

Children in Care Collective

Submission: AHRC Inquiry into Youth Justice and Child Wellbeing Reform across Australia

The Children in Care Collective (the Collective) welcomes the opportunity to make a submission to the inquiry by the National Children's Commissioner into the opportunities for reform of youth justice and related systems across Australia.

INTRODUCTION

The Children in Care Collective was formed in 2016 by a group of out-of-home care service providers and leading experts in working with children with complex needs in out-of-home care.

The aim of the Collective is to share experience, discuss best practice informed by research, provide advocacy and learn from policy and practitioner experts in out-of-home care. The Collective seeks to address solutions to difficult systemic practice issues faced by the sector and to improve outcomes for children and young people with complex needs living in out-of-home care.

Members of the Collective are: Allambi Care; Anglicare NSW South | NSW West | ACT; Anglicare Sydney; CareSouth; Key Assets; Life Without Barriers; Mackillop Family Services; Marist180; Pathfinders; Settlement Services International; Uniting NSW/ACT; Institute of Child Protection Studies - Australian Catholic University; Australian Centre for Child Protection - University of South Australia; Research Centre for Children and Families– University of Sydney.

This submission does not seek to replicate individual agency submissions, but rather to draw on the experience of the Collective to respond to the questions being addressed by the Inquiry.

QUESTIONS

What factors contribute to children's and young people's involvement in youth justice systems in Australia?

This submission focuses on children and young people in out-of-home care and the increased risk to this cohort of contact with youth justice systems. There is an all too well-known risk of children in child protection systems, and out-of-home care in particular, becoming criminalised. There have been extensive reports, inquiries and research relating to this cohort, sometimes described as 'cross-over children', children for whom the state is the legal guardian, who have been removed from home ostensibly to ensure their safety, welfare and wellbeing and yet they become involved in the criminal justice system.

Their involvement in both child protection and justice systems is clearly indicative of significant adverse childhood experiences and, frequently, complex trauma.

What is well known to out-of-home care providers is confirmed in inquiries and research.¹ The report by Baidawi and Sheehan to the Criminology Research Advisory Council on 'cross-over

¹ See, for example, Baidawi, S., Ball, R., Newitt, R., Turnbull, L., Kembhavi-Tam, G., Avery, S., & Sheehan, R. (2022). *Research Report – Care Criminalisation of Children with Disability in Child Protection Systems*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; Baidawi S & Sheehan R,

children' in 2019 examined the characteristics of a cohort of Victorian cross-over children and the factors that contributed to their entry into the criminal justice system. They found that:

... cross-over children were overwhelmingly impacted by cumulative harm across their lives, faced considerable co-occurring challenges affecting their engagement with statutory and non-statutory social systems, and were more likely to be among children convicted with earlier onset, more violent and more voluminous offending.²

Their findings correlate with those of other research and inquiry reports. The most relevant factors can be summarised as follows.

Individual factors

- experiences of physical, emotional and sexual abuse and neglect, including multi-type maltreatment
- greater likelihood of: a mental health diagnosis, intellectual disability, a neurodevelopmental/neurological condition other than an intellectual disability, a trauma or attachment-related disorder diagnosis, behavioural disorder diagnosis, or experience of self-harm/suicidal ideation and/or attempts
- harmful sexual behaviours
- high risk behaviours including substance abuse, absconding and risk/involvement in sexual exploitation
- complex and long-standing educational challenges related to 'unmet protective, mental health and disability needs'.³

The strong association between child maltreatment and mental disorders is confirmed by the Australian Child Maltreatment Study.⁴

Family factors

- Poverty, homelessness/housing instability
- Parental/carer health issues, including mental illness
- Parental/carer substance abuse
- Parental/carer criminal justice system involvement
- Exposure to family violence, including the victimisation of the child by a household member as well as physical, emotional or sexual violence against another family member.

(2019) *'Crossover' children in the youth justice and child protection systems*, Routledge Frontiers of Criminal Justice, Routledge; Baidawi, S. and Sheehan, R. (2019). *'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems*. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology; Guardian for Children and Young People and Training Centre Visitor (2019) *A Perfect Storm? Dual status children and young people in South Australia's child protection and youth justice systems Report 1 November 2019*; McFarlane, Katherine (2015) 'Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system' Thesis, School of Law UNSW

² Baidawi, S. and Sheehan, R. (2019). *'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems*. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology. P8

³ *ibid* P67.

⁴ Scott, JG, et al. (2023). *The association between child maltreatment and mental disorders in the Australian Child Maltreatment Study*. *Med J Aust.* 218 (6) S26.

Societal/structural factors

- Socioeconomic disadvantage: Living in areas with high levels of poverty, unemployment, or social deprivation increases the risk of youth justice involvement.
- Discrimination and marginalization: Children and young people from minority or marginalized groups may face systemic biases, discrimination, and limited access to resources, which can contribute to their involvement in the justice system.
- Inadequate support systems: Insufficient access to quality education, healthcare, mental health services, and community support can contribute to young people's involvement in the youth justice system.

What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

Noting the well-documented vulnerability of cross-over children and the cumulative adversity they face, the immediate change which should be made is to increase the age of criminal responsibility to 14 years in all Australian jurisdictions.

The systems response to all children below the age of 14 years should be based on individual needs and should focus on therapeutic interventions and restorative justice rather than punishment as the underpinning principle.

Restorative Justice (RJ) is a set of principles, a philosophy, focused on mending broken relationships to create a better future. It is a fundamental shift in the way that we think about and do justice, in the way that we do community. What happens when we stop thinking about justice as “an eye for an eye”? What happens when we think about harm in ways that don't involve retaliation or vengeance, but healing and transformation? (Restorative Justice for Oakland Youth, available online at <https://rjoyoakland.org/what-is-ri/>)

As the RJOY website goes on to say: ‘Restorative Justice is rooted in indigenous practices. It is reparative, inclusive, and balanced. It can be practiced anywhere that we make human connections.’

The Australian Association for Restorative Justice website states that Youth Justice Group Conferencing programs exist in every Australian jurisdiction but with differing functions and governance arrangements. Ensuring consistency and high standards of practice in all jurisdictions would strengthen this approach to supporting children to avoid entrenchment in criminal justice systems.

One of the barriers to these changes is (some) community and popular media responses to the anti-social behaviour of children which are blaming or punitive and can verge on the hysterical. There is a need for a careful and well-resourced community education program to ensure that there is broad understanding and agreement that criminalising young children serves neither the individual child, nor the community.

The recent release in Tasmania of its *Youth Justice Blueprint 2022-2023* is evidence that government can change its response to youth justice (available online at <https://www.decyp.tas.gov.au/children/youth-justice-services/youth-justice-reform/youth-justice->

[blueprint/](#)). Minister Jaensch's media release clearly indicates the more positive approach the Tasmanian Government has adopted, including raising the minimum age of detention to 14 years.

The Blueprint aims to improve the wellbeing of children, young people and their families while addressing the underlying drivers of offending behaviour, reducing offending and improving community safety.

To achieve this, the Blueprint focuses on five key strategies:

- Prioritise prevention and early intervention to reduce engagement with the youth justice system;
- Ensure diversion from the justice system is early and lasting;
- Establish a therapeutically based criminal justice response;
- Integrate and connect whole of government and community service systems; and
- Provide an appropriately trained and supported therapeutic workforce.

(available online at

https://www.premier.tas.gov.au/site_resources_2015/additional_releases/therapeutic-approach-to-youth-justice-reforms)

Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

Family support and early intervention

There is broad consensus that well designed and resourced family support and early intervention programs show the most promise in reducing children's involvement in youth justice and child protection systems.

For example, Higgins and Davis reported in 2014 that for First Nations children and young people:

... promising practices identified in evaluations include:

- programs that are designed for the right participants and address identified risk factors
- adequately resourced interventions that are based on clear program logic
- family-based programs, including behavioural parent training
- community involvement and engagement (including Indigenous-specific programs where possible)
- cultural appropriateness and cultural competence at all levels of program design and delivery
- effective collaboration across organisations and between Indigenous and non-Indigenous individuals and communities
- addressing multiple and complex needs by adopting a holistic and comprehensive approach.⁵

The *Research Report - Care criminalisation of children with disability in child protection systems* set out similar factors in those it identified as decreasing the change of children with disability in child protection systems becoming involved in the youth justice system. These factors included

⁵ Higgins, D. & Davis, K. (2014). *Law and justice: Prevention and early intervention programs for Indigenous youth. Resource sheet no. 34*. Produced by the Closing the Gap Clearinghouse. Canberra: Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies.
<https://aifs.gov.au/publications/archived/4590>

connection to culture and community, provision of culturally appropriate supports and provision of disability and trauma-informed services.⁶

This approach is strongly supported by Baidawi and Sheehan:

Professionals believed better-supporting families was crucial to disrupting the pathway to criminal justice involvement present in cross-over children. Two key themes emerged relating to family support and intervention: the need for earlier and more intensive support for families, and delivering whole-of-family approaches.⁷

Services and supports that address the underlying issues faced by families, such as poverty, substance abuse, and mental health challenges, can help prevent child protection concerns and youth offending.

Study participants were united in their understanding that failure to deliver intensive and early support to families increased the likelihood of poor outcomes for children, including their involvement in offending.⁸

Improved educational experiences

Another factor consistently identified by out-of-home care service providers as well as inquiries and reports is the need to improve the educational experiences of cross-over children. Baidawi and Sheehan reported that:

Professionals depicted two main trajectories of educational disengagement among cross-over children:

- Disengagement/exclusion from mainstream education occurring in primary school; and,
- Disengagement/exclusion around the transition from primary to secondary school.

Cross-over children rarely had significant secondary school involvement.⁹

Strengthening support for children with neurodevelopmental, behavioural and mental health problems to remain engaged in education or training is strongly indicated as reducing youth justice involvement.

Professionalised foster care

The lives of cross-over children are all too frequently marked by instability: removal from family, school exclusion, frequent changes in out-of-home care placements (particularly for children with complex trauma, high needs behaviour and attachment issues who are at high risk of criminalisation).

The absence of appropriate, responsible and consistent adult figures is a key feature in social disconnection of cross-over children, who had often to navigate services and processes such

⁶ Baidawi, S., Ball, R., Newitt, R., Turnbull, L., Kembhavi-Tam, G., Avery, S., & Sheehan, R. (2022). *Research Report – Care Criminalisation of Children with Disability in Child Protection Systems*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability pp2-6

⁷ Baidawi, S. and Sheehan, R. (2019). 'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology. P156

⁸ Ibid p156

⁹ Baidawi, S. and Sheehan, R. (2019). 'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology. P165

as court or school meetings alone. This placed both unrealistic expectations on children, and compromised service outcomes...¹⁰

... what these kids do need, they need one person in their lives to navigate, to stay with them throughout whatever process it is that they're going through to pull it all together.¹¹

Developing models of professionalised foster care in Australia would be a significant contribution to reducing placement instability with foster or kinship carers, the likelihood of placement in congregate residential settings (with the well-documented risks of increased likelihood of criminalisation) or alternative care arrangements, such as living in emergency accommodation including motels, supervised by rotating agency staff and absent any therapeutic or even consistent relationships.

There are international examples where carers are considered as "paid professionals" and in Australia there are pilot programs and limited services (for example, OzChild – Treatment Foster Care Oregon; PIC - Professional Individualised Care; Care2Thrive – Life Without Barriers). This model of care enables carers to provide therapeutic care in stable home environments where 'healthy attachment is both natural and vital to the success of the work' [<https://pic.care/about-pic>].

The Australian pilots have identified barriers to implementing a paid professional model, particularly related to the employment status and tax treatment of the payment of carers. The implementation of this significant social policy initiative is being impaired by unintended consequences of the taxation regime. A government supported, Australia wide service system design should not require individual agency negotiation as is currently the situation. The 'case by case' identification of what services can be paid for as a job and what parts can be reimbursement of expenses incurred by a carer can lead to inconsistencies and inequities across and possibly within jurisdictions.

From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

Many of the necessary reforms and improved supports and services are state based. However, a national approach to the following matters would be of benefit.

- Leadership and resourcing of *Safe and Supported First Action Plan* (especially actions 1 and 5) and *Safe and Supported Aboriginal and Torres Strait Islander Plan* (especially actions 2 and 8) which would benefit from a national approach.
- Investment in earlier and more intensive family strengthening initiatives that target evidence informed approaches to supporting not only the child at risk of criminalisation, but the whole family
- Raising the age of criminal responsibility to 14 years in all jurisdictions and developing supports/therapeutic interventions for children under that age who commit offences or who are at risk of contact with youth justice services.
- Professionalising foster care – work by the Australian Taxation Office to resolve existing barriers.

¹⁰ Ibid p135

¹¹ Ibid p161

IN CONCLUSION

The Children in Care Collective believes that full implementation of the United Nations Convention on the Rights of the Child in Australia would provide a valuable framework for increasing the safety and wellbeing of vulnerable and disadvantaged children, and their families, and preventing children's involvement in crime.

We would be pleased to continue to assist the National Children's Commissioner with the inquiry into Youth Justice and Child Wellbeing Reform across Australia.

Should you have any queries arising from this submission or wish to take up this invitation, please contact me at Rob.Ryan@lwb.org.au or Lindy Annakin, Coordinator of the Children in Care Collective at lindy.annakin@bigpond.com.



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Chair
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30 June 2023

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