



Real-time Rights-based Recordkeeping Governance

An Australian Research Council (ARC) Discovery Project at Monash University investigating the governance of systems to support the recordkeeping rights of people who experience childhood out-of-home care.

Submission to:

Review of the Reportable Conduct Scheme 2022

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Children and Young People in Alternative Care situations have little to no discretion around participation in the child protection and welfare systems that document the intimate, sensitive and personal details of their lives (Evans, 2020).

This submission addresses several questions from the Review of the Reportable Conduct Scheme (RCS) submission template. Issues concerning the supports, structures, resources and capabilities that can assist organisations to better operationalise the scheme are discussed below. This submission also addresses potential safety and security issues in relation to the RCS and recordkeeping practices with regard to upholding the rights of care experienced people.

Background

The Department of Human Centred Computing in the Faculty of Information Technology at Monash University has developed a research focus on recordkeeping in out-of-home care (see <https://rights-records.it.monash.edu/>) since 2015, incorporating:

- Connecting the Disconnected ARC Future Fellowship (2017-21)
- Setting the Record Straight for the Rights of the Child Summit (May 2017)
- Rights in Records by Design ARC Discovery Project (2017-22)
- Real-time Rights-based Recordkeeping Governance ARC Discovery Project (2020-24)

The 2017 *Setting the Record Straight for the Rights of the Child Summit* brought together an interdisciplinary audience to discuss how children and young people's Out-Of-Home Care (OOHC) records could be better created, captured, managed, archived and accessed to meet lifelong identity, memory and accountability needs. From this came a conceptualisation of a *National Framework for Recordkeeping for Out-of-Home Care* ('the National Framework') to enlarge on the,

then anticipated, recordkeeping recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) (Evans, 2017). Recommendation 8.4 in particular sets out a set of principles for records and recordkeeping namely:

1. Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.
2. Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.
3. Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.
4. Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.
5. Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent. (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017).

A rights-based charter for childhood recordkeeping was identified as a key element of the proposed National Framework and through the ARC funded Rights in Records by Design Project, Professor Sue McKemmish has led the development of a *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* ('the Charter') (see <https://www.monash.edu/it/clrc>). The Charter articulates a set of recordkeeping rights for

- Participatory recordkeeping
- Agency in access and disclosure
- Privacy and safe recordkeeping

The *Charter for Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* informs this submission's contribution to the review identifying several policy and practice approaches that can work to uphold care experienced people's rights in recordkeeping in relation to the RCS and their care experiences.

Our current ARC Discovery Project, Real-time Rights-based Recordkeeping Governance, is aimed at progressing the independent advocacy and oversight elements of the National Framework. It is taking up the challenge of modelling the vital governance components, as digitally enabled functions, for independent advocacy and oversight of recordkeeping to reflect child/person-centred and rights-based approaches to the provision of OOHC.

Recordkeeping and the Reportable Conduct Scheme

From this work briefly outlined above, our concern regarding the review of the Reportable Conduct Scheme is that the CCYP and Victorian government consider:

- 1) For children and young people with OOHC experiences, how do RCS records intersect and/or interact with their OOHC records? What rights do children and young people have to access RCS records over their lifetimes? How can these RCS records be created and maintained to support lifelong identity, memory and accountability needs of care experienced people?
- 2) How do RCS recordkeeping requirements and guidelines support participatory recordkeeping rights? The *CCYP Guide for Including Children and Young People in Reportable Conduct Investigations* details trauma-informed approaches to interviewing children and conducting investigations. Are there further considerations around communicating actions

taken and outcomes from RCS investigations that should also be developed for organisations and institutions participating in the RCS?

- 3) How could the RCS and other OOHC recordkeeping practices be more proactively monitored by the CCYP and/or any Independent Advocate/s? What oversight mechanisms, tools and technologies could enable proactive rather than reactive auditing of recordkeeping and child safety with regard to the RCS?

The *Charter for Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* and associated resources such as the *Recordkeeping Best Practice Guide to support implementation of the Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* ('the Recordkeeping Best Practice Guide') provide guidance for recordkeeping practice, regulation and governance across these areas of concern.

1. Reportable Conduct Scheme records and Out-Of-Home Care records

Care experienced people's records of their time/s in care may be held by several organisations and consequently are archived and governed under different policies and processes. The Public Record Office Victoria (PROV) recognises the RCIRCSA recommendations that records of allegations of child sexual abuse should be retained for 45 years after reported incidents have taken place (PROV, undated). The PROV also recognises that public inquiries and legal proceedings regarding reportable conduct and allegations of child abuse may be initiated more than 45 years into the future past the date they have been reported to have occurred on. For anyone included in these records this means that private and sensitive information is stored about them in non-discretionary records for long periods of time. Organisations recording allegations of reportable conduct may need support to properly secure and store such records. They may also need support to create records that can maintain the identity, memory and accountability needs of care experienced people who are the subjects of such records.

Best practice:

The Recordkeeping Best Practice Guide provides several recommendations for maintaining Safe Recordkeeping Rights. These rights include recognition of the lifelong implications of such records for care experienced people as well as the importance of participatory approaches to recordkeeping practices (Reed, 2021, p. 26):

- Understanding that a right to safe recordkeeping means this trust extends past the cessation of Care and lasts throughout a lifetime
- Prioritise children's right to records in designing or selecting new organisational systems containing records
- Engage with carers in supporting them in managing their records
- Involve children in system design processes where new organisational systems containing records are being considered
- Involve children in business process design that affect information created or managed about them
- Ensure children are informed when records are moved from one organisation to another for either current operational purposes or long term retention

Implications: Recordkeeping rights are likely affected by reviews of the RCS and/or in reviews of institutional practices within the scheme. For example, if an organisation is audited, how will the rights of care experienced subjects of their records be protected and upheld in inquiries, audits or legal proceedings? Careful consideration of the implications of accessing records in this way will help to uphold care leavers' rights. Paying attention to how such records and recordkeeping processes are created and governed can reduce the potential re-traumatisation for care leavers when accessing their records.

2. The Reportable Conduct Scheme and participatory recordkeeping

Complementing the *CCYP Guide for Including Children and Young People in Reportable Conduct Investigations*, the Recordkeeping Best Practice Guide outlines several participation rights in records creation. Trauma-informed practice in investigating reportable conduct and interviewing children and young people is intertwined with rights to participatory recordkeeping.

Best practice:

Participatory rights are outlined in the Recordkeeping Best Practice Guide with details of how these can be realised. People with experiences of OOHC should have rights in (Reed, 2021):

- Deciding how your records are used and who has access to your records (p. 7)
- Determining how long to keep records, and in what form (p. 7)
- Deciding to delete records about you (p. 8)
- Participate in decisions about what types of records that should be created about you in organizational recordkeeping systems (p. 9)
- Create your own personal records in organisational settings (p. 10)
- Intervene in/challenge the record (truth telling/right of reply) (p. 12)

Implications: Organisations required to comply with the RCS may require additional supports and training around how their recordkeeping practices can work to uphold children and young people's participatory rights. The same issues apply where organisations conduct follow up investigations, request further information or are reporting back on actions undertaken and any outcomes – both trauma-informed practices detailed by the CCYP guide and participatory recordkeeping rights detailed in the Charter.

3. The Reportable Conduct Scheme and recordkeeping proactive oversight

The RCS represents one domain of recordkeeping for children and young people involved with child protection and often countless other systems. Several inquiries have noted the complex systemic issues at play in coordinating child safety and the provision of quality OOHC across government and community-based organisations. Recognising that the CCYP, the Victorian Auditor-General's Office (VAGO) and the Victorian Ombudsman have all called for an independent advocate for children in care (CCYP, 2020; VAGO, 2014; Victorian Ombudsman, 2020), our Real-time Rights-based Recordkeeping Governance project seeks to explore the role of an independent recordkeeping advocate.

Best practice:

The Real-time Rights-based Recordkeeping Governance project seeks to model and operationalise best practice in relation to governance of the *National Framework for Recordkeeping for Out-of-Home Care* and the *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* in order to uphold care experienced people's rights in relation to *their* records. The Recordkeeping Best Practice Guide details some of the work involved in meeting these obligations (Reed, 2021, p. 26):

- Ensure that all practitioners are able to articulate and define business requirements for records to be migrated/accessible over technology software/systems change
- Ensure all organisational systems involving creation, capture, management or use of children's personal information are designed to meet recordkeeping requirements
- Ensure the organisational infrastructure sufficiently addresses data sovereignty, secure transmission, cybersecurity protection and strict controls on access and permissions to any systems containing personal information of children
- Design real time governance processes to continuously monitor systems that maintain personal information about children

Implications: The role of an Independent recordkeeping advocate serves several purposes connected to upholding the rights of children and young people with care experiences and the adults they later become. With recordkeeping practices inextricable from practice across social services that intersect with children and young people in care and adults who have transitioned from care previously, recordkeeping governance is an important component of child protection, OOHC and the oversight of these systems. Participatory governance is necessary to ensure that such systems are informed by the particular expertise that comes from lived experience of: being subject to, navigating through and being exited from Australian OOHC and associated social services.

Participation strengthens accountability: Participation is central to a process of building accountability and promoting good governance. It is a means through which governments and other duty bearers can be held to account. Investment in building children's capacities for and commitment to active participation will contribute towards the creation of more transparent and open government. (EU-UNICEF, 2014, p. 6)

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