



Perspectives on records and archives: an update from the Royal Commission

Australian Society of Archivists National Conference Thursday 20 October 2016 Parramatta

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Introduction

I am one of six Commissioners appointed to Australia's Royal Commission into Institutional Responses to Child Sexual Abuse. Today I would like to talk to you about the work of the Royal Commission and in particular our work on records and recordkeeping. The theme of this conference, forging links: people, systems, archives, sits at the very heart of the Royal Commission's work. It reflects the growth of archival, recordkeeping and heritage preservation services in Australia, and the increasing demand for archival and recordkeeping skills in community organisations, corporate entities and government. It is also relevant to our work and what we seek to accomplish.

The work of the Royal Commission

In January 2013, the Royal Commission was established under the Commonwealth Letters Patent to examine and inquire into child sexual abuse in institutional contexts and to make recommendations on how to improve and strengthen community and institutional practices against child sexual abuse. In particular, we are tasked to inquire into:

- what governments and institutions should do to better protect children against institutional child sexual abuse in the future;
- best practice in encouraging the reporting of allegations and the response to reports of child sexual abuse in an institutional context;
- reducing or eliminating impediments to appropriate responses;
- alleviating the impact of institutional child sexual abuse, including in ensuring justice for victims through redress, criminal justice processes and support services.

The number of child sexual abuse allegations that have come forward to the Commission is both profound and substantial. We have found that child sexual abuse occurred across

a range of institutions in all states and territories in Australia, and that child sexual abuse is not confined to a particular space or time. We have heard of the suffering and trauma endured by these victims and survivors as a result of these abuses.

What brings sadness to the Commissioners is listening to the lifelong impact child sexual abuse has had on victims and survivors. Often, they have lost hope, confidence and faith in the institutions in which they placed their trust. Often, we notice quiet reflection by victims and survivors on what their lives could have been had they not been sexually abused as children. What started out as a three-year task has now been extended to five years. The Royal Commission will end in December 2017. Between now and then, there is a lot to be done to ensure that we create a continuing legacy in which communities can feel safe placing children in the care of institutions. The Royal Commission has heard from victims and survivors of child sexual abuse primarily in two ways: through stories told to us in private sessions and through evidence in public hearings. These two methods, combined with the research and policy program conducted at the Royal Commission, form what we call the 'three pillars' of our work.

Private sessions

Private sessions are a unique process created for this Royal Commission through an amendment to the Commonwealth Royal Commissions Act 1902. This process allows a survivor, or a survivor's family members, to tell the story of their abuse in a protected and supportive environment. It is the primary way for the Commissioners to bear witness to the abuse and trauma inflicted on children who suffered sexual abuse in an institutional context. That amendment to the Royal Commissions Act 1902 (Cth) specified that, for the purposes of the Commonwealth Archives Act 1983, records that relate to private sessions, or contain information obtained at a private session, are not publicly accessible for 99 years after they are created. This reflects the historical importance of these records and ensures that these stories of trauma and suffering are archived and available to future generations. It also reflects the sensitive nature of these sessions, and ensures that they are kept confidential during our lifetime.

The number of private session requests we received to date is a clear indication of the need for an avenue where victims and survivors of abuse can confidentially talk to someone in authority about their experiences. We have now heard over six thousand (as of 5 October 2016) personal stories of survivors and their family members in private sessions. In a small number of these sessions, Commissioners have been privileged to receive self-published books, poetry, photographs and personal journals written by survivors as children. The National Library has indicated that it would be pleased to take some of this realia into its collection, if the material is not required by the National Archives. We will discuss this with the relevant survivors. The Commission is aware that this material may be of some national significance and, in its original, hard-copy form, may be useful for exhibitions or other creative events in years to come. There are presently more than 1900 people waiting for a private session, requiring us to close private session registrations to allow sufficient time for the Commission to complete our work by December next year.

Public hearings

Today we commenced our 45th public hearing – this one is examining the treatment of problematic or harmful sexual behaviours in children, including best-practice school responses. Previous hearings have covered a wide range of institutions in each state and territory. Decisions about which institutions we choose to examine in a public hearing are informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity for institutions to learn from previous mistakes. Public hearings are also an important means of enhancing the community's awareness and understanding of the nature, circumstances and, the often devastating, impact of child sexual abuse. Each public hearing is preceded by a period of intensive investigation and research. Royal Commission staff obtain and consider documents and information from a wide range of sources. Since our inception in 2013, the Royal Commission has issued 3022 notices for the production of documents, including from governments and a variety of private institutions. This equates to around 586,250 documents reviewed and analysed by our Commission officers.

The right to request documents from any relevant institution is one important part of the Royal Commission's investigative power. This includes records of incidents and allegations of child sexual abuse in institutions. It also includes internal policy documents on the structure and operation of institutions. Records are a crucial aspect of our ability to investigate and understand what an institution knew about incidents of abuse, and how they responded.

Research and policy program

The research and policy program represents the third pillar of our work. This has had the assistance of national and international experts across many disciplines. The program has four broad areas of focus: prevention, identification, response and justice for victims. As of September 2016, the Commission has published 35 research reports and five consultation papers. We have released 11 issues papers and received over 615 submissions in response to the issues papers. Our most recent consultation paper dealt with records and recordkeeping practices in institutions that care for and provide services to children. The consultation paper proposed five high-level principles for good institutional recordkeeping practices. It also proposed a sixth principle, which is the establishment of a records advocacy service for victims and survivors seeking access to institutional records.

The submissions process for this consultation paper has now closed and I thank everyone for their feedback and contribution. They are currently being considered and will help inform our final recommendations, which will be published in December 2017.

I will now talk more about our work on records and recordkeeping.

Records and recordkeeping

To understand records, it is crucial to understand what they contain and the significance of them to people, systems and archives.

As you are aware, the definition of records set out in the Australian Standard of Records Management includes physical and digital records, as well as other items such as audio and visual recordings, photographs and artworks.

From a personal perspective, records can contain information about a person's childhood and life which may not form part of their knowledge or memory. The information contained in records can help people understand who they are and where they come from. They may tell someone about their identity, parentage, birthplace, origins, home, childhood and other significant events.

One record can provide a glimpse of a life or event, but multiple records can together provide a lifelong story for some individuals. It is often not enough to have records themselves, but a system to hold these records together to create stories of people's lives and experiences. The means by which records are kept can be just as crucial as the records themselves.

Recordkeeping describes the creation, use and administration of records. In our consultation paper, we emphasised that good recordkeeping involves three interrelated stages that occur over the life of a record: creation, maintenance and disposal.

The creation of accurate records and the exercise of good recordkeeping practices by institutions that care for children play a critical role in preventing, identifying and responding to child sexual abuse. More broadly, they are important elements of any institution's good governance. They promote consistency of practice, retention of organisational memory, and accountability and transparency in institutional operations and decision-making.

Despite this, problems with the records and recordkeeping of institutions have arisen directly or indirectly in almost all of our public hearings. Over the life of the Royal Commission, many victims and survivors of child sexual abuse in various institutional contexts have told us of the distress, frustration and trauma that poor institutional records and recordkeeping practices have caused them. In many cases the impacts of this were profound.

We heard numerous examples where records were either never created, or contained only limited, inaccurate or insensitive content. We have encountered instances of records being lost or destroyed. The issue of access to institutional records has been a recurring theme for victims and survivors in a range of institutions and over several decades. We have heard that poor recordkeeping practices have:

- eroded victims' and survivors' sense of self, their capacity to establish that they had been abused and their confidence in disclosing abuse;
- prevented identification of risks and incidents of child sexual abuse;
- delayed or obstructed responses to risks, allegations and instances of child sexual abuse;
- obscured the extent of institutional knowledge of abuse;
- hindered disciplinary action, redress efforts, and civil and criminal proceedings.

The fact that we have found poor records and recordkeeping practices dating from as early as 1919 to as recently as five years ago, in a wide range of sectors, indicates to us that there are systemic and enduring problems in institutional recordkeeping. Similarly, the fact that some victims and survivors have told us that they are still experiencing considerable difficulties accessing historical records of their time in institutions indicates that reforms in response to the recommendations of earlier inquiries have not overcome these problems.

For these reasons, we consider that the issue of records and recordkeeping practices is an important part of the Royal Commission's work.

Other inquiries into records

Problematic recordkeeping practice in institutions that cared for children has been examined and exposed in several earlier inquiries. In 1997, the Australian Human Rights and Equal Opportunity Commission conducted a national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.

The report of that inquiry, *Bringing Them Home*, found that it was not possible to state with any precision how many children were forcibly removed. Many records had not survived, others failed to record the children's Aboriginality.¹ It also found that much supporting evidence, including records, had been destroyed.²

In 2001, the Senate Community Affairs Committee inquired into child migration. The report of that inquiry, *Lost Innocents*, found that many former child migrants had little information about their childhood.³ The Committee found, for example, that there were incomplete details on files including birth certificate, baptismal certificate, and health and school reports. Information was scant, non-existent or lost following the closure of many institutions. The report also found that the records of many child migrants were destroyed after they reached the age of 21.

In 2004, a Senate inquiry was held into Australians who experienced institutional or out-of-home care as children. The report of that inquiry, *Forgotten Australians*, observed that state wards and children in homes often lost contact with siblings and their families, and retained few memories of their childhood before they were removed into care.⁴ The lack of information kept about these children has had a major impact on their sense of self and identity. For some victims and survivors, their path of healing from prior traumatic experience was suspended.

Each of these three inquiries made recommendations to improve recordkeeping practices and access to records. Nevertheless, the evidence before us makes plain that problems with institutional recordkeeping and access to records are not confined to the past, and that the practices and processes of contemporary institutions require improvement to better meet the needs of victims and survivors.

The Royal Commission's work in records and recordkeeping

Records and recordkeeping is a broad and complex area that covers many areas and disciplines. Our focus has, of course, been on records and recordkeeping relevant to institutional child sexual abuse. In the time we have left today, I will address our work in this area so far.

Your submissions to our records and recordkeeping consultation paper will inform our future work in this area.

Historical records

Recognition of the significance of institutional records relating to children and child sexual abuse has developed gradually. Before the 1980s, most institutions within our Terms of Reference were not legally obliged to create or maintain records about their care of children. We have found that recordkeeping practices in historical institutions often varied considerably, even between institutions in the same sector.

In some cases we heard that historical institutions did not create records about the children in their care. We have heard examples of institutions denying that particular individuals were ever in their care owing to an absence of records. Several care leavers have told us that their whole childhoods in care were undocumented; some were never even issued a birth certificate.

The absence of institutional records relating to child sexual abuse has been a recurrent concern. In our public hearing into the response of the Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland (Case Study 5), we found that detailed records of homes or of individual boys either were not kept or were made not available to the Royal Commission. There were no written records of complaints of child sexual abuse against two staff members in the Salvation Army where there were a considerable number of allegations of physical and sexual abuse to children in their care. Without records of all complaints received, the institution was unable to accurately determine how prolific the abuse was, and the extent of abuse perpetrated by particular individuals.

In our public hearings into Marist Brothers schools in the Australian Capital Territory and Christian Brothers orphanages and schools in Western Australia (case studies 11 and 13), we found that there were virtually no written records of any allegations of child sexual abuse against Brothers.

In one case, we heard that an institution claimed an alleged perpetrator never worked for it because the institution had kept no employment records.

In our inquiry into the Catholic Diocese of Wollongong (Case Study 14), we heard evidence that Father Brian Lucas was asked to interview a priest about rumours and complaints about his conduct with children in the early 1990s. In accordance with his usual practice, Father Lucas did not record the interview or take any notes. We found that, as a result of this practice, there were no written records of any admissions of criminal conduct which might otherwise have been available for use in subsequent investigation, prosecution or other penal process.

While some institutions had recordkeeping policies and practices, our public hearings have shown that historical records were often of low quality compared to what is expected today, and that the recordkeeping practices were often ad hoc and unsophisticated.

Many records contained minimal discussion or information. We have heard several examples of files purportedly representing a decade or more in care amounting to only a few pages, leaving the individual feeling their childhoods were meaningless and insignificant. For many, the absence of discussion about heritage, ethnicity, personal development and friendships has been deeply hurtful and disappointing.

Other records contained insensitive, inaccurate or judgemental language. Several care leavers described how they found reading the descriptions of themselves in institutional records to be extremely upsetting and sometimes traumatising. We heard one example where a 14-month-old child was described as 'manipulative', and another where a child with learning disabilities was described as 'dumb' and 'backwards'. A young girl was labelled as 'naughty' when she absconded the institution to escape from child sexual abuse, and a young child was described as 'mentally retarded and emotionally deprived'.

We have encountered many examples of records being destroyed, sometimes inadvertently, often in line with institutional policy or applicable regulations. It appears to us that many historical records were destroyed with little consideration for their potential future relevance, or their significance to the individuals discussed in them.

For many care leavers, the absence of any records about their early lives has had profoundly detrimental effects, including:

- loss of identity and childhood memories;
- disconnection from family, ethnicity, language and heritage;
- loss of knowledge about family or hereditary medical histories;
- preventing or delaying applications for passports.

Changes in recordkeeping practice over time

Since the 1980s, a large number of statutes have been enacted across Australia to govern the recordkeeping practices of various institutions, as well as government agencies and public institutions. Every Australian jurisdiction has enacted Freedom of Information legislation, which gives individuals a legally enforceable right to access public records.

Despite the developments in recordkeeping laws and policies in the past few decades, our work has revealed that there are still problems with recordkeeping practices in institutions today.

For instance, we have heard several contemporary examples of institutions that did not follow their own policies or guidelines in recording allegations and complaints of child sexual abuse. In our public hearing into the response of the Toowoomba Catholic Education Office and a primary school to Gerard Byrnes (Case Study 6), we found that, although there were records policies in place, these policies were neither implemented nor followed by staff at the school. Where records were made, critical information in relation to a child's disclosures was omitted.

In the public hearing into Scouts Australia NSW (Case Study 1), we found that grooming actions by Steven Larkins were not effectively recorded or communicated to those responsible for appointing and supervising leaders within Scouts. Allegations against him were not permanently recorded on his record, which led to missing information for senior Scouts leaders. This case study also revealed police officers' lack of recordkeeping practices during the taking of statements from three key witnesses, which also led to inaccurate information recorded in their system.⁵

Access to records

We have also heard about the difficulties some victims and survivors continue to have when trying to access historical records about their time in care, or the institution in which they were abused. We understand how important it can be to victims and survivors of all ages and from all types of institutions to be able to access institutional records about their childhoods, sexual abuse and the institution's response to that abuse.

In the case of care leavers in particular, accessing records created by children's homes, orphanages, residential care facilities and other out-of-home care institutions can be particularly important. These records may contain the only surviving link to their families, personal history and childhood. In our public hearing into out-of-home care (Case Study 24), we heard from several recent care leavers that the question about their time in care they most wanted answered was why they were placed into care in the first place.

Many victims and survivors remain unconfident or unsure about how to assert their rights to access records about themselves, and feel ill-equipped to begin the process of requesting access to or amendment of records about themselves.

Many are unsure about where and from whom they can seek assistance. Although several support services exist to assist some groups to locate, access and interpret records created about their time in institutions, other groups do not have such services so readily available. We understand that many victims and survivors find navigating the current systems complex, costly, adversarial and traumatising. Some of the reason for this include:

- inconsistencies between the laws in different jurisdictions, and in the laws that apply to public and private institutions;
- application fees and processing charges when requesting access to records;
- delays in processing and responding to requests for access to or amendment of records;
- lack of explanation for refusals to grant requests or significant redactions to records;
- the reluctance of victims and survivors to re-engage with institutions in which they were abused;
- uncertainty about the extent of the need to protect the privacy of third parties named in records.

The way forward

In our consultation paper, we suggested five high-level principles for records creation and management in response to these concerns. The principles are:

- (1) Creating and keeping accurate records is in the best interest of children.
- (2) Accurate records must be created about all decisions and incidents that affect child protection.
- (3) Records relevant to child sexual abuse must be appropriately maintained.
- (4) Records relevant to child sexual abuse must only be disposed of subject to law or policy.
- (5) Individuals' rights to access and amend records about them can only be restricted in accordance with law.

In order to ensure that these five key principles are effectively implemented, we also sought submissions on whether an advocacy group was needed to provide advice and support to victims and survivors seeking access to institutional records. While Find and Connect provides a records advocacy service to care leavers, a similar service for the victims and survivors of abuse in other institution types, as well as younger care leavers, may be useful.

These principles do not represent our final view. We will be carefully reviewing all the submissions in order to come to appropriate recommendations on the best way to improve the system of records and recordkeeping.

Conclusion

The topic of records and recordkeeping is complex. Our work has demonstrated that there have been improvements in recordkeeping practices over time. However, we heard from

private sessions and public hearings that the current system continues to create difficulties for victims, survivors, advocates and record holders.

It is also important to note that our work, and the work of previous inquiries, have put pressure on institutions and governments to improve recordkeeping to better protect children in the future. We are aware that institutions and government entities continue to improve systems and archives, and acknowledge ongoing problems such as fees and inconsistent law and practices. We have also observed governments finding ways to consider how best to tackle the number of records they hold. Responding to significant amounts of archival material, which in some case stretches over tens of kilometres, is a considerable challenge. We are aware of the ongoing efforts to use technology to digitalise records and improve access.

When individuals in organisations and institutions proactively maintain good records and recordkeeping practices, in particular those relevant to child sexual abuse, they are supporting child safety in institutions. It is our hope, and the hopes of many, that child safe practices through good records and recordkeeping governance will better protect children from future harm.

Thank you.

Endnotes

1. Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, 1997, p. 30, available at <https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>, accessed 9 August 2017.
2. *ibid.*, pp. 17, 299.
3. Senate Standing Committee on Community Affairs, *Lost Innocents: Righting the Record – Report on Child Migration*, Commonwealth of Australia, 30 August 2001, available at <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/1999-02/child_migrat/report/c04>, accessed 9 August 2017.
4. Senate Standing Committee on Community Affairs, *Forgotten Australians: A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children*, Commonwealth of Australia, 30 August 2004, available at <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index>, accessed 9 August 2017.
5. The records consultation paper looks specifically at out-of-home care and schools in terms of contemporary recordkeeping practices.

Acknowledgements

Firstly, I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to their elders past and present. I would like to thank the Australian Society of Archivists for inviting me to make a presentation to this conference today. In particular, I would like to acknowledge two distinguished archivists who will feature on the panel following my speech to you today: Professor Sue McKemish and Barbara Reed, as well as two members of the non-archival community who have been working towards improving recordkeeping for wards of the state – they are Ms Bonny Djuric, a founding member of Parrgils, and Mr Frank Golding, from the Care Leavers Association Network.

Disclosure statement

No potential conflict of interest was reported by the author.

Note on contributor

Justice Jennifer Coate is a judge of the Family Court of Australia. Prior to this, she held a number of appointments, including Judge of the County Court of Victoria, State Coroner of Victoria, the inaugural President of the Children's Court of Victoria and Senior Magistrate and Magistrate of the Magistrate's Court of Victoria. During her time as president of the Children's Court of Victoria, Commissioner Coate oversaw the establishment of the Children's Koori Court. She has also worked as a part-time Law Reform Commissioner, a solicitor in private practice, a solicitor for the Legal Aid Commission of Victoria and in policy and research for the Victorian Government.