

# **Transformative Justice: Transdisciplinary Collaborations for Archival Autonomy**

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# **Transformative Justice: Transdisciplinary Collaborations for Archival Autonomy**

## ***Abstract***

Worldwide inquiries into childhood institutionalisation repeatedly document systemic and enduring problems with fractured and fragmented recordkeeping and archiving systems that put the protection of organisations and institutions ahead of the safety and wellbeing of those in their care. As importantly, they demonstrate how much recordkeeping matters in people's lives and the role that records play in developing and nurturing identity, connection to family, community and culture, and as instruments of accountability, restitution and redress. They highlight the transdisciplinarity inherent in recordkeeping endeavours, and for research and praxis in child welfare and protection to transcend disciplinary, professional, and community boundaries to ensure that systems created to protect children from neglect and abuse do not themselves cause harm.

In this article we explore the transformative justice approach of the Archives and the Rights of the Child Research Program, that through transdisciplinary collaborations investigating rights-based recordkeeping, aims to advance archival autonomy, the ability of individuals and communities to participate in organisational and societal evidence and memory structures with their own voice. This broad re-imagining of recordkeeping is vital if we are to escape endless cycles of ambiguous and disappointing transitional justice outcomes, through recognising voice and agency in recordkeeping as a human right.

Keywords: records continuum, participatory recordkeeping, archival autonomy, transformative justice, transdisciplinary

## ***Introduction***

A host of inquiries into child welfare and protection systems throughout the world have raised a number of archival and recordkeeping challenges.<sup>1</sup> Instigated through the tireless activism of Care<sup>2</sup> experienced communities and their allies, these inquiries have documented how much records and recordkeeping matter in people's lives. They illustrate the role records can play in developing and nurturing identity, connection to family, community and culture, and as instruments of power, accountability, restitution and redress. They also highlight where recordkeeping regimes have failed to meet the immediate and lifelong needs of those whose childhoods are entangled in them.

Recommendations to improve access to records and the quality of recordkeeping abound; as do institutional responses falling short of the expectations of Care experienced communities for archival justice – rights to records to be fulsomely recognized<sup>3</sup> – and archival autonomy – having agency in and over their childhood records and have continuing impacts on their lives.<sup>4</sup> The take-up of their calls for substantive reforms to deliver fairer, equitable, more respectful and less harmful evidence and memory management systems has been limited.

Our aim in this article is to explore how a transformative justice approach may help to address these challenges. Transformative justice, with emphasis on participation and agency in processes and in defining outcomes as part of acknowledging and addressing unequal power relations, seeks to identify the root causes of inequalities and the ways in which socioeconomic structures (re)produce structural violence.<sup>5</sup> The idea is to foster and support systemic reform through the (re)design of specific interventions to redistribute power and refigure relationships.<sup>6</sup> This requires a transdisciplinary approach, transcending disciplinary, professional and community boundaries to develop rights-based recordkeeping infrastructure to help ensure that systems created to protect children from neglect and abuse do not themselves cause harm.

In this article we make the case for transformative justice approaches, beginning with an overview of the recordkeeping failings identified by Australian inquiries into institutional childhood Care. A brief review of literature highlighting the shortcomings of transitional justice mechanisms for

addressing the root causes of systemic human rights abuses, and positing transformative justice as an alternate approach follows. These ideas are then applied into an analysis of responses to the recordkeeping recommendations from the latest Australian inquiry into abuse in institutional childhood Care contexts, identifying a lack of systemic reform. The transformative justice approach of the Archives and the Rights of the Child Research Program is then described, with details of three key transdisciplinary collaborations to develop understanding of rights-based recordkeeping infrastructure, and producing practical outcomes to contribute to the advancement of archival autonomy and justice. We argue that this broad re-imagining and re-figuring of recordkeeping frameworks, processes and systems is vital to escape from endless cycles of ambiguous and disappointing transitional justice mechanisms, and that voice and agency in recordkeeping is essential to the provision and protection of human rights.

Reflecting our continuum perspective, we use the term recordkeeping – one word – to be inclusive of all the activities and processes in which individuals, communities, organisations and societies create, capture, organize and pluralize records. We view records as traces in any form that serve to evidence and memorialize social, cultural and organisational activity, and regard archives as records of continuing value, regardless of age or custody.<sup>7</sup>

### ***Australian Inquiries into Institutional Care***

A feature of Australian inquiries into institutional Care over the past decades has been a focus on the structural violence wrought by recordkeeping regimes. Gilliland, in her ethnographic research into recordkeeping in post-conflict Croatia, has written of this violence in the ways in which records and recordkeeping processes as tools of state and institutional power, target and traumatize vulnerable communities.<sup>8</sup> Those with Care experiences have spent decades documenting through advocacy, inquiry, research and memorialisation processes the ways in which recordkeeping regimes have failed to meet their identity, memory, evidence and accountability needs, and the impacts of this on their lives.<sup>9</sup> They have highlighted

- the fragmentation, dispersal and loss of vital records, particularly in non-government organisations that provide most of the out-of-home Care services in Australia,
- difficulties with navigating poor, inconsistent and disconnected descriptive systems to find surviving records,
- how the lack of uniform rights of access across jurisdictions, leads to wide variations in policies and processes, with harsh and inconsistent access and redaction practices, and
- the lack of contextual information and support to make sense of the records.

Reflecting on their own Care experiences, historical justice scholars Wilson and Golding, describe how recordkeeping contributes to ‘the sense of relentless and censorious scrutiny’ that characterizes childhoods under the control of child welfare and protection systems.<sup>10</sup> In accessing their own Care files, they describe how the judgemental and pejorative assessments of themselves and their families in the records were used against them throughout their time in Care and continue to reverberate in their lives maintaining ‘the conditions of oppression that impelled their creation’.<sup>11</sup> The capacity of records and recordkeeping systems to abuse and restrict human rights, contributing to, and compounding social injustices has thus been thoroughly documented in Australian inquiries into institutionalized Care systems. Senator Claire Moore, a member of a series of Australian Senate committees investigating the impacts of such systems, reflected at hearings in 2018 into responses to the redress recommendations of the latest inquiry that:

... records were consistently in the top two issues that were raised at every inquiry. It didn't matter whether it was institutional care or forced adoption or out-of-home care; accuracy and ownership of records came up every time.<sup>12</sup>

Reforms to recordkeeping have therefore featured in outcomes from all the major inquiries. From the recommendations of the *Bringing them Home Report* of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995-1997) that ‘access to records must be made easier and less hurtful’,<sup>13</sup> through to the findings of the most recent Royal

Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) of ‘the significant and detrimental consequences that poor records and recordkeeping practices can have’<sup>14</sup> they challenge recordkeeping professionals to confront the harm and power imbalances in extant practices, frameworks and systems. Tellingly, while the RCIRCSA acknowledged some improvements, it also noted that recordkeeping concerns ‘have not been overcome by reforms in response to recommendations of earlier inquiries.’<sup>15</sup>

### ***Transitional Justice***

Inquiries into institutionalized Care in Australia are examples of transitional justice mechanisms to deal with human rights abuses.<sup>16</sup> Originating in post-conflict international human rights circles, transitional justice is defined as

... the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.<sup>17</sup>

Mechanisms include criminal trials, truth commissions, apologies, reparation schemes, institutional reforms, memorialisation activities and education programs to deal with the scope and scale of impacts of gross human rights abuses, and aid in transitions to more peaceful, stable and democratic societies.

Records and recordkeeping are essential to these mechanisms. They rely on the gathering of layers of documentary evidence of human rights abuses and their impacts, whether that be through preventing the destruction of records of violations and ensuring their protection, and/or creating witness and victim/survivor testimony in a range of forms.<sup>18</sup> Authentic, reliable and highly trustworthy and secure recordkeeping processes and systems are also essential to their function, reflective of the integrity, ethics and values of their operations and justice outcomes.<sup>19</sup> Their archives are thus an important legacy and potential ongoing instrument of justice.<sup>20</sup>

Transitional justice mechanisms are also being used to recognise the harm suffered by those in various forms of institutional Care during their childhoods, and confront the obfuscation, inaction, denials and cover-ups that have magnified injustices.<sup>21</sup> McAlinden, in applying a transitional justice lens to institutional child abuse in Ireland, highlights the particular complexities that arise where there is an absence of regime change, and the difficulties settled states have in admitting the truth, breaking with the past and meaningfully reforming stable, entrenched and powerful institutions.<sup>22</sup> She writes of

... the tendency for Church and State ‘communities’ to deny or minimise wrongdoing, and the stark contrast between their ‘imagined selves’ and the legacy of an abusive past.<sup>23</sup>

Without the power shifts of post-conflict and post-authoritarian contexts, victims and survivors of institutional childhood abuse and neglect have to trust in transitional justice mechanisms and processes under the control of the governments and institutions that perpetrated the violence against them. This compounds the growing critique of the narrow legalism dominating transitional justice approaches and of top-down, state-centric approaches falling short of meeting the needs and expectations of impacted populations for remedy, redress, reconciliation and reform.<sup>24</sup> Their ‘short-term, legalistic and corrective’ nature makes them ill-suited to deal with deep-seated social and economic inequalities,<sup>25</sup> and ‘to follow through on recommended institutional reforms.’<sup>26</sup>

The legalistic frameworks of judicial inquiries in particular can militate against participation by those who have suffered injustices, given the selective and ‘highly prescribed ways’ in which engagement is allowed.<sup>27</sup> Lawyers and legal processes take over and so

... those most affected by violations have little or no opportunity to impact upon the goals of the process or the nature of the particular mechanisms.<sup>28</sup>

This can colour both process and outcomes.

Since lawyers, policy makers, and state officials often appear to think of justice as belonging to the institutions which make up the justice system and the people who staff it, state-like models of justice are thus prone to replication.<sup>29</sup>

These kind of responses inherently ‘mitigates against developing lines of ownership and accountability in the communities they were designed to serve’<sup>30</sup> In addition the fixed timespan of inquiries and truth telling commissions means that when dismantled after their reports are handed down, ‘their recommendations are easily (and frequently) ignored.’<sup>31</sup>

The way recordkeeping is configured in transitional justice processes, even with the best of intentions to document and redress human rights abuses, can also contribute to their shortcomings. Historian and human rights advocate Geoffrey Robinson, writing of East Timor experiences, highlights the particular dangers of archives of human rights abuses arising from transitional justice mechanisms being centralized under the control of the State. He argues that

... widely accepted archival norms and practices can serve to reinforce an acute imbalance of political power, effectively disenfranchising important stakeholders, and also impeding the pursuit of both knowledge and justice.<sup>32</sup>

This increasing awareness of how recordkeeping and archiving processes and systems inherently enfranchise and disenfranchise has characterised archival scholarship over the last few decades.<sup>33</sup>

Critical continuum scholarship in particular has focused on recordkeeping and archiving as processes of historic and ongoing colonisation and imperialism, replicating and reinforcing institutional power.<sup>34</sup> There is thus a need for recordkeeping in transitional justice mechanisms to challenge and invert the assumed hierarchy ‘by placing the interests of survivors of human rights abuse and their advocates, at the top, and those of national states at or near the bottom’.<sup>35</sup> We argue here that this requires a transformative approach to enable archival and recordkeeping frameworks, processes and systems to overtly represent the recordkeeping rights of impacted communities and seek ongoing agency in recordkeeping processes for archival justice and autonomy.

### ***Transformative justice***

Discussions of agency in processes and systems are also reflected in transitional justice discourses. McEvoy argues for a thickening of transitional justice with



... a greater willingness to give space to actors other than the state or 'state-like' institutions in justice provision. It means being open to insights of disciplines and forms of knowledge other than law.<sup>36</sup>

He provides the example of community-based restorative justice projects in Northern Ireland where the localized application of a human rights framework creates

... a space where a dialogue about competing rights claims can occur, where power relationships can be named, and where the needs of the state ... do not necessarily trump the needs of individuals and communities most affected by violence.<sup>37</sup>

Lundy and McGovern also critique the exclusionary tendencies of transitional justice measures which constrain the role of local communities 'raising fundamental questions of legitimacy, local ownership and participation.'<sup>38</sup> They describe the bottom-up truth telling processes and outcomes of the Ardoyne Commemoration Project in Northern Ireland, where 'the bearer[s] of the testimony' were placed 'at the heart of decision-making processes'.<sup>39</sup> They highlight how such empowerment enabled the development of intra-community conflict resolution processes to surface tensions and address previously taboo topics. They indicate the need for transitional justice initiatives to apply principles from the substantive literature on participatory theory and practice and seek to 'create spaces for people to determine, shape and develop solutions for themselves'.<sup>40</sup> Their example also illustrates how agency in the design and doing of recordkeeping can play an integral part in community empowerment and justice seeking.

Human rights scholars are thus calling for new ways of conceptualising and designing justice initiatives, not just as transitional, legalistic processes, but as spaces for social and political transformation. This involves two radical shifts. Firstly in paying greater attention to, and providing remedies, redress and accountability for, structural violations of economic and social rights and secondly in supporting and resourcing 'a more bottom-up understanding and analysis of the lives and needs of populations.'<sup>41</sup> Instead of formal, elite and state-led processes there is scope for transformative justice initiatives to be configured in ways more responsive to local needs, that while

addressing the big questions, prioritise resourcing and building capacity in and across communities to implement desired changes in all their complexity. This leads to a definition of transformative justice

... as transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level.<sup>42</sup>

This incorporates

... a focus upon socioeconomic structures, the ways in which inequalities may produce structural violence and a focus upon how this structural violence may effectively be addressed.<sup>43</sup>

Transformative justice thus accords with the growing body of critical archival scholarship seeking to reveal the ways in which institutional recordkeeping and archiving infrastructures enforce existing power differentials, marginalisation and inequalities, and to canvas ways in which they can be addressed.<sup>44</sup> In the next section we use a transformative justice lens to critique responses to the recordkeeping recommendations of the latest Australian inquiry into institutional Care settings.

### ***Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA)***

Held from 2013 to 2017, the RCIRCSA was an extensive investigation into the systemic failures of a range of public and private institutions to deal with allegations of child sexual abuse. While the Care Leaver community welcomed its establishment – having fought for so long for such an investigation into the manifest injustices suffered in their childhoods – the narrow focus on child sexual abuse in the terms of reference was, and continues to be, a source of disappointment.<sup>45</sup>

The significance of recordkeeping was raised with the RCIRCSA from the beginning with their response to what they were hearing in the private sessions a hallmark of their survivor centred approach.<sup>46</sup> Recognition of the systemic nature of trauma and its impacts on the exercise of human rights framed the way in which they drew on interdisciplinary perspectives and

... prioritized the acknowledgement of historical injustice and intergenerational trauma, the political and therapeutic value of bearing witness to pain, the evidentiary utility of survivor testimony and the importance of organizational and individual accountability.<sup>47</sup>

This led the Commissioners to examine the quality of recordkeeping across their case studies as a significant contributor to poor institutional responses to child sexual abuse. They commissioned specialized research on recordkeeping, held a (closed) records roundtable with stakeholder communities and organisations, and developed a consultation paper on records and recordkeeping practices.<sup>48</sup>

The RCIRSA's final report contains a volume dedicated to recordkeeping and information sharing, that explicitly recognizes recordkeeping as a human rights issue:

... good records and recordkeeping practices are integral to the realisation of many of the rights of children enshrined in the United Nations Convention on the Rights of the Child ... In particular, the creation and management of accurate and detailed records is fundamental to children's rights to identity, nationality, name and family relations. The rights of children to be protected from all forms of physical, mental and sexual abuse are promoted by good records and recordkeeping.<sup>49</sup>

Lifelong rights in records are also clearly acknowledged:

Creating and keeping accurate records about children, and the care and services provided to them, promotes the best interests of the child by fostering accountability and transparency and recognising individuals' character and experience. Importantly, these records matter to individuals when they are adults – to satisfy their essential human needs in relation to identity and personal history and for practical reasons, including in relation to redress and civil or criminal proceedings.<sup>50</sup>

This is an important addition to the literature on archives and human rights, as it challenges a narrow legalistic interpretation of the human rights that recordkeeping professionals should seek to serve.<sup>51</sup> It highlights a responsibility to those with Care experiences extending beyond their

childhood contact with Care systems and that may come into conflict with organisational and government interests.

#### *Recordkeeping Principles Recommendation*

In the handing down of the RCIRCSA's final report in December 2017, there was hope that their cleverly crafted high-level principles for recordkeeping for child safety and wellbeing linked to the institutional leadership, governance and culture of Child Safe Organisations, as detailed in Table 1, would provide the mandate and impetus for significant reform in Care sector recordkeeping.

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.

Table 1: Records and Recordkeeping Principles Recommendation 8.4 from the RCIRCSA.<sup>52</sup>

The report noted that:

It is in the best interest of children that institutions foster a culture in which the creation and management of accurate records are integral parts of the institution's operations and governance.<sup>53</sup>

It also acknowledged the significant structural barriers to addressing recordkeeping problems given the fractured and fragmented landscape of recordkeeping and archiving in Australia.<sup>54</sup> The absence of any unifying governance and accountability framework across state and federal jurisdictions, government and collecting institutions, government and non-government organisations is a significant contributor to the dysfunction so keenly felt by those with Care experiences, and the limited responses to recordkeeping recommendations from prior inquiries.<sup>55</sup> However, they stopped

short of the radical reform they were prepared to advocate for in other areas,<sup>56</sup> with no recommendations for legislative change, instead relying on implementation of the records and recordkeeping principles for child safety and wellbeing to address the systemic problems, with existing oversight bodies and regulatory frameworks to enable, monitor and enforce compliance.<sup>57</sup> To what extent have those with recordkeeping oversight and regulation powers responded to the RCIRCSA's challenging and inspiring words?

### *Responses to the Recordkeeping Principles Recommendation*

Federal and state governments and other organisations were given six months to respond to the RCIRCSA recommendations, and then charged with annual reporting for the next five years on their implementation.<sup>58</sup> All governments accepted the recordkeeping principles recommendation, along with other recommendations relating to retention periods for institutional records of child sexual abuse. This came with a commitment to work collaboratively with the adoption of the following standard wording in many of the responses:

... [Government] will prioritise collaboration with relevant agencies and organisations to develop appropriate guidance on assessing risk and developing recordkeeping principles.<sup>59</sup>

However, push back was also evident with some jurisdictions reporting that they were already compliant with the principles in their policies and advice, hence implying no need for further action. Victoria was the only one to note the need to tackle the compliance of non-government organisations, but just in relation to the further regulation of records retention<sup>60</sup> Only South Australia and New South Wales mentioned access to records; SA to say that they 'will continue to provide access to the State's archival collection'<sup>61</sup> and NSW to indicate they had 'substantially reduced the processing time for care leaver applications for records through increased resource allocation' over the past four years.<sup>62</sup>

Our analysis of subsequent annual reporting indicates that the RCIRCSA's recordkeeping principles are being interpreted through a narrow focus on records of childhood sexual abuse. In each

jurisdiction effort has been put into updating retention and disposal schedules to reflect the recommendations relating to minimal retention periods (i.e. 45 years for records relating to child sexual abuse incidents to reflect the often-delayed disclosure). Through the Council of Australasian Archives and Records Authorities (CAARA) the jurisdictions have also worked together to produce a record-keeping [sic] guideline that only deals with managing child sexual abuse records after an incident.<sup>63</sup> There is no mention of access to these records by survivors, or of how they could and should encompass other recordkeeping needs for child safety and wellbeing. The advice is principally for Australian government institutions with a note encouraging voluntary adoption by non-government organisations.<sup>64</sup> CAARA has also provided support for the Australian Society of Archivists to develop an online training toolkit for Out-of-Home Care Records to help improve records access practices.<sup>65</sup>

Missing from the CAARA responses and the annual government reporting on Recommendation 8.4 is connection to the parallel development by the National Children's Commissioner of *National Principles for Child Safe Organisations*,<sup>66</sup> despite the RCIRCSA highlighting their integral connection:

Good recordkeeping is an important part of making and supporting institutions to be child safe. Our principles for records and recordkeeping are supplementary to our 10 recommended Child Safe Standards – in particular, Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture (Recommendation 6.5).<sup>67</sup>

Here too there has been initial hope but then disappointment. While submissions<sup>68</sup> to the initial exposure draft of the *National Principles for Child Safe Organisations* succeeded in increasing references to 'record keeping' [sic], the accompanying practical tools relegate meeting recordkeeping requirements to a policy response<sup>69</sup> and focus only on records for concerns and complaints.<sup>70</sup> Policy, guidance and advice are rather passive tools – relatively easy to produce, but ultimately toothless if not accompanied by mechanisms for driving and overseeing implementation and evaluating impact.

While these improvements are welcomed, do they address the ‘systemic and enduring’ problems with creating and managing records that the RCIRCSA identified? Crafted with the best of intentions, they are very much traditional responses focused on records and archives management and reflective of functional, professional and jurisdictional silos. In our estimation, they fall short of holistically improving the quality of Care recordkeeping in the best interests of the child and do not champion its active role in the governance of child safe organisations. They also do not refigure power relations. Subjects of records remain powerless and beholden to individual institutional integrity and largesse, perpetuating existing paternalistic relationships. The moment has not been seized to highlight the integral role that recordkeeping plays in identity, memory and accountability, nor to challenge the sector to ask and address hard questions about how accountability to childhood rights is adequately reflected and monitored (preferably with independent oversight) in recordkeeping regimes.

Our conclusion is that while recordkeeping frameworks, processes and systems in the Care sector continue to operate in jurisdictional, functional and professional silos and put the rights of organisations, institutions and governments ahead of those of children, young people and their adult selves, then their capacity for structural violence will continue to inflict and exacerbate disadvantage, discrimination and trauma.<sup>71</sup> There is an imperative to move beyond transitional to transformative approaches to re-figure power relations in recordkeeping to allow for voice, agency and autonomy.

### ***Transformative responses***

The Archives and the Rights of the Child Research Program is a transdisciplinary research, development and advocacy agenda investigating how lifelong rights in records and recordkeeping can be recognized, respected and enacted in Care systems, particularly through the utilisation of digital technologies. Its transdisciplinary nature reflects the need to bring together researchers from a range of disciplinary, community and organisational contexts to tackle this complex problem.<sup>72</sup>

Utilising participatory research and design methodologies, we seek to foster the voice and agency of Care experienced advocates in highlighting and addressing recordkeeping needs. The program incorporates a range of interconnected and complementary research projects, with key resourcing through an Australian Research Council (ARC) Future Fellowship, *Connecting the Disconnected: Co-Designing Integrated and Inclusive Recordkeeping and Archival Networks* (2015-2018), and an ARC Discovery Project, *Rights in Records by Design: Transforming Recordkeeping Systems for Children in Out-of-Home Care* (2017-2020).

The participatory design mechanisms of the *Connecting the Disconnected Future Fellowship* brought key advocates and researchers together as the *Setting the Record Straight for the Rights of the Child Initiative* to hold a National Summit in May 2017 and develop a long-term strategy for transforming recordkeeping for childhood Care around recognizing, respecting and enacting multiple rights in records.<sup>73</sup> As Senator Moore stated in 2018 hearings:

So, when your organisation was set up, there was a lot of joy that finally, instead of having to have these battles consistently with state groups over and over again, at least someone was looking at the wider context .... I think the fact that you exist is something that everyone can agree is a really, really positive step.<sup>74</sup>

Reflecting a transformative justice approach, the Initiative has through the Summit created ‘a space in which locally led transformation can occur.’<sup>75</sup> The Summit brought those wanting major recordkeeping reform together, and the resultant strategic plan is an ongoing advocacy tool to inspire localised action. It outlines the elements of a *National Framework for Recordkeeping for Childhood Out-of-Home Care* to address the full gamut of identity, memory and accountability needs for all those who experience childhood out-of-home Care – past, present and future – along with action and advocacy and research and development agendas to foster co-ordinated developments and drive practical reforms.<sup>76</sup> Framed around continuum conceptualisations of recordkeeping, it speaks to how recordkeeping rights should be designed into contemporary Care systems, as well as incorporated into the access and management of records for past generations of



Care leavers. The research funding that the Archives and the Rights of the Child Research Program has been able to attract to conceptualise rights-based recordkeeping also embodies the ‘facilitating [of] change through the provision of resources, material and intellectual’ that characterise transformative justice approaches.<sup>77</sup>

### ***Rights in Records by Design***

Since the Summit, our focus has been on progressing the research and development agenda of the strategy. The *Rights in Record by Design Project* has brought together a transdisciplinary team to imagine Care recordkeeping systems 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 UN Convention on the Rights of the Child.<sup>78</sup> The project team, operating across Monash University and Federation University Australia, has undertaken a number of interconnected strands of investigation, utilising participatory research and design approaches, with the three highlighted here focusing on the development and operationalisation of recordkeeping rights.

### ***Charter of Lifelong Rights in Childhood Recordkeeping***

A Charter of Lifelong Rights in Childhood Recordkeeping is a key element of the Summit’s *National Framework for Recordkeeping for Childhood Out-of-Home Care*.<sup>79</sup> Care experienced keynote speakers, panellists and participants provided the impetus for its development, arguing for a shift away from organisation-centric records of control and surveillance towards participatory recordkeeping that would sensitively document childhoods, support the development of identity and belonging, maintain connections with family, community and culture, and address their questions about who they are, where they come from, and why they are/were in Care. Indigenous Australian<sup>80</sup> participants also emphasized the role recordkeeping should play in truth-telling and connecting to their rich heritage and Country.

[Figure 1]

Figure 1 is a graphic representation of the Charter, with human rights, Indigenous human rights linked to Indigenous sovereignty,<sup>81</sup> and transformative justice forming its broader context. It identifies recordkeeping rights to participation, access, disclosure and privacy, stemming from human rights to identity, memory, accountability, and autonomy. The Charter is designed to apply throughout a Care experienced person's lifetime, supporting child safety and wellbeing principles, cultural safety for Indigenous Australians, and lifelong information, historical justice and redress needs of Care leavers. Importantly the Charter recognizes the unique human rights issues associated with the removal of Australian Indigenous children from their families as part of a larger colonial project of dispossession and denial of Indigenous sovereignty.<sup>82</sup> As a rights-based instrument to support information equity, agency, safety and justice, the Charter aims to serve transformative justice purposes as a tool for rebalancing the power asymmetries embodied in extant recordkeeping in the Care sector.<sup>83</sup> One of its main goals is to strengthen the voices of both children in Care and Care leavers in the decision-making that affects them, including recordkeeping itself, reflective of the emphasis in transformative justice on participation and agency in processes and defining outcomes.

Transdisciplinary engagement has been essential to its development, with warrant analysis establishing the evidence base for the Charter. This process has identified and analysed authoritative sources that provide testimonial and instrumental warrant of human rights and child rights linked to Care recordkeeping.<sup>84</sup> The testimony of Care leavers, the views of children in Care and sources authored by those with lived experience have been privileged over other forms of warrant from child and family welfare, systems design, the creative arts and archival practice, historical justice, and archival fields.<sup>85</sup> This acknowledges that Care-experienced individuals can speak with direct authority on the ways in which recordkeeping affects the exercise of their rights leading up to, during, and after Care. Testimonies and sources of warrant produced by Indigenous organisations

and authors are also prioritized as the best expressions of knowledge regarding the rights and experiences of Indigenous Australian children.

This transdisciplinary approach will continue in the next stage of Charter development, involving key stakeholders across the Care sector in participatory validation processes and advocacy planning for its implementation. This community uptake will be key to fulfilling its potential as a transformative tool.

### *Applying the Charter in a Community Sector Organisation*

While this warranting work was being undertaken, members of the *Rights in Records by Design Project* team at Federation University Australia have been exploring the embedding of participation, control and moral ownership principles of the Charter into the practice of a contemporary children's Care organisation. Cafs (an abbreviation of Child and Family Services) is based in Ballarat and manages a range of programs, including Out-of-Home Care, Placement Prevention and Family Services Programs, and other youth and community-focussed activities. Cafs has a history dating back to 1866 as a large children's institution, providing a living example of the ways in which such historical legacies play out in contemporary community service contexts. A series of workshops with the Rights in Records team in late 2019/early 2020, exploring the application of the Charter principles, has helped Cafs to consciously move towards an approach to records – both historical and contemporary - that emphasises its responsibility to the young people it has/does care for. The process recognised that change in practice will come from practitioners, as long as they get the tools and leadership needed to do so.

While overcoming more than 150 years of history is still a work-in-progress, Cafs has been able to strive for new and improved organisational cultures influenced by a more challenging range of stories, metaphors and perspectives than had previously been the case. Established narratives of institutional generosity and benevolence can make way for emerging narratives of individual

agency and its denial, along with recognition of the lifelong effects of institutionalisation.<sup>86</sup> This reframing of institutional history facilitates

- Individual empowerment, whereby ex-institutional residents and their families, along with current service users, are better able to connect with their own pasts, with the possibility of enhanced self-identity;
- Organisational Strategy, whereby better decision-making is made possible through access to narratives, stories, metaphors and collective experiences that can enhance the organisation's self-perception and public presentation as being an experienced actor in the sector – 'warts and all'
- (Re)-building community trust, enabling the organisation to communicate with integrity and honesty and move towards healing in the communities it serves, including former residents, those affected by inter-generational trauma and those involved in contemporary services.

Such transformations, of outlook, action and professional thought, are needed if the rights-based reforms embodied in the Charter are to be embraced by institutions and incorporated into their routine practices. They also facilitate the breaking down of the intellectual boundaries that tend to produce the reflexively siloed thinking that impedes the uptake of transdisciplinary concepts and practices. In this way the organisation can realize its potential as a significant agent of transformative justice.

### *Recordkeeping Rights Prototyping*

The third strand of inquiry involves the exploration of the Lifelong Living Archives component of the *National Framework for Recordkeeping for Childhood Out-of-Home Care*, through the development of a technical demonstrator of how recordkeeping rights in Care systems could be dynamically enacted. Through a series of co-design workshops with a small team of Care leaver advocates we have developed MySSy,<sup>87</sup> a web app front end to a records registry; a gateway to a

child, young person, and adult's distributed Care records network, that places personal information and access to records under their control.<sup>88</sup> Together we have identified the key functionality, defined information and records sharing protocols and designed the app interface. As with the other research activities, fostering voice, agency and equity in the research and design processes have been just as important as the outcomes.<sup>89</sup>

Through the workshops we have learnt from our co-design team of the kinds of activities in which Care records are produced, what they mean in the moment and of their significance later in life, and how they would like to participate in their creation, management and use. In return, they have learnt from us about recordkeeping frameworks, processes and systems, along with web app and systems design considerations. This exchange of experiences and expertise enabled us together to focus on modelling a recordkeeping system for a Care experienced person, to break the shackles of being forever the client, subject or case of organisational systems, and redistribute power in recordkeeping.

As a research prototype, MySSy is not a ready-to-implement system, but the foundation of a through-time participatory Care recordkeeping eco-system. It aims to be a conversation starter for the systems and infrastructure transformations needed to operationalize recordkeeping rights and no longer exclude people from the recordkeeping and records that document their childhoods. The next stage of the research will be discussing MySSy with organisations like Cafs in further transdisciplinary collaborations.

## ***Conclusion***

The transdisciplinary approach of the *Rights in Records by Design Project* aims to provide a pathway for transformations in Care recordkeeping practices and systems to address current inequities and break free of the endless cycles of ambiguous and disappointing transitional justice responses that do not address the structural violence inherent in extant frameworks, processes and systems. In privileging the perspectives, voice and agency of Care experienced people in a variety

of ways, and then working collaboratively with allied professionals and disciplines, we not only better understand the needs of and barriers to archival autonomy and justice, but can also imagine and explore how they can be addressed. These processes also help to build the will and capacity to support potential solutions across stakeholder communities.

The project also demonstrates the leadership role that the archival and recordkeeping community can, and should be willing to, take in re-imagining and re-figuring recordkeeping frameworks, processes and systems around multiple rights in records. In articulating the recordkeeping rights that support child safety and wellbeing and facilitate working in their best interests, in engaging in conversations about recordkeeping in support of these rights, and in building a demonstrator of the systems architecture for activating those rights we hope to have taken steps towards ensuring that systems created to protect children from neglect and abuse do not themselves cause harm.

### ***Acknowledgements and Declaration of Interests***

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## Notes

- <sup>1</sup> As well as the Australian inquiries referenced in the next section see Commission to Inquire into Child Abuse, “Final Report of the Commission to Inquire into Child Abuse”; Sköld, Foberg, and Hedström, “Conflicting or Complementing Narratives?”; Truth and Reconciliation Commission of Canada, “Final Report of the Truth and Reconciliation Commission of Canada”; Shaw, “Historical Abuse Systemic Review: Residential Schools and Children’s Homes in Scotland 1950 to 1995”; IICSA, “Interim Report of the Independent Inquiry into Child Sexual Abuse.”
- <sup>2</sup> In Australia, Out-of-Home Care is the contemporary term to describe temporary, medium, or long-term living arrangements for children and young people removed by authorities from parental homes for a variety of child welfare and protection reasons. As explained in Wilson & Golding, we use the capitalised term ‘Care’ as an uneasy compromise to encapsulate the diversity of childhood Care experiences and to denote the ironic connotations of often manifestly uncaring treatment, without the typographically heavy-handedness of continually enclosing the word in quotation marks.
- <sup>3</sup> Evans et al., “‘All I Want to Know Is Who I Am’: Archival Justice for Australian Care Leavers.”
- <sup>4</sup> Evans et al., “Self-Determination and Archival Autonomy: Advocating Activism.”
- <sup>5</sup> Evans, “Structural Violence, Socioeconomic Rights, and Transformative Justice.”
- <sup>6</sup> Gready and Robins, “From Transitional to Transformative Justice.”
- <sup>7</sup> McKemmish, “Recordkeeping in the Continuum.”
- <sup>8</sup> Gilliland, “Moving Past,” 255–56.
- <sup>9</sup> There is a growing bibliography of memoirs, submissions and testimony to inquiries, and advocacy material. Those that feature Care experienced authors writing for recordkeeping audiences are: Wilson and Golding, “Latent Scrutiny”; Golding, “‘Problems with Records and Recordkeeping Practices Are Not Confined to the Past’”; O’Neill, Selakovic, and Tropea, “Access to Records for People Who Were in Out-of-Home Care”; Selakovic, “Transcript of Presentation given at ‘Archiving: Moving Forward as a Community’ Workshop Victorian Archives Centre, North Melbourne, 15 April 2010.”
- <sup>10</sup> Wilson and Golding, “Latent Scrutiny.”
- <sup>11</sup> Wilson and Golding, 96.
- <sup>12</sup> Commonwealth of Australia, “Official Committee Hansard - Royal Commission into Institutional Responses to Child Sexual Abuse: Australian Government Response to the Redress Related Recommendations of the Royal Commission,” 53.
- <sup>13</sup> Human Rights and Equal Opportunity Commission, “Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families,” 299.

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- 14 RCIRCSA, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:39.
- 15 RCIRCSA, "Consultation Paper: Records and Recordkeeping Practices," 4.
- 16 Daly, "Conceptualising Responses to Institutional Abuse of Children."
- 17 Annan, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General."
- 18 Harris, "The Archival Sliver"; Robinson, "Break the Rules, Save the Records."
- 19 For a useful summary of the archival literature on human rights see endnote 28 of Procter, "Protecting Rights, Asserting Professional Identity."
- 20 Jones and Oliveira, "Truth Commission Archives as 'New Democratic Spaces.'"
- 21 Daly, "Conceptualising Responses to Institutional Abuse of Children"; Sköld and Swain, *Apologies and the Legacy of Abuse of Children in "Care."*
- 22 McAlinden, "An Inconvenient Truth."
- 23 McAlinden, 192.
- 24 McEvoy, "Beyond Legalism."
- 25 Waldorf, "Anticipating the Past."
- 26 Evans, "Structural Violence, Socioeconomic Rights, and Transformative Justice," 5.
- 27 Gready and Robins, "From Transitional to Transformative Justice."
- 28 Gready and Robins, 361.
- 29 McEvoy, "Beyond Legalism," 423.
- 30 McEvoy, 424.
- 31 Evans, "Structural Violence, Socioeconomic Rights, and Transformative Justice," 5.
- 32 Robinson, "Break the Rules, Save the Records," 341.
- 33 As the literature is extensive, two key works are Cook, "Evidence, Memory, Identity, and Community"; Gilliland, "Permeable Binaries, Societal Grand Challenges, and the Roles of the Twenty-First Century Archival and Recordkeeping Profession."
- 34 Evans, McKemmish, and Rolan, "Critical Approaches to Archiving and Recordkeeping in the Continuum"; McKemmish et al., "Decolonizing Recordkeeping and Archival Praxis in Childhood Out-of-Home Care and Indigenous Archival Collections."
- 35 Robinson, "Break the Rules, Save the Records," 341.
- 36 McEvoy, "Beyond Legalism," 440.
- 37 McEvoy, 432.
- 38 Lundy and McGovern, "The Role of Community in Participatory Transitional Justice," 100.
- 39 Lundy and McGovern, 118.
- 40 Lundy and McGovern, 120.
- 41 Gready and Robins, "From Transitional to Transformative Justice," 340.



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42 Gready and Robins, 340.

43 Evans, “Structural Violence, Socioeconomic Rights, and Transformative Justice,” 5.

44 As the literature is extensive, a couple of the most recent publications bringing together the latest social justice and community archives research are Bastian and Flinn, *Community Archives, Community Spaces: Heritage, Memory and Identity*; Wallace et al., *Archives, Recordkeeping and Social Justice*.

45 Golding, “‘Problems with Records and Recordkeeping Practices Are Not Confined to the Past’”

46 As documented in the final report ‘Problems with institutions’ records and recordkeeping were raised directly or indirectly in virtually all of the Royal Commission’s case studies, as well as in our private sessions. We heard about instances of poor records and recordkeeping practices in both historical and contemporary institutions, and in a wide range of sectors.’ RCIRCSA, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:39

47 McPhillips et al., “Understanding Trauma as a System of Psycho-Social Harm: Contributions from the Australian Royal Commission into Child Sex Abuse,” 2.

48 RCIRCSA, “Consultation Paper: Records and Recordkeeping Practices.”

49 RCIRCSA, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:44.

50 RCIRCSA, 8:62.

51 Procter, “Protecting Rights, Asserting Professional Identity.”

52 RCIRCSA, 8:22–23.

53 RCIRCSA, 8:108.

54 RCIRCSA, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:61.

55 Evans, McKemmish, and Wilson, “Submission to the Out of Home Care Consultation Paper.”

56 For example in recommending that confessionals in the Catholic Church be subject to mandatory reporting of child sexual abuse.

57 RCIRCSA, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:11–12.

58 Australian Government, “Annual Progress Reporting: Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse.”

59 Australian Government.

60 Victorian Department of Justice and Regulation, “Victorian Government Response to the Royal Commission into Institutional Child Sexual Abuse.”

61 Government of South Australia, “Royal Commission into Institutional Responses to Child Sexual Abuse Government of South Australia 2019 Annual Report,” 35.

62 NSW Government, “NSW Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse,” 18.

63 CAARA Royal Commission Working Group, “Guidance for Identifying and Retaining Records Which May Become Relevant to an Actual or Alleged Incident of Child Sexual Abuse.”

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- 64 Australian Government, “Annual Progress Report 2019: Implementation of Recommendations from the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse,” 11.
- 65 Australian Society of Archivists, “Out-of-Home Care Records Toolkit.”
- 66 Australian Human Rights Commission, “Child Safe Organisations.”
- <sup>67</sup> RCIRCSA, *Final Report: Volume 8 Recordkeeping and Information Sharing*, 8:10.
- 68 Rolan, Evans, and McDowall, “Submission to the 2017 Draft National Statement of Principles for Child Safe Organisations.”
- 69 Australian Human Rights Commission, “Child Safe Organisations: Child Safety and Wellbeing Policy Template.”
- 70 Australian Human Rights Commission, “Child Safe Organisations: Introductory Self-Assessment Tool,” 8.
- 71 McKemmish et al., “Decolonizing Recordkeeping and Archival Praxis in Childhood Out-of-Home Care and Indigenous Archival Collections.”
- 72 Lawrence, “Deciphering Interdisciplinary and Transdisciplinary Contributions”; Rolan et al., “Weapons of Affect: The Imperative for Transdisciplinary Information Systems Design.”
- 73 Evans, “Setting the Record Straight for the Rights of the Child Summit”; Evans, McKemmish, and Rolan, “Participatory Information Governance.”
- 74 Commonwealth of Australia, “Official Committee Hansard - Royal Commission into Institutional Responses to Child Sexual Abuse: Australian Government Response to the Redress Related Recommendations of the Royal Commission,” 53.
- 75 Gready and Robins, “From Transitional to Transformative Justice,” 36.
- <sup>76</sup> Setting the Record Straight for the Rights of the Child Initiative, “Setting the Record Straight for the Rights of the Child Strategic Plan.”
- 77 Gready and Robins, “From Transitional to Transformative Justice,” 36.
- 78 Rolan et al., “Weapons of Affect: The Imperative for Transdisciplinary Information Systems Design.”
- 79 Evans, “Setting the Record Straight for the Rights of the Child Summit.”
- 80 We use the term ‘Indigenous Australian’ to refer to Aboriginal and Torres Strait Islander people, and acknowledge the diversity of peoples and communities within this definition.
- 81 UN General Assembly, “Declaration on the Rights of Indigenous Peoples.”
- 82 Human Rights and Equal Opportunity Commission, “Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families”; McKemmish et al., “Decolonizing Recordkeeping and Archival Praxis in Childhood Out-of-Home Care and Indigenous Archival Collections.” Tilbury, “The Over-Representation of Indigenous Children in the Australian Child Welfare System.”
- <sup>83</sup> Lewis, “Literature Review: Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care.”

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- <sup>84</sup> Testimonial warrant may be contained within other sources of warrant, including submissions, hearings, and reports of inquiries and royal commissions; oral histories and cultural materials; and research findings. Instrumental warrant is established through existing rights instruments and statements; legislation, policies and regulatory standards; and inquiry recommendations. For more detail on warrant analysis as an archival research method, see Duff and Cumming, “Respect My Authority.”
- <sup>85</sup> For example: The CREATE Foundation, the peak advocacy body for children and young people with an out-of-home care experience; Frank Golding’s Charter of Rights for Childhood Records developed for CLAN see Golding, ““Problems with Records and Recordkeeping Practices Are Not Confined to the Past””; recordkeeping rights scholarship: Gilliland and McKemmish, “Rights in Records as a Platform for Participative Archiving”; Gilliland and McKemmish, “The Role of Participatory Archives in Furthering Human Rights, Reconciliation and Recovery.”
- <sup>86</sup> David McGinniss, “Histories of the Ballarat District Orphan Asylum, Ballarat Orphanage and Ballarat Children’s Home, 1866-1983, PhD Thesis. Ballarat: Federation University Australia.”
- <sup>87</sup> MySSy stands for My System with the extra S to foster ‘Missy’ as the pronunciation which had the most appeal to the team. The extra S can stand for many things - safe, secure, special, supporting, sharing, etc. See <https://rirservermonash.gitlab.io/landing/>
- <sup>88</sup> Rolan, Phan, and Evans, “Recordkeeping and Relationships.”
- <sup>89</sup> Rolan et al., “Voice, Agency, and Equity.”

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