



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:

*Australian Human Rights Commission Youth Justice and Child Wellbeing Reform across Australia
consultation*

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About us

We are researchers from Monash University working on various aspects of the Recordkeeping and Rights of the Child Research Program, a transdisciplinary research agenda investigating how multiple and lifelong rights in records and recordkeeping can be recognised, respected and enacted in child welfare and protection systems utilising digital and networking technologies.

Our research imagines future digital systems for the Care sector capable of real-time, proactive and transparent accountability to the principles of provision, protection and participation in the best interests of the child enshrined in the United Nations Convention on the Rights of the Child, and for upholding rights to dignity, autonomy and identity in the Universal Declaration of Human Rights.

It brings together researchers from a range of academic, community and organisational contexts, and disciplinary perspectives to tackle this complex problem using participatory research and design methodologies. It also seeks to give voice and agency to Care Experienced people¹ in research to better address their recordkeeping and archiving needs. Key projects are represented below and more details are available at <https://rights-records.it.monash.edu/research-development-agenda/>



¹ <https://www.careexperiencedhistorymonth.org/care-experience-australia>

Our Submission

Governance of our child protection, youth justice and associated social welfare systems in Australia has been called into question through the multiple state and federal government Royal Commissions, inquiries and reforms over the past decade.

This submission seeks to bring rarely considered matters to the attention of the Australian Human Rights Commission (AHRC) concerning information governance in our out-of-home care systems. There is a need for future participatory information governance models to create and enact solutions to our wicked problems in providing care and protection for our most vulnerable populations.

The concern of this current project, the Real-time Rights-based Recordkeeping Governance project is to co-define and co-produce a model for participatory information governance in out-of-home care. This is to meet the identity, memory and accountability needs of people who have spent time in out-of-home care systems in Australia as children. There is a small and growing field of research investigating the impacts of current and past recordkeeping practices which points to several qualities and functions of out-of-home care and child protection services which can indirectly contribute to youth justice involvement and other poor outcomes for care experienced people.

The Recordkeeping and Rights of the Child Research Program seeks to expand the scope of thinking when looking at wicked problems such as children and young people's involvement with criminal offending and youth justice.

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Factors contributing to children's and young people's involvement in youth justice systems

Child maltreatment and child protection involvement

With the growing availability of administrative datasets, it has become clear that involvement with the child protection system contributes to the likelihood that a child or young person will be involved with youth justice systems in Australia. Malvaso and colleagues (2016) found that of 2,045 children and young people in custody in youth justice settings between 1995 and 2012 in South Australia, 75% had a history of child protection involvement ranging from notifications only (n=479) to substantiations only (n=229), through to those who had been placed in care (n=823) (Malvaso et al., 2016).

Links between child maltreatment and youth offending are perhaps less understood in the general public but tend to be more accepted in the child, youth and family welfare sector. The evidence-base in factors contributing to youth involvement with youth justice is growing, yet the policy environment remains highly influenced by party politics and community attitudes that favour the 'tough on crime' policies that research shows to be ineffective and harmful (Save the Children, 2023).

A large proportion of youth offending appears to be concentrated amongst children and young people with the worst experiences of maltreatment, child protection involvement and placements in out-of-home care systems. As long as the general community is unaware of, or ignoring links between, childhood adversity and criminal offending, policy options and innovations are stunted. The recent results from the Australian Child Maltreatment Study showing alarmingly high rates of child maltreatment amongst the Australian population over generations may raise community awareness of these issues (Mathews et al., 2023). This study found the prevalence rate of physical abuse in childhood amongst respondents was 32%, for sexual abuse this was 28.5%, for emotional abuse the rate was 30.9% and 39.6% of respondents reported exposure to domestic violence (Mathews et al., 2023). As this study was conducted through a random sample of the Australian population recruited through mobile telephone numbers (Mathews et al., 2021), 'hard to reach' populations such as care experienced young adults, young people and adults in custody and others without mobile phones or the ability or inclination to complete the survey are likely under-represented (Purtell, forthcoming). Given the maltreatment history of many in these groups the figures on child maltreatment are also likely under-estimating the scale of the problem.

Residential care

The South Australian Office of the Guardian for Children and Young People (2019) cites two studies from Victoria which outline the key demographic characteristics for children and young people who have been in care and involved with youth justice. Children and young

people in these studies, involved with child protection and youth justice disproportionately are Aboriginal, female, have a disability and have experienced trauma and were involved with the youth justice system at younger ages (Baidawi & Sheehan, 2019 and McFarlane, 2015 cited in Office of the Guardian for Children and Young People, 2019). Young people in custody were also found to be more likely to have lived in residential care with the associated issues of placement instability and poor resident matching, criminalising responses to young people's behaviour and high incidences of going missing from care with all of these issues being compounded in regions and remote areas (Baidawi & Sheehan, 2019 and McFarlane, 2015 cited in Guardian for Children and Young People, 2019). The Guardian for Children and Young People's analysis of the Victorian Sentencing Advisory Council's report on 'Crossover children' found that "only 3 per cent of those with time spent in care who had received a custodial sentence had not experienced residential care" (Sentencing Advisory Council, 2019 cited in Guardian for Children and Young People, 2019, p. 13).

Multi-system involvement

The Queensland Family and Child Commission (QFCC) (2023) has recently released an interactive map of Child Protection and Youth Justice systems, tracking pathways into and out of each system (see <https://www.qfcc.qld.gov.au/sector/supporting-our-sector/child-protection-and-youth-justice-system>). The outer boundaries of this map are labelled as 'Family Support Services' with 'Community wellbeing', 'Family wellbeing' and 'Universal services' sitting outside. A 2023 report from Save the Children, *Putting children first: A rights respecting approach to youth justice in Australia*, reports that many children involved with youth justice services have current or previous involvement with several other services (Save the Children, 2023). Baidawi and Ball (2023) observe in their Australian study that most frequently, youth justice involvement begins *after* child protection involvement commences.

We know that residential care is closely linked with youth justice involvement and that young people living in residential care have a reputation for exhibiting 'challenging behaviours'. Most often such behaviour is attributed to complex family and out-of-home care histories of instability and maltreatment, difficulties with matching children and young people in residential care units and more recently the exploitation of young people placed in residential care (CCYP, 2021). Looking at the QFCC systems map of the child protection system and youth justice systems we can see many intersections, most with their own set of new professionals and new assessments and records to be created about this child or young person. The Recordkeeping and Rights of the Child Research Program has highlighted how seemingly innocuous practices of recordkeeping taking place in most of our social institutions and social services can be experienced by the *subjects* of those records as

deeply disempowering. Such records can also create surveillance biases which can impact care experienced people as parents (Purtell et al., 2021), and presumably when in contact with justice systems.

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).

Recordkeeping practices in care and protective systems

We rarely hear about or consider the recordkeeping aspects of care and other aspects of welfare services practices that can cause distress. Wilson and Golding (2016) detail their own traumatic experiences in relation to recordkeeping and accessing their 'care' files as adults. The following excerpt demonstrates the sheer number of professionals a child or young person may encounter through child protection involvement, each making formal assessments to be shared with various others typically without regard for consent from a child or young person:

A key operational facet of the Care regime's official gaze was the routine compilation of records. These were produced by institution staff, transitional carers, administrators, caseworkers, government bureaucrats, medical and psychiatric clinicians, police officers, officers of the court—anyone with whom the child had more than passing contact. Throughout the years of a child's time in Care, their movements within and between institutions, family data, specific health concerns, critical incidents, and any other personal aspects deemed pertinent to their upkeep and maintenance within the welfare system, were documented (Wilson and Golding, 2016, p. 93).

Many young people involved with youth justice have endured the worst experiences of child maltreatment for the longest time and the worst of the child protection and care systems (Malvaso et al., 2016). What this means, if we think in reference to the QFCC systems map, is that these young people have experienced the *most* interventions and the longest contact with Australian social services and welfare systems. We need to carefully consider what impact our information governance processes have on children and young people's experiences of 'help', 'support' and social assistance and the impacts of our systems on their development and wellbeing. Care experienced leader of the UK organisation 'The Care Leaders' explains how his distress was institutionally interpreted:

"I was told I was 'unfosterable' because I was displaying such challenging behaviour. But the reason I was being challenging was because I was in pain and being unfairly judged" (The Care Leaders, 2023)".

In contrast, Wilson and Golding (2016) also discuss the potential for care records to restore a fragmented life narrative of a care leaver. The current Real-time Rights-based Recordkeeping Governance project is working to develop *participatory* information governance models that serve to ensure that children and young people involved with care and protection systems no longer experience a fragmented life narrative.

A national approach to youth justice and child wellbeing reform in Australia

That child protection and youth justice systems are considered to be state government responsibilities, is a major barrier to meaningful reform in Australian systems. The children and young people within these systems and the people who have experienced them exist outside of government portfolio silos. Policy responses to these issues need to take a far broader perspective on issues of child protection and youth justice.

The Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care

The rights-based charter for childhood recordkeeping provides a reference point for addressing the need for real-time, rights-based, recordkeeping practices in care and protection systems. This 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

Governance of recordkeeping rights

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

Recordkeeping practices are 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, out-of-home care 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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