

**SUBMISSION TO THE ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE IN RESPONSE TO THE
CONSULTATION PAPER:
RECORDS AND RECORDKEEPING PRACTICES**

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My research, conducted with care-leavers, care-leaver advocates and record-holders, has been primarily concerned with supporting care-leavers to access their records. (A list of relevant publications drawn from this research is found at the end of this submission.) This submission is largely concerned with supported release of records and a number of system-wide issues that require attention. Please note that by care-leavers I am referring to those aged over 25 years, although much is applicable to the supported release of records to young people and children. It is the nature of the records that have changed in more recent decades that produces some of the specific issues raised here.

As the consultation paper (CP) states:

[in some instances] records were either never created, or contained only limited, inaccurate or insensitive content. There have also been instances of records being lost or destroyed, and of where it has proven difficult to access records that do exist. The impact on victims and survivors in each of these circumstances can be profound ... (CP, p. 3)

The loss, lack and poor quality of information that is produced through inadequate and inappropriate recordkeeping and records management is a major concern and has caused 'distress, frustration and trauma' (CP, p. 3) to those who rely on these sources of information, including care-leavers. At the same time, the information that is available - as minimal as it may be - can be highly significant. As care-leavers may not know why they were in care, remember little of their childhood, or not know who their family members are, records can be important in filling in these gaps in an individual's personal history. Care-leavers may be seeking records for other reasons, such as to inform decisions about their health, or that of other family members. Alternatively, as is highlighted in the consultation paper, they may be seeking evidence of abuse to be used in an effort to gain financial compensation or other forms of redress for the harms perpetrated by those who 'cared' for them. Personal records may be the only artefacts that remain of their childhood, and for this reason can be significant to them.

22. in relation to inconsistent laws and practice, whether the Privacy Act 1988 (Cth) should be amended so the Australian Privacy Principles relevant to access and amendment apply to all private institutions that care for or provide services to children; or, alternatively, how small private institutions that care for or provide services to children can be encouraged to 'opt-in' to the Australian Privacy Principles scheme

Legislation should apply to all institutions which care for or provide services to children. It is worth considering the introduction of legislation specifically for care-leavers, as there exists for those who have been adopted.

23. in relation to fees and charges, whether requests to access records created by institutions about children with whom they have engaged should be free of fees and charges, and, if so, what resourcing implications this may raise for record holders

Some record-holding institutions do not charge fees and this should be the case with all. Those who grew up in care who do not have this information about themselves and their families should not be charged to access this material.

24. in relation to access grants, what steps institutions should take to ensure that individuals have appropriate support when reading and interpreting records with potentially distressing content

There is a range of elements to supported release, and providing emotional support is one part of this. When there is an appreciation of the importance of the records, this then informs that way that records are made available and the care-leaver is kept at the centre of the records-release process. To assist care-leavers in accessing their records a model of supported release can be used; elements of this model follow.

Respect and believe

Requesting their records may be the first time a care-leaver has sought assistance regarding their childhood experiences. It may be the first time they have disclosed information about their family and childhood, or the first time that have told anyone how little they know, and what they do not know. Expressing belief in their account and being respectful encourages them to continue on this pathway. Disrespect and disbelief may mean they do not seek assistance again.

Offer support

Offering emotional support from the first point of contact and respecting care-leaver's wishes in this regard are essential. Taking into account the impact of the records (or lack of records), and ensuring the availability of emotional support or counselling are key elements of good practice. Referral to alternative services other than the record-holding organisations is important as care-leavers may not wish to receive support from the organisation from which they received care as children. Not all adult care-leavers will take up such an offer and, if such support is declined at first contact, follow up to re-affirm its availability. Be aware as well that accessing records can occur over long periods of time and invite them to return for support as such needs arise over time.

Prepare the records

Have an awareness of the likely fragmentation of a care-leaver's records and the need to conduct comprehensive searches to provide the greatest possible detail. Provide both the story in the records, and also the story of the records, to help care-leavers make sense of what they are receiving. Present the records in ways that demonstrate the value of the documents and display care for them as respected individuals.

Provide maximum information

Legislation provides for an entitlement for care-leavers to access information held about themselves in their records. Where records contain information about others, decisions are made by the record-holders about what is reasonable to release, given the impact of disclosure of this information on these other parties. Sometimes information may not be released due to the risk of harm to the care-leaver, or others. Supported release takes into account these competing interests, aiming for full disclosure and the maximum release of information, while redacting as little as possible to protect other's privacy. In instances where information is redacted, specific explanation is given.

Provide sources of contextual information

Sources other than care records can provide information. Extracts from documents such as annual reports and organisational histories can provide context to childhood experiences. In addition, sitting with a care-leaver as they read through their records at the time of release is an opportunity to answer questions about these childhood circumstances. Offer for care-leavers to re-contact over time to provide further information as other questions arise.

Make photos available

Care-leavers often request photos from their childhood. Typically, record-holding organisations do hold photos but not necessarily in ways that make them readily accessible. Like other records management, there are major resourcing issues in ensuring that photos are looked after for the long-term and that they are digitised and archived. Where photos of interest to a care-leaver are available, provide colour copies.

Support access to other information

Care records may provide all the information that a care-leaver needs to make sense of their childhood. For others, these records may be a stepping stone to a range of records, or be one of many records that they have sought to find information about their lost childhood. Other sources that can be searched include births, deaths and marriages registers, hospitals, court and police records, military archives, genealogical websites, newspapers and other specialist resources such as that held by Australian Institute of Aboriginal and Torres Strait Islander Studies.

In addition to these elements of supported release of records two key issues – specialist training and peer support – are integral to developing good practice in this field.

Specialist training

This work requires records release staff to have expertise in dealing with care-leavers' practical and emotional needs. It requires an understanding of the historical context of care, sound knowledge of the policy and legislative frameworks in which the work occurs, and a strong appreciation of processes of records management and the implications for their release. Skills in the use of trauma-informed approaches take into account the likelihood of care-leavers having experienced harm during and/or before care and its long-term impact. There appears to be much scope for the further development of training resources for those working in the field of care-leavers records release and consideration of the minimum qualifications required to undertake this specialised work.

Peer support

Not uncommonly, staff who are responsible for the release of records are sole practitioners or in small teams. The formation of local peer networks or communities of practice are ways of reducing this isolation, and also providing opportunities to share skills and discuss practice issues. Peer networks can be an informal means of professional development and professional support. While formal supervision is recommended, having opportunities to discuss common concerns with others working in the field are also valuable.

25. in relation to redactions, whether nationally consistent standards for redaction should be established; and what those standards should be

Nationally consistent standards for redaction would be useful; the issue then would be implementing them. As noted below, training in the application of privacy legislation is also needed for some record-holding organisations.

27. in relation to third party privacy, how public and private institutions can be better educated about the proper application of third party privacy exceptions.

Specialist training is important to ensure staff properly apply privacy legislation. There are highly skilled practitioners working in this field that could lead these developments.

30-32. whether a records advocacy service would be useful for victims and survivors of child sexual abuse in institutional contexts; what powers, functions and responsibilities a records advocacy service should have; whether there are existing bodies or agencies that may be suited to delivering records advocacy services.

A records advocacy service could be a useful mechanism to promote good practice, ensure the availability of support and monitor and advise on the proper application of third party privacy exceptions. There are currently a number of organisations that provide high quality work in the area of records release to care-leavers who could provide advice on key elements of such a service.

Relevant publications

- Murray, S. (work-in-progress) *Finding Lost Childhoods: Supporting Care-Leavers to Access their Personal Records*.
- Murray, S. (2015) *Supporting Adult Care-Leavers: International Good Practice*, Bristol: Policy Press.
- Murray, S. (2014) 'Compassion and compliance: Releasing records to care-leavers under privacy and freedom of information legislation', *Social Policy and Society*, 13(4): 493-503.
- Murray, S. and Goddard, J. (2014) 'Life after growing up in care: Informing policy and practice through research', *Australian Social Work*, 67(1): 102-17.
- Murray, S. and Humphreys, C. (2014) "'My life's been a disaster but I feel privileged": Care-leavers access to personal records and their implications for social work practice', *Child and Family Social Work*, 19(2): 215-24.
- Goddard, J. Murray, S. & Duncalf, Z. (2013) 'Access to child-care records: A comparative analysis of UK and Australian policy and practice', *British Journal of Social Work*, 43(4): 759-74.
- Murray, S. (2012) *Records Access Project: Report of the Survey of Record-holders and Support Services*, Melbourne: RMIT University.
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- Murray, S., Murphy, J., Branigan, E. and Malone, J. (2009) *After the Orphanage: Beyond the Children's Home*, Sydney: University of New South Wales Press.
- Murray, S., Branigan, E. and Malone, J. (2008) 'Making a life after care: The provision of support across the life course', *Developing Practice*, 22: 63-71.
- Murray, S., Malone, J. and Glare, J. (2008) 'Building a life story: Providing records and support to former residents of Children's Homes', *Australian Social Work*, 61(3): 239-55.