

**CREATE Foundation submission to the Royal  
Commission into Institutional Responses to  
Child Sexual Abuse**

**Response to Consultation Paper:  
Records and recordkeeping practices**

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**CREATE Foundation**

A Level 3, 630 George Street  
Sydney, NSW 2000

T 02 9267 1999

E [create@create.org.au](mailto:create@create.org.au)



# About CREATE Foundation

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of the 43,399 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people in care.



# Introduction

CREATE Foundation welcomes the opportunity to provide a response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) Consultation Paper, “Records and Recordkeeping Practices.” CREATE acknowledges and commends the Royal Commission’s efforts to highlight that sexual abuse of children in institutions has occurred in recent times and continues to happen. CREATE again emphasises the need for the Royal Commission to ensure individual and systemic responses to improve their life outcomes of the 43,399 children and young people living in out-of-home care across Australia.


CREATE recognises the commitment, courage, and generosity of the people who already have, and continue to come forward to speak publicly and privately about the sexual abuse perpetrated on them as children and young people while in the “care” of institutions. Through their actions and the sharing of their experiences, they have played a significant role in forcing Australia to accept that it must become a safer place for all children and young people to grow up in. Without the Royal Commission, this important goal would have been more difficult to achieve. CREATE also acknowledges the important support provided to survivors of child sexual abuse by individual and systemic advocates.

CREATE’s mission is to create a better life for children and young people in care. To do this we connect individual children and young people with a care experience to each other to reduce feelings of isolation, to build their self-confidence and skills, to assist their self-advocacy, and to enhance their ability to advocate for changes to improve the system for everyone. Children and young people are connected to each other and CREATE at the local level through CREATE’s state and territory offices. The views and wishes of children and young people in out-of-home care are regularly sought by CREATE through formal and informal consultations. The views expressed by children and young people provide a basis for all of CREATE’s policy and advocacy work by informing the way CREATE operates and enabling CREATE’s media responsiveness.

Children and young people under 18 years of age have no political power and are dependent on adults to help them access their rights (ALRC, 1997). Article 5 of the United Nations (1989) *Convention on the Rights of the Child* (CROC) recognises the responsibilities, rights, and duties of parents or persons legally responsible for a child to direct and guide children and young people to learn about and exercise their rights as laid out in the CROC. CREATE believes that when state or territory governments intervene in the best interests of the child to provide alternative guardianship to parents, it is essential that children and young people’s interests and rights are regularly reviewed independently and are upheld. Individual and systemic advocacy can help children and young people in out-of-home care to express their rights and navigate the complex bureaucratic systems of child protection.

Often, individual therapeutic and support services are required to address individual needs, and individual advocacy is needed to help children and young people locate and access support services, or to assist them in contacting organisations where they have previously resided in order to find out relevant information about their own care experiences. Research shows that while most children and young people in out-of-home care have good physical health, a significant number experience psychological and behavioural issues, and generally have mental health outcomes that are poorer than their peers who have never been in care (Osborn & Bromfield, 2007). When young people have limited relevant information about their situation, these issues can become major problems.

In addition to this, CREATE believes that much can be achieved through aggregating the voices of children and young people so that they can participate in systemic advocacy as a way of effecting large-scale change to the child protection systems. CREATE’s Report Cards are major research



projects that promote the voices of children and young people in care to stakeholders in the out-of-home care systems on important issues.

CREATE is an active member of the National Forum Group of the *National Framework for Protecting Australia's Children 2009-2020* (the National Framework) and helped develop the National Standards for Out-of-Home Care (the National Standards) (FaHCSIA, 2011). CREATE firmly believes that a continuing commitment to the National Framework across government and non-government services is essential to improve systems for children and young people in out-of-home care across Australia, to keep them safe, and support them to achieve to their potential.

CREATE believes the implementation of the National Framework can promote and achieve consistency across Australia's eight different child protection systems. The voices of children and young people, obtained through consultations across Australia, must be included in the development of, and reporting on the Action Plans that underpin the work of the National Framework.

This National Framework, and the National Standards that sit underneath this, can provide the national consistency for the record keeping and data collection covered within this discussion paper. Consistency in developing the processes and methods of record keeping and data collection will increase accountability and reduce jurisdictional barriers for young people who move within the system.

CREATE recommends that all mechanisms to maximise consistency, and reduce barriers created through jurisdictional differences, should be explored.

### **The voices of children and young people**


The Royal Commission (2015) has heard from CREATE Young Consultants about some of the barriers to making complaints by children and young people in out-of-home care, including feeling they won't be believed and that the negative outcomes outweigh the potential benefits of following through on a complaint. For example, if a child or young person is happy with their placement and doesn't want to move, then they may feel it is unwise to report abuse as removal from the placement may be the first and automatic response. Regard must be paid to the views of the child or young person and whether there are other actions that can provide for their safety.

Each Australian state and territory government has a "Charter of Rights" for children and young people in care based on the United Nations Convention on the Rights of the Child. It includes the right of children and young people to participate in the decisions that affect their lives, which importantly for children and young people in out-of-home care relates to their care experience.

For children and young people to participate in decisions requires building trust and respect, and open and honest communication. CREATE's work aims to improve opportunities for children and young people to have a voice and be heard to improve out-of-home care systems.

Need to view young people and their access to files as an issue of access to their own histories. Within a family, a child's sense of identity is, in many ways, given to them by the stories and narratives they hear about their connections within family. For children and young people in care, this is often missing. No one gives them these stories and narratives over time, because they are often separated from family members who could help reinforce their identity.

Much of this information will be contained in files within organisations and services that have provided care for the young person. It is therefore imperative that young people in care (including care leavers) be able to access these files, as a way of gaining an understanding of their childhood and care experiences. This is how they learn to make sense of what occurred in their lives, and can form a foundation for them moving forward with the rest of their lives.



To be cut off, hindered, and redirected away from this information is difficult enough. But, to be given files with vast swathes of “blacked out” material, or insensitive descriptions of the young person, or even inaccurate information, can have a devastating effect on them over that can persist for many years.

The following information specifically addresses the questions related to principles 1 to 5 and the proposed sixth principle from the Consultation Paper, Records and recordkeeping practices (referred to herein as the Consultation Paper).



## Principle 1. Creating and keeping accurate records in the best interests of the child

CREATE recognises the need for a broad sector wide approach to recordkeeping, as well as the need for rigorous internal organisational processes. As noted in the Consultation Paper, records are often written for organisational purposes and not with the young person as a potential reader in mind. This is certainly CREATE's experience and the effects are often traumatic for care leavers who access their records. CREATE notes that care leavers often receive records that are not only inaccurate, but insensitive in terms of their content.

CREATE agrees with the notion of providing support for young people accessing and reading through their records. This can be a traumatic time of reliving past events and they may need assistance in this regard. Young people told CREATE that they would like support and warning about the contents of files before they are given these records to read. They also noted that review of records (which correspond to histories) is a critical component for any healing process they undergo.

CREATE suggests that including a focus on the need for sensitivity is a critical element of any training developed by organisations. This needs to be central in terms of setting the context for keeping records and how organisations understand their significance to care leavers.


Consideration should also be given to ensuring good recordkeeping practices as a requirement of any licencing of a care service. CREATE has provided a response regarding the monitoring of care services previously in, *CREATE Foundation Response to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home-Care (April 2016)*, where we referred to the keeping of *accurate* records as a vital part of this process.

A significant issue that CREATE has found is that records are often not kept, or are inaccessible once young people have aged out of care. One of the findings from the *CREATE's Go Our Own Way Resource for young people transitioning from care in Australia: An evaluation* (McDowall, 2016) is that all state and territory government departments were not able to provide even basic contact information for young people who had aged out of care within the previous year. In attempting to obtain ethics approval for this research, a significant challenge was that "young people (had) aged out of care... and their records were not retained" (p. 56). This highlights the issue that the record keeping is not continued and may not capture important issues encountered during the transition from care that may need to be accessed in future years.

In the US, state governments are required to enter the details of all young people transitioning from care each year onto the *National Youth in Transition Database*. This comprehensive record allows the progress of young care leavers in their search for independence to be monitored. Their use of services, their achievements, and their difficulties can be noted, and the information used to inform policy development surrounding support services. This information is critical for the system to provide adequate support to young people for maximising the likelihood of successful independence.

Further, despite all governments maintaining that they continue to care for young people up to the age of 21 years, and in some jurisdiction up to the age of 25 years, CREATE also found that no formal records were available for those who would be eligible for support up to the age of 21 or to the age of 25 years (McDowall, 2016).

CREATE recommends that state and territory government departments are required to maintain case records for all young people at least up until the age that support is scheduled to cease. That is, if the jurisdiction provides support until the age of 25, records should be maintained until this time. However, it is highly desirable, as indicated in later sections, that records be retained as long as possible to ensure that young people can refer to their "story" in the future if required.



CREATE also recommends that institutions include, as part of their induction, training that supports the development of supportive records that may be viewed by the person it refers to. These are part of someone's life, not just a transactional account of risk factors or incidents. This training should be part of an overarching organisational culture that encourages people in their care to view their records and ask questions as required.

### **Principle 2. Accurate records must be created about all decisions and incidents affecting child protection**

CREATE's response to the *Royal Commission into Institutional responses to Child Sexual Abuse Consultation Paper* (2016a), detailed number of areas related to the importance of accurate records about decisions and incidents related to child protection decisions and children and young people in care. We also draw the Royal Commission's attention to our submission to the Senate Select Committee into Out-of-Home-Care (CREATE Foundation, 2014) in relation to complaints.

With regard to records related specifically to child sexual abuse, the types of records that should be created by institutions in this regard are a matter for the institutions and for any licensing organisations and must meet compliance standards under relevant law. However, the language that is used must also reflect the fact that these records are about the alleged harms that have occurred to a child while in the care of that same institutions, and must reflect due sensitivity and care. CREATE has consulted with young people who noted that the use of language that is insensitive and inaccurate, often only serves to further create a sense of harm for them. As noted above, CREATE's response to the Royal Commission into Institutional responses to Child Sexual Abuse Consultation Paper (May 2016), detailed number of areas in this regard.

CREATE provided a response to the Royal Commission into Institutional Responses to Child Sexual Abuse: Responses to Issues Paper 4: Preventing Sexual Abuse of Children in Out of Home Care (2013) whereby CREATE supported the notion of monitoring and regulation of out-of-home care providers. This monitoring can readily be extended to include records keeping and information practices. This was again noted in the *CREATE Foundation Response to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home-Care* (2016b), where we referred to the keeping or accurate records as part of this process.

### **Principle 3. Records relevant to child sexual abuse must be appropriately maintained**

CREATE recognises that the requiring of institutions to hold volumes of information and other records will increase the need for additional resources including storage infrastructure, and policies to ensure that these records are well maintained, secure, and accessible. Nevertheless, and as previously noted, these records represent life histories of children and young people and are often the only links they have to their family histories, that may assist them in making sense of their past experiences.

CREATE understands that while there may be an imposition in maintaining these records and that additional resources may be required, it is essential that organisations take the necessary steps to ensure that records are safely managed and accessible to young people.

This is particularly an issue for older care leavers seeking to retrieve or access records from years in the past, when these are the only link to their childhoods in care and potentially to help resolve issues of past harm. Many families where children have been removed into some form of statutory or out of home care, can lack records and information often spanning several generations. These records would assist young people taken into care to reconstruct their family histories. For these reasons, CREATE supports the concept of maintaining records for as long as possible after the person has left the institution.



#### **Principle 4. Records relevant to child sexual abuse must only be disposed of subject to law or policy**

CREATE supports the principle that records must only ever be disposed of in accordance with law and policy. Further, the disposal of any records must be considered a most serious act given that these are often the only such records for the care leaver, and their disposal severs any link to their past histories. In addition, CREATE questions the policy of many departments not to retain records, or not to make them accessible, once a young person ages out of care.

CREATE considers that, if possible, records dealing with young people should be retained for the life of the organisation, and that they should be deposited with government archive services if the institution closes or ceases to operate. This longevity of record keeping is important when relating to children and young people because many years could pass before a request is made to access the documents. CREATE supports legislation and organisational policies are developed and/or strengthened to minimise the destruction of records relating to people's experiences in care.

However, if such destruction is contemplated for whatever reason, CREATE supports the notion that institutions must maintain a register of destroyed records. This register must also provide details of why the records were destroyed and under whose authority, and provide any links to other records a care leaver may seek to obtain. It is imperative that the existence (or not) of records is easily determined so that care leavers are not required to spend lengthy periods of time searching for records that no longer exist.

#### **Principle 5. Individuals' rights to access and amend records about them can only be restricted in accordance with law.**


A key point made by young people who have left care is that survivors need all records of their time in care, including documents relating to any abuse experienced, to provide accurate, chronological, comprehensive and balanced account of their childhoods and family histories. . This is a point that has been returned to consistently within this response.

As noted in the Consultation Paper, it has been suggested that children and young people be engaged as active contributors in relation to their own information. This would require an open approach to developing accurate records about children and young people and may guide recordkeeping practices.

Access to records by children and young people must be made easier. The consultation paper raises the issue of fees associated with such access. However, CREATE supports the view that no fees for access should apply to young people or care leavers. Once again, this goes to the broader issue of access to their personal history by young people; the files should be the property of the young person, not the organisation.

CREATE believes that people with a care experience should be provided with a copy of their "file/record" or personal documentation when they transition from care. If this is not given immediately on transitioning, a timetable should be included as part of the planning process that specifies how, when, and where young people can access the records. As previously noted, CREATE is aware that many departments do not retain records, or that documents are not accessible, once a young person ages out of care. Personal documentation must be given to young people as part of the transitioning process. If the young person does not obtain records on transitioning, the records should be retained (archived) in case the young person requires access in the future. Access to such records should be provided free or at minimal recovery cost. It is important that when the information is provided, the process should include the offer of support to assist with reading the file as it can be a very confronting process. As discussed previously in this paper, the records are to be free from redaction unless such censorship is prescribed by law, and written in language that is





accessible to the reader. CREATE recommends that all records are produced by workers keeping in mind that the documents and notes will be read by the people whom they are written about.

### A sixth principle

Regarding the question if a sixth principle, one should be developed to direct organisations to conduct more effective monitoring of processes. CREATE believes that departments and institutions should have self and external monitoring systems in place that would allow oversight of the appropriate production and maintenance of client records. An independent agency could be established with the authority to monitor the processes of organisations and to hold these organisations to account where violations of expectations occur. This can be through the regular auditing, licensing, and registration processes.

## Conclusion

Children and young people in out-of-home care in Australia are considered to be vulnerable due to their age and their experiences of abuse and neglect. Children and young people under 18 years old have no political power and are dependent on adults to help them access their rights and navigate the complex bureaucratic systems of child protection (ALRC, 1997).

The records of children and young people often represent the only tangible link they have to their histories and to their past experiences in care. It is the responsibility of any agency caring for children and young people to maintain these records and ensure that access is afforded to young people, particularly when leaving care.

CREATE believes the National Framework for Protecting Australia's Children and the National Standards underneath this provide the opportunity for consistency of record keeping across the jurisdictions. Listening to the voices of children and young people in out-of-home care and accurately recording their contributions to care planning is an important part of supporting children and young people. This requires that accurate records are kept on behalf of children and young people in care.

In particular, improvements are needed to support more a child and young person focussed approach to how records are kept, what is written in them, and how support is provided to young people including care leavers seeking access to their records. Organisations are encouraged to develop training that has their staff using language that can be understood by young people, and written knowing that the documents, at some stage, may be read by the people they refer to. Records are to be provided free of charge and redaction and with support for interpretation as required.

CREATE thanks the children and young people who, through their responses to CREATE's initiatives, add their voices to effect improvement in the out-of-home care system in Australia. Promoting their voices and experiences remains CREATE's central aim.



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