recording Agreement* with an embargo as repositories may have reservations about accepting embargoed recordings.

Use the **Notes** section to record embargoes.

2.6.4 Access and Restrictions generally

Sometimes there are personal or ethical reasons to restrict a section of a recording that is otherwise suitable for open access and publication. While it may be possible technically to give access to a recording with a few minutes removed, many repositories lack the resources to do this as it requires producing an edited listening copy and may require an edited version of an abstract. For this reason it is preferable to restrict whole files not parts of files unless you have first talked to the Repository about manageable options.

Once the recording is given to the Commissioner or Repository the Interviewer often has no further role in managing the recording. For this reason make any restrictions clear and unambiguous. Use the **Notes** section to provide information that will be needed by anyone responsible for administering the recording.

2.6.5 What happens after the Interviewee's death?

Treatment of restrictions after death may vary from Repository to Repository. In principle the *Recording Agreement* remains in force as a contract after the death of the Interviewee. So if the recording is restricted the restrictions continue to apply. Even where a restriction is released after the death of an interviewee oral historians and Repositories need to be alert to ethical and moral considerations such as information in the recording about third parties, and to copyright ownership.

2.7 SECTION 3: PUBLICATION

Publication can happen in a number of ways. If publication is not restricted the whole of a recording and accompanying material can be published in full without reference to the Interviewee, and in a range of formats, including on the Internet.

Examples of publication include:

- Inserting a sound file on a web page
- Printing a transcription of the spoken words in a book, thesis, school work
- Broadcasting the recording
- Using the words spoken in the recording as part of an exhibition, performance (theatre etc), or artwork
- Use in a thesis or in schoolwork, ie. in formats to be read by third parties, even if the work is not published in a formal sense (eg. in book form).

Note that once material has been used or published in one form, eg. in a printed university thesis, it can be published in another format at a later time, eg. if the thesis is placed on the internet. A printed book quoting oral history may be issued as an e-reader etc.

If the Interviewee wishes to restrict **all** publication tick the box "I require there be **NO** publication of my recording and accompanying material without my prior written permission".

If "No" is ticked a "Release Date" or a "Review Date" must be completed – see below for notes about these.

Release date (see 2.6.1 page 8)

Review date (see 2.6.2 page 8)

2.8 SECTION 4: COPYRIGHT

The question of copyright in oral history is open to debate as the Copyright Act 1994 does not address oral history specifically and there is no directly applicable case law. Copyright restrictions may have long lasting practical effects and may prevent oral history material from being used. It is imperative to discuss, agree on and record copyrights before making an oral history recording. If any of the parties – Interviewer, Interviewee or Commissioner – have a particular use in mind they need to ensure copyright agreements will permit this.

For more specific information about the potential copyrights in oral history see FAQs for Interviewees.

It is vital that what is agreed is documented on the *Recording Agreement* Form. The Recording Agreement was amended in 2014 to ensure that it complied with the Copyright Act because of concerns that the copyright section of the form did not adequately assign the default copyright.

Alert users (eg. researchers) to the existence of copyright and what is and is not permitted.

The holder of copyright must also observe any restrictions on publication contained in the *Recording Agreement* and the *Code of Ethical and Technical Practice*.

There are other options for handling intellectual property in sound recordings such as Creative Commons Licences – see Digital NZ
<http://www.digitalnz.org/records?text=creative+commons>

2.9 SECTION 5: PRIVACY ACT

Interviewers, Interviewees, Commissioners, repositories and users of oral history are all bound by the Privacy Act. There have not been any cases involving the application of the Privacy Act to oral history and the Privacy Commissioner can only give general advice. Obviously by the very nature of oral historians' work, they are collecting, using and storing personal information – so oral historians must ensure their practices comply with the principles of the Privacy Act. For information about privacy principles see <http://privacy.org.nz/a-thumbnail-sketch-of-the-privacy-principles/>

Before beginning a recording Interviewers must:

- Inform Commissioners of their obligations under the Act
- Inform Interviewees of their rights and obligations under the Act.

As the understanding of privacy and oral history develops more information will be added to these notes.

2.10 SECTION 6: ADDITIONAL INFORMATION

Use this for background information about the circumstances and purpose of the recording. Occasionally an Interviewee will be concerned about how their Interview appears in a library catalogue. Alert the Repository to this on the Recording Agreement. If in doubt ask the Repository about their arrangement and description practices.

2.11 SECTION 7: SIGNATURES

All parties to the recording must sign the *Recording Agreement*.

The Interviewer is responsible for ensuring the *Recording Agreement* is signed by the Interviewee.

Where the Commissioner is an organisation obtain the signature of a person who is authorised to sign for the organisation. This will usually be the Chief Executive or a senior person. Remember the person signing is committing the organisation to observe the terms of the *Recording Agreement*.

Provide a copy of the completed *Recording Agreement* to all signatories and the Repository.

2.12 SECTION 8: ALTERNATIVE CONTACT

It can be helpful for the Interviewee to provide the name of a family member or friend who can be contacted about the recording if necessary. This person is a point of contact only. To protect privacy, do not put any contact details apart from names on this form; use a separate one.

2.13 NOTES SECTION

2.13.1 Note 4: Crediting the Interviewee (The question of “Moral Rights”)

Where material from an oral history recording is published it will usually be appropriate to name the Interviewee and the Interviewer unless there are good reasons not to disclose identities. If identity is likely to be sensitive this should be discussed.

Under the law Interviewees and Interviewees have the option to assert “Moral Rights”, namely:

- The right to be identified as the authors of the work (right of attribution)
- The right to not have a work falsely attributed to them
- The right to object to derogatory treatment of the work (right of integrity).

These rights only exist if asserted. This means they must specify that they wish to be named on copies of the work. For more information see the Copyright Council Information Sheet <http://www.copyright.org.nz/infosheets.php>

2.14 SUGGESTED READING

Beth Robertson, *Oral History Handbook*, Oral History Association of Australia (South Australian Branch), 2010

Is your Oral History Legal and Ethical? Practical Steps. Oral History Society (UK) 2013 <http://www.ohs.org.uk/ethics.php>

2.15 REVIEW AND FEEDBACK

These *Explanatory Notes* and the *Recording Agreement* have been issued by NOHANZ for use in oral history work. NOHANZ may in future review and update these documents. If you would like to comment on the documents or contribute to any future review, please contact us at nohanzexec@gmail.com, putting “Recording Agreement” in the subject line.

NOHANZ RECORDING AGREEMENT GROUP
September 2014

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