MONASH University

Royal Commission into Institutional Responses to Child Sexual Abuse

Response to Consultation Paper on Institutional Responses to Child Sexual Abuse in Out-of-home Care

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Introduction

Children who experience out-of-home care need quality recordkeeping systems to develop and nurture their sense of identity and connectedness to family and community; to account for their care experiences; and to prevent, detect, report, investigate, and take action against child neglect and abuse. Those involved in providing out-of-home care services and supporting children experiencing family dislocation need access to efficient, effective, and responsive information systems – driven by quality recordkeeping – to ensure the highest standards and continuity of care. As the many inquiries have shown, the need for such systems does not disappear when a child leaves care. In inquiry after inquiry, testimony after testimony, Care Leavers have highlighted the lifelong importance of these childhood records describing the difficulties they have faced in finding and accessing records in the search for identity and memory, (re)connecting with family, holding the child-welfare system accountable for decisions and actions, and seeking redress for abuse and neglect.

We are concerned as researchers and educators with the lack of capacity to respond to these needs within existing frameworks, processes and systems. We are part of an international network of scholars, practitioners and community advocates calling for the re-imagining of recordkeeping and archival systems in support of responsive and **accountable child-centred out-of-home care** and as enablers of **historical justice and reconciliation**. We see the need to re-position recordkeeping and archiving, not as bureaucratic overheads, but as drivers of high-quality, efficient, and effective person-centred child protection and out-of-home care services.

Transforming archival and recordkeeping infrastructure

The quote from the CREATE Foundation's submission to Issue Paper 4 highlighted in Section 4 of the Consultation Paper encapsulates some of the complexities around recordkeeping and archiving in this context:

> Regardless of which agency regulates out-of-home care, transparency of processes and external accountability is crucial. This is particularly important as the child protection system involves dealing with a particularly vulnerable cohort of the population and is also a 'closed' system due to the confidential nature of the content and the information the system deals with.

The system as a whole has to meet the highest standards of accountability, privacy and confidentiality at societal, governmental, organisational and individual levels. Unfortunately the way in which current frameworks, processes and systems have been conceived and configured leads to unacceptable trade-offs between these competing demands. Information that could and should be shared within the system is not, due to poor understandings of privacy legislation, a lack of interoperability between systems, and simplistic rights models. While the Consultation paper in Section 8.3 clearly describes the recordkeeping needs of Care Leavers and the failings of current fractured and dysfunctional archival access frameworks it falls short in not making the recordkeeping connection with the data, information, accountability, oversight and regulation needs discussed in earlier sections.

The challenge is to design and build an integrated data, information and recordkeeping architecture that meets the short and long-term operational and accountability needs of Australia's child protection system, along with 'as a good parent would', ensuring that the system also creates and maintains a personal archive for each child that adequately

documents their time in out-of-home care and plays a role in establishing their sense of identity and connectedness with family, community, place and culture. A child or young person's participation in the creation of records and development of their archive is also essential, which raises the issue of how the capacity to participate in decision making about recordkeeping is developed.

A key failing of the existing system is that it assumes that implementing recordkeeping requirements are an organisational issue, and that somehow all the disconnected and disparate parts will 'magically' come together to work as an integrated whole when needed. This is patently wrong, as the evidence from the numerous inquiries demonstrates. Existing archival and recordkeeping frameworks, processes and systems put the rights of organisations, institutions and governments providing and responsible for out-of-home care ahead of those of children and their adult selves. These regimes have been found to foster poor quality recordkeeping, and be incapable of supporting childhood development outcomes. They exclude children and young people from participation in decision-making about their records and continue that exclusion throughout adulthood.

The many recordkeeping and archival issues identified by Care Leavers and inquiries are part of a larger systemic problem. Australia lacks holistic, unifying frameworks for recordkeeping and archiving, resulting in few accountability mechanisms, poor recordkeeping practices and inadequate resourcing, especially outside the government and business sector. There are also significant gaps in the archival record, with some sectors and communities largely absent from collective memory stores, and the fragmentation of the record of many communities and individuals. Australia does not have national or state archives or recordkeeping/archival legislation - laws and institutions so named in fact only regulate government archives. The Australian recordkeeping and archival landscape is sharply divided between government and non-government sectors. The former has its own peak body representation, the Council of Australasian Archives and Records Authorities (http://www.caara.org.au/). Its member institutions exercise authority over current and historical government recordkeeping, including access and appraisal, and have adopted series-based documentation methodologies and a common approach to digital recordkeeping. The latter ranges across library manuscript departments, university based collecting archives and prime ministerial libraries, historical societies, and records and archives units within organisations such as business firms, religious institutions, schools and community organisations. Their professional practice across recordkeeping and archival management functions varies markedly. In short, there is no single unified approach to recordkeeping and archiving embracing the government and non-government sectors.

This dysfunctional approach to recordkeeping and archiving impacts in devastating ways on our most vulnerable communities. Children in care and Care Leavers, highlight the impacts on their lives and well being of the fragmentation, dispersal and loss of vital records, major gaps in the record particularly in non-government sector organisations that provide much of the care, differences in or absence of access policies and processes within and across the sectors, the lack of uniform rights of access across jurisdictions, and difficulties with discovering relevant records linked to poor or inconsistent descriptive systems and the lack of contextual metadata.

We thus advocate for the need to fundamentally transform archival and recordkeeping frameworks, processes and systems in the child care sector, as we do not believe that the immediate and lifelong needs of children in out-of-home care can be addressed by incremental changes to existing infrastructure. These have been built for previous eras of

child protection and welfare designed for a different age, different values, different principles, and a different technological paradigm. The information and recordkeeping needs of an accountable child-centred model of out-of-home care are at odds with existing frameworks which grant the organisation that creates the recordkeeping system sole ownership and control of the records, with the rights of the 'subject' of the record subsumed within.

A new model is needed that accords with the latest principles and expectations of participatory practice, and that takes advantage of the capabilities of digital and networking technologies. Such a model needs to be designed around a rights framework from the outset to facilitate transformations across a variety of domains - political, technological, institutional, and more.[1] We believe the need is to envision, design and build an integrated archival and recordkeeping infrastructure for the child protection system, so that any party involved in the provision or receipt of services can readily do their part to contribute to the quality and accountability of the whole.

At its heart we envision an independent Lifelong Living Archive of the Child as a safe and secure keeping place, populated by children and young people themselves, and by their care givers, social workers, teachers, health professionals, communities, and families. We imagine a secure, distributed, networked system housing vital evidence of a child's identity, life events, and experiences, accessible throughout his or her life. We see it lessening rather than adding to bureaucratic burdens. And we imagine it using sophisticated analytic capabilities – respectful of privacy and confidentiality considerations – enabling smarter and more efficient monitoring of recordkeeping and ultimately the quality and continuity of out-of-home care.

While we understand that such a vision goes beyond the need for immediate responses to the issue of child sexual abuse in the out-of-home care system, as the Consultation paper notes, abuse flourishes where there is fragmentary, and disconnected data, information and records systems. We hope that the Royal Commission into Institutional Responses to Child Sexual Abuse, as the latest in a long line of inquiries into the lifelong ramifications of out-of-home care, can go beyond recommendations that ameliorate the symptoms rather than addressing the causes and systemic nature of the recordkeeping dysfunctions. We offer the following recommendations as potential starting points for systemic transformations.

RECOMMENDATION 1

Development and implementation of a rights based suite of national requirements for recordkeeping relating to children in out-of-home care based on role it should play in:

- governance of child-centred out-of-home care
- supporting efficient and effective child-centred out-of-home care
- providing evidence base for transparency and accountability in decision-making and reporting
- fostering child safe practices
- helping to identify persons who may pose a risk to children
- managing risks to children in out-of-home care and supporting preventative measures

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[1] Gilliland, A., & McKemmish, S. (2014). The role of participatory archives in furthering human rights, reconciliation and recovery. *Atlanti: Review for Modern Archival Theory and Practice*, 24, 79–88. Retrieved from http://www.iias-trieste-maribor.eu/fileadmin/atti/2014/Gilliland.pdf

- documenting and investigating allegations and incidents of abuse
- supporting children in out-of-home care/adult Care Leavers to construct or reconstruct their identities and supplement or verify memories of childhood.

RECOMMENDATION 2

Establishment of independent Recordkeeping Archiving and Rights of Child body with development, auditing and oversight responsibilities, and to oversee the design and implementation of a national cross-jurisdictional, cross-sectoral legislative and policy framework to promote efficient and accountable recordkeeping and archiving by all agencies involved in child care services. The main aim would be to support good governance, best practice child-centred out-of-home care, the child's identity and memory needs, and long-term societal archival needs.

A possible model can be found in the recent Scottish legislative reforms that require relevant public sector agencies to lodge recordkeeping plans, and report on progress to improve recordkeeping,[2] but it would need to be extended to include agencies in other sectors. Such a body could also manage a Records at Risk register which enables reporting of records at risk across Australia and identifies the nature of the risk and the risk management strategies required.

A participatory design approach involving all relevant agencies across all jurisdictions and sectors, children in care and Care Leavers, and the organisations that advocate for them would be critical to achieving a framework that would support the recordkeeping and archival needs of all stakeholders.

RECOMMENDATION 3

Recognition of the agency of children in relation to recordkeeping, in alignment with the UN Convention on the Rights of the Child 1990 and the emphasis on the active participation of children in the decision making that impacts on their lives in the National Standards for Out-of-Home Care 2011.

Development of cross-sectoral, cross-jurisdictional principles-based recordkeeping best practice should be centred on children in out-of-home care and adult Care Leavers as participatory agents not passive, captive subjects of the record. Recordkeeping practices and systems must be developed which engage the child/adult as co-creators in decision making about what records to make, how long to keep them, what metadata to capture about them, and who can access them throughout their lifetime. This will involve

- Enabling children in out-of-home care to create their own records, with care providers undertaking the role that families play in supporting childhood identity and memory making, along with their engagement as participatory agents in recordkeeping processes of service providers.

- Writing into service provider arrangements requirements to work with children to create their own records and document their experiences, life events and memories in concert with social workers, care givers, teachers, health professionals, with a

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[2] The Keeper of the Records of Scotland. (2015). *Public Records (Scotland) Act 2011 Scottish Law Commission Assessment Report*. National Records of Scotland. Retrieved from http://www.nrscotland.gov.uk/files/record-keeping/public-records-act/keepers-assessment-report-scottish-law-commission.pdf

view to lodgement in a safe, secure keeping place - see Lifelong Living Archive Recommendation 4.

- Establishing a charter of rights in childhood records to govern the ongoing records access needs of Care Leavers and more consistently, effectively and compassionately deal with the historical legacy of fragmented and distributed archives. We note the work of Frank Golding from CLAN[3] and of the DSS Find and Connect Program[4] in this area, and see the challenge ahead is in co-developing a unifying framework to effect legislative, cultural and systems reforms.

RECOMMENDATION 4

Development and implementation of the infrastructure to support an independent Lifelong Living Archive for every child who experiences out-of-home care. Such a personal archive needs to be connected to, but separated from, organisational recordkeeping systems. As an active system, not just a passive repository, it would not only act as a safe keeping for personal and organisational records of a child's time in out-of-home care, but also play a role in supporting the development of their sense of identity and connectedness to the world. This will involve

- Development of person-centred principles for creation, access, management and control. We note the potential in the work of Sarah Webber, Martin Gibbs and Gavan McCarthy in prototyping a collaborative repository for young people in care and demonstrating how tensions between privacy and control in shifting contexts may be negotiated and balanced, in transformed systems.[5]

- Cross-sectoral, cross-jurisdictional requirements that all service providers must lodge copies of any record they make for their administrative purpose in the Living Archive subject to negotiated access and disclosure protocols.

- Establishment of an interoperability framework so that the requirements of working with the Living Archive are not an administrative burden, but a complement to the provision of quality out-of-home care.

- Nurturing of recordkeeping literacy as a crucial enabler for children, young people and their adult selves to exercise agency in records' creation, management and use. Decision-making needs to be informed by appropriate understanding and awareness

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[3] Golding, F. (2015, December 7). A Charter of Rights to Childhood Records. Retrieved from http://frankgolding.com/a-charter-of-rights-to-childhood-records/

[4] Recordkeeping Innovation. (2015). *Access to records by Forgotten Australians and Former Child Migrants: access principles for records holders, and best practice guidelines in providing access to records* (No. DSS1687.11.15). Department of Social Services. Retrieved from https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access

[5] Webber, S., Gibbs, M., & McCarthy, G. (2015). Help Me Keep My Stuff Safe: Designing a Collaborative Online Repository for Young People in Care. In *Proceedings of the Annual Meeting of the Australian Special Interest Group for Computer Human Interaction* (pp. 152–161). New York, NY, USA: ACM. http://doi.org/10.1145/2838739.2838757

of the impacts records and recordkeeping can have on lives by all the stakeholder communities that may be involved in forming, managing and using a child's personal archive.

We welcome the opportunity to discuss these recommendations with the Commissioners.

Author bios

Joanne Evans is an ARC Future Fellow in the Faculty of Information Technology, Monash University, and co-ordinator of the Records Continuum Research Group, part of the Faculty's Centre of Organisational and Social Informatics. She has many years of experience in archival systems development, with the technologies she has been involved in designing and developing deployed into a number of research projects, as well as being utilised in small archives settings. Her research explores the multifarious roles metadata plays in creating, managing, and sustaining information and recordkeeping infrastructure and systems, particularly in community settings. From 2015-18 her *Connecting the Disconnected: Co-designing Integrated and Inclusive Recordkeeping and Archival Networks* ARC Future Fellowship aims to develop a participatory archival design methodology to facilitate the development of sustainable living archives, particularly for children who experience out-of-home care.

Sue McKemmish is Associate Dean of Graduate Research in the Faculty of Information Technology, Chair of Archival Systems, and Director of the Centre for Organisational and Social Informatics at Monash University. Since 1990, she has been involved with Monash colleagues in the development, coordination and teaching of Australia's leading professionally accredited graduate program in archives and recordkeeping (ARK), and in developing records continuum theory. More recently she has been engaged in research and standards initiatives relating to the use of metadata in records and archival systems, information resource discovery and smart information portals. Her current research and writing focus on archives and human rights, the participatory archive, archival autonomy and agency, rights in records, community and Indigenous archiving, and the development of more inclusive archival educational programs that meet the needs of diverse communities.

Jacqueline Wilson is an Associate Professor in Humanities and Social Sciences at Federation University Australia. She has a BA (Hons) in Sociology and History from La Trobe University, where she was awarded the David Myer University Medal, and a PhD in History from Monash University. Before commencing her position with Federation University Australia, Jacqueline taught history and sociology at Monash University, the University of Melbourne and La Trobe University. She has authored over forty scholarly publications, including four books, with a research focus on the intersections between public history, incarceration and sites of suffering and trauma. Jacqueline's current research focuses on heritage sites of incarceration and institutionalization and their role in the formalization and emergence of Australian welfare and justice systems. Jacqueline is a former ward of the State of Victoria and an activist and advocate for Care Leavers in Australia. This underpins much of her research which is concerned with historical justice, national memory and experiences of State care and welfare systems.