



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:

The New South Wales Government's Office of the Children's Guardian consultation on a proposed code of practice for statutory out-of-home care and adoption.

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 importance of recordkeeping has been recognised through the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) (Evans, 2017). Recommendation 8.4 in particular sets out several 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. (RCIRCSA, 2017).

Our work is concerned with realising individuals' rights in relation to records created, maintained and kept about them through childhood or adolescent out-of-home care. This work is informed by reports from the Stolen Generations, Former Child Migrants, Forgotten Australians and other care experienced communities about "the ongoing impacts of institutional record-keeping on their identity and memory, their life chances and their struggle for accountability and redress" (Rolan et al., 2019). This work is further informed by the direct participation of care experienced advocates in several research activities and particularly in the Rights in Records by Design ARC Discovery project carried out at Monash University between 2017 and 2022 (Rolan et al., 2019).

The Australian Human Rights Commission's (AHRC) *National Principles for Child Safe Organisations* state that organisations should be "...proactive in providing age appropriate platforms to regularly seek children and young people's views and encourage participation in decision-making" (AHRC, 2018, Principle 2). The national principles further stipulate that "Children and young people participate in decision-making in the organisation, including in relation to safety issues and risk identification" (AHRC, 2018, Principle 2). In our own research it has been noted that incorporating participatory principles into this work is not only:

...due recognition of living experience and expertise, and rights to participate, but also has the potential to generate shared understandings which transcend the insights that would normally be gained from non-participatory academic research methods and traditional systems development projects (Rolan et al., 2019).

The Office of the Children's Guardian's example guiding principles included in the consultation paper broadly incorporate participatory principles. Participatory recordkeeping principles should also be included in the guiding principles of the NSW Code of Practice for statutory out-of-home care and adoption.

Participatory recordkeeping

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 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'). 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 example guiding principles of the proposed code of practice uphold participatory rights, rights to cultural safety and generally to inclusive practices in out-of-home care and adoption. The 'Proposed practice requirements' on the other hand do not currently support these guiding principles. For example, 'Proposed practice requirement 1 – Governance and leadership' makes no reference to children and young people's rights to participation in governance and leadership decision making. Similarly, 'Proposed practice requirement 2 – Supporting participation of children and young people' also makes no reference to children and young people's rights to participation in governance and leadership decision making. Each of the proposed requirements for Proposed requirement 2 are aimed at the level of individual participation predominantly in case management-related activities. Opportunities for children and young people's participation at group and collective levels are also important and there is evidence that they can improve both individual and collective outcomes for care experienced people generally (Magalhães et al., 2022; Purtell et al., 2022).

While young people's participation is often thought of at the individual level of participating in care planning meetings with professionals and transition from care plans, for example, involving young people in research and policy development, and even policy implementation is a growing trend in Australia. Youth participation and co-production approaches recognize young people's expertise and see ways we can use the acquired knowledge of care leavers, to inform system reforms that achieve practice improvements, better outcomes for young people, and more efficient and cost-effective service delivery models (Purtell et al., 2022).

The *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* informs a detailed Recordkeeping Best Practice Guide where the practical application of the Charter is demonstrated. In relation to *participatory recordkeeping*, people with experiences of out-of-home care 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)

The proposed NSW Code of Practice 'Proposed practice requirement 4 – Meeting the individual needs of children and young people' section 'Case plans, documentation and record keeping' discussed on page five of the consultation paper relates only to case planning, casework and information sharing and includes no provision for participatory recordkeeping principles as listed above. The proposed requirements suggest annual or more regular reviews of case plans. A more participatory approach would involve discussions with a child or young person about how accurate they feel the records about them are, how well they understand them and whether they have articles or materials they would like to add.

The section 'Case plans, documentation and record keeping' could explain the importance of this documentation further. Children and young people's participation in recordkeeping should be considered as more than simply an annual or more frequent review of a 'case plan'. Where children and young people are supported to better understand their circumstances, their family history and the ways that records have been created about them those records can be a more positive part of their lives and the impact of accessing such records as an adult can be less re-traumatising.

For guiding principles of the Code of Practice to be 'child-centred' and 'collaborative and support the participation of children and young people, their families and their community' as proposed in the consultation paper they must be reflected in the monitoring and compliance processes set in place also. This requires regulatory frameworks that can assess the participatory practices of an organisation through processes which do not create 'tick box' or compliance-based pressures on organisations (CCYP, 2020).

Life story work and the gathering and storing of young people's belongings and mementos is discussed in the 'Social and emotional development, identity and connections to family and culture' section of proposed requirements. These processes are critical to the creation, maintenance and storage of information pertaining to a person's identity, memory and cultural rights and they help people who are subjects of the records to make sense of important issues such as:

- Where a person may 'belong'
- Why someone was removed from their family

- How decisions about their care have been made
- What happened to other family members, and
- What the persons' concerned were like as children (Evans, et al., 2019).

These issues are therefore related to the proposed requirement (under Proposed practice requirement 2) that 'Children and young people are supported when accessing information held about them and their family and care history'.

The consultation paper addresses young people's recordkeeping rights again in the context of transitions from care where the proposed practice requirement is 'Young people are provided with their life story material, original identity documents and information about how to access their care records upon attaining adulthood' (p. 7). The participatory recordkeeping principles discussed above see life story work and participatory recordkeeping as woven through a child or young person's care and life rather than as a procedural function of organisational responsibility. Children and young people can be engaged in group and collective participation efforts to assist government and care organisations to better conceptualise how a person who has lived in care can have a more positive experience in the creation, maintenance and archiving of, plus access to their care records.

Safe recordkeeping rights

The Recordkeeping Best Practice Guide provides several recommendations for maintaining safe recordkeeping. 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

Such objectives require new ways of organising child and adolescent care, just as the *National Principles for Child Safe Organisations*, recent extended care reforms and the *Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* all require new

ways of thinking and governing for improved experiences of care and improved outcomes for care experienced people.

Recordkeeping and proactive oversight

Several inquiries have noted the complex systemic issues at play in coordinating child safety and the provision of quality out-of-home care across government and community-based organisations. In Victoria (where Monash University is based) the Commission for Children and Young People, 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 current Real-time Rights-based Recordkeeping Governance project seeks to explore the role of an independent recordkeeping advocate.

Our current ARC Discovery Project, Real-time Rights-based Recordkeeping Governance, is aimed at progressing the independent advocacy and oversight elements of participatory recordkeeping governance. 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 out-of-home care.

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

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.

Participatory recordkeeping governance

This submission has argued that realising children and young people's rights to participation goes beyond individual participation in case work and case planning processes. According to the *National Principles for Child Safe Organisations* participation in organisational decision making and identification of risk and safety factors in care are key areas for children and young people's participation also. In our work we have seen how care experienced young people's involvement in our research can produce insights and learning critical to our understandings of how care systems work in practice and how they can diverge from policy expectations.

Participation in recordkeeping is necessary to ensure that people understand who they are, where they came from, why they were in care and what happened in their childhoods and adolescences. Participatory recordkeeping governance is necessary to develop the new ways of thinking that can create care systems that transcend the endemic challenges recognised through generations of inquiries, reports and recommendations (CCYP, 2015; CCYP, 2020; Victoria Auditor-General, 2014; Victorian Ombudsman, 2020; RCIRCSA, 2017).

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