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The Honourable Sir William Deane AC KBE
The Honourable Dame Quentin Bryce AD CVO

PATRONS

We are supported by over 140 patrons who are eminent Australians, crossing party political lines.

Submission to the Child Safety Commission of Inquiry into Corporate parenting and the link between child safety and youth justice systems

27 January 2026

Introduction

The Justice Reform Initiative (JRI) welcomes the opportunity to make a submission to the Child Safety Commission of Inquiry into Corporate parenting and the link between child safety and youth justice systems. This submission will focus on the link between the child safety system and the youth justice system, how elements of the child safety system operate as a ‘feeder system’ to the youth justice system and the factors contributing to children in care entering the youth justice system.

The JRI submits that there is substantial evidence to show the strong association between involvement with the child care and protection system and youth justice systems, and that a disproportionate number of children who have been the subject of child protection involvement go on to involvement in the criminal justice system as children or as adults. This is a phenomenon that has been called “cross-over” between child protection and youth justice systems.

Data that supports the ‘cross-over’ between child protection and youth justice systems

As noted by Walsh and others, the statistical association between child protection and youth justice involvement has been established numerous times in studies in Australia and also in the UK and the US.¹ In Australia the ‘cross-over’ phenomenon is particularly strong in respect of First Nations young people. The over-representation of First Nations children in care and protection is repeated in their disproportionate representation amongst children and young people who come into contact with the criminal justice system.

According to the Australian Institute of Health and Welfare (AIHW) in 2022-23 there were 9,068 children under youth justice supervision in Australia. Of these children:

- 65% had an interaction with the child protection system in the 10 years from July 2013-June 2023;
- 76% of First Nations children under youth justice supervision had an interaction with the child protection system;
- 76% of girls under youth justice supervision had an interaction with the child protection system;
- 84% of children aged 10-13 at their first contact with youth justice supervision had an interaction with the child protection system.²

In Queensland in 2022-23 there were 2,557 children under youth justice supervision. Of these children:

- 73% had an interaction with the child protection system in the 10 years from July 2013-June 2023;
- 81% of First Nations children under youth justice supervision had an interaction with the child protection system;
- 84.5% of girls under youth justice supervision had an interaction with the child protection system.³

¹ Tamara Walsh. 2019. ‘From child protection to youth justice: legal responses to the plight of ‘crossover kids’’. *University of Western Australia Law Review*. (2019) Vol 46(1):90, 92; Katherine McFarlane, ‘From care to custody: Young women in out-of-home care in the criminal justice system’ (2010) 22(2) *Current Issues in Crime and Criminal Justice* 345; Alison Gerard, Andrew McGrath, Emma Colvin and Katherine McFarlane “‘I’m not getting out of bed!’ The criminalisation of young people in residential care’ (2018) 52 *Australian and New Zealand Journal of Criminology* 76

² Australian Institute of Health and Welfare (AIHW). 2024. *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, catalogue number CSI 030, AIHW, Australian Government. 7.

³ *Ibid*, Table S2.

Based on the most recent AIHW data for the year 2022-23, there is a strong association between involvement in the child protection system and the youth justice system in Queensland, and this cross-over is particularly strong in respect of girls and First Nations children.

Having been in out-of-home care one of the social determinants of criminal offending

In 2023 Australian researchers used linked administrative data to unpack the social determinants of incarceration. One of the key findings was that the chances of ending up in prison or youth detention is greatly increased by having been in out-of-home or foster care.⁴ The researchers analysed studies of a data set containing information from government agencies of 2,731 people who had been in prison in NSW, and identified eight factors that increased the likelihood of someone going to prison. These were:

1. Having been in out of home (foster) care;
2. Receiving a poor school education;
3. Being Indigenous;
4. Having early contact with police;
5. Having unsupported mental health and/or cognitive disability;
6. Problematic alcohol and other drug use;
7. Experiencing homelessness or unstable housing; and
8. Coming from or living in a disadvantaged location.⁵

The researchers concluded that several of these factors are experienced at the same time and the more of these factors a person experiences, the more likely that person will be incarcerated and reincarcerated. The data indicates that people face a significant risk of ending up in adult or youth jails when child protection, education, disability and health services fail them.⁶

This provides further evidence that when child protections systems fail, it increases the likelihood of that child eventually coming into contact with the criminal justice system either as a child or an adult. The research also illustrates the importance that children in out of home care also need to have support to continue their school education and, where necessary, to have access to competent and culturally appropriate support services to address mental health concerns and problematic alcohol and drug use. In addition, when the residential care finishes the young person must have access to stable housing.

The experience of service providers in Queensland

Focus group research with Queensland community service providers and community legal centres undertaken in 2017 aimed at examining the association between child protection and youth justice involvement. Across all of the five focus groups (which included a total of 24 participants) there was common agreement that there was a 'cross-over' between child protection and youth justice systems. Participants reported that 'most often, children became involved with the youth justice system after they had become subject to child protection interventions, and many said that 'the actual child protection is, in itself, playing a key role in criminalisation.'⁷

Of particular concern, several participants reported that the conduct which resulted in initial contact with the criminal justice system was in relation to relatively minor incidents which occurred in residential care

⁴ Ruth McCausland and Eileen Baldry. 2023. 'The Social Determinants of Justice: 8 Factors that increase your risk of imprisonment'. *The Conversation*. Available online <<https://theconversation.com/the-social-determinants-of-justice-8-factors-that-increase-your-risk-of-imprisonment-203661>>.

⁵ Ibid.

⁶ Ibid.

⁷ Walsh n 1, 95.

settings. These tended to be charges such as wilful damage and assault that resulted from anti-social behaviours. These incidents often involved altercations with youth workers or other residents and were often associated with mental health problems, anger or trauma. The involvement of police in these incidents was reported as often being a fall-back behavioural management or disciplinary response initiated by residential care workers.⁸

Some of the specific incidents that resulted in criminal charges included:

- Spilling barbeque sauce on tiles;
- Wilfully ripping glad wrap;
- Kicking doors or punching walls;
- Putting blu tac on a youth worker's head;
- Throwing a basketball at a carer's head.⁹

Most participants considered that police call-outs to residential units were usually unnecessary and that youth workers and carers should have more training in therapeutic behaviour management approaches and conflict de-escalation.¹⁰ Such training would reduce the likelihood of police being called to deal with behaviours or situations which would be normally handled within a family environment.

Options to reduce the likelihood of 'cross-over'

Apart from more training for youth workers/carers, participants identified a number of specific measures that could reduce children's contact with the criminal justice system:

- Greater use of diversionary responses in dealing with a situation, rather than formally charging a young person. This would involve carers/youth workers employing restorative justice strategies or police using cautions rather than charging a young person;
- Ensuring that child protection legislation emphasises that family preservation, with appropriate supports, are the preferred responses to child protection concerns and that intervention and placement in out-of-home care only occur as a last resort;
- Developing joint protocols between police and residential units outlining when police should and should not be called in response to incidents at residential units;
- Developing quality standards for residential care which state explicitly that children should not be charged with offences resulting from behaviour within residential care units if such behaviour would not similarly lead to police involvement if it occurred in a family home;
- Children should not face criminal law sanctions for low-level criminal offending such as fare evasion or shoplifting;
- Raising the age of criminal responsibility so that young children cannot be criminalised for bad behaviour;
- Ensuring that police always consider using diversionary alternatives such as taking no action, cautions, warnings or youth justice conferences before initiating criminal proceedings against a child.¹¹

There are two matters that deserve particular attention as they directly relate to some of the social determinants of criminal offending identified above: the need for well-resourced family support and early intervention programs, and the need for engagement in education for children in care.

⁸ Ibid 96.

⁹ Ibid 96-97.

¹⁰ Ibid 97-98.

¹¹ Ibid 103-107.

The Children in Care Collective states that well designed and resourced family support and early intervention programs assist in reducing children’s involvement in child protection systems, and thereby reduce the likelihood of the cross-over phenomenon into involvement with the youth justice system. In particular, services that address underlying issues such as poverty, substance abuse and mental illness can assist in the prevention of child protection issues and related criminal offending by children.¹² As noted above, these underlying issues are identified as factors that increase the likelihood of someone going to prison.

According to 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.¹³

The other factor that is essential is maximising the opportunity for children in out-of-home-care to engage with education. Out-of-home care service providers identify the importance of improving educational experiences for ‘cross-over children’, noting that ‘cross-over children’ rarely had significant secondary school involvement.¹⁴ As noted above, a poor school education is one of the factors that increases the likelihood of someone going to prison.

About the Justice Reform Initiative

The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, further supported by a movement of Australians of goodwill from across the country who believe jailing is failing and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is committed to reducing Australia’s harmful and costly reliance on incarceration. Our patrons include more than 120 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of incarceration in Australia.

We seek to shift the public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven evidence-based approaches that break the cycle of incarceration. We are committed to elevating approaches that seek to address the causes and drivers of contact with the criminal justice system. We are also committed to elevating approaches that see Aboriginal and Torres Strait Islander-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

The Queensland Patrons of the Justice Reform Initiative include:

- **Sallyanne Atkinson AO.** Co-Chair of the Queensland Interim Body for Treaty and a member of the Queensland University Senate.
- **Adjunct Professor Kerry Carrington.** School of Law and Society, University of the Sunshine Coast, and Director of her own Research Consultancy.
- **Mick Gooda.** Former Aboriginal and Torres Strait Islander Social Justice Commissioner and former Royal Commissioner into the Detention of Children in the Northern Territory.

¹² Children in Care Collective. 2023. *Submission: AHRC Inquiry into Youth Justice and Child Wellbeing Reform across Australia.*

¹³ Dr Susan Baidawi and Professor Rosemary Sheehan.(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. 156.

¹⁴ Ibid 165; Children in Care Collective n 12.

- **Keith Hamburger AM.** Former Director-General, Queensland Corrective Services Commission.
- **Professor Emeritus Ross Homel, AO.** Foundation Professor of Criminology and Criminal Justice, Griffith University.
- **Natalie Lewis.** Commissioner, Office of the Aboriginal and Torres Strait Islander Children’s Commissioner, Queensland Family and Child Commission.
- **Gail Mabo.** Australian visual artist represented in most major Australian art galleries and internationally. Gail is of the Meriam language group and clan of Mer (Murray Island) in the Torres Strait, is deeply engaged with young people in her community and is the daughter of land rights campaigner Eddie Mabo and educator and activist Bonita Mabo AO.
- **Professor Elena Marchetti.** Griffith Law School, Griffith University.
- **The Honourable Margaret McMurdo AC.** Former President Court of Appeal, Supreme Court of Queensland and Commissioner of the Victorian Royal Commission into the Management of Police Informants.
- **Dr Mark Rallings.** Former Commissioner, Queensland Corrective Services.
- **Greg Vickery AO.** Former President, Queensland Law Society and former Chair of the Standing Commission of the International Red Cross and Red Crescent Movement.
- **The Honourable Dean Wells.** Former Attorney General of Queensland.
- **The Honourable Margaret White AO.** Former Judge of the Queensland Supreme Court and Queensland Court of Appeal, former Royal Commissioner into the Detention of Children in the Northern Territory, and Adjunct Professor TC Beirne School of Law UQ.

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