

Submission to the Queensland Child Safety Commission of Inquiry

Corporate parenting and the links between the child safety and youth justice system

23 January 2026

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Acknowledgement of Country

We acknowledge the Jagera and Turrbal people as the Traditional Custodians of Meanjin (Brisbane), the lands on which PeakCare is physically located - where we meet, work and learn - and acknowledge the Traditional Custodians of all lands across Queensland. We pay respects to their Elders past and present, and extend that respect to emerging leaders.

We acknowledge the strength, wisdom and resilience of Aboriginal and Torres Strait Islander children, young people, families, and communities, who continue to nurture their cultures, share their stories and uphold their knowledge systems.

At PeakCare, we honour the enduring connection First Nations peoples have to land, waters, skies and community. We remain committed to listening deeply, walking alongside, and creating a future where Aboriginal and Torres Strait Islander voices are heard, valued and respected.

About PeakCare

PeakCare is a not-for-profit peak body for the child and family services sector in Queensland. Its vision is that Queensland's children, young people, and families, in all their diversity, are thriving with access to support, when and where it is needed.

PeakCare's purpose is to improve the wellbeing of Queensland's children, young people, and families by championing innovation, creating impactful partnerships, anchoring its actions in evidence, driving forward-thinking advocacy, and amplifying the voice of its members and the sector.

PeakCare's members are non-government organisations who deliver child and families services across the continuum of life and need, from early supports through to statutory kinship, foster, and residential care across Queensland. PeakCare's membership includes associate members who are aligned to PeakCare's vision and purpose.

Introduction

PeakCare Queensland Incorporated (**PeakCare**) welcomes the opportunity to continue to assist¹ the Commission of Inquiry into the Queensland Child Safety System (**Child Safety Inquiry**). This submission responds to the Child Safety Inquiry's Call for Submissions in December 2025, in respect of "*corporate parenting and the links between the child safety and youth justice systems*". Due to the intersections between the Child Safety and Youth Justice systems, with the common drivers of demand in both tertiary systems being disadvantage and child maltreatment, this Call for Submissions is important to PeakCare and its members.

PeakCare is committed to evidence-based policy and programs that uphold the safety, wellbeing, and rights of children, young people, their families, and victims of crime, and that enhance community safety. PeakCare acknowledges the harm caused by criminal activity to victims of crime. These victims of crime include many children and young people who are known to the Child Safety and Youth Justice systems.²

¹ Mr Thomas James Norbert Allsop, Chief Executive Officer, PeakCare Queensland Incorporated, gave evidence at the Cairns public hearings in September 2025. His evidence is part-heard. Mr Allsop's Outline of Evidence was tendered into evidence on 15 September 2025. A Supplementary Outline of Evidence was provided by Mr Allsop to the Inquiry in November 2025.

² See Children's Court of Queensland Annual Report 2022-23.

PeakCare recognises the over representation of First Nations children and families in the Child Safety and Youth Justice systems. PeakCare is committed to self-determination and to working in partnership with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (**QATSICPP**) and First Nations peak bodies and community-controlled organisations.

PeakCare and its member organisations are committed to working with all Queensland Government departments and agencies, non-government providers, and community-controlled organisations, to reduce family's engagement in the Child Safety system, and fundamentally improve outcomes for children known to the Child Safety and Youth Justice systems, and/or in care or youth detention.

PeakCare engages with and listens to young people who are in care and/or youth detention. With the permission of these young people, PeakCare draws on their lived experience as powerful voices which help shape this submission. This aligns to the right for children to be heard and their views to be given weight in all matters affecting them,³ a foundational principle in the United Nations Convention on the Rights of the Child that Australia is a party to.

PeakCare is preparing further submissions to support the Child Safety Inquiry in recommending solutions to improve the child safety system, prevent care entries, and better support children in care.

³ United Nations Convention of the Rights of the Child, Article 12.

Executive Summary

Preventing children from entering care and providing better services to children in care and youth detention as their corporate parent cannot be achieved by the Child Safety system in isolation.

Children growing up in families with multiple challenges - such as family and domestic violence, parental mental health concerns, parental substance misuse, housing insecurity, and poverty - have a higher risk of experiencing child maltreatment, receiving a Child Safety and/or care intervention, and of having poorer life outcomes than the general population. Their children are also more likely to be known to the Child Safety system, perpetuating an intergenerational cycle.

To be safe, well, thriving, to heal from experiences resulting in entry to care, and address the root causes of offending behaviours, children need services and supports across multiple government portfolio areas, including health, education, mental health, housing, and the National Disability Insurance Scheme (NDIS).

PeakCare advocates for a whole of Queensland government priority focus on reducing disadvantage and preventing child maltreatment. This will require new investment in coordinated, culturally safe, and accountable services provision to vulnerable children and their families across multiple portfolios areas. PeakCare believes that this could best be achieved by the following reforms:

- **A Queensland Government Minister for Children.** Establish a dedicated ministry for children with a mandate to implement a whole-of-government approach that prioritise the needs of vulnerable children and the prevention of child maltreatment. A Minister for Children would represent children's interests in Cabinet, focusing on child development and wellbeing by strengthening universal and secondary services for vulnerable children and their families. This approach could target investment and early services and supports for cohorts that are disproportionality represented in the Child Safety system. For example, priority populations could be parents with unborn child harm reports; First Nations children and families; young parents (under 20 years of age); parents with a care experience; and children transitioning from care or youth detention to independent adulthood.
- **A new corporate parenting framework for children in and transitioning from care.** Legislating a corporate parenting scheme that identifies government entities with corporate parenting responsibilities, mandates these entities publish and regularly report on plans which identify specific and evidence-base outcomes for children, and holds these entities accountable. This would better support the safety, health, and access to dedicated and fulsome supports for children in and transitioning from care or youth detention to thrive across their life course.

In respect of residential care, there is an over-representation of children in residential care in the Youth Justice system compared to children in foster or kinship care placements. This is a result of the higher complexity of children in residential care and a structural problem built into the design of the residential care system in Queensland. It does not reflect on the commitment of the residential care workforce to support children in their care.

The exponential and continued growth, cost, and worker health and safety concerns in Queensland's residential care system raises very serious concerns.⁴ Residential care is the most costly and labour-

⁴ In its opening hearing on 23 July 2025, the Child Safety Inquiry underlined that the number of children in residential care in Queensland grew by 85 per cent between 2018 to 2023. Moreover, that this growth is a phenomenon unique to the State of

intensive model of care. Despite this, children with a residential care experience face significantly poor outcomes than their peers in home-based care. The residential care workforce can also be better supported.

For **residential care**, PeakCare advocates for:

- a root cause analysis of the drivers of Queensland’s reliance on residential care placements and the identification of a suite of programs and responses to address these;
- increasing both financial and non-financial supports and services for kinship care and foster care, targeted at placement stability and improving outcomes for children in their care; and
- a commitment and funding for the implementation of the “*Foundations of the future – building a workforce that carers, connects and evolves, Queensland Workforce Strategy*” (the **Residential Care Workforce Strategy**) (at **Attachment A**).

PeakCare’s previous submission on youth justice

PeakCare is contributing to current inquiries into youth justice; the Australian Senate Legal and Constitutional Affairs Reference Committee into *Australia’s Youth Justice and Incarceration System*⁵ and the Queensland Parliament Education, Arts and Communities Committee inquiry in the *Youth Justice (Electronic Monitoring) Amendment Bill 2025*.⁶

To assist the Child Safety Inquiry and avoid duplication, PeakCare has listed and annexed its submissions in response to current and previous inquiries, strategies, and legislative changes in respect of youth justice over the last 18 months at **Attachment B** to this submission.

PeakCare’s ongoing commitment to assisting the Child Safety Inquiry and its contributions to date

This submission contributes to PeakCare’s ongoing commitment to assist the Child Safety Inquiry in its important work to improve the outcomes for children, young people, their families, and the broader community.

PeakCare’s Chief Executive Officer, Mr Tom Allsop, gave evidence at the Child Safety Inquiry’s public hearings in Cairns on 15 and 16 September 2025. Mr Allsop’s evidence has not been concluded at this time. Mr Allsop’s evidence is supported by an Outline of Evidence, tendered into evidence by the Child Safety Inquiry on 15 September 2025, and a Supplementary Outline of Evidence.

Mr Allsop’s Outline of Evidence assists the Child Safety Inquiry with the following areas:

- The role and work of PeakCare.
- The causes of the growth in statutory Child Protection in Queensland.
- The strong preference to place children who enter statutory care into kinship or foster care.

Queensland. In this respect, 40 per cent of Australian children in residential care were in Queensland, despite the state only having 21 per cent of the nation’s children, between 2018 to 2023. See Child Safety Commission of Inquiry, 23 July 2025, at transcript pg. 18.

⁵ See

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/YouthJustice2025.

⁶ See <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=269&id=6559>.

- How to better support foster and kinship carers in Queensland.
- The issues facing residential care in Queensland.
- The urgent need to reduce the residential care numbers in Queensland, and prevent entries, most particularly for children under 12 and especially for children under four.
- The current approach to residential care in Queensland.
- Why the model of residential care in Queensland must be therapeutic.
- Availability of medical treatment in residential care.
- First Nations children in residential care.
- The residential care workforce in Queensland and the training and supports provided to them.
- PeakCare's role in increasing the capacity of the residential care workforce, including through training.
- The regulation of residential care providers and the need for new processes to licence providers, which should be undertaken independently to the Department.
- The employment structures adopted by residential care providers.
- The outcomes framework for children in statutory care in Queensland but the failure to monitor, report, collect data to measure against it.
- The approach taken to transitioning children from residential care.
- What is being done to get children out of residential care.

Mr Allsop Supplementary Outline of Evidence, provided to the Child Safety Inquiry in November 2025, set out the following:

- Responds to the Child Safety Inquiry Commissioner's invitation to provide a possible structure through which practical assistance can be given both in terms of early intervention to prevent a child from entering State care, and to better deliver services once a child is in State care. Specifically considering:
 - systemic reports into the Child Safety system across jurisdictions and their findings and recommendation themes;
 - a whole of Queensland Government commitment, framework, and reporting to provide vulnerable children and their families with the right support, at the right time (which refers to the "Getting it Right For Every Child" (**GIRFEC**) model in Scotland);
 - a proposed "Corporate Parenting" model for children in care in Queensland, with reference to "The Promise" in Scotland, a legislated whole of government commitment to children in care that mandates guidance and regular public reporting on progress;
 - a focus on priority populations, including parents with unborn child harm reports, children transiting from care to independent adulthood, Aboriginal and Torres Strait Islander children who are significantly overrepresented in the Child Safety system;
 - critical Child Safety system enablers required to deliver actionable intelligence, drive continuous improvement, and transparency.
 - improvements to the residential care system including:
 - forecasting future demand for residential care in Queensland;

- the importance of the Child Safety department to committing to and investing in, as a priority, the implementation of the Residential Care Workforce Strategy to put into practice the key priority areas.
 - the Child Safety department establish a business unit and model like Queensland Country Practice (**QCP**), a division in Queensland Health, for residential care workers. This would enable a pool of already accredited and employed casual workers to be available for flexible and immediate support to regional residential care providers for short and medium term causal relief placements (either immediate or to cover planned leave) in regional and remote areas;
 - work health and safety, capability uplift and ongoing training and development for residential care workers;
 - examples of standard residential care house models and the number of individual staff required to fill a 7-day roster where services are provided on a continuous 24-hour cycle;
 - understanding and addressing the root causes of Queensland's over reliance on residential care;
- Supporting kinship care and foster care, which the evidence clearly demonstrates provides for greater stability and significantly better outcomes for the majority of children than residential care.
 - Information requested by the Child Safety Inquiry on two models of care being implemented in Australia that the Child Safety Inquiry requested being Treatment Foster Care Australia - QLD (**TFCA-QLD**) and the "*Mockingbird Model*."
 - Definitions and useful terms in the child and family service system.

PeakCare's support for self-determination

This submission, Mr Allsop's Outline of Evidence and Supplementary Outline of Evidence, and Mr Allsop's evidence, all build on the fundamental need for reforms to the Child Safety system to be:

- underpinned by a commitment to self-determination for Aboriginal and Torres Strait Islander children, young people, and families;
- supporting and expanding delegated authority⁷ aligned to the position of Aboriginal and Torres Strait Islander communities and community organisations; and
- implementing the Aboriginal and Torres Strait Island Child Placement Principle (**ATSICPP**) to the standard of '*active efforts*'⁸, to keep children connected to their family, culture, community, and country.

⁷ The *Child Protection Act 1999 (Qld)* under section 148BB(1) provides for the Chief Executive of Child Safety to delegate one or more of their function or powers under that Act in relation to an Aboriginal or Torres Strait Islander child who is either in need of protection or likely to become in need of protection.

⁸ Active efforts are purposeful, thorough and timely efforts, supported by legislation and policy, that enable the safety and wellbeing of Aboriginal and Torres Strait Island children.

PeakCare Submission

The Call for Submission Questions

In December 2025, the Child Safety Inquiry invited submissions in respect of “*corporate parenting and the links between the child safety and youth justice systems*” (**Call for Submissions**). The Call for Submissions sets out specific questions, inclusive of sub-questions, see **Attachment C**.

This submission responds globally to questions in the Call for Submissions that are relevant to the work, experience, and expertise of PeakCare and its members, set out **below**.

- *“Is the Department an effective corporate parent and is it meeting community expectations in relation to parenting, particularly in respect of:*
 - *children and young people who are placed in non-family-based (residential) care;*
 - *young people in care who are known to both the child safety system and the youth justice system;*
 - *young people who are transitioning out of detention into care and care into adulthood?*
- *What is the link, if any, between the child safety system and the youth justice system? For instance, do elements of the child safety system operate as a ‘feeder system’ to the youth justice? What are the factors contributing to children in care entering the youth justice system?*
- *The experiences of non-family based (residential care workers), foster carers and kinship carers, in dealing with children in care who are known to the youth justice system and/or youth offenders.”*

PeakCare respectfully submits that the terminology in the Call for Submissions referring to the Child Safety as a “*feeder system*” into the Youth Justice system may be viewed as disparaging to children, young people, their families, carers, and workers.

PeakCare respectfully submits that the intersection between the Child Safety and the Youth Justice systems are disadvantage, child maltreatment, and the over reliance on residential care in Queensland.

Proposed practical approach to improve the effectiveness of Child Safety

The Honourable Paul Anastassiou KC, Commissioner, of the Child Safety Inquiry has invited assistance with practical structure, allowing for the flexibility to meet individual needs of a child, to prevent entries into care and better deliver services to children and young people in care.

PeakCare is appreciative of Commissioner’s invitation and uses this submission to propose reforms for the Child Safety Inquiry’s consideration.⁹

⁹ See the invitation by the Honourable Paul Anastassiou KC, Commissioner, Commission of Inquiry into the Queensland Child Safety System, to Mr Thomas James Norbert Allsop, Chief Executive Officer, PeakCare Queensland Incorporated, during Mr Allsop’s evidence at the public hearings in Carins, in September 2025.

Is the Department an effective corporate parent?

A 'Corporate Parent'

The State of Queensland can assume parental responsibilities for a child by operation of the *Child Protection Act 1999* (Qld) (**Child Protection Act**) and the *Youth Justice Act 1992* (Qld) (**Youth Justice Act**).

The Child Protection Act does not use the term 'corporate parent'. However, as the departments responsible for Child Safety (**the Child Safety Department**) and Youth Justice (**the Youth Justice Department**) are not natural persons they can be referred to as a '*corporate parent*' as they have parental functions for children in care or youth detention.

In Queensland, the role of a corporate parent is exercised by either or both the Child Safety Department or the Youth Justice Department. In practice, the parenting responsibilities are assumed by:

- The Department of Child Safety for a child placed in the custody or guardianship of the Chief Executive of the Child Safety Department under the Child Protection Act.
- The Department of Youth Justice for a child in youth detention, for functional parental-type responsibilities for the child's care, such as daily supervision, discipline and control, safety, and wellbeing.
- The Department of Child Safety for a child in the custody or guardianship of the Child Safety Department and in youth detention. In these circumstances, the Department of Child Safety has parental responsibility, and the Department of Youth Justice has functional parental-type responsibility for the daily supervision of the child.

Many jurisdictions have debated whether children in need of protection and who offend should be governed under one unified legislative framework. This is effectively a question of whether children are primarily offenders or primarily in need of care.

In this respect, many children who offend are victims of abuse or neglect, have multiple unmet needs and/or disabilities. A child centred and rights-based approach recognises the considerable overlap between the Child Safety and Youth Justice systems.

A unified legislative framework could prioritise the care, health, disability support, education, health planning, rehabilitation, and wellbeing of the child. This approach could also provide clarity for the government entity who is responsible for the child, supporting more timely decision making and reducing the risk of children's needs unintentionally being unmet due to service boundaries between the Child Safety and Youth Justice systems.

A unified legislative framework could also support community safety by prioritising children's rehabilitation to reduce the risk of child re-offending.

The Responsibilities of the State as a 'Corporate Parent'

Child protection is a state responsibility in Australia. Child protection systems across Australian jurisdictions are subject to national and international polices, primarily the *United Nations Convention on the Rights of the Child* (**UNCRC**). The UNCRC is the principal instrument setting out the human rights of children.

Australia ratified the UNCRC on 17 December 1990, and it became legally binding in Australia on 16 January 1991. This means that Australia is obligated to follow the UNCRC and ensure domestic laws and policies align with its principles.

The preamble of the UNCRC states that children, by reason of their physical and mental immaturity, need “*special safeguards and care, including appropriate legal protection, before as well as after birth.*”¹⁰ A ‘child’ is defined as below the age of 18 years of age.¹¹

The UNCRC declares that in all actions concerning children, including those undertaken by social welfare institutions, courts or legislative bodies, the best interests of the child shall be a primary consideration.¹² It seeks to ensure that every child is safe, receives care and is protected. It recognises that all children have the same rights regardless of their background, ability, gender, culture, or family situation. These rights include to grow up healthy, safe, and supported physically, emotionally, and educationally and to express their views in matter affecting them, with their views to be taken seriously.

The UNCRC is reflected in the Child Protection Act and Queensland Youth Justice Act. The Child Protection Act and the Youth Justice Act establish a child-centred, rights-based approach for children involved in the Child Safety and Youth Justice systems.

Both the Child Protection Act and Queensland Youth Justice Acts reflect the UNCRC core principles by prioritising the best interests of the child¹³, emphasising family involvement,¹⁴ promoting cultural connection¹⁵, promoting rehabilitative responses, limiting the statutory removal of children¹⁶, the role of child detention as a last resort¹⁷ and the right to self-determination of First Nations children.

The Making Queensland Safer Bill

The *Making Queensland Safer Act 2024* (Qld) (**Making Queensland Safer Act**), associated with the mantra ‘*adult time, adult crime*’, amended the Youth Justice Act and the *Bail Act 1980* (Qld).

The Making Queensland Safer Act allows for prescribed offences such that children can be sentenced to the same penalties as adults. This undermines the UNCRC that recognises children, by reason of their physical and mental immaturity, need special safeguards and care, including appropriate legal protection.

The Making Queensland Safer Act imposed stricter bail provisions for children charged with prescribed offences and increased the likelihood that they would remain in custody. This is inconsistent with the UNCRC and the Youth Justice Act that state youth detention should be the last resort.

The Making Queensland Safer Act also disproportionately impacts First Nations children, who are significantly overrepresented in the Child Safety and Youth Justice systems.

¹⁰ Convention on the Rights of the Child, Preamble.

¹¹ Convention on the Rights of the Child, Article 1.

¹² Convention on the Rights of the Child, Article 3.

¹³ Convention on the Rights of the Child Article 3; *Child Protection Act 1999* (Qld) s. 5A; and *Youth Justice Act 1992* (Qld) general principles.

¹⁴ Convention on the Rights of the Child Article 5, 18; *Child Protection Act 1999* (Qld) s. 4; and *Youth Justice Act 1992* (Qld) s. 5B.

¹⁵ Convention on the Rights of the Child Article 8, 30; *Child Protection Act 1999* (Qld) s. 4; and *Youth Justice Act 1992* (Qld) s. 5C.

¹⁶ *Child Protection Act 1999* (Qld) s. 10, a child is in needs of protection due to having suffered harm, or being at an unacceptable risk of suffering harm, and without a parent who is willing or able to protect the child from such harm.

¹⁷ *Youth Justice Act 1992* (Qld) s. 150(a).

An effective corporate parenting model

An effective corporate parenting model is one that ensures children in and transiting from care are safe, healthy, educated, and reach their full potential. It must be more than high level aspirations enshrined in legislation.¹⁸

What makes an effective corporate parenting model was considered in the United Kingdom by the All-Party Parliamentary Group for Care-Experienced Children and Young People (**APPG Care Group**). This is an informal group of Members of Parliament and Peers who share a common interest in promoting the voice of care-experienced children and young people and better informing or influencing government policy for the care system.

The APPG Care Group recognised that children in care continued to have disproportionately poor outcomes that impacted their lives and life chances.¹⁹ In 2023, APPG Care Group undertook an inquiry into the effectiveness of the corporate parenting model.

The APPG report, “*Inquiry on Extending Corporate Parenting Responsibility across the Public Sector Final Report*” (at **Attachment D**), made 14 recommendations to improve the effectiveness of a corporate parenting model.²⁰ The recommendations are sanguine for any new corporate parenting model for Queensland, summarised below:

- Action focused corporate parenting responsibilities with strong legal weighting.
- Publication of guidance material setting out corporate parenting organisations and the ways in which they can be fulfilled, how they will be held accountable, and examples of best practice.
- Legislation conferring corporate parenting responsibilities onto a broad range of public sector bodies and organisations.
- Funding for training, advice, guidance, and support to corporate parenting organisations to enable them to effectively fulfil their responsibilities and promote best practice.
- Corporate parenting organisations be required to develop and publish corporate parenting plans every three years and submit progress reports annually. These plans should have SMART objectives for how organisations will fulfill their corporate parenting responsibilities over this period, an action plan for delivery and how plans have been informed by the views of care-experienced young people.
- Government oversight and enforcement measures for a failure of a corporate parenting organisation to submit corporate parenting plans and progress reports.
- The government develop and publish a cross government corporate parenting plan every three years, which brings together strategic objectives and plans from across government departments, as well as publishing an annual progress report.

¹⁸ Aspirations such as to act in the best interests of care-experienced children and young people, promote their health and wellbeing, and listen to their wishes and preferences.

¹⁹ All-Party Parliamentary Group for Care-Experienced Children and Young People, “*Inquiry on Extending Corporate Parenting Responsibility across the Public Sector Final Report*”, March 2024, pg. 4.

²⁰ The All-Party Parliamentary Group for Care-Experienced Children and Young People report acknowledged that the government had already committed to strengthen and extend corporate parenting responsibilities across the public sector, accepting the recommendation from the “*The independent review of children’s social care – Final report*, May 2022 (known as the MacAlister Review), at www.gov.uk/government/groups/independent-review-of-childrens-social-care, and building on the reforms in Scotland where 26 public bodies were named as corporate parents.

- An independent body such as the Children’s Commissioner’s Office be funded to develop and publish a shadow corporate parenting report every three years based on consultation with care-experienced young people about progress to date and areas for improvement.
- Relevant regulators, inspectorates and ombudsman organisations ensure that assessments of how well corporate parenting organisations are complying with corporate parenting responsibilities are adequately reflected in relevant regulatory frameworks.
- An independent body such as the Children’s Commissioner’s Office be given additional powers to hold corporate parents to account (e.g. receive complaints about flagrant or systemic breaches; compel information as part of investigating complaints; write to corporate parenting organisations setting out remedial action that they must take to ensure compliance; undertake enforcement action and impose penalties if not taken).
- The government fund and implement a workforce development program to upskill frontline professionals who work with care-experienced children and young people, including building their understanding of the impact of trauma.
- The government improve and increase the collection of data relating to children and young people’s outcomes, which is disaggregated by care experience.²¹

Jurisdictional Examples - Corporate Parenting Models

Scotland

The ambition in Scotland is to be the best place in the world for children to grow up, where all children and young people are loved, treated with respect, have their voices heard, their rights respected, and their outcomes improved.

To achieve this ambition, “*Getting it right for every child*” (**GIRFEC**) is a bipartisan commitment and framework for improving child wellbeing and outcomes through a rights-based, early intervention, and coordinated, services approach. GIRFEC is legislated in the *Children and Young People (Scotland) Act 2014*. GIRFEC aims to create a more successful country, give opportunities to all people living in Scotland, increasing wellbeing, creating sustainable and inclusive growth, reducing inequalities, and giving equal importance to economic, environmental, and social progress.²²

“The Promise” – corporate parenting model

“*The Promise*” is the corporate parenting model in Scotland for children in care or at the edges of the care system. It aims to ensure that they grow up loved, safe and respected.²³

“*The Promise*” is legislated in the *Children and Young People (Scotland) Act (2014)*. This Act establishes a framework for Corporate Parenting at Part 9, by defining who corporate parents are (s. 56), the specific children and young people they apply to (s. 57), their key responsibilities (s. 58), and the requirement for

²¹ All-Party Parliamentary Group for Care-Experienced Children and Young People, “*Inquiry on Extending Corporate Parenting Responsibility across the Public Sector Final Report*”, March 2024.

²² See [Getting it right for every child \(GIRFEC\): policy statement - gov.scot](https://www.gov.scot/publications/getting-it-right-for-every-child/girfec-policy-statement/pages/1-to-4.aspx).

²³ The “*The Promise*” has its origins in the Scottish “*Independent Care Review*” commenced in October 2016 that was “*an independent root and branch review of the care system*” to look at “*the underpinning legislation, practices, culture and ethos*”. The Independent Care Review published seven reports, including: “*The Promise*”; “*The Plan*” (how the change must happen); “*The Money*” and “*Follow the Money*” (explaining how Scotland can invest better in its children and families); and “*The Rules*” (how the legislative framework needed to change to achieve “*The Promise*”).

those bodies (e.g. local authorities, health boards) to create, review, and publish plans to promote the well-being of children in care and care leavers (s. 59).

This legislative mandate in Scotland requires corporate parents to take responsibility for children in care and to improve their life chances, and plan and work together. The corporate parenting responsibilities go beyond the department responsible for child protection and extend to a range of public bodies, making them jointly accountable for ensuring children in or leaving care have the same opportunities as other children.

Scotland has distilled what a corporate parent is all about to asking the question “*would this be good enough for my child?*”

See: A Rights Respecting Approach to Justice for Children and Young People: Scotland’s Vision and Priorities, 2024-2026, pg. 8

“*The Promise*” is a broadly supported vision for children with a care experience. However, its effective implementation has been impacted by workforce pressures, siloed service systems, insufficient investment, and inconsistent delivery. These challenges can be addressed in developing a new corporate parenting model in Queensland, to include:

- clear practical guidance on what a corporate parenting model requires for staff in their day-to-day work and decision making for children;
- practical training and guidance to embed rights based and trauma-informed practice;
- new workforce investment, such as in supervision, reflective practice, and pay and conditions to uplift capability and increase retention;
- guidance and training across all services (e.g. education, health, youth justice);
- new investment in mental health, community based and family supports services dedicated for children with a care experience and their families;
- specific measurements to track progress and outcomes; and
- dedicated focus on reducing reliance on residential care, crisis, and secure placements for children in care.

Children Engaged in the Youth Justice System

The Scottish approach to children in conflict with the law recognises that reducing offending behaviours requires addressing the root causes of each child’s behaviour in a trauma informed way. This approach is not just about supporting children to understand the impact of their conduct on themselves and others, nor just about holding children accountable for their actions, it is about recognising each child’s potential and providing them with the support they need to succeed.²⁴

The approach is outlined in “*A Rights Respecting Approach to Justice for Children and Young People: Scotland’s Vision and Priorities*” is at **Attachment E**. It is based in the evidence of links between children experiencing psychological trauma and adversity in childhood, victimisation, and criminalisation later

²⁴ “*A Rights Respecting Approach to Justice for Children and Young People: Scotland’s Vision and Priorities*”, 2024-26, pg. 3 at [Justice for children and young people: vision and priorities 2024-26](#).

in life. The approach is to support children and their families impacted by psychological trauma and adversity to prevent and mitigate offending and re-offending as well as the likelihood of falling victim to violence in adulthood.

The Scottish approach aims to divert children away from offending towards a future filled with promise and opportunity. The intent is to provide children with effective supports to meet their individual needs and address the circumstances which have caused them to offend. If a period of detention is required, it must be in a trauma informed setting.

This more to a preventative approach in Scotland aligns with a 92 per cent reduction in the number of children and young people prosecuted in Scotland's courts and a 97 per cent reduction in 16 and 17 year olds being sentenced to custody between 2008-09 to 2021-22.²⁵

By investing in our children and providing them with the tools and opportunities they need to thrive, we not only reduce harm, crime and recidivism but also build stronger, more resilient communities.

A Rights Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities

Victoria

A Minister for Children

In 2023, Victoria established its first dedicated Minister for Children. The new ministry reflected a major new policy priority for the government to bring together the work across government that supports children and families. This included the *Best Start, Best Life* early childhood education reforms, continuing to drive improvements to the child protection system, and providing a whole of government focus on child development and wellbeing.²⁶

The Minister for Children is a voice for children at cabinet. The portfolio is focused on shifting services for children from tertiary and crisis driven response to a prevention, early intervention and wellbeing.

Reforms in the State of Victoria - Corporate Parenting - Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill 2025

In Victoria on 2 December 2025, the "Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill" (**Supporting Stable and Strong Families Bill**) was introduced into Parliament (at **Attachment F**).

Leveraging off the Scottish model and its success, the Supporting Stable and Strong Families Bill amends the Children, the *Children, Youth and Families Act 2005* (Vic) and the *Child Wellbeing and Safety Act 2005* (Vic) to:

"Create a legislative framework to improve collaboration across Government and better support vulnerable children, young people, and families. The Bill incorporates shared responsibilities

²⁵ "A Rights Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities", pg. 5.

²⁶ Media release, Premier of Victoria, Hon Jacinta Allan MP, New Cabinet to Keep Delivering for Victorians, 2 October 2023, <https://www.premier.vic.gov.au/new-cabinet-keep-delivering-victorians>.

*across the Victorian Government to enhance service access and support earlier intervention for children, young people, and families at risk of, or already involved with, Child Protection.*²⁷

The objective of the Supporting Stable and Strong Families Bill is to achieve a fundamental shift in how government cares for the most vulnerable children and young people. It seeks to move away from a reactive referral model to a proactive, collective responsibility model. The aim is to provide comprehensive supports that promote earlier interventions to support families stay together and to address the diverse needs of children in care.

The Supporting Stable and Strong Families Bill proposes legislative scheme, the “*Supporting Stable and Strong Families scheme*” (**SSSF Scheme**). The SSSF Scheme recognises that when the State takes responsibility for a child’s care every Victorian government department becomes a part of that child’s support structure.

It introduces responsibilities across government, mandating integrated planning and service delivery across government areas such as housing, health, education, and justice. It seeks to be more than an aspiration and instead holds Ministers and departments accountable for their role in supporting vulnerable children and families through mandating reporting on outcomes for children and families.

To encourage the SSSF Scheme to provide early intervention, the definition of “*vulnerable children*” includes children who are involved in or at risk of coming to the attention of the child protection system and/or whose families are receiving family services.

The initial focus on the SSSF Scheme will be children and families with the highest needs, those involved in Child Protection and recent care leavers. Over time, the SSSF Scheme will extend to:

- children under the age of 18 who are receiving, have received, or require but are not receiving, services from a community service;
- children under the age of 18 whose primary family carer is receiving, has received, or requires but is not receiving, services from a community service;
- care leavers under the age of 15; and
- parents and household members of children subject to Family Preservation Orders and Family Reunification Orders.²⁸

Ministers will release Supporting Stable and Strong Families plans every two years, which outline the actions to be taken by responsible individuals within portfolios. These plans will be tabled in the Victorian Parliament and include:

- a vision and specific, measurable objectives focused on the well-being and development of children and young people;
- detailed action plans outlining steps to achieve objectives, and ensure adequate resources (e.g. staffing allocation and material) are allocated;
- fostering collaboration with other responsible individuals, agencies, and communities; and
- systems for monitoring implementation, evaluating outcomes, and making necessary adjustments to improve effectiveness.

²⁷ The Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill, Second Reading Speech, the Hon. Ben Carroll, Minister for Education, Minister for WorkSafe, and Minister for the TAC, 3 December 2025. Hansard, Legislative Assembly 60th Parliament, Wednesday 3 December 2025, Bills, pg. 5368.

²⁸ The Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill, Second Reading Speech (pg. 5370).

At the conclusion of the two-year plan, the responsible Ministers will be required to release a report outlining the progress against these plans. Outcome measures will include the areas of health, education, justice, housing, Aboriginal self-determination, and employment.

In the Second Reading Speech, the Hon. Ben Carroll recognised that whilst the Supporting Stable and Strong Families Bill focuses on how government works together, its success will be measured by the impacts this has on the lives of vulnerable children and families. Successful outcomes identified will include:

- fewer families coming into contact with the Child Protection system;
- children who do enter the Child Protection system being safely reunified with families sooner; and
- children who cannot be reunified with their families, having outcomes equivalent to their peers across education, health, housing, employment, justice system involvement, and connection to culture.

In summary, the Supporting Stable and Strong Families Bill, aims to hold Ministers and department heads accountable to proactively provide vulnerable children and families with the help they need, when they need.

Should the Supporting Stable and Strong Families Bill become law, its effectiveness will depend on factors including the level of financial investment, its prioritisation within government agendas, and the robustness of its implementation and accountability framework.

Is the Queensland Child Safety Department an Effective Corporate Parent?

Children born into families with multiple challenges - family and domestic violence, parental mental ill-health and/or substance misuse, socio-economic stress, and/or engagement in the criminal justice system – are at a greater risk of experiencing maltreatment.²⁹ Child maltreatment brings children to the attention of the Child Safety system. If the challenges in families are not addressed, children can be removed from their families under the Child Protection Act and placed in care.

The prevalence of child maltreatment (physical abuse, sexual abuse, emotional abuse, neglect or domestic violence) in Australia is known from the landmark Australian Child Maltreatment Study (ACM Study).³⁰ For children with a care experience, the ACM Study found that the prevalence of child maltreatment was significantly higher and more intense than the general population.³¹

Therefore, as a corporate parent the Child Safety Department needs to:

- support children to heal from the impacts of maltreatment prior to their entry into care; and

²⁹ Higgins, D.J., Herrenkohl, T. I., Lonne B., Scott, D., “Advancing a prevention-oriented support system for the health and safety of children”, Children and Youth Services Review 159 (2024) 107521, pages 1-2.

³⁰ Haslam, D., Mathews, B., Pacella, R., Scott, J. G., Finkelhor, D., Higgins, D. J., Meinck, F., Erskine, H. E., Thomas, H. J., Lawrence, D., & Malacova, E. (2023). *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*. Australian Child Maltreatment Study, Queensland University of Technology. <http://doi.org/10.5204/rep.eprints.239397>. The ACM Study found that 61 per cent of Australians had experienced one type of child maltreatment, and one in four had experienced three to four types. The ACM Study found prevalence rates of maltreatment among people aged 16 to 24 included: 28.2 per cent experienced physical abuse; 25.7 per cent experienced sexual abuse; 34.6 per cent experienced emotional abuse; 10.3 per cent experienced neglect; and 43.8 per cent experienced exposure to domestic violence.

³¹ Harris LG, Higgins DJ, Willis ML, Lawrence D, Meinck F, Thomas HJ, Malacova E, Scott JG, Pacella R, Haslam DM, “Dimensions of child maltreatment in Australians with a history of out-of-home care. *Child Maltreatment*” 2025 August, 30(3):525-39.

- provide services and supports enable children to be healthy, well, meet developmental milestones, meaningfully engage in education, and reach their potential in and transitioning from care.

The effectiveness of the Child Safety Department as a corporate parent can be assessed against the rights of the child identified in the UNCRC, the Child Protection Act and the Youth Justice Act.

The “*Queensland Care Services Outcomes Framework*” (**the Care Outcomes Framework**) sets out the outcomes that the Child Safety Department aims to achieve for children in care (at **Attachment G**). The Care Outcomes Framework aligns with the UNCRC and the Child Protection Act. It is structured around five domains to improve the life outcomes of children in care, namely:

- **Safe and nurtured:** children and young people feel cared for and nurtured in stable environments, safe from abuse, neglect, violence, and harm.
- **Connected:** children and young people feel a strong sense of identity and belonging, have stable and long-lasting relationships with family and friends and are connected to culture and community.
- **Achieving:** children and young people learn and develop to their full potential.
- **Healthy:** children and young people make healthy lifestyle choices and access health care services.
- **Resilient:** children and young people have strong social and interpersonal skills and feel confident to pursue life goals and manage challenges.

The Care Outcomes Framework identifies indicators and measures of success for children in care, which are aligned to the five domains. However, there is no dedicated public reporting by Child Safety Department directly against the Care Outcomes Framework.

In Queensland, the experiences and outcomes for children in care are captured in reporting by the Queensland Family and Child Commission (**the QFCC**). The Child Safety Department also undertakes an annual Children in Care Census.

The QFCC “*Performance of the Queensland child protection system 2024-25 Annual Report*” found that children in care, and in particular children in residential care, had:

- low educational enrolment, poor attendance, high rates of exclusion from school, and poor educational attainment;
- multiple and complex needs, which were beyond the existing residential care model to provide for;
- limited disability and mental health supports;
- significant unmet needs; and
- faced higher risks of homelessness, poor mental health, and early deaths after transitioning from care.³²

The QFCC found that children in detention experienced harm, including self-injury, and had limited access to therapeutic supports. Further, because many youth offenders had child protection involvement and were themselves victims of crime that they needed trauma-informed supports and services.

³² Queensland Family & Child Commission report on the “*Performance of the Queensland child protection system 2024-25 Annual Report*”, pg. 3.

The QFCC concluded that poor long-term outcomes for children in care reflected missed opportunities for earlier and more effective intervention.

Data from the 2024 Children in Care Census³³ identified children in care had multiple and complex needs and insufficient supports and services to meet these needs, for example:

- 31 per cent of children had limited or severely limited intellectual functioning / development delay.
- 20 per cent of children had a suspect mental illness or behavioural disorder. Further, 31 per cent had unmet support needs in relation to their mental illness, and it was unknown whether 18 percent had unmet support needs in relation to their mental illness.
- 41 per cent of children have a diagnosed or suspect disability and/or neuro-development disability.
- 33 percent of children aged six to 16 years had been excluded or suspended from an education facility in the past.
- Children in care on youth justice orders had more negative experience whilst in care, including an increased likelihood of school exclusions, being absent from care, and having more than four care placements.
- High rates of unmet need for young people transitioning from care. For example, within 12 months of transition from care, 58 per cent of care leavers required NDIS support applications and 29 per cent requiring housing support applications which had not been submitted. Further, almost two-thirds were not yet registered with Centrelink and 11 per cent did not have a leaving care plan.
- For the 54 per cent of young people transitioning to adulthood requiring public housing, 71 per cent will be on a waitlist for public housing.

From the available data and research, the Child Safety Department is falling short of the obligations under UNCRC and Queensland legislation as a corporate parent. The experiences and outcomes for children who have been in care (particularly residential care and youth detention) do not meet those of the general population. The impacts on children of care or youth detention are lifelong and intergenerational, with their children of more likely to be known to Child Safety.³⁴

The multiple and complex unmet needs and poor outcomes for children with a care experience have been considered extensively in inquiries, reports and research. Longitudinal studies have also shown that children with a residential care experience have significantly poorer outcomes than children with a home-based care experience (foster care or kinship care) and/or who remained with their families. For example:

- The *Looked After Children Grown Up Project*³⁵ in the United Kingdom focused on understanding the long-term outcomes and adult experience of people who were in care as children. It found that children with a residential care experience were three times more likely to have died than children who stayed with their parents, were more likely to have no qualifications, live in rented accommodation, and were less likely to be employed.³⁶

³³ Department of Families, Seniors, Disability Services and Child Safety, “Children in Care Census 2024”.

³⁴ See PeakCare Queensland Inc “Draft Hope & Healing Literature Review – For Residential Care”, July 2025.

³⁵ See <https://www.nuffieldfoundation.org/project/looked-after-children-grown-up>.

³⁶ Sacker, A., with Murray, E., Lacey, R, and Maughan, B. “The lifelong health and wellbeing trajectories of people who have been in care, Findings from the Looked-after Children Grown Up Project”, July 2012, page 12.

- The “*Pathways of Care Longitudinal Study – Improving the long-term outcomes of children in Out-of-Home Care*” (**Pathways of Care Study**) funded by the NSW Government commenced in 2011. It is a large-scale longitudinal study of children and young people in out-of-home care in NSW focusing on the child development domains of physical health, socio-economic wellbeing, and cognitive/learning ability. The Pathways of Care Study shows that children with a residential care experience have lower school engagement, attendance and achievement, are more likely to be suspended or excluded, are less likely to meet national literacy and numeracy benchmarks and are more frequently involved in the justice system.

The complex array of adversities factors that bring children to the attention of the Child Safety and Youth Justice systems, such as inadequate housing, disengagement from education or training, poverty, family and domestic violence, parental mental illness and/or substance misuse, are largely not within the remit or budget of the Child Safety Department to address. This significantly limits the Child Safety Department’s ability to be an effective corporate parent and to promote the rights of children. Key examples of these limitations include:

- **Limited access to health care:** children in care tend to have multiple and complex health needs, poor physical health, development delays and compromised mental health. Despite the needs, they have limited access to health care compared to the rest of the community.³⁷ The Department of Health is responsible for the provision of health care to children. Whilst Queensland does not capture state-wide data or report against the “*National Clinical Assessment Framework for Children and Young People in Out-of-Home Care*” (**the Clinical Assessment Framework**), evidence from experts and carers is that Queensland is not compliant with the Framework.³⁸

For example, Preliminary Health Checks are not routinely commenced as soon as possible (and no later than 30 days) after a child enters care to determine areas of immediate concern. Similarly, a Comprehensive Health and Developmental Assessment is not routinely completed within 3 months of a care placement.

- **Over representation in school exclusions and disengagement in education:** despite education being a protective factor for children in care, they have been shown to be over represented in school exclusion.³⁹ Further, disengagement from education is a significant precursor to youth involvement in criminal activities.⁴⁰ The Department responsible for education and schools is best placed to identify and support students with learning difficulties and behavioural issues.

³⁷ The “*National Clinical Assessment Framework for Children and Young People in Out-of-Home Care*” recognises that children and young people in statutory care tend to have multiple and complex health needs, poor physical health, development delays and compromised mental health. It also recognises that children and young people in statutory care tend to experience very limited access to health resources that are otherwise routinely available to the rest of the community. Compounding this situation, the large number of placements experienced by some children and young people often leads to reduced availability of information about their past medical history, inconsistent maintenance of accurate information about their current health status and consequently poor continuity of health care.

³⁸ It is widely accepted in Queensland and other Australian jurisdictions, and the Child Safety Inquiry has heard evidence from health professional and carers at its Cairns public hearings that there is limited, inconsistent and significant delays in access to assessments and health care for children in care.

³⁹ Graham, Linda J., Killingly, Callula, Alexander, Matilda, & Wiggans, Sophie (2024) Suspensions in QLD state schools, 2016-2020: overrepresentation, intersectionality and disproportionate risk. *Australian Educational Researcher*, 51(4), pp. 1527-1558.

⁴⁰ See

Kirstie O'Hare ^a, Stacy Tzoumakis ^{a b}, Oliver Watkeys ^a, Ilan Katz ^c, Kristin R. Laurens ^{a d}, Merran Butler ^e, Felicity Harris ^a, Vaughan J. Carr ^{a f g}, Melissa J. Green, “*Out-of-home care characteristics associated with childhood educational underachievement, mental disorder, and police contacts in an Australian population sample*”, *Child Abuse and Neglect*, Volume 139, May 2023, 106120.

- **Unmet disability support needs:** the QFCC “Performance of the Queensland child protection system 2024–25 Annual Report” reported that only 69.2 per cent of the children in care with a recorded disability had an approved NDIS plan. Children in foster care with a recorded disability were most likely to have a NDIS plan, at 86 per cent. Whereas children in kinship care had the lowest at 50.3 per cent.⁴¹
- **Adverse outcomes from detaining children:** detention disrupts children’s education, health care, family connection, cultural identity, and community supports. Evidence from the Queensland Child Death Review Board shows that repeated detention is a risk factor for self-harm, chronic instability, and adult imprisonment.⁴² Children with an experience of detention are also at increased risk of reoffending.⁴³
- **Inhuman treatment and failing to foster the health and dignity of children:** Queensland imposes some of the toughest youth detention conditions in Australia, including detaining young people in adult watchhouses and legislation to override the rights of the child. Detention environments do not consistently meet standards relating to safety, dignity, education, health, cultural connection, time out of cell, and freedom from isolation and restraint.⁴⁴ Children in detention centres have described the unsuitability of Police Watchhouses environments to PeakCare.

“People were yelling while I was trying to sleep, adults being admitted and they’re under the influence. If I could change watchhouses I’d make them cleaner and just more respectful.”

Child in a youth detention centre (2024)

- **Ineffective planning and reintegration support after custody:** poor transition planning, particularly for housing and support services, often leads to children returning to criminal behaviour.

The Queensland Audit Office report, “Reducing serious youth crime (Report 15: 2023-24)”, found that transition planning from detention to the community was not evidence-based, the Youth Justice Department could not explain the rationale for only planning for the first 72 hours after a young offender’s release, and that a longer period than 72 hours of transition planning was needed.⁴⁵ Research also shows that a lack of stable housing significantly increases the risk of reincarceration.⁴⁶

Children in detention centres have told PeakCare what they need when released from youth detention. They have asked to be connected to mentors and role models and for assistance to gain employment.

⁴¹ Queensland Family & Child Commission, “Performance of the Queensland child protection system 2024–25 Annual Report”, pg. 80.

⁴² Queensland Family and Children Commission, Inquiry into Australia’s Youth Justice and Incarceration System “Submission to the Australian Federal Senate Legal and Constitutional Affairs Reference Committee”, December 2025, pg. 4.

⁴³ Queensland Audit Office, “Reducing serious youth crime (Report 15: 2023-24)”, pg. 18.

⁴⁴ Queensland Family and Children Commission, Inquiry into Australia’s Youth Justice and Incarceration System “Submission to the Australian Federal Senate Legal and Constitutional Affairs Reference Committee”, December 2025, pg. 4.

⁴⁵ Queensland Audit Office, “Reducing serious youth crime (Report 15: 2023-24)”, pages 3, 33, 34

⁴⁶ Queensland Family and Children Commission, “Queensland Child Rights Report 2023: Spotlight: Youth Justice in Queensland”.

PeakCare acknowledges and welcomes funding allocated in the 2025-26 budget for the “*Staying on Track*” program through the Department of Youth Justice and Victims. This funding is aimed at helping children and young people successfully transition out of youth detention and to reduce re-offending.

To evaluate the effectiveness of the “*Staying on Track*” program, an independent evaluation framework and the collection of baseline data at the outset and ongoing data is recommended. This would support quality and consistent data collection and avoid the difficulties of retrospective evaluation and distinguishing the effects the “*Staying on Track*” program from unrelated reforms.

"I needed someone to call, like a mentor, when I got out last time."

"We need good role models. They should pay for more role models and less juvies [youth detention centres]."

"I want to buy stuff with my own money. If I get a job, I would feel so proud of myself."

"Next time I get out I am ready to try a job. I want to think about what I want to do when I get out and make a plan."

"I've been doing a horticulture certificate, I want to get a job when I get out. Anything outdoors."

Children in a youth detention centre (2024)

Youth Justice

The purpose of the Youth Justice system is to keep the community safe, to hold a child that commits an offence accountable and respond in a way that promotes their rehabilitation and reintegration into the community.

Youth offending in Australia has been in decline for over a decade.⁴⁷ This trend is consistent in Queensland, with youth offending having declined from a rate of per 100,000 persons aged 10 to 17 years 3,575.8 in 2008-09, to 1,828.1 in 2023-24.⁴⁸

The Queensland Audit Office's report, “*Reducing serious youth crime 2023-24*”, findings included:

- Youth crime accounts for only a small percentage of overall crime in Queensland. The percentage has decreased from 17 per cent of overall crime in 2011-12 to 13 per cent in 2022-23.
- Most children and young people who offend commit a small number of offences and are diverted away from the Youth Justice system.

⁴⁷ Australian Institute of Health and Welfare, “*Youth Justice in Australia 2022-23*”, 2024; Productivity Commission, “*Report on Government Services 2024: Youth Justice*”, 2024, Australia Bureau of Statistics, Recorded Crime – Offenders, 2023-24, released 06/03/2025, at <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>.

⁴⁸ Australian Bureau of Statistic, Recorded Crime – Offenders, 2023-24, released 06/03/2025, at pg. 2. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>.

- A small proportion of children and young people do reoffend and commit serious offences. Between 2018-19 and 2022-23, serious repeat youth offenders have increased from 278 to 547. Further, in 2022-23, 55 per cent of all youth crime in Queensland was committed by repeat offenders.⁴⁹

Youth detention in Australia has increased, and most children in youth detention are on remand.⁵⁰

The QFCC has highlighted that Queensland spends more on youth justice than any other Australian jurisdiction, with the cost of detention-based supervision per day per child or young person being \$2,086.32.⁵¹ Further, that the percentage of children and young people who return to detention in Queensland has been consistently high.⁵² The Queensland Audit Office's report found that between 2018-19 and 2022-23, \$1.38 billion was spent on youth justice. This included \$1.25 billion for detention centres and services and internal programs, and \$134 million in outsourced programs and services.⁵³

What is the link, if any, between the child safety system and the youth justice system?

The link between the Child Safety and Youth Justice systems are the experiences of children known to both experiencing disadvantage and maltreatment.

In 2022, the Youth Justice Census found that of the 1,605 young offenders:

- 53 per cent had experienced or been impacted by domestic and family violence;
- 33 per cent had a mental health and/or a behavioural disorder;
- 45 per cent were disengaged from education, training or employment;
- 30 per cent have been living in unstable and/or unsuitable accommodation;
- 19 per cent had active Child Protection orders;
- 27 per cent had a disability (suspected or assessed), including 17 per cent who had a cognitive or intellectual disability; and
- 27 per cent had at least one parent who has spent time in adult custody.⁵⁴

The social determinants of children known to the Child Safety and Youth Justice systems have been identified in numerous reports, including the Queensland Child Protection Commission of Inquiry report *"Taking Responsibility: A Roadmap for Queensland Child Protection"* June 2013 (**Carmody Report**).⁵⁵ More recently by the Australian Human Rights Commission in its report *"Help way earlier! How Australia can transform child justice to improve safety and wellbeing"* in August 2024.

⁴⁹ Queensland Audit Office, *"Reducing serious youth crime (Report 15: 2023-24)"*.

⁵⁰ Australian Institute of Health and Welfare, *"Youth detention population in Australia 2024"*, at <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/about>.

⁵¹ Queensland Family and Child Commission, *"Inquiry into Australia's youth justice and incarceration system. Submission to the Australian Federal Senate Legal and Constitutional Affairs References Committee"*, December 2025, pg. 5.

⁵² Queensland Family and Child Commission, *"Inquiry into Australia's youth justice and incarceration system. Submission to the Australian Federal Senate Legal and Constitutional Affairs References Committee"*, December 2025, pg. 6.

⁵³ Queensland Audit Office, *"Reducing serious youth crime (Report 15: 2023-24)"*, pg. 20.

⁵⁴ Queensland Government, Department of Children, Youth Justice and Multicultural Affairs (2022), *Youth Justice Census Summary Statewide*.

⁵⁵ *"Taking Responsibility: A Roadmap for Queensland Child Protection"* June 2013 pg. 36.

PeakCare also draws the Child Safety Inquiry's attention to the reports and their recommendations in respect of Child Safety and Youth Justice systems, which are synthesised in the June 2024 report of the Australian Institute of Family Studies and the Australian Human Rights Commission, *"Improving the safety and wellbeing of vulnerable children. A consolidation of systemic recommendations and evidence."* This report analysed 61 state, territory and Commonwealth commissions and inquiries reports into Child Safety and Youth Justice systems between 2010 and 2024 and identified six consistent themes set out below.

1. **System coordination:** inadequate cross-system information sharing, collaboration and coordination across child protection and youth justice systems;
2. **Cultural appropriateness:** limited First Nations partnerships and self-determination across child protection and youth justice systems;
3. **Monitoring and evaluation:** lack of mechanisms for oversight, monitoring and transparency across child protection and youth justice systems;
4. **Workforce capacity:** limited child protection and youth justice workforce capacity and support;
5. **Investment:** inadequate levels of investment across child protection and youth justice systems; and
6. **Voice of the child:** limited opportunities for child voice and participation within child protection and youth justice systems.⁵⁶

What are the factors contributing to children in care being known to the youth justice system?

Disadvantage, maltreatment, and a care experience (particularly of residential care) are key risk factors for children being known to the Youth Justice system.

In Victoria, the Sentencing Advisory Council examined the intersection of child protection and youth justice systems in 2019. Their report, *'Crossover Kids': Vulnerable Children in the Youth Justice System*⁵⁷ (**Cross Over Kids Report 2019**) (at **Attachment H**), found that:

- Children in care, particularly residential care, are some of the most vulnerable, traumatised, and disadvantaged children in the community.
- First Nations children were significantly over-represented among children known to both youth justice and child protection systems.
- The younger children are at first sentence, the more likely they are known to child protection.
- Children sentenced to custody are more likely to be known to child protection.
- Children in care, and in particular in residential care, were over-represented in the youth justice system. In this respect, of the children in care who were sentenced or diverted 58 per cent were in residential care.

⁵⁶ Australian Institute of Family Studies and the Australian Human Rights Commission, *"Improving the safety and wellbeing of vulnerable children. A consolidation of systemic recommendations and evidence"*, June 2024. state, territory and Commonwealth commissions and inquiries reports between 2010 and 2024 and identified six consistent themes across 3,000 recommendations.

⁵⁷ Sentencing Advisory Council, *"Crossover Kids': Vulnerable Children in the Youth Justice System. Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court"*, June 2019.

The Cross Over Kids Report 2019 considered the impact of trauma on a child's brain, as disrupting healthy development with children feeling constantly in crisis mode, hyper-vigilant and over-reacting to minor event. Further, for children in care, they may have been removed from their community, friends and family which can compound their trauma and result in their over-representation among sentenced and diverted children.⁵⁸

The Cross Over Kids Report 2019 report identified a specific and measurable indicator of success of any reforms to the residential care system, namely the reduction over time in the proportion of sentenced children who have experienced residential care.

In New South Wales, longitudinal studies have shown that children with residential care experience are more likely to be engaged in the justice system.⁵⁹

The report of the Australian Senate's Legal and Constitutional Affairs Reference Committee, "*Australia's youth justice and incarceration system*" considered the '*social determinants of justice*' and highlighted a care experience as a key risk factor for engagement in the youth justice system.⁶⁰

Queensland's residential model has structural factors contributing to in children engaging with the Youth Justice system. These factors include:

- **No therapeutic model of care:** residential care in Queensland is not a therapeutic model. Consequently, the high levels of trauma and the complexity of children placed in residential care (such as higher levels of mental illness compared to children in home-based care⁶¹) are often not managed or addressed, and workers are often not sufficiently supported to manage children's behavioural and emotional issues.
- **Residential care housing model:** The high level of trauma and complexity of children in residential care is compounded by residential care houses having up to four unrelated children. This can create an environment which exacerbates a child's behavioural and emotional issues.
- **Criminalisation of behaviour:** Children's behavioural issues and trauma responses that can result in property damage, absconding or aggression can be treated as criminal.

⁵⁸ Sentencing Advisory Council, "*Crossover Kids: Vulnerable Children in the Youth Justice System. Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court*", June 2019, pg. 94.

⁵⁹ The New South Wales Government funded "*Pathways of Care Longitudinal Study – Improving the long-term outcomes of children in Out-of-Home Care*" commenced in 2011. It is a large-scale longitudinal study of children and young people care and focuses on child development domains of physical health, socio-economic wellbeing and cognitive/learning ability. This study shows that children and young people with a residential care experience have lower school engagement, attendance and achievement, are more likely to be suspended or excluded, are less likely to meet national literacy and numeracy benchmarks and are more frequently involved in the justice system.

⁶⁰ The Senate, Legal and Constitutional Affairs Reference Committee, "*Australia's youth justice and incarceration system*", February 2025, pages 11 to 14.

⁶¹ Department of Families, Seniors, Disability and Child Safety, "*Children in Care Census*", 2024.

- **Residential care staffing model:** The number of staff required to fill a 24/7 roster⁶² and a highly casualised workforce can result in a lack of consistent staff. There is also no requirement or funding for ‘stand up’ overnight staff.⁶³
- **Residential care workforce qualifications:** Residential care workers’ minimum training and qualifications are often insufficient to manage the complexity and multiple needs of children in a residential care home. Queensland qualifications include having, or working towards, a relevant Certificate IV qualification and the completion of five hours of online “Hope & Healing” training. There is no ongoing requirement or support for residential care workers to undertake further professional development.
- **Quality assurance of care providers:** Queensland currently permits residential care providers to operate without a specific license. These providers are not audited on their compliance with the Queensland Human Services Quality Framework, and their workers are not required to obtain either minimum qualifications or to complete the mandatory “Hope and Healing” training for residential care workers.

The number of children in Queensland residential care has grown by 85 per cent between 2018 and 2023⁶⁴. This is particularly concerning given the increased risk of children in residential care engaging in the Youth Justice system. Modelling by the Queensland Commission for Child and Families (QFCC) forecasts an additional 5,000 children will be in the Queensland care system by 2030, with up to 4,000 children placed in residential care based on current system settings.⁶⁵ This is likely to result in more children in care being known to the Youth Justice system in the future.

PeakCare has also undertaken numerous consultations with residential care providers and workers in Queensland that have consistently reported serious concerns with workplace violence and aggression (WVA).⁶⁶ The prevalence of WVA in residential care in Queensland can be attributed to the same design factors outlined above that can result in children engaging with the Youth Justice systems.

Practical structures, allowing for flexibility to meet individual need, to prevent children entering care, and to better deliver services for children in care

⁶² In Queensland, a common residential care house has four bedrooms and three children. The fourth bedroom is used for the staff quarters. For this model, information from residential care providers suggests that 7 permanent part-time works and 2-3 casual staff would be needed to staff a 24/7 roster. This would mean 9 to 10 individual staff members would be required to fill a residential care home with three children over a 24/7 period. However, residential care providers advise that due to staff shortages being experienced across all regions in Queensland, all staff in some residential care houses are casual and work across residential care houses and regions due to staff shortages, which results in a higher number of individual staff required to fill the 24/7 roster.

⁶³ Residential care providers can request funding for a stand-up (awake) overnight worker for limited periods when there are disruptions in the residential care house (e.g. when there is a new placement and escalations). However, best practice in residential care requires and funds a stand-up overnight worker. For example, Victoria introduced and funded a stand-up overnight staff in all residential care homes in 2016.

⁶⁴ Queensland had 40 per cent of Australia’s residential care placements, despite only having 21 per cent of the nation’s children in care, Child Safety Commission of Inquiry, 23 July 2025, at transcript pg. 18.

⁶⁵ Queensland Family & Child Commission. “Buyer Beware, How economic forces are shaping Queensland’s residential care market, Queensland Family & Child Commission”. August 2025, pg. 20.

⁶⁶ For example, PeakCare’s June 2023 workshop with residential care providers and its PeakCare Report “Insights and Opportunities – Queensland Residential Care Workforce”, March 2025.

A Minister for Children

PeakCare recommends the creation of a dedicated Queensland Government Minister for Children with a mandate for whole-of-government oversight and accountability for services for children and their families across portfolios areas.

A Minister for Children could focus on improving outcomes for children by leveraging off the universal and secondary services platforms and ensuring greater support for vulnerable children and their families. This could enable earlier interventions before families escalate into crisis and the tertiary Child Safety and Youth Justice system.

For example, a Minister for Children could be given a mandate to focus on priority populations, cohorts of children and families who are over-represented in the Child Safety system, such as:

- parents with unborn child harm reports;
- First Nations children and families;
- young parents (under 20 years of age);
- parents with a care experience; and
- children transitioning from care or youth detention to independent adulthood.

Supporting priority populations would require dedicated and new funding. It would have positive effects on the health and wellbeing of children and their families, reducing their challenges and child maltreatment. It would also be a more cost-effective approach than attempting to address issues with remedial interventions at later stages when children are entrenched in the Child Safety and/or Youth Justice systems.

Interventions and investment in priority population, grounded in the evidence of what works and designed to maximise participation, can disrupt intergenerational transmission of trauma and disadvantage. Key elements of successful interventions for priority populations include:

- a ‘navigator’ who assists a child and/or parent understand available services and their objectives, and coordinates and assists with access to services (as opposed to child or parent attempting to action individual referrals to multiple separate services, potentially in different locations);
- non-stigmatising services and providers, often best achieved through delivery by non-government child and family service providers and/or community controlled organisations;
- increased funding to community-controlled organisations, to understand and meet the actual demand and costs of services and supports to children and families before they escalate into crisis. These organisations are well positioned to foster trust, respect, cultural connection and achieve greater engagement and improved outcomes than mainstream services;
- strength-based, working with children, parents and families to identify and achieve their goals (not deficits focused or stigmatising);
- provide *wrap around* services and supports, such as housing, educational and employment supports, priority health and mental health care; dentistry; and
- dedicated, quarantined and flexible services and funding, so that funding and services provision can extend over the time of need, and ongoing access is available should future need arise without any stigma, penalty, or the need to start the process of assistance over.

Co-designed specific responses to each identified priority population, based in the evidence of what works and supported by new investment, data capture and reporting on outcomes, could enable

culturally safe services to provide interventions as early as possible and dispute intergenerational disadvantage and child maltreatment.

A new corporate parenting model

A new *Corporate Parenting Model* is proposed as a practical structure for children in care that would require the State of Queensland, as a corporate parent, to ensure prioritised, quality, coordinated and funded support for children in care to be safe, stable, access education, health and mental health services, and cultural and emotional supports.

A new Corporate Parenting Model could impose on the State of Queensland, and all its Ministers, and departments heads, responsibilities, and accountabilities to uphold the rights of children in care in their specific portfolio areas to promote health and wellbeing of children in care. Leveraging off the recommendations in the APGG Care Group report for an effective corporate parenting model, elements for a new Corporate Parenting Model could include:

1. **Legislation:** Defining a corporate parenting model that extends parenting obligations and responsibilities beyond the Child Safety Department to include departments and agencies that impact the wellbeing and development of children in care, such as health and mental health, education, and housing.
2. **Specific and measurable outcomes:** identification of outcomes that are concrete and measurable, such as compliance with the Clinical Assessment Framework, NDIS plans for all children in care with a disability, specific and evidence-based educational participation and attainment metrics etc.
3. **Monitoring and evaluation:** Mandating that every child in care must have a care plan and regular reporting by all government departments and agencies providers on progress in achieving the plan's objectives. Independent oversight of each plan and global public reporting obligations for the cohort of children in care would further strengthen this approach.
4. **Data and reporting:** Improved data sharing, monitoring, reporting and independent evaluation, to be a more effective corporate parent, understand and act on opportunities for ongoing improvement, and monitor outcomes.
5. **Funding and service access:** New, dedicated, and quarantined funding coupled with mandatory prioritisation of children in care to access services and supports, such as health care and mental health care and education.
6. **Voice of the child:** The right for children and families to be heard and to meaningfully participate in decisions that affect their lives.
7. Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (**ATSICPP**) to the standard of 'active efforts'⁶⁷, to keep children connected to their family, culture, community, and country.

⁶⁷ Active efforts meaning purposeful, thorough, proactive steps to keep children connected to their families, culture, community and country, rather than simply defaulting to removal.

A focus of earlier intervention and prevention

Early interventions for children have long-term intergenerational benefits and a proven return on investment for the community. All Queensland Government ministers, departments and agencies have a role to play in promoting child health and wellbeing.

Improving the effectiveness of the Child Safety Department as a corporate parent also requires a whole of Queensland Government approach to enable earlier intervention and prevention for vulnerable families. A focus on priority populations, considered above, is needed to ensure that vulnerable, geographically isolated, and families with intergenerational trauma, are proactively engaged in services and supports and feel safe to seek help when they need it and before escalation into crisis.

Early intervention and prevention require support to meaningfully engage families in universal and secondary services which are protective factors⁶⁸ and build their health, safety, and resilience, including:

- **Earlier intervention and prevention:** families experiencing disadvantage require earlier and proactive support across universal and secondary services, such as housing, health, mental health, and education. This builds protective factors and resilience, can prevent or reduce families escalating into crisis and prevent their engagement in the Child Safety and Youth Justice systems.⁶⁹
- **Reframing the narrative about family's engagement in supports offered:** from a narrative of “*failure to engage*” by a child or family in a support, service, or intervention offered to them (which can attribute blame to a child and family) to the services systems instead focusing on “*continued efforts to encourage participation*”. This would recognise and enable systemic or relational barriers that prevent genuine engagement to be addressed. Barriers could include: service inaccessibility; distance and/or transportation costs; cultural safety concerns; trauma; fear; previous negative experiences; language; and educational barriers.
- **Interventions for families to address the issues that resulted in their children being known to the Child Safety and Youth Justice systems:** evidence-based interventions that intensively work across a child's family, peers, school and community to reduce offending and anti-social behaviours, increase family functioning, reduce family challenges and child maltreatment, are critical for change.

Young people that PeakCare have consulted with are aware of their parents' challenges and of the insufficient supports available to them to address these.

“It's not like mum and dad don't want to be good parents, they're struggling too. My mum had nine of us. The generation above us are all single and on drugs and their parents were too... We're not blaming other people for our crimes. We didn't have what we needed when we were kids but it was our normal. It was normal for everyone I knew.”

Young person in detention in June 2024

⁶⁸ Protective factors are strengths or supports in a child's life that help them cope with challenges, reduce the impact of risk factors, and increase positive outcomes.

⁶⁹ Universal services are supports available to all children, young people and their families regardless of risk or need (e.g. kindergarten, schools, general practitioner, immunisation, maternal and child health, libraries). Secondary services provide additional supports for children, young people and their families who are at increased risk or showing early signs of emerging needs (e.g. parenting programs, mental health supports, counselling, financial counselling, and targeted educational supports such as literacy and numeracy programs, behaviour supports and wellbeing officers).

Reducing children in residential care becoming known to the Youth Justice System and improving the experiences of residential care workers

A multi-faceted approach is needed to reduce the cross over between the residential care and Youth Justice systems. Firstly, a focused effort is needed to reduce the number of children in residential care and the pipeline of children entering residential care. Consideration could be given to the following actions:

8. **Dedicated funding:** A dedicated, funded program across the Queensland Government forward estimates targeted at models of care and practices that are proven to exit children from residential care to kinship care, foster care and/or family reunification.
9. **Root cause analysis:** A root cause analysis of the drivers of Queensland's high prevalence of child residential care placements and recommended responses to address identified causes.
10. **Early intervention:** Increasing investment in early interventions⁷⁰ to prevent children entering or re-entering care (which will also reduce intergenerational care entry), based on the evidence of what works and that encourages participation and engagement by children and families.
11. **Kinship and foster incentives:** Increasing financial and non-financial support for kinship care and foster care which are effective and cost-effective models for Queensland. This should include measures targeted at placement stability and improving outcomes for children in home-based statutory care placement.
12. **Data-driven decision making:** Data capture, monitoring, and public reporting to ensure focus and accountability of government on the numbers of children entering and exiting residential care.

Secondly, the model of residential care in Queensland requires significant change, including:

- **Therapeutic model of care:** Development and implementation state-wide of a therapeutic residential care model for all residential care placements in Queensland.
- **Workforce development:** Committing to and investing in the Residential Care Workforce Strategy to deliver on its priority areas: investing in developing system enablers to empower the workforce; creating meaningful career pathways and development opportunities; building a collaborative and respectful workplace culture; and strengthening community understanding and support.
- **Centre of excellence:** Establishing a child and family services sector led '*Residential Care Learning & Development Centre*' to support consistent and high-quality practice, through the ongoing delivery of training, professional development and dissemination of best practice

⁷⁰ Targeted, timely, strength based, and collaborative provision of support and services to children and families as soon as issues emerge, with the goal of preventing them from escalating, or avoiding, or reducing the need for more intensive statutory interventions and/or engagement with systems such as criminal justice and mental health. Early intervention includes the provision of services/interventions across the spectrum of children and family's known to the Child Safety and Youth Justice system. The key characteristic of early intervention is that it is aimed at preventing escalation of issues and deeper engagement (or re-engagement) with statutory services and the criminal justice system.

through peer support networks, to strengthen and support the capability of the residential care workforce.⁷¹

- **Leadership and professionalisation:** Developing a '*Residential Care Safety Leadership Program*' through a co-designed process with residential care providers, sector peaks, workers, Child Safety, WorkSafe, occupational health and safety experts and academics, cultural experts, and young people with a residential care experience. Once designed, embedding the program in business-as-usual. This will build residential care workforce capacity and capability, contribute to the reduction in workforce violence and aggression, and improve the experiences for workers and children in residential care. Residential care workers will be able to better recognise when a child's behaviour is escalating and have practical skills to safely and effectively manage such behaviour. This will assist reduce behavioural issues and the criminalisation when they occur.

⁷¹ For example, in Victoria, the Centre for Excellence in Child and Family Welfare *Residential Care Learning and Development Strategy*, has been delivered since 2016. It aims to deliver ongoing development to develop and support a skilled and stable residential care workforce; provision of high-quality training, supervision and support to workers; development and delivery of appropriate pre-service and in-service qualifications relevant to the field; a commitment to, and development of, a lifelong learning culture in the residential care workplace; and responding to current trends/issues in residential care through evidence-informed learning and development activities. The department responsible for Child Protection in Victoria funds the CFECFW to lead and manage the *Residential Care Learning and Development Strategy* and the training and support it delivers for residential care workers.

Appendix A – Related Attachments

- **Attachment A:** Foundations of the future – building a workforce that carers, connects and evolves, Queensland Workforce Strategy, 2025.
- **Attachment B:** PeakCare’s Submissions to inquiries, committees, and strategies in respect of youth justice in the last 18 months.
- **Attachment C:** Commission of Inquiry into the Queensland Child Safety System, December 2025 Call for Submissions “*corporate parenting and the links between the child safety and youth justice systems*”.
- **Attachment D:** United Kingdom, All-Party Parliamentary Group for Care-Experienced Children and Young People, “*Inquiry on Extending Corporate Parenting Responsibility across the Public Sector Final Report*”, March 2024.
- **Attachment E:** “*A Rights Respecting Approach to Justice for Children and Young People: Scotland’s Vision and Priorities*”, 2024-26.
- **Attachment F:** Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill, Victoria.
- **Attachment G:** Queensland Care Services Outcomes Framework.
- **Attachment H:** Victoria, Sentencing Advisory Council, ‘*Crossover Kids: Vulnerable Children in the Youth Justice System*’, June 2019.

Appendix B - PeakCare's Reports and Submissions to inquiries, committees, and reviews in respect of youth justice in the last 18 months

1. Submission to Legal Affairs and Safety Committee in response to the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023.
2. Submissions to Youth Justice Reform Select Committee November 2023 and January 2024.
3. Submission in response to the Discussion Paper for A Safer Queensland: Youth Justice Strategy.
4. Submission to the Department of Youth Justice Draft Youth Justice Strategy June 2024.
5. Response to the report from the disbanded Youth Justice Reform Select Committee 2024.
6. Response to the Better Justice Together Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031.
7. Response to Broadening the focus: Queensland's strategy to strengthen responses to people who use domestic and family violence 2024-28.
8. Submission to the Community Safety and Legal Affairs Committee Queensland Community Safety Bill 2024.
9. Submission to the State Development and Regional Industries Committee Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023.
10. Response to the Office of the Public Guardian Independent Inspectorate's Cleveland Youth.
11. Detention Centre Inspection Report 2024 IDS CYDC Inspection report 2024 - Focus on separation.
12. Submission to the Legal and Constitutional Affairs Reference Committee - Australia's Youth Justice & Incarceration System October 2024.
13. Submission to the Education, Arts and Communities Committee, Youth Justice (Electronic Monitoring) Amendment Bill 2025, 12 January 2026.

Foundations of the future - building a workforce that cares, connects and evolves



**Queensland Residential
Care Workforce Strategy**



Acknowledgments of First Nations Peoples

We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners and Custodians of this country and recognise their enduring connection to land, wind, water and community. We pay our respect to Elders past and present, and to emerging leaders who carry forward the strength, wisdom, and resilience of their ancestors.

We recognise that First Nations peoples have cared for children and young people, families and communities for tens of thousands of years. Their knowledge systems, cultural practices and relational ways of being continue to shape and enrich the work of care today.

This Strategy affirms a commitment to cultural safety, truth-telling, and self-determination. We acknowledge the ongoing impacts of colonisation, intergenerational trauma and systemic injustice, and we uphold our responsibility to walk alongside First Nations peoples in building a future where all children and young people are safe, connected, and strong in identity.

We are deeply grateful to the Aboriginal and Torres Strait Islander leaders, workers, families and communities who contributed their voices, insights, and cultural knowledge to the development of this Strategy. Your guidance strengthens our collective vision and reminds us that healing and hope begin with respect, relationship, and recognition.

This Strategy is designed to complement the Aboriginal and Torres Strait Islander Community Controlled Organisation (ATSICCO) Workforce Strategy, developed by Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP). QATSICPP's strategy, and its implementation plan, provide a roadmap to grow a strong, skilled and culturally led child and family services workforce, guided by the aspirations of ATSICCOs and informed by extensive community consultation.

This Strategy was developed by PeakCare Queensland, with funding provided by the Queensland Government. The Queensland Government's support enabled a collaborative process informed by the voices and experiences of residential care workers, children and young people, sector partners, parents and academics.

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Using this strategy

The **Foundations of the future – building a workforce that cares, connects and evolves** is more than a workforce strategy, it is a cultural blueprint. It acts as a values-based handbook for how we show up, support one another and walk alongside children and young people in residential care.

This cultural blueprint is intended to serve as a practical guide for all stakeholders, and invites residential care workers, leaders, policymakers, educators and community members to align their efforts and move forward together. This blueprint offers a shared vision grounded in dignity, connection, cultural safety and hope, providing a strong foundation for collaborative action and meaningful change.

Informed by lived experience and co-designed with voices across the sector, the Strategy outlines not just what needs to change, but how we change together. It defines the behaviours, mindsets and relational practices that create safe and stable environments. It reinforces that the culture we build as a workforce directly shapes the care experiences of children and young people.

This document is designed for everyday use. It can inform individual reflection, team conversations, supervision sessions, training, recruitment, leadership development, organisational planning and government activities. Structured around key priority areas and outcomes, it provides clear guidance on how to align actions with values at every level of the system.

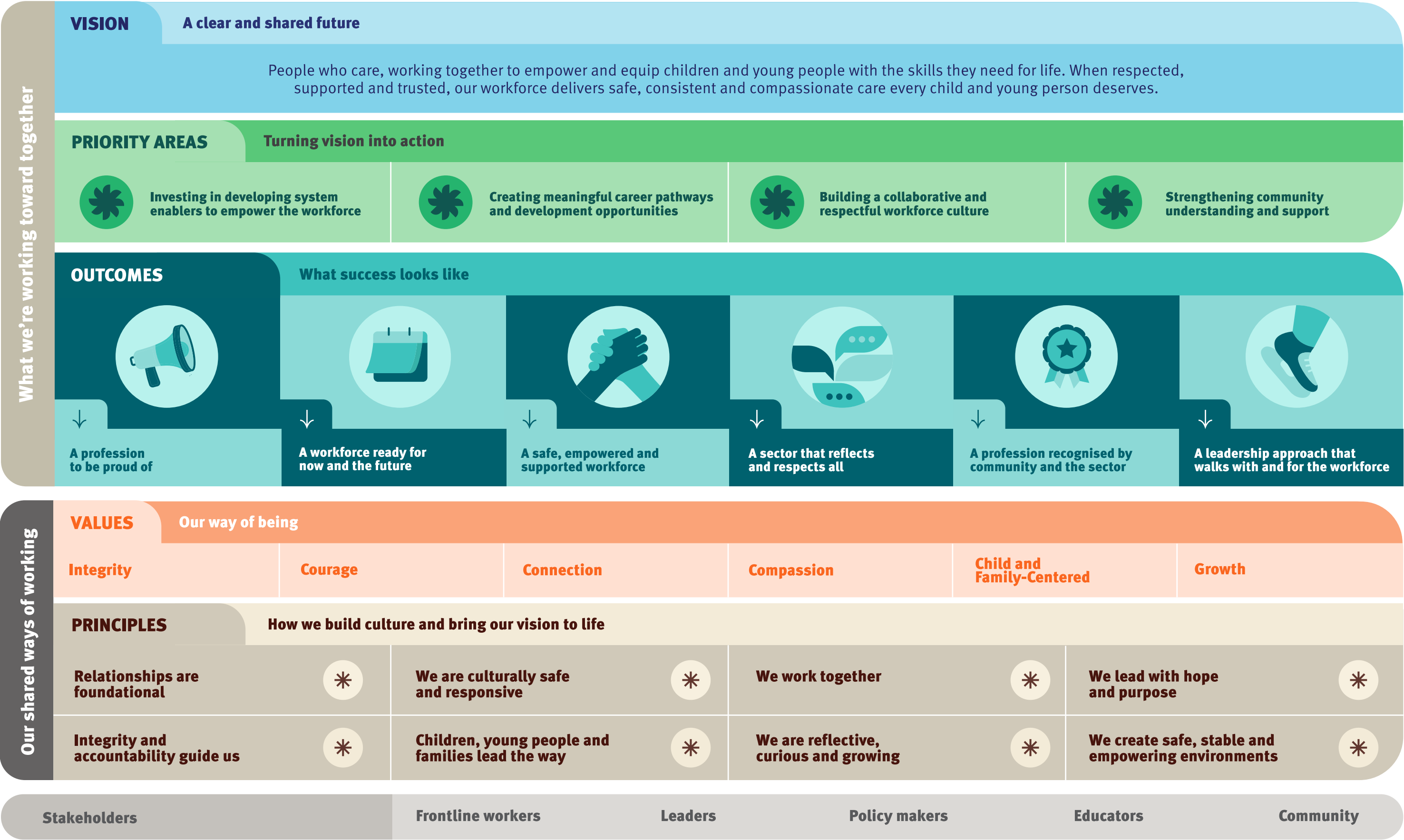
As much a strategy as it is a culture handbook, this document holds a shared language, a collective purpose and outcome areas that reflect what it means to be part of a profession that is not only skilled, but deeply human. It encourages reflection, accountability and pride so that every worker can feel supported, empowered, included and part of something bigger.

We encourage you to return to this Strategy often. Read it not just for direction, but for inspiration. Use it as a guide to align your practice, shape your team culture and contribute to a workforce that is responsive, relational and resilient. Whether you're a frontline worker, a manager, a trainer or a policy maker, this Strategy is yours to carry forward so that together, we build the future of residential care.



As much a strategy as it is a culture handbook, this document is designed to be used as a guide to align your practice, shape your team culture and contribute to a workforce that is responsive, relational and resilient.

Our strategy on a page





Tom Allsop
Chief Executive Officer
PeakCare Queensland

Foreword

Queensland’s residential care workforce plays a vital role in safeguarding the rights, wellbeing and futures of children and young people who cannot live safely at home.

This work is demanding. It is relational, often unpredictable, and shaped by the complex needs of those it seeks to support. The individuals who carry out this work on the floor, in teams, in leadership and in community do so with skill, commitment and courage. However, this workforce often feels undervalued, fragmented and under-supported.

Foundations of the Future: Queensland Residential Care Workforce Strategy seeks to change that. It offers a coherent, values-led vision for a workforce that is recognised, resourced and empowered. It acknowledges the complexity of the system in which residential care operates, while putting forward a hopeful, practical and unifying pathway toward a stronger future. This Strategy makes clear that strengthening the workforce is imperative to improving the standard of care for children and young people.

This Strategy has been developed during a period of significant reform. The Queensland Child Safety Commission of Inquiry and other system reviews have cast a spotlight on the urgent need for transformation in child protection and out-of-home care. This Strategy does not replace that work, it complements it. It provides a foundation from which residential care services, government, educators, Aboriginal and Torres Strait Islander organisations, and the broader community can align and invest in the people at the heart of residential care.

The creation of this Strategy was undertaken in partnership with Social Vantage Advisory, and I wish to particularly acknowledge the outstanding contributions of Andrea Lauchs, Sammy Bruderer and Lauren Sullivan. Their leadership, sector expertise and deep understanding of residential care brought integrity, clarity and heart to this process. They not only facilitated meaningful engagement across diverse stakeholder groups but translated complex insights into a cohesive and aspirational Strategy that captures both the challenges and the possibilities

ahead. Their stewardship has meant that the voices of workers, young people, families and service providers were not only heard, but honoured.

The Strategy was shaped by more than 200 contributors from over 150 organisations across Queensland. We are grateful to the residential care workers who shared their experiences with such honesty and passion. You named the challenges, described the moments of pride and pain, and offered a powerful, vision of what’s possible when care is built on trust and respect. To the young people and families who brought insight, courage and truth, we thank you. Your perspectives shaped not only the priorities of this Strategy, but its tone, its purpose and its commitment to doing better. To sector leaders, peak bodies, cultural advisors, educators and government representatives, your collaboration has built a shared vision that will continue to guide our collective efforts.

I also extend my thanks to the Catalyst for Care Reference Group and Program Board Members, whose guidance and oversight have been essential throughout the development of this document.

Foundations of the Future is more than a workforce plan. It is a cultural blueprint for how we show up in this work for each other and for the children and young people we walk alongside. It invites reflect, action and accountability. It offers a common language and direction for those committed to building a more responsive, relational and resilient residential care system.

This is a strategy we share with the sector, with community, and most importantly, with the children and young people whose lives it seeks to support.

Sector voices: These sentiments capture the collective voice of the sector, reflecting the strength and passion that is present, and equally, the complexities that surround supporting children and young people in residential care.

“We need a plan, not just hope that more workers will show up.” **Brisbane**

“We’re not just youth workers — we’re the people who keep showing up.” **Innisfail**

“Community perception is misinformed at the moment – negative stories are spread on social media.” **Logan**

“If our staff are not empowered and pushed to learn and develop, then they can’t be the person to role model that to the young people.” **Mackay**

“We need to feel safe in the team, in the organisation, and in the home.” **Ipswich**

“I love coming back to the kids when they’re so excited to see you.” **Kingaroy**

“It’s a lot easier when you have a consistent core team – you notice the change in the kids when you have workers coming and going.” **Gold Coast**

“Sleepovers are really hard, I can’t sleep.” **Toowoomba**

“If we’re not supported ourselves, how can we support them?” **Kingaroy**

“I feel like a lot of the people who I talk to think that I’m a babysitter” **Gold Coast**

“The public doesn’t understand our role. They just see the chaos, not the care.” **Caboolture**

“We talk about qualifications but it’s also about the values and the attributes of what we do.” **Gold Coast**

“You feel like you’re doing something that actually matters.” **Kingaroy**

“I came into it wanting to make a difference.” **Kingaroy**

“I love what I do, but I know that people don’t understand what I do.” **Toowoomba**

“It’s hard to improve what we can’t see.” **Brisbane**

“Voice of workers needs to be valued more – they spend the most time with the young people.” **Logan**

“I feel more confident when I know there’s someone I can turn to for guidance.” **Kingaroy**

“There is shame and stigma associated with young people and the workers.” **Mackay**

“Peer support is too rare and only happens occasionally – we are mostly alone.” **Toowoomba**

“Lots of youth workers don’t feel like they have a voice.” **Ipswich**

“We need the sector to be proactive rather than reactive.” **Innisfail**

Helena Wright
Deputy Chief Executive Officer
Policy and Strategy
QATSICPP

A message from QATSICPP

For Aboriginal and Torres Strait Islander children and young people, safety, healing and belonging are found in culture, kinship and connection to Country.

A strong and supported residential care workforce can help nurture those connections, not by standing in place of family or culture, but by walking alongside them with deep respect.

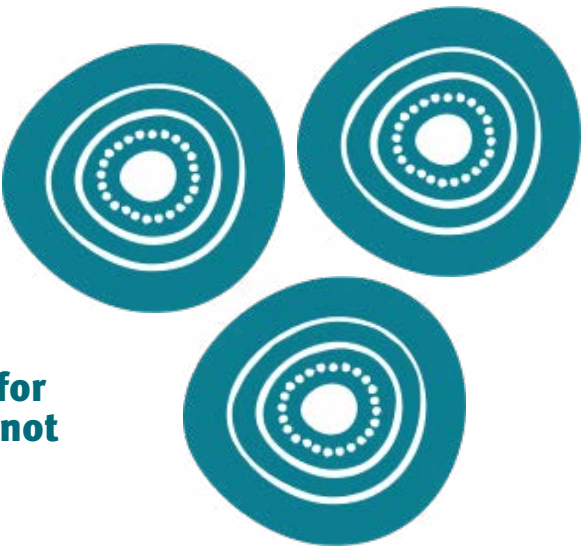
This Strategy affirms what our communities have long known - that healing cannot happen without relationship, and that the presence of safe, culturally capable adults is essential to the wellbeing of our children. We acknowledge the residential care workers who strive every day to show up with heart, to listen more than they speak, and to honour the cultural identity of the children in their care.

Aboriginal and Torres Strait Islander children and young people are overrepresented in residential care. This is not just a statistic, it is the legacy of colonisation, of systemic racism and of policies that have too often excluded, punished or misunderstood our families. This Strategy presents an opportunity for change, a way to centre cultural safety not as an add-on, but as core business.

We call for a workforce that is reflective, informed by cultural knowledge, and guided by First Nations leadership at every level. One that sees our children not as broken, but as whole, as future leaders, with their own aspirations, and one that knows the power of walking with Elders, listening to community, and holding space for truth-telling.

QATSICPP stands ready to support the implementation of this Strategy through the parallel QATSICPP Aboriginal and Torres Strait Islander Community Controlled Child Protection Workforce Strategy. Together, these frameworks can help ensure that Aboriginal and Torres Strait Islander children in residential care are supported by adults who are not only skilled, but culturally grounded and committed to their right to grow up safe, connected and proud.

We look forward to a future where every Aboriginal and Torres Strait Islander child in care is surrounded by a workforce that walks with them, not ahead of them, not in place of family, but beside them, with care, integrity, cultural humility and hope.



This Strategy presents an opportunity for change, a way to centre cultural safety not as an add-on, but as core business.

Written by Nel Monssen with and on behalf of young people with lived experience in Queensland's child protection system.

What a good residential worker looks like to a young person?

I was in care. I've seen the good, the bad and everything in between. I've had workers who made me feel like just another shift, and I've had a few who made me feel human.

This Strategy? It gives me hope that the care we have talked about when creating the workplace strategy becomes the care we actually live.

What young people in care want is simple - people who care enough to stay. People who don't judge us by what's in our files or case notes. People who are consistent, calm and who show up even when we are not easy to be around. We want workers who are real, who talk to us like equals, and who actually listen.

"The best worker I even had didn't try to fix me, she just made me feel like I mattered"
- Young person, aged 17

There's a lot of talk in the system about behaviour management, risk, placements. But what we remember are the people who sat with us when we were angry, who helped us cook dinner, who celebrated our birthdays - even when we said we didn't want one. That's what makes a difference.

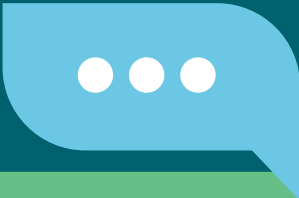
"Care shouldn't feel like a job. It should feel like someone actually gives a damn"
- Young person, aged 16

This Strategy recognises that residential care workers aren't just staff, they're the adults who many of us see more than anyone else. When they're supported, trained and respected, it shows. When they feel safe, we are more likely to feel safe too.

We don't need perfect workers. We need real ones. People who are honest, who follow through, and who believe we can do more than survive. We can grow, heal and lead full lives.

"I just needed one person to not give up on me. One person to see past the files"
- Young person, aged 18

If this Strategy helps build a workforce like that, then it is not just a plan, it is a chance. A chance to make residential care a place where young people can find stability, respect, and maybe even hope.



"My workers showed up every time they were meant to see me, ready to meet me where I was at that day regardless of what objectives or goals we may have set for that day- Young person, aged 20

Why this strategy, why now?



By setting a clear vision and outcomes, this Strategy can turn collective insight into collective action. It allows for accountability of progress and lays the foundation for the kind of system we want to build.



Context and understanding



From fragmentation to foundation



How we got here and where we're going



What this strategy means



Workforce trends and insights



From fragmentation to foundation: creating a cohesive strategy

Residential care in Queensland plays a vital role in the lives of children and young people who have experienced trauma, abuse and neglect. The workforce that supports them does so with compassion, resilience and deep commitment. But these efforts are often carried out in a fragmented system—one that is reactive rather than proactive, and too often shaped by crisis response rather than long-term vision.

Without a shared strategy, we risk reinforcing the very challenges we aim to resolve — staff turnover, inconsistent care, inadequate preparation and workforce burnout.

The purpose of this Strategy is to build and sustain a skilled, valued and resilient workforce that is supported to deliver safe, relational and trauma-informed care for children and young people.

It envisions a future where residential care workers are equipped with the training, supervision and resources they need to form meaningful relationships with children and young people, and where their knowledge is recognised, their wellbeing is prioritised and their voices are heard and valued.

This Strategy provides the direction and coherence needed to achieve this. It is a blueprint for a stronger, safer and more sustainable future — or the children and young people whose growth and development depend on the quality of that workforce.

This is not just a workforce issue; it is a child-centred issue. Children and young people need to be surrounded by a workforce and adults that are stable, skilled, culturally responsive and supported in their roles. This Strategy outlines system values and invests in the people who show up every day to care, advocate and walk alongside children and young people through some of the most difficult periods of their lives.

It provides a shared framework for government, service providers, educators and communities to act with greater alignment, clarity and purpose. It allows for proactive planning, evidence-informed investment and a sector-wide shift from compliance-driven practice, to care that prioritises relationships, reflection and respect.

By setting a clear vision and outcomes, this Strategy can turn collective insight into collective action. It allows for accountability of progress and lays the foundation for the kind of system we want to build. One that supports not only better care for children and young people, but better conditions for those who provide it.

This Strategy is our commitment to act, not just in response to what is wrong, but in pursuit of what is possible. At its core, it's about creating the conditions where residential care workers can thrive, so that children and young people can too.



This Strategy is a blueprint for a stronger, safer and more sustainable future — not only for the residential care workforce, but for the children and young people whose growth and development depend on the quality of that workforce.

Supported, equals supportive. Our icon captures the inextricable link between a supported workforce and the delivery of consistent, supportive care for children and young people.



What this strategy means

More than a plan for workforce, this Strategy is a commitment to creating the conditions in which healing, stability and optimism are possible. Its impact will be felt across every part of the residential care ecosystem: by children and young people, workers, the sector as a whole and the communities they are part of.

While it does not prescribe specific commitments or fixed action plans, it offers a shared vision and unifying framework that can empower everyone to take steps aligned with the same goals, including workers, organisations, government, education providers and the wider community. It recognises the significant role that each stakeholder plays in shaping a residential care system where children and young people are supported by a capable, respected and adaptable workforce.



Improved + consistent care

For children and young people

This Strategy aims to improve experiences and outcomes by shaping a workforce that is skilled, stable and empowered to provide consistent, culturally responsive, inclusive and trauma-informed care. Children and young people should be surrounded by workers who are well-supported, well-trained and emotionally present, not just equipped to manage behaviour. When workers are skilled in building relationships and fostering growth, children and young people will feel safer, more seen and more hopeful about their futures. A strong workforce is necessary to building safe, trusting relationships that enable children and young people to heal, grow and thrive.



Recognition + support

For workers

This Strategy provides recognition of the complexity and importance of their roles. It articulates a clear ambition to elevate their role, both in how it is perceived and how it is supported. It offers guiding principles and outcome areas that highlight what a healthy, sustainable workforce could look like and how collective efforts can create safer, more supportive work environments.



Awareness + understanding

For the community

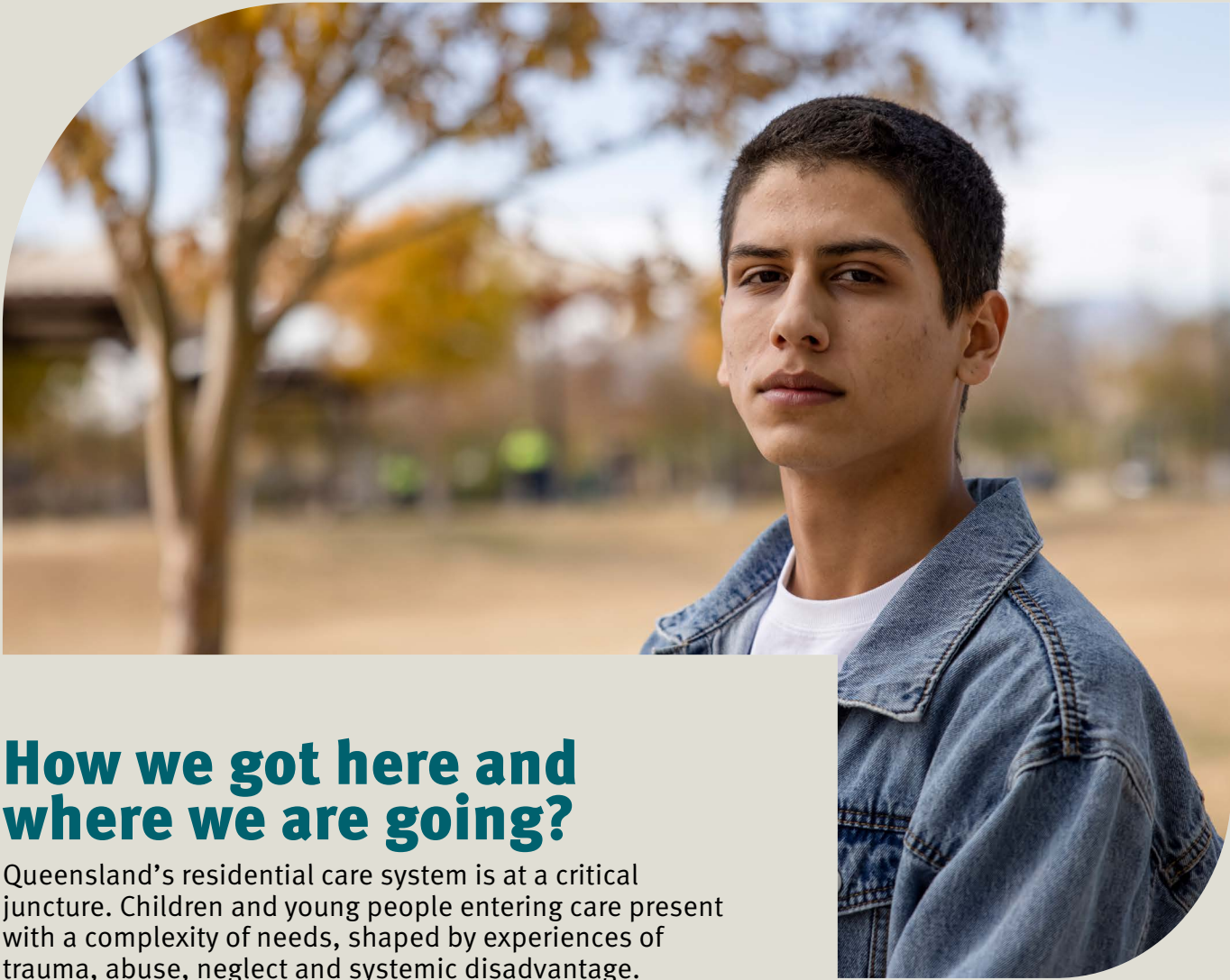
This Strategy reinforces the importance of understanding and respecting the role of the residential care workforce. It calls on the broader public to gain a more accurate and empathetic understanding of residential care and the children and young people it supports. This aims to encourage communities to recognise and value the workforce that guides and supports the children and young people in care.



Strategic focus + direction

For the sector

This Strategy highlights areas of focus that have emerged from consultations across the state and sets a direction for collaborative investment in capability, leadership, safety and diversity. It enables opportunities for providers to align their workforce strategies with a shared vision and supports coherence across service delivery, training and professional development. It promotes a culture of learning, collaboration and leadership, fostering innovation and raising the quality of residential care across Queensland.



How we got here and where we are going?

Queensland’s residential care system is at a critical juncture. Children and young people entering care present with a complexity of needs, shaped by experiences of trauma, abuse, neglect and systemic disadvantage.

There is a rising prevalence of harmful sexual behaviours, violent behaviours, and significant emotional and developmental challenges. The current workforce is dedicated and resilient but faces growing pressure to respond to these complexities in ways that promote growth, uphold safety and build positive futures. This Strategy recognises the urgent need to better support the workforce to meet both today’s needs and those we anticipate for the future.

Residential care must be a place where every child and young person can feel safe and thrive. Achieving this requires a workforce with the right capabilities, support structures, leadership and pathways for growth. Current approaches to recruitment, training, supervision and development must evolve to reflect contemporary best practice in trauma-informed, culturally safe, therapeutic care. Without targeted investment and reform, there is a risk of workforce

fatigue, staff turnover and inconsistent care, all of which directly impact the wellbeing of children and young people.

Insights shared throughout this Strategy are drawn directly from consultation workshops held with residential care workers, service providers, sector leaders, government representatives, peak bodies, support organisations, children and young people and families across Queensland. The voices of these stakeholders, their lived experiences, ideas and aspirations are woven throughout the Strategy, not only through direct quotes but also in how we frame priorities, define outcomes and describe the changes required. This Strategy reflects a strong sector consensus that workforce investment must be sustained, trauma-informed, culturally responsive and genuinely child-centred.

This Strategy also reflects insights from the recent *Residential Care Workforce*

Insights and Opportunities report. It aligns with activities already underway to improve workforce capability, leadership development, safeguarding practices and sector sustainability.

It focuses on the entire residential care workforce across Queensland, including frontline residential care workers, team leaders, supervisors, managers and the critical business support roles that enable effective service delivery. It sets out a blueprint for capability development, workforce planning, recruitment and retention, leadership pathways, cultural safety, wellbeing and continuous learning over the next five years.

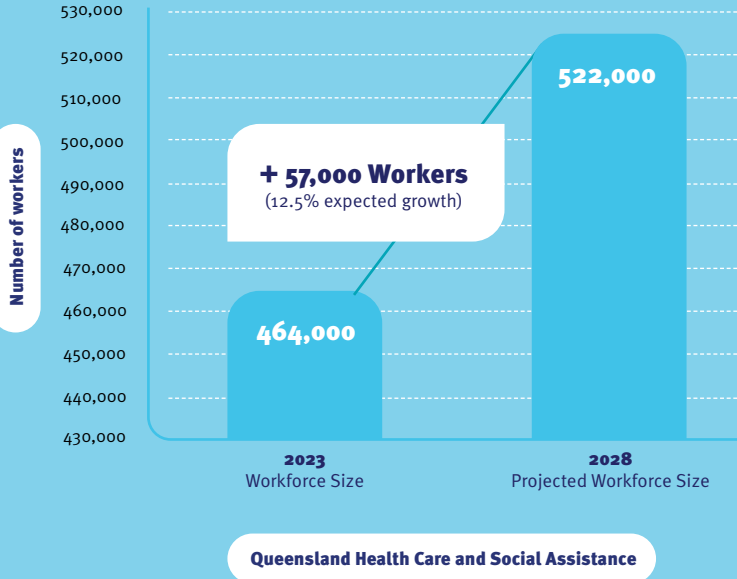
We must build a workforce that meets the needs of children and young people in care today, while also shaping the workforce we need for the future.

Workforce trends and insights

Projected workforce growth

Queensland’s residential care sector is poised for significant transformation over the next five years, underpinned by the rapid growth of the Health Care and Social Assistance industry, rising numbers of children and young people entering care and an increasing complexity in the support needs of those children and young people. These converging pressures point to an urgent and sustained demand for a residential care workforce.

The Health Care and Social Assistance industry is projected to be the fastest-growing in Queensland by 2028. According to projections from Jobs Queensland, this sector is expected to grow by more than 12.5% between 2023 and 2028, adding more than 57,000 workers across the state¹. This industry already represents the largest workforce in Queensland, employing approximately 464,000 people in 2023. By 2028, it is forecast to exceed 522,000 workers. Within this broader sector, occupations linked to youth residential care, such as residential care officers, youth workers, disability support workers and community services professionals, are projected to grow at or above the sector average due to increasing demand from government and non-government services.



“The Health Care and Social Assistance industry is mainly engaged in providing human health care and social assistance. It includes hospitals, medical and other care services (including allied health, ambulances and pathology), residential care services and social assistance services, such as child care, disabilities assistance, and welfare counselling services.”

– Jobs QLD, 2024

This projected growth is closely tied to escalating pressures in the child protection system. The number of children entering out-of-home care in Queensland has steadily increased over the past decade, with a 2023 Child Protection Australia report by the Australian Institute of Health and Welfare (AIHW) noting that Queensland consistently has one of the highest rates of children in care nationally². This is further compounded by a marked increase in children under the age of 12 in residential care, as well as children and young people living with disability or presenting with high levels of trauma-related behaviours³. These changes demand residential care workers have more advanced training, a deeper understanding of development, trauma and neurodiversity and the capacity and capability to respond with compassion and care to children and young people.

Minimum qualification standards for licensed service providers require that staff either hold, or be working toward, a

relevant Certificate IV qualification. While this implies a consistent level of care, it also perpetuates workforce supply challenges, particularly in rural and regional areas where access to training and ongoing supervision may be limited.

TAFE Queensland and private training organisations play a pivotal role in supporting workforce readiness in this sector. Enrollments in the Certificate IV in Child, Youth and Family Intervention and related community services qualifications have increased over time, aligning with government incentives such as Fee-Free TAFE. However, the completion rates of the Certificate IV and Diploma in Child, Youth and Family Intervention remain low, averaging only 20% between 2019 and 2023⁴. Data from the National Centre for Vocational Education Research also reveals that in 2023, 67.5% of enrolled students were aged between 25 and 49 years, 70.8% were female and 60.2% were enrolled at a private training organisation⁵.

Projected workforce growth cont...

Despite increased enrolments in relevant qualifications, demand for capable workers continues to outstrip supply. Sector feedback consistently identifies high rates of burnout and staff turnover and highlights the need for better support and recognition for frontline residential care workers.

A simple comparison of workforce data illustrates the urgency: the current number of residential care workers in Queensland is estimated to be between 3,000–5,000 depending on classification, yet demand is projected to rise significantly. The number of children and young people in residential care has steadily increased at an average annual rate of 16% per annum over the last 5 years¹. If the number of children and young people in residential care continues to grow at this rate, this would equate to approximately 3900 children and young people by 2028. If even 5–10% of the projected 57,000 new workers needed in the broader health and social assistance sector are to be absorbed into residential care to meet this demand, that equates to an additional 2,850 to 5,700 new workers by 2028. This essentially doubles the current workforce. This figure does not account for attrition or expansion of service models such as the introduction of the dual-worker model.

16% increased demand

for residential care per annum over last five years

Approx 3,900 young people

will be in care by 2028 if demand continues to rise at this rate

Double the current workforce

would be required to meet this demand for residential care alone

While the growth of the sector presents significant opportunities for jobseekers, it also poses challenges for service providers and government to make sure that the future workforce is not only sufficient in number but is also deeply skilled, values-aligned and equipped to deliver trauma-aware, culturally safe and developmentally responsive care. Addressing this need will require coordinated investment across recruitment, training, workforce planning and staff wellbeing strategies, particularly to attract and retain workers in under-served communities.



There is no clear occupation and no clear industry that directly relates to the residential care workforce ... at the Census people are asked to self-classify their occupation. Since there is no clear occupation, many workers will tick other boxes and might “be classified elsewhere”.

- The Demographics Group, 2025

Data gaps

Significant data gaps hinder efforts to strengthen and grow the residential care workforce. There is currently no shared system to track workforce supply, turnover or demand trends across Queensland. Role titles and qualification requirements vary across service providers, creating inconsistencies that make workforce planning difficult. Currently, there is no clear or specific category that captures the residential care workforce accurately. Some roles available for selection in the Census that residential care workers might select include:

- Child or youth residential care assistant
- Residential care officer
- Youth worker
- Special care worker

Additionally, most workforce estimates rely on self-reported data from the Census and provider surveys rather than formal, centralised workforce data collections. Without reliable and consistent data, it is difficult to accurately diagnose workforce size, projections, challenges, monitor progress or target investment effectively.



Workforce pressures

The residential care workforce in Queensland is under growing pressure. The Demographics Institute reports that “research has not identified any significant difficulty filling vacancies”, however, the sector reports that high turnover rates remain a persistent challenge, impacting on the stability of care for children and young people. Funding mechanisms that favour casualisation over secure employment contribute to workforce fragmentation, undermining team cohesion and continuity of care. Alongside this, workers face a high risk of burnout and psychological harm due to the complex, trauma-related needs they manage daily, often without the depth of support required. A consistent theme across consultations was the lack of meaningful supervision, with workers reporting that formal supervision processes often feel like compliance exercises rather than genuine opportunities for reflection and professional growth.

Workers are calling for clear development pathways that recognise their contributions and build their skills, rather than a narrow focus on meeting minimum compliance requirements.



Worker expectations

The next generation of the residential care workforce is seeking more than a job. They are looking for values-aligned, purpose-driven roles where they can make a real difference. Workers want to be part of organisations that live their mission, not just state it. Practical, hands-on training and real-time support are increasingly seen as essential, not optional. Workers are calling for clear development pathways that recognise their contributions and build their skills, rather than a narrow focus on meeting minimum compliance requirements. The workforce of the future expects professional respect, meaningful supervision and career progression that acknowledges the complex and skilled nature of their work.

¹ Jobs Queensland. (n.d.). Anticipating future skills: Data explorer. Queensland Government. <https://jobsqueensland.qld.gov.au/anticipating-future-skills/data-explorer>

² Australian Institute of Health and Welfare. (2024). Child protection Australia 2022–23: Supporting children. <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2022-23/contents/insights/supporting-children>

³ Queensland Government Department of Child Safety, Seniors and Disability Services. (2024). 2024 Children in care census: Full report for publication. https://performance.dcssds.qld.gov.au/_media/documents/2024-children-in-care-census-full-report-for-publication.pdf

⁴ National Centre for Vocational Education Research. (n.d.). DataBuilder. <https://www.ncver.edu.au/research-and-statistics/data/databuilder#>

⁵ National Centre for Vocational Education Research. (n.d.). DataBuilder. <https://www.ncver.edu.au/research-and-statistics/data/databuilder#>

⁶ Department of Families, Seniors, Disability Services and Child Safety. (2024). Our Performance. Retrieved from Department of Child Safety, Disability and Seniors: <https://performance.dcssds.qld.gov.au/>



The road ahead

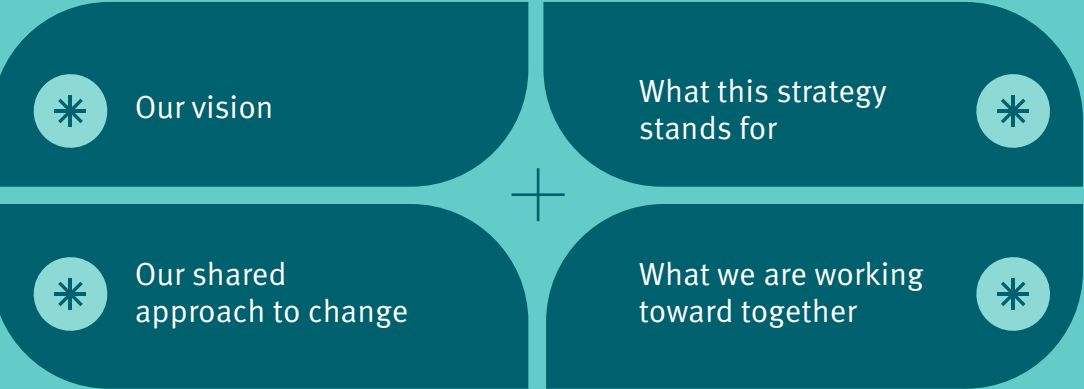
The broader care sector is projected to experience major growth over the next decade, increasing competition for skilled, compassionate workers. Residential care services will need to compete with other sectors (including disability services, early childhood education and mental health) for a discrete pool of talent. This makes it critical to create clear, supported entry pathways into the workforce and to offer structured, continuous professional development once workers are in roles. Workforce planning must be proactive, not reactive, recognising the skills and capabilities that will be needed into the future, and building a pipeline of workers who are trained, supported and valued.

Our workforce strategy

Voices from across the sector contributed to building a strategy informed by real-world challenges and hopes. Together, we have developed a shared vision of what the future residential care workforce looks like.



Looking to the future

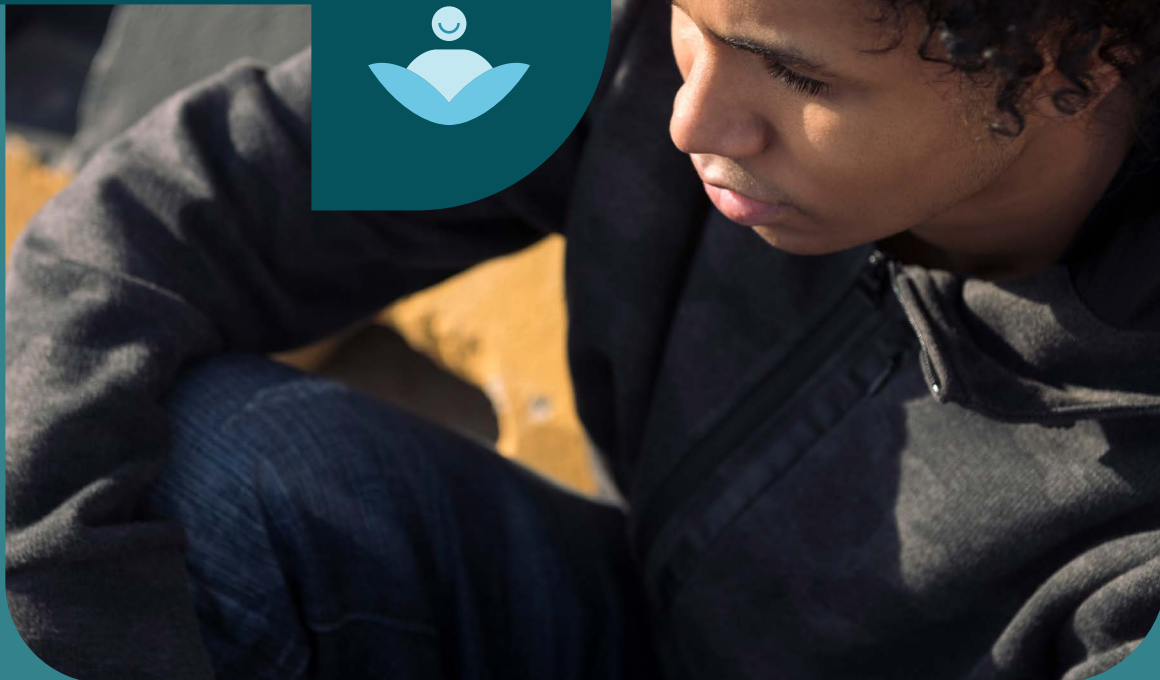


Our vision

Our shared vision for the workforce has been developed by, and is reflective of, voices across the sector.



People who care, working together to empower and equip children and young people with the skills they need for life. When respected, supported and trusted, our workforce delivers safe, consistent and compassionate care every child and young person deserves.



Our vision supports our desire to build a workforce that meets the needs of children and young people in care today, while also shaping the workforce we need for the future.

Our shared approach to change

Realising a stronger residential care workforce requires shared commitment, shared responsibility and shared action.



This Strategy is not a standalone initiative, it is part of a larger reform agenda informed by the voices of those working every day in residential care, as well as children and young people, communities, sector leaders, peak bodies, government representatives, educators and support organisations. It represents a co-created path forward that acknowledges the diverse realities and aspirations across Queensland.

Throughout the 12-month consultation process to develop this Strategy, we heard from stakeholders across the state. The stories, insights and lived experiences shared during this time shaped every part of this Strategy. Whether it was the call for more respectful and culturally safe workplaces, the request for more stable career pathways, or the desire for recognition of the emotional toll of the work, each voice contributed to building a strategy informed by real-world challenges and hopes. Together, we have developed a shared vision of what the future residential care workforce looks like.

This outlines what we, as a sector, are working towards together and guides the outcomes and priority areas identified within this Strategy. Our approach centres on collaboration and connection. It recognises that no one stakeholder group can achieve this shared vision for the residential care workforce. The workforce must be supported by strong leadership, responsive training systems, enabling policies and a broader community that values and understands the unique role of

residential care. Therefore, this Strategy invites all stakeholders in the system to work in unison to align their efforts and stay focussed on what matters most: the wellbeing and futures of children and young people and recognising the importance of strengthening the workforce that cares for them.

This document now serves as a guide that outlines a shared understanding of where we are, where we want to go and how we might get there together. It does not dictate specific actions but provides consistent language, a shared vision, set of desired outcomes, list of priorities and collection of values that can guide decisions at all levels of the residential care sector.

Importantly, this Strategy is an invitation to keep talking, listening and learning together. It's about holding ourselves accountable to the change we want to see and continuously improving how we support the residential care workforce and by extension, the children and young people they care for. It is a living, evolving approach that encourages reflection, flexibility and partnership as we move forward.

What we heard

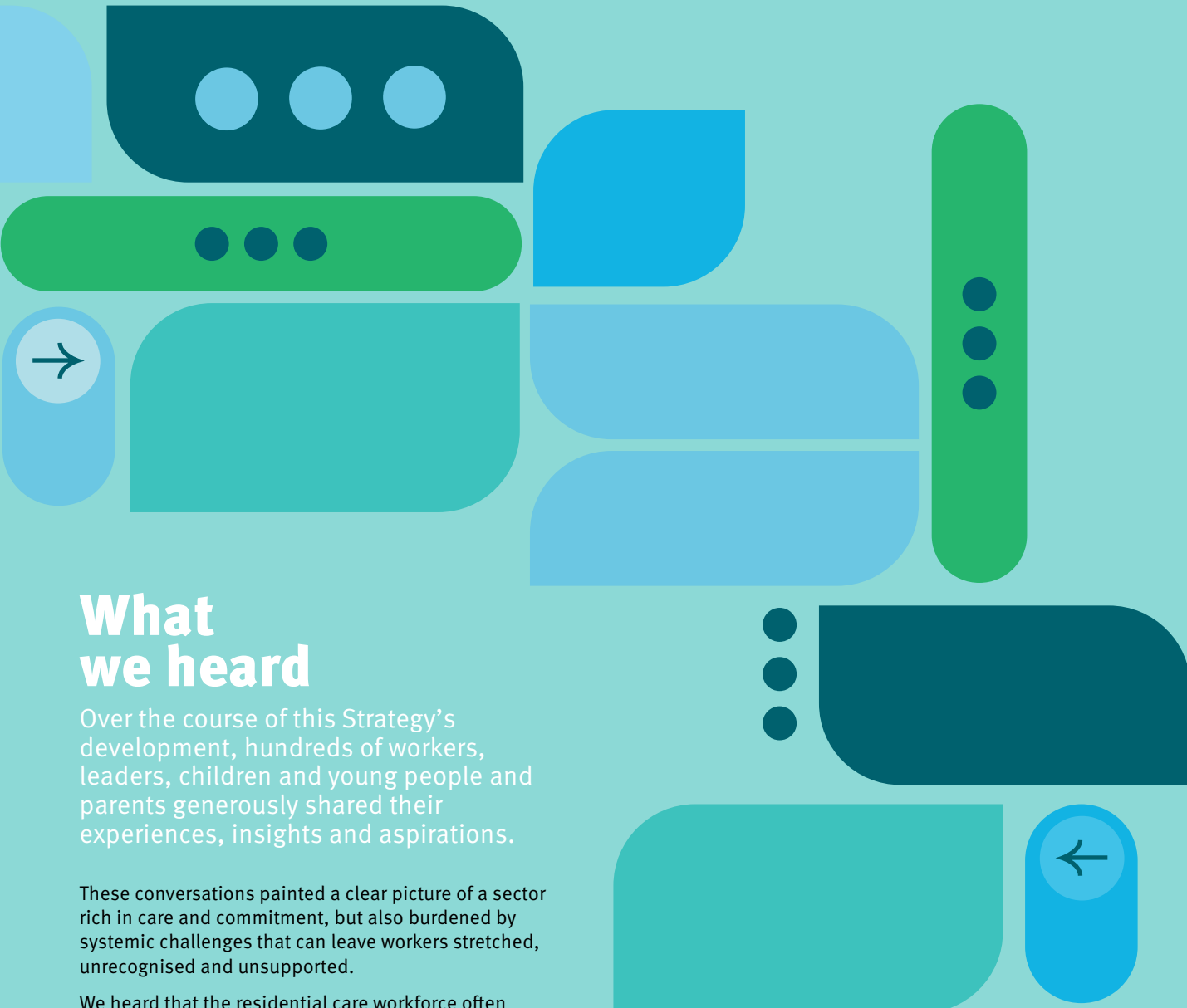
Over the course of this Strategy's development, hundreds of workers, leaders, children and young people and parents generously shared their experiences, insights and aspirations.

These conversations painted a clear picture of a sector rich in care and commitment, but also burdened by systemic challenges that can leave workers stretched, unrecognised and unsupported.

We heard that the residential care workforce often feels misunderstood or undervalued by the community and even within the broader child protection system. Worker's spoke of the emotional demands of their roles, the lack of consistent professional development, the strain of high staff turnover and the complexity of responding to trauma and crisis without sufficient wraparound support.

We also heard a deep sense of pride when people expressed profound connection to the children and young people they support, and a strong desire to grow in their practice and to contribute meaningfully to positive change. They want to be part of a sector that is safe, inclusive and built on trust, mutual respect and strong relationships.

Crucially, we also heard from young people who had lived in residential care. They shared what a positive relationship with a residential care worker can mean to them, and how the presence of safe, consistent adults can be life changing. Their voices have helped shape this Strategy, and to centre the workforce as a key lever for improving outcomes.



This strategy stands for:

Leadership that listens and walks alongside workers, especially Aboriginal and Torres Strait Islander leaders who hold deep cultural knowledge and solutions.



A workforce that is empowered to grow, supported to stay and recognised for the vital role it plays in the lives of children and young people.



A residential care workforce that is valued.



Care environments that reflect the diversity of our communities.



Cultural safety that is embedded, not added.



How we show up:



By not accepting poor conditions or outdated assumptions as inevitable.



By being present, being open and being prepared to challenge the status quo.

By treating every interaction with workers, children, families and each other as an opportunity to build trust and respect.



By creating space for new voices and lifting each other up.



What we stand for and how we show up is underpinned by a set of core principles and values that guide behaviour, decision-making and interactions. These values represent what is important to individuals, organisations and systems, serving as a foundation for ethical conduct, relationships and cultural identity.



At the heart of this Strategy is a belief in dignity, respect and possibility.

✱ VALUES These values form the foundation of the attributes, competencies, capabilities and behaviours expected of the residential care workforce. In practice, values help define the culture of a workforce by establishing standards for behaviour, fostering consistency in decision-making and creating an environment where everyone understands what is expected.	
Integrity We are transparent, accountable and follow through.	Compassion We are passionate about children and young people’s futures.
Courage We always work for the needs of children and young people.	Child and Family-Centered We provide individualised care for each child and young person’s unique circumstances.
Connection We build authentic and trusting relationships.	Growth We are committed to learning and reflection.
✱ PRINCIPLES The collective principles describe the culture we want to build, the relationships we want to foster and the kind of workforce we need to bring that vision to life.	
We prioritise connection, trust, compassion and genuine care as the basis for healing, development and safety. Relationships are foundational ➤	We do what we say we’ll do. We own our actions, hold ourselves and others accountable and follow through with consistency and purpose. Integrity and accountability guide us ➤
We centre cultural safety, respect for identity and inclusion in every interaction. We walk alongside First Nations peoples and value all forms of diversity. We are culturally safe and responsive ➤	We listen to and act with children, young people and families, placing their voices, strengths and lived experiences at the heart of everything we do. Children, young people and families lead the way ➤
We are better together. We show up as team players, share responsibility, support each other and learn collectively. We work together ➤	We practice with curiosity and humility. We reflect, adapt and improve continuously because young people deserve our best, every day. We are reflective, curious and growing ➤
We believe in children and young people and in each other. We bring energy, positivity and commitment to creating opportunities for healing, joy and futures worth believing in. We lead with hope and purpose ➤	We create spaces where children, young people and the people who support them feel safe, supported, respected and able to thrive. We create safe, stable and empowering environments ➤

Challenging assumptions, –shifting our thinking

We all want children and young people in residential care to feel safe, respected and empowered. Achieving this requires more than new policies or better funding, it calls for a deep reflection on the beliefs that guide our actions.

Residential care is shaped not only by formal systems but by the everyday assumptions we make about the children and young people we support, the workers who care for them and the role of residential care itself. Some beliefs strengthen our practice. Others, even when well-intentioned, can unintentionally limit our expectations, decisions and behaviours.

During the development of this Strategy, people from across the state bravely named the assumptions they see in their work. Some beliefs were shared with pride, others emerged more quietly, shaping culture

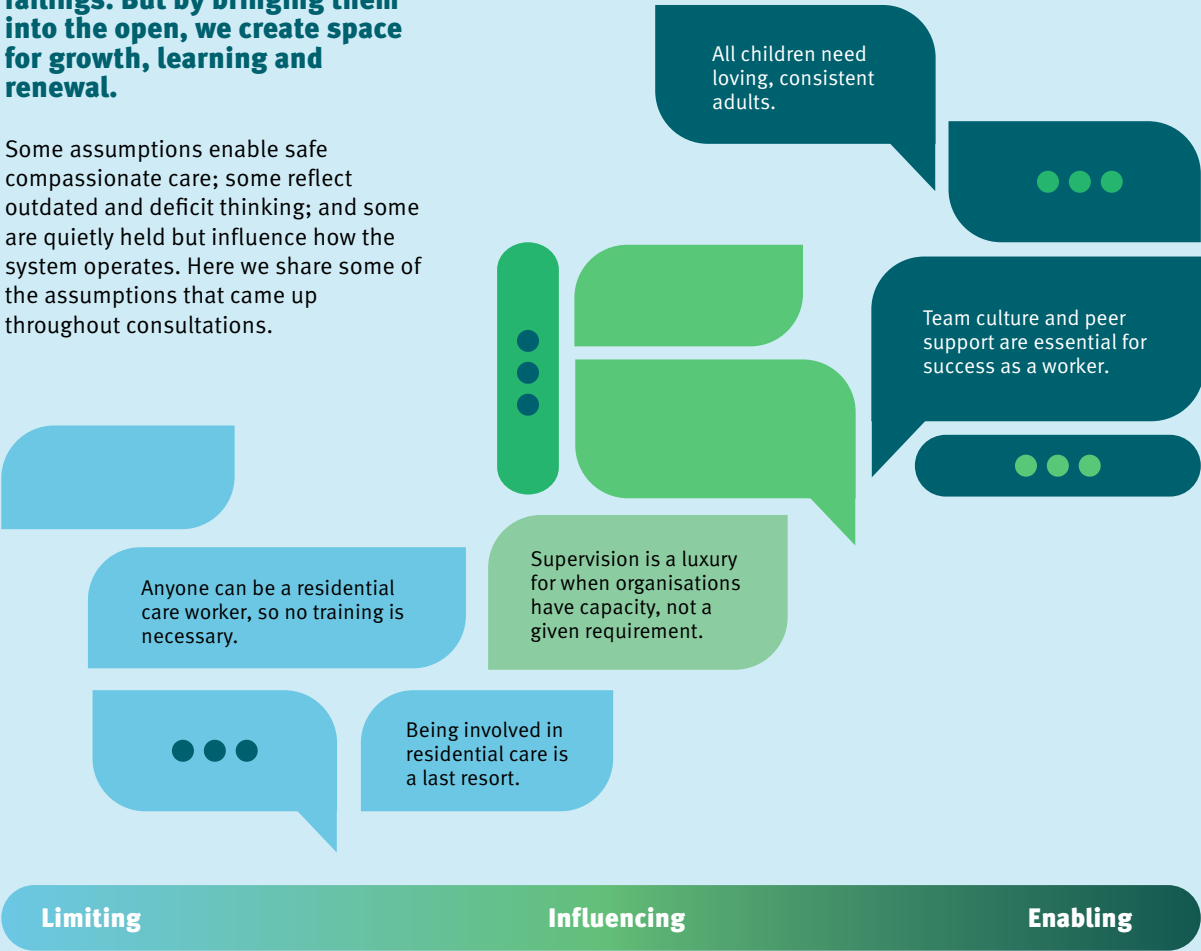
without being questioned. Together, they reveal where our thinking aligns with the values we want to uphold, and where it might need to shift.

This process isn’t about blame. While everyone holds assumptions, it is important to recognise and understand how our own assumptions can create implicit biases, shape our thinking and influence our beliefs and behaviour.

Shifts in the culture and narrative around residential care are necessary to support and uplift the children and young people in care and the workforce that support them. Ultimately, shifting culture starts with questioning assumptions. When we do this together, we build a stronger foundation for care that is relational and respectful.

Many of these assumptions are shaped by broader forces such as policy, funding models or public discourse, not individual failings. But by bringing them into the open, we create space for growth, learning and renewal.

Some assumptions enable safe compassionate care; some reflect outdated and deficit thinking; and some are quietly held but influence how the system operates. Here we share some of the assumptions that came up throughout consultations.



What we are working toward together

Realising meaningful change in residential care begins with a shared commitment to a better future, for children and young people and for the people who care for them. Across the sector, there is a clear desire to move beyond the status quo and build a stronger, more supported workforce that can sustainably deliver care for children and young people.

To bring the vision guiding this Strategy to life, we need practical, achievable areas of focus that everyone, including government, service providers, workers and communities, can work toward together. That’s what these six outcome areas represent.

 A profession to be proud of	 A workforce ready for now and the future	 A safe, empowered and supported workforce
 A sector that reflects and respects all	 A profession recognised by community and sector	 A leadership approach that walks with and for the workforce

They describe what needs to be true if we are to make lasting improvements across the sector. They directly reflect what children and young people, families, service providers, sector and workers have told us is needed to realise our shared vision. And, they respond to the current challenges facing the sector and highlight what needs to change to help

the workforce better support children and young people.

Each outcome area stands on its own, but together they form a picture of a workforce that is connected, capable and confident. One that is equipped to meet the needs of children and young people, now and into the future.

By aligning our efforts toward these outcomes, we take a collective step closer to the future we all want to see. A future where every child and young person in residential care is supported by a workforce that is empowered, valued and trusted to make a difference.



A profession to be proud of

Residential care is understood and respected as a meaningful, long-term career. Workers see a clear future in the work, with pathways that build on their strengths, values and life experience. The sector invests in growth, stability and belonging, not just recruitment.

Residential care is not just a job, it’s a vocation. It is one of the few roles in child protection that can have a direct, meaningful and tangible difference to a child or young person’s life. Workers describe themselves as carers, not ‘just’ youth workers or ‘babysitters’. They are consistent, trusted adults in the lives of children and young people who are navigating trauma, disconnection and uncertainty. Many workers feel undervalued, misunderstood or overlooked by the system, by the public and sometimes even by their own organisations.

While some workers shared they are hesitant about labelling the work as a ‘profession’ fearing it sounds clinical or disconnected, they are clear that what they do requires deep skill, care and

consistency. They see themselves as people who guide, empower, support and advocate for the children and young people in their care. What they want is recognition for the impact they have on children and young people’s lives, and for their contribution to be understood and valued.

Pride grows when people feel recognised for who they are and what they bring; not just formal qualifications, but life experience and relational care

Supporting workers to see residential care as a long-term, meaningful career means offering pathways, mentorship and opportunities to lead in different ways, including from the floor. A proud workforce is a stable workforce and that stability changes lives.

Sector voices: “I came into it wanting to make a difference.”
- Kingaroy



What this means for workers

- Workers feel a sense of pride and purpose in their roles.
- Feeling that the role matters and makes a meaningful difference in the lives of children and young people.
- High level of job satisfaction.
- Career progression is visible and achievable.
- Staff are more likely to remain in the sector long-term.
- Residential care is seen for some as a viable, first-choice career, not a fallback or a steppingstone.
- Organisations invest in leadership, growth and the wellbeing of workers.

What success looks like

- Workforce retention improves across the sector, particularly in frontline roles.
- Staff report a sense of purpose, value and connection to the work.
- Workers understand available pathways and feel supported to grow in the areas that align with their goals and strengths.
- New entrants are drawn to residential care through targeted promotional campaigns and attraction strategies.
- Career progression is linked to meaningful learning and reflective practice, not just formal qualifications.



A workforce ready for now and the future

→ The workforce is confident and well-prepared, with access to practical, ongoing and responsive training that reflects real experiences - including relationship-based care, cultural responsiveness and supporting the individual needs of children and young people.

To deliver safe, responsive and consistent care, the workforce needs more than compliance-focussed training. They need learning that reflects the reality of their work and the individual needs of the children and young people in care. This includes understanding trauma, child development and cultural identity. It also requires the ability to respond in unpredictable moments, regulate emotions and support healing through relationships.

In consultations, workers emphasised that training must evolve alongside practice. Induction programs need to go beyond theory to include shadowing, buddy shifts and real-time coaching. Supervision and team learning should be embedded into daily work and delivered consistently across the sector. This supports all workers, no matter which organisation they are part of, to have

equitable access to the support they need to grow, reflect and improve.

Workers also highlighted the importance of access to role-specific and practical learning and resources. Particularly in areas such as supporting children under-12 and early childhood development, disability, Fetal Alcohol Spectrum Disorder (FASD) and medicine management. They called for greater recognition of life experience and relational skills as core components of care.

The workforce already holds deep insight and knowledge. What is needed is a system that recognises the capability that is required and creates the conditions for it to grow.

Sector voices: “You can’t learn this job from a manual. You have to live it, reflect on it, and keep growing.” Cairns



What this means for workers

- Workers feel prepared and supported to meet the demands of the role.
- Learning is practical, real-time and relevant to their specific context.
- Experience, insight and relational skills are recognised as core to effective practice.
- Supervision is meaningful, consistent across the sector and improves confidence and decision-making.
- Ongoing development is accessible, embedded in practice and valued by leadership.

What success looks like

- Workers receive relevant, role-specific and practical training upon entry and through ongoing refreshers, tailored to real-world needs.
- Organisations have access to consistent and contemporary statewide training resources.
- Life experience and relational skills are recognised alongside formal qualifications.
- Workers report increased confidence, adaptability and clarity in practice.
- Supervision is used as a learning and reflection tool, with outcomes meaningfully integrated into everyday care.



A safe, empowered and supported workforce

→ Workers feel safe, supported and are cared for in ways that help them care for others. Support is consistent, not conditional. They have access to regular debriefing, reflective supervision, peer support and leadership that listens, values their voice and shares decision-making.

Residential care work is fast-paced, unpredictable and filled with moments that require emotional presence, adaptability and quick thinking. Many workers shared that the unpredictability of the role, the challenges and the chance to make a difference in hard moments is part of what they love. But they also said that the challenge has to be matched with the right support.

Workers described feeling stretched, unsupported and in many cases unsafe. They spoke of managing high-risk situations alone, navigating trauma without space to debrief and lacking the tools or time to regulate themselves before continuing their work or showing up for their next shift.

Being and feeling safe must be a given, not something workers accept as negotiable. Feeling physically protected, psychologically safe and backed by leadership is fundamental to doing this work well. But safety is only the starting point. Empowerment grows when workers are trusted to make decisions, supported through meaningful supervision and connected to teams that debrief together, not just endured alone.

When the workforce is cared for, with time to reflect, engage with peers and lean on leadership, they are more likely to stay, grow and continue showing up for the children and young people who rely on them.



What this means for workers

- Workers feel physically and emotionally safe in their roles.
- They have regular access to reflective supervision, debriefing and peer support.
- Leadership is collaborative, responsive and present.
- Organisational culture prioritises worker safety and wellbeing.
- Staff feel equipped through ongoing training and supervision to manage stress, emotionally regulate and continue showing up with confidence.
- Teams operate with trust, clear communication and shared accountability.

What success looks like

- Staff consistently access reflective supervision, peer mentoring, and debriefing, with structured time allocated during shifts.
- Psychological safety improves across teams; workers feel safe to speak up and supported to recover after challenging situations.
- Workers feel empowered to make decisions in the best interest of children, with leadership and care teams that trust and back them.
- Wellbeing is treated as essential, with access to mental health supports and recognition of emotional load.
- Supervision is consistent across organisations and for permanent and casual staff, with systems in place to make sure that no one is left behind.



A sector that reflects and respects all



The workforce is diverse, inclusive and responsive - reflecting the strengths of communities it serves and creating environments where people of all backgrounds and identities feel seen, respected and empowered.

Residential care is a sector committed to equity, inclusion and respect for all individuals - children, young people, workers, families and communities. It recognises and responds to the diverse identities, backgrounds and experiences of those it serves, including Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities, LGBTQIA+ young people and those with disabilities or lived experience of trauma.

Children and young people in residential care come from a wide range of cultural, spiritual, social and personal backgrounds. To provide safe, consistent and meaningful care, the workforce must reflect the diversity of the children and young people they care for. This diversity should be represented across values, relationships and leadership.

Workers reflected on the importance of being connected to respected leaders

and community knowledge holders. They shared that while many want to provide culturally safe and inclusive care, they often lack the confidence, support or resources to do their job. Some described feeling unsure about how to approach conversations around identity, culture or inclusion, especially when working with children and young people from communities they do not belong to. Others highlighted the absence of visible leadership and guidance from Aboriginal and Torres Strait Islander peoples, people with disability and LGBTQIA+ communities.

Inclusion is not a checklist. It is a commitment to making sure that every person - whether a child, young person, family member or worker - feels safe, valued and heard. This means embedding genuine cultural responsive practice, place-based learning and leadership based on human rights, respect and dignity.



What this means for workers

- Workers feel confident in their ability to support young people from diverse backgrounds.
- They are supported by culturally informed leaders, community mentors and inclusive teams.
- Staff are empowered to engage in ongoing learning about culture, identity and inclusion.
- Diverse leadership models give workers role models they can relate to and learn from.
- Staff feel safe to express who they are and supported to grow into culturally responsive practitioners.

What success looks like

- The workforce reflects and respects the diversity of the communities and children they support.
- First Nations leadership is embedded in governance, training and frontline practice.
- Cultural learning is place-based and locally led, not just policy-driven.
- LGBTQIA+, disability inclusion and neurodiversity are reflected in training, workplace practices and leadership development.
- Staff feel respected and safe to express and honour their identities.
- Workers feel confident accessing leadership and guidance from Aboriginal and Torres Strait Islander peoples, people with disability and LGBTQIA+ communities to improve practice.



A profession recognised by community and sector



Residential care workers are respected for their insight, skill and contribution. They are visible across the system and in the community, with their voice included in decisions and their stories told with pride.

Residential care is a vital, values-driven profession recognised by the community for its role in safeguarding and nurturing children and young people who cannot live safely at home. The profession demands emotional resilience, advanced interpersonal skills, cultural competence and a strong ethical foundation.

Recognition by the community comes from an understanding that residential care workers are not 'just carers' but staff working within a multidisciplinary system, contributing to child protection, education, mental health and community wellbeing. Like teachers, nurses and social workers, residential care staff are frontline workers - playing a critical role in shaping futures and upholding the rights and dignity of children and young people.

The dominant language around residential care continues to promote this placement type as a 'last resort' either due to the complexity of the needs of the

child or young person or the lack of family-based options to provide care. This can then unintentionally devalue the important role residential care plays as part of the out-of-home care continuum. This can result in the role of a residential care worker being seen as casual or entry-level, overlooking the value of the insights workers contribute to the case planning and service delivery to the children and young people in their care.

Recognition changes culture. It's about giving weight to the experience, insight and care that residential workers bring every day and making that part of how the system evolves. It means being respected by colleagues in other sectors and having their voice included in shaping policy and reform. When residential care workers are valued and recognised for the role they play, it creates the conditions for cultural change, improves workforce retention and fosters a shared sense of pride across the sector.



What this means for workers

- Workers feel seen and respected for their skills and the care they provide.
- Their contributions are acknowledged by peers, leaders and the broader community.
- They feel motivated to grow in their careers, knowing their work matters.
- Workers have opportunities to participate in forums that enable connection and collaboration with sector peers.
- External and internal recognition strengthens professional identity and morale.
- Staff feel proud to be part of a sector that values relational work and life experience.

What success looks like

- Residential care is publicly understood and valued, reflected in positive sector stories, lived experience campaigns and broader community awareness.
- Workers report feeling seen, heard and proud of their role.
- Recognition from internal and external stakeholders is embedded in everyday practice, not just formal awards.
- Workers feel their experience is listened to and shapes how the system improves.



A leadership approach that walks with and for the workforce

→ Leadership is relational, inclusive and embedded in practice. They walk alongside teams, listen first and create space for workers to lead with integrity.

Strong leadership shapes the everyday experience of the workforce. For residential care workers, leadership is not just about policies, procedures or performance management. It is about how people are listened to, how decisions are made and how values are embedded in practice. Workers expressed that the leaders they trust are those who are present, work alongside them and create safe spaces for reflection, growth and accountability.

Workers shared the impact of different leadership styles. Some described leaders who modelled integrity, guided teams through complex moments and centered the needs of children and young people. Others spoke about feeling unsupported or unheard, with decision-making disconnected from the

realities of the work. Workers also shared that leadership often comes from peers, mentors or colleagues, and that these informal leadership roles need greater visibility and value.

Leaders at every level of the sector should model the same values expected in care - empathy, consistency and integrity - and advocate for the workforce by actively addressing systemic challenges, championing wellbeing and pushing for the resources and recognition workers deserve.

When leadership is inclusive, consistent and culturally informed, it builds trust, strengthens retention and supports teams to do their best work. It also creates room for new leaders to emerge.

Sector voices: “It’s not just about managing a team, it’s about knowing your people and walking with them.” **Toowoomba**



What this means for workers

- Workers feel supported, heard and guided by leaders who understand the demands of the role.
- Staff experience leadership as relational, culturally responsive and embedded in practice, not just policy.
- Leadership roles are visible and accessible across levels, including peer mentoring, cultural guidance and lived experience expertise.
- Trust in leadership contributes to staff wellbeing, psychological safety and long-term commitment to the work.

What success looks like

- Leadership programs reflect relational, cultural and trauma-informed approaches, not just management skills.
- Frontline workers trust their leaders to listen, act and protect their wellbeing.
- Leadership opportunities are visible at all levels, including peer mentors, cultural leaders and lived experience champions.
- Leadership is inclusive of people who do not want formal progression but still influence and support others in meaningful ways.
- Succession planning includes diverse voices and future leaders from within teams.
- Leaders model the practice they expect, including showing up on the floor, supporting decision-making and reflecting shared values.

Moving from vision to action

Bringing our shared vision to life requires coordinated and meaningful change at every level of the system.

This section outlines four strategic priority areas that, together, create a clear pathway to realising our shared vision over the next five years. These priorities are not rigid directives; they are guiding commitments, offering adaptable ideas to inspire collaboration and innovation while respecting place-based and organisational contexts.

Each priority area reflects a core principle of the shared vision: that when respected, supported and trusted, our workforce can deliver the kind of care that every child and young person deserves. These guiding commitments highlight where energy and investment can be more impactful and how all parts of the system, from government and service providers, to educations, media, communities and workers themselves, can play a role in building a better future for children and young people in care.

These priorities suggest practical ways the desired outcomes can be achieved, encouraging us to move forward together, because real change happens when we all embrace this vision and play our part in creating the work our children and young people deserve.

Investing in developing system enablers to empower the workforce

This recognises that frontline care does not exist in isolation. A thriving workforce depends on strong, supportive foundations, fair and stable funding, responsive regulation, useful data and leadership that is visible in practice.

Creating meaningful career pathways and development opportunities

This aims to make residential care a profession that people choose, grow in and feel proud of. A workforce that is respected and nurtured is more likely to stay and thrive. By investing in training, recognition, mentoring and progression, we strengthen not only individual workers but the entire care environment around children and young people.



Building a collaborative and respectful workforce culture

This recognises the value of connection. To create the stability and belonging children and young people need, the adults around them must be united. This priority seeks to break down silos and foster a culture of relational practice, where collaboration, inclusion and cultural safety are embedded within practice.

Strengthening community understanding and support

This focuses on shifting the narrative that surrounds residential care. By building public awareness, amplifying the voices of children and young people and celebrating the skill and impact of residential care work, we begin to dismantle stigma and replace it with pride, dignity and inclusion. In doing so, we foster a culture where children and young people feel seen, valued and supported, and where the community rallies behind the people who care for them.

→ **Across these priorities, this Strategy encourages cross-sector collaboration and shared responsibility. In moving from vision to action, we create the conditions where children and young people in residential care are empowered to thrive and where the workforce that supports them is equipped, trusted and proud.**



Investing in developing system enablers to empower the workforce



To deliver the safe, stable and trauma-informed care that children and young people deserve, we must strengthen the system that supports those who provide it. The residential care workforce cannot thrive within outdated, fragmented or under-resourced systems. When funding, regulation, data and leadership are aligned with the realities of frontline work, they become powerful enablers of quality care.

Government, sector leaders, regulators and funders have a responsibility to commit to bold and coordinated investment in the system-level foundations that empower the residential care workforce. This means going beyond compliance to build a responsive system that listens to workers, values their insights and evolves with their needs.

Strong system enablers don't just support workers; they uplift the entire ecosystem of care. When workers are equipped, organisations are stronger. When data is meaningful, decision-making improves. When funding is stable, teams stay connected. And when leadership is nurtured, the sector grows.

This is the time to shift from reactive fixes to long-term foundations. The care of children and young people in residential care depends on the strength of the system that surrounds them, and the people who care for them every day.



How this could be achieved:

One of the most critical enablers of a strong workforce is a **funding model** that reflects the complexity and demands of residential care. Reforming funding structures could allow for secure employment arrangements, helping to reduce casualisation and support continuity of care. When workers feel stable in their roles, relationships with young people are more consistent and meaningful. Contracts could include dedicated funding for staff wellbeing, reflective supervision and peer mentoring, recognising that caring for carers is fundamental to quality practice. Flexibility in funding would also be important so that organisations are resourced to respond to the varying and often complex needs of the children and young people they support.

Better data and evidence systems could also play a key role in empowering the workforce. A centralised worker register could track critical workforce indicators such as supply, turnover, training needs and regional demand, allowing for more accurate and timely planning. When data is shared and used proactively, it could inform policy and resourcing decisions that directly impact frontline conditions. Importantly, these systems could be shaped to reflect the voices of lived experience and frontline workers themselves, embedding their knowledge into how information is collected, interpreted and reported.

Regulatory settings could also be designed to enable rather than constrain quality care. A review of existing requirements could help make sure they reflect best practice in trauma-informed and relational approaches, moving beyond minimum compliance. Qualification expectations could be simplified and standardised across service providers, making it easier for workers to understand what is required and move between roles. Most powerfully, regulatory frameworks could include formal mechanisms for frontline worker feedback, so those most affected by regulation are also involved in shaping it.

Investing in **leadership development** could help grow the next generation of sector leaders from within the residential care workforce. Programs could be funded and scaled that focus on relational, culturally responsive and practice-based leadership, not just administrative or managerial skills. Career pathways could be designed to allow experienced practitioners to lead from the floor, recognising that leadership can take many forms. Peer leadership and mentoring roles could also be embedded into team structures, with particular emphasis on supporting leadership in regional and remote areas where additional supports are often needed.

Finally, the broader **infrastructure that supports the workforce** could be significantly strengthened. This could include investment in clinical consultation, staff wellbeing hubs and mobile support teams that extend into rural communities. Digital tools and platforms could be made more accessible to enable real-time learning, reflection and cross-sector collaboration. Establishing communities of practice would allow workers to come together across organisations to share insights, build relationships and innovate around shared challenges. These supports would not only lift individual capability but build a culture of connection and continuous improvement across the sector.

By investing in these foundational system enablers, Queensland could create the conditions where residential care workers are not only supported but empowered. Where they feel part of a system that is built around their success, and in turn, the wellbeing of the children and young people they care for.



Creating meaningful career pathways and development opportunities



Residential care work changes lives, yet too often those who do this vital work are left without clear pathways to grow, lead or be recognised. Without meaningful development opportunities, we risk losing skilled, compassionate workers at a time when their presence matters most.

Government, service providers, training organisations and sector leaders have a responsibility to reimagine what it means to build a career in residential care. This means establishing clear, supported and respected pathways that honour life experience, elevate relational practice and encourage growth at every stage, from entry to leadership.

A valued workforce is a stable workforce. When residential care is seen as a credible, skilled and supported career, more people will choose to stay, grow and lead. With the right training, mentorship and recognition, workers are not only retained, they are inspired to shape the future of the care system.

Let's build a system that invests in frontline workers, grows with them and values their expertise as the foundation of safe, consistent and healing care for children and young people.



How this could be achieved:

Creating **meaningful career pathways** could begin with designing a clear and accessible framework that maps out how someone might grow within the residential care sector. A statewide Career Pathways Framework could be developed and shared, showing not just the roles that exist but how workers could move between them, whether they bring formal qualifications, life experience or deep cultural knowledge. It would recognise that not everyone aspires to management and would create genuine progression options for those who want to stay in frontline, relationship-based roles. By valuing practice as much as leadership, this approach would allow people to build a fulfilling career on their strengths and interests.

Training and continuous learning could form the backbone of this progression. Realistic, role-specific training designed around trauma-informed and relational care - not just compliance - would support workers to feel equipped and supported. Modular and micro-credential options could allow people to upskill flexibly while remaining in their roles. Early-stage supports such as buddy systems, shadowing and on-the-job coaching could become standard elements of induction, helping new workers gain confidence and grounding. This type of continuous professional development would make growth feel achievable, rather than out of reach.

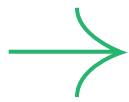
Recognising the skill and dedication required for residential care work would also be essential to building a strong professional identity. A recognition framework could be established to formally acknowledge the contributions of frontline workers through awards, accreditation and celebration. Public storytelling could also help to shift community perception, sharing real examples of the compassion, expertise and emotional labour involved in the work. Universities, TAFEs and peak bodies could be engaged to actively promote residential care as a valued career path, not just a stop-gap or stepping stone.

Mentorship and peer development would play a vital role in retaining and growing the workforce. Structured mentoring programs could pair early-career workers with experienced practitioners, offering guidance, encouragement and real-world insight. Peer-led learning communities could provide safe, energising spaces for reflection, sharing practice and sparking innovation across services and locations. For those seeking direction in their career journey, funded coaching and planning supports could help clarify goals and open up opportunities.

Finally, **attraction and early career support** could help build a pipeline of committed workers from a range of backgrounds. Campaigns targeted at schools, TAFEs and community programs could raise awareness about the purpose and potential of residential care careers. Placement and graduate opportunities could provide hands-on experience for students in child, youth or community services courses. Entry-level traineeships and cadetships with wraparound supports could be offered to reduce barriers, especially for First Nations peoples and those in regional communities. This could mean that more people not only enter the workforce, but feel that they belong and can thrive.

Together, these approaches could help create a workforce culture in Queensland where people are inspired to begin, supported to grow and proud to stay. A culture where career development is not the exception, but the expectation, and where the expertise of residential care workers is recognised as a central pillar in supporting children and young people to heal and flourish.

Building a collaborative and respectful workforce culture



Children and young people thrive when the adults around them work together with trust, shared purpose and respect. Yet in residential care, too many workers operate in silos, isolated by organisational boundaries, fragmented systems or inconsistent practice. To deliver the stable, connected and healing environments that children and young people deserve, we must prioritise culture as much as capability.

Government, service providers, sector leaders and communities have a responsibility to foster a culture of genuine collaboration; one anchored in cultural safety, shared values and relational practice. This means moving beyond compliance or competition and toward a way of working where every team, every worker and every organisation feels aligned in their commitment to children’s wellbeing.

Collaboration is not a soft skill, it is a core condition for safe and effective care. When workers trust each other, when care teams are united and when services coordinate instead of compete, children and young people experience more stability, more safety and more hope.

Let us build a workforce culture that does not just support children and young people, but models the very connection, inclusion and respect we want them to experience.



How this could be achieved:

Building a collaborative and respectful workforce culture could begin by creating the conditions for **meaningful cross-agency collaboration**. Local and regional forums could bring together residential care workers, case managers, clinicians and community stakeholders to share knowledge and align their efforts. These forums would allow people to build relationships across organisational boundaries and develop shared practice agreements that create consistency for children and young people. Co-case planning could be embedded as a standard way of working, where residential care workers are respected as equal partners in decision-making, not peripheral observers. This would send a powerful message: that collaboration is not just encouraged but expected.

Shared learning and reflection would further strengthen these collaborative foundations. Inter-agency learning communities or communities of practice could be established to bring workers together around common goals such as trauma-informed care, cultural safety and relational practice. Joint training sessions would offer space for workers across different roles and organisations to learn with and from each other. Funding reflective practice could enable teams to step back, make sense of shared challenges and celebrate successes together. Over time, this would help create a culture where continuous learning is woven into the everyday fabric of care.

Embedding a **culture of respect and inclusion** would also be central. This could mean that First Nations Elders, cultural mentors and people with lived experience are not just consulted, but actively involved in team learning, leadership and planning processes. Their presence would ground teams in community knowledge, cultural wisdom and the real experiences of children and young people in care. By shining a light on stories of effective collaboration, where teams demonstrate genuine partnership, inclusion and mutual respect, we could begin to shift what is seen as exemplary practice.

Cultural safety and place-based practice sits at the heart of any workforce strategy. Aligning with QATSICPP’s Workforce Strategy, training and development could be tailored to the cultural and community context of each location. Partnerships with Aboriginal and Torres Strait Islander organisations would be vital in shaping localised practice models that reflect the strengths and needs of community. Cultural safety would not be treated as a one-off event or compliance measure, but as a living part of team culture. This could be developed through ongoing learning, reflective supervision and culturally capable leadership.

Finally, **system-level recognition and support** could embed these ways of working sustainably. Organisational KPIs and performance measures could be expanded to value collaboration and relational leadership, not just compliance or output. Funding models that prioritise continuity of care, shared planning and joint outcomes would help organisations work together instead of in competition. Regulatory frameworks could include indicators of collaboration, workforce safety and staff voice so that quality care is understood not only through outcomes for children and young people, but also through the wellbeing and unity of the teams who support them.

Together, these approaches could begin to realise a workforce culture in Queensland where trust, inclusion, and shared responsibility are not aspirations, but everyday practice.



Strengthening community understanding and support

Children and young people in residential care deserve more than safety. They deserve connection, respect and belonging. Yet public misunderstanding and outdated stigma too often leave them, and those who support them, isolated. Now is the time for communities across Queensland to stand together in reshaping the narrative.

Government, service providers, educators, media and everyday Queenslanders have a responsibility to champion a new story. One that recognises residential care as a vital, skilled and compassionate part of our child protection system. One that celebrates the courage and strength of children and young people and honours the commitment and impact of those who walk beside them every day.

By building public understanding, confronting stigma and promoting inclusion, we create the conditions for healing and hope. Every conversation, policy, campaign and act of allyship can help foster a society where all children and young people, regardless of their care experience, feel seen, valued and supported.

Together, let us build a culture that upholds the dignity of children and young people in care and respects the workforce who support them. The future of residential care is a shared responsibility, one we must all be willing to carry.

How this could be achieved:

Achieving this vision requires coordinated, compassionate action across sectors and communities. **Public awareness and storytelling are key.** A statewide campaign could challenge stigma and promote understanding by sharing real, positive stories from residential care that centre the voices of children and young people and the frontline workers who support them. Partnering with media outlets to establish responsible reporting guidelines would help make sure that coverage of residential care is respectful, accurate and strengths-based. Celebrating the journeys of young people transitioning from care, as well as the dedication of long-serving residential workers, would humanise the sector and foster pride.

Central to this effort would be **active involvement of children and young people themselves.** Campaigns and materials co-designed with those who have lived experience would promote authenticity and relevance. Establishing Youth Ambassadors or Advocates would enable young people to lead the way by sharing their stories in schools, community forums and training sessions to build empathy and challenge misconceptions.

Community engagement could also play a powerful role. Volunteer and mentoring programs would offer children and young people opportunities to build trusted relationships with supportive adults and strengthen social networks. Collaborations with local councils and neighbourhood centres could help embed inclusion into communities, fostering environments where residential care homes are understood, respected and supported.

Raising the **visibility and value of the workforce** is also important. A 'Pride in Practice' recognition initiative could celebrate the skill and impact of residential care workers, while targeted campaigns in schools, universities and job readiness programs could promote residential care as a meaningful career pathway.

Education and cross-sector understanding are also critical. Workshops and presentations for educators, police, healthcare providers and other key sectors could deepen awareness of the role and importance of residential care. By embedding content on care experience and trauma-informed practice into university and training curriculum, we could work towards future workers entering the sector equipped to respond with empathy and insight.

Finally, **meaningful change should be reflected in policy and language.** Advocating for the use of affirming, strengths-based language in government documents and discourse to move away from terms like 'placement of last resort' could shift the narrative at a systemic level. Making sure residential care is represented in child wellbeing and community safety planning processes would help embed its value across the broader child protection landscape.

Together, these actions can bring to life a shared vision: a Queensland where children and young people in residential care are not only safe but seen, supported and embraced by the communities around them.

Conclusion

A strong, skilled and supported residential care workforce is essential to delivering safe, stable and trauma-informed care for children and young people. This Strategy provides a shared foundation for workforce development, so that the sector is equipped to meet the evolving needs of those in care.

By strengthening system enablers, fostering professional development and promoting sector-wide collaboration, residential care workers can be empowered to provide meaningful, relational care. A workforce that is valued, prepared and resilient contributes to not only better outcomes for children and young people but also a more sustainable and effective system overall.

The success of this Strategy relies on ongoing engagement across government, service providers, educators and

communities. Together, we can shape a workforce that is recognised for its expertise, supported in its role and positioned to deliver care that transforms lives.

Through strategic investment, shared vision and collective action, this Strategy sets the foundation for a workforce that thrives so that children and young people are surrounded by stable, skilled and culturally responsive caregivers who walk alongside them every day.

Child Safety Commission of Inquiry



Call for submissions

Corporate parenting and the link between the child safety and youth justice systems

The Commission of Inquiry into the Child Safety System invites submissions from the public in respect of the Department's role as a corporate parent and the link between the child safety and youth justice systems.

- Is the Department an effective corporate parent and is it meeting community expectations in relation to parenting, particularly in respect of:
 - children and young people who are placed in non-family-based (residential) care;
 - young people in care who are known to both the child safety system and the youth justice system;
 - young people who are transitioning out of detention into care and care into adulthood?
- What is the link, if any, between the child safety system and the youth justice system? For instance, do elements of the child safety system operate as a 'feeder system' to the youth justice? What are the factors contributing to children in care entering the youth justice system?
- Experiences of information sharing, communication and engagement between government agencies in relation to 'dual order' youth offenders.
- The experiences of non-family based (residential) care workers, foster carers and kinship carers in dealing with children in care who are known to the youth justice system and/or youth offenders.
- The experiences of children in family-based and non-family-based (residential) care who have also been in the youth justice system.
- The experiences of children in family-based and non-family-based (residential) care of contact with other children in care who have also been in the youth justice system and the impact of that contact upon their experiences in care.
- The experiences of community members who have been:
 - victims of crime at the hands of young people who were in care at the time of the offending;
 - negatively affected by the conduct of children and young people housed in non-family based (residential) care facilities in their neighbourhoods.

To make a submission, visit the Commission website at www.childsafetyinquiry.qld.gov.au/submissions.

Due date for submissions: Friday 23 January 2026



for Care-Experienced
Children and Young People

BECOME.

THE CHARITY FOR CHILDREN IN CARE
AND YOUNG CARE LEAVERS

Inquiry on Extending Corporate Parenting Responsibilities across the Public Sector

Final Report

March 2024

About Become

Become is the national charity for care-experienced children and young people. We put young people at the heart of everything we do, supporting them to get the help they need now and empowering them to bring about change in their own lives, the care system and society.

This is not an official publication of the House of Commons or the House of Lords. It has not been approved by either House or its committees. All-Party Parliamentary Groups are informal groups of Members of both Houses with a common interest in particular issues. The views expressed in this report are those of the group. This research and report was carried out and funded by Become, the national charity for children in care and young care leavers, as the secretariat to the APPG.

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Foreword

In February 2023, the Government's *Stable Homes, Built on Love* strategy included a commitment to strengthen and extend corporate parenting responsibilities to a range of public bodies and organisations. This commitment builds on a recommendation from the *Independent Review of Children's Social Care* and the example of Scotland, where similar reforms have already been introduced.



Care-experienced children and young people engage and interact with a range of public services in many different ways. These services can provide vital support and assistance, helping young people to develop, heal and fulfil their hopes and aspirations. However, in my work as a social worker, MP and Chair of the All-Party Parliamentary Group for Care-Experienced Children and Young People, I have consistently heard how public services are not always equipped to provide the right support. There can be a lack of understanding amongst frontline professionals about what it means to be care-experienced and the impact of childhood trauma. Moreover, public services and systems are not always flexible enough to recognise or respond to the specific barriers that care-experienced young people can face.

As an APPG, we wanted to examine these proposals. We wanted to understand which bodies these reforms should apply to, how they should be implemented and what impact they could have. Most significantly, we wanted to hear what care-experienced young people thought about these proposals – their views should ultimately be the most important factor in policy decisions that impact on their lives.

I'm extremely grateful to all the care-experienced young people, professionals and organisations who kindly shared their views, insights and experiences through our regional online evidence sessions, workshops, call to evidence and survey for public bodies. Throughout the inquiry, we also heard some really interesting examples of how some public bodies already adapt their policies and services to meet the needs and views of care-experienced young people. I'm also grateful to Become – the national charity for children in care and young care leavers – who as Secretariat to the APPG led on the coordination and delivery of this Inquiry.

The breadth and depth of insight that we received throughout the Inquiry has helped the APPG to develop a strong set of recommendations, which we hope will be able to influence the Government's thinking as they continue to develop these proposals.

It is our view that extending corporate parenting responsibilities has the potential to act as a framework for how public services can improve the scaffolding of support around care-experienced young people. This is not about undermining or diluting local authorities responsibilities: local authorities must remain ultimately responsible for providing safety, housing, care and support. But these proposals have the potential to drive a culture change in how public services support and interact with care-experienced young people. We want these reforms to be bold, robust and deliver concrete change to improve support, services and outcomes for care-experienced young people.

Steve McCabe MP

Chair of the All-Party Parliamentary Group for Care-Experienced Children and Young People
MP for Birmingham, Selly Oak

Executive Summary

Introduction

There is currently not a level playing field for care-experienced children and young people. Children in care have often faced high levels of adversity, complexity and trauma before entering the care system and this can be compounded by the instability that they experience whilst in care. When leaving the care system, young people can face a care cliff: expected to become independent overnight, often well before they are ready and with no safety net or support network to fall back on.

Care-experienced children and young people currently have contact with a broad range of public services, which can range from health, education and transport services to the welfare, criminal justice and immigration systems. Public services can provide crucial support, but this can also be inconsistent, inadequate or even at times harmful. We have heard how public services and professionals can be stigmatising, or inflexible; how care-experienced young people can face barriers to accessing services, or can fall through the cracks between different services; and how some services are not adequately equipped to identify or respond to their needs.

Care-experienced young people continue to experience disproportionately poor outcomes across a range of areas. This has a significant human cost, impacting on their lives and life chances; as well as a significant financial cost.

There is a real need for concerted action to improve support for care-experienced children and young people across society to enable them to have happy and healthy lives, and to be able to fulfil their potential and aspirations. As this report will show, whilst their role is critical, this should not be solely the responsibility of local authorities—

we all have a role to play.

“A collaborative approach with other organisations rather than just the council is really important because it does take a village raise a child.”

Care-experienced young person

Our Inquiry

Under current legislation, local authorities in England are required to have regard to corporate parenting principles, which are a set of high-level aspirations such as to act in the best interests of care-experienced children and young people, promote their health and wellbeing, and to listen to their wishes and preferences.

In its *Stable Homes, Built on Love* strategy, published last year, the Government committed to strengthen and extend corporate parenting responsibilities across the public sector, accepting a recommendation from the *Independent Review of Children’s Social Care* and building on reforms in Scotland where 26 different types of public body are currently named as corporate parents.

As the All-Party Parliamentary Group for Care-Experienced Children and Young People, we think these reforms have the potential to positively transform the scaffolding of support around care-experienced young people. We want these reforms to be ambitious, robust and deliver concrete change to improve the lives and life chances of care-experienced children and young people. Most importantly, we want the views, insights and experiences of care-experienced young people to be at the heart of these reforms.

Over the past six months Become, as the secretariat to the APPG, have supported us to carry out an inquiry to gather and collate the views of care-experienced children and young people, organisations and professionals about these reforms. In total, we have heard from over 200 people and organisations, including 160 care-experienced children and young people. This report sets out our main findings and recommendations for the effective development and implementation of reforms to corporate parenting.

Corporate parenting tree



Throughout our inquiry, we have heard numerous examples of how care-experienced children and young people have been or felt let down by public services and professionals. Young people have reported facing stigma from professionals, such as police officers, teachers and health professionals, on the basis of prejudicial negative stereotypes of children who have been in care. Others have highlighted the specific barriers that they have faced in accessing services or support, or how they have fallen through the cracks between services, such as university students being left without anywhere to live outside of term-time. Public services are often not adequately trauma-informed; and young people have reported that interactions with professionals, systems and services have negatively impacted on their wellbeing.

On the other hand, we have heard brilliant examples of public services providing vital support or taking targeted action to identify or respond to the views and needs of care-experienced young people. This includes surveying care-experienced young people about how services could be improved for

them, providing ring-fenced training and employment opportunities to address under-representation in certain professions, involving them on recruitment panels for key roles, and the promotion of resources to upskill professionals' awareness and understanding about the impact of being care-experienced.

When organisations proactively or strategically consider how they can adapt their services or policies to better meet the needs of care-experienced young people, this can lead to a real improvement in young people's opportunities, experiences and outcomes.

Throughout our inquiry, we have found widespread support for strengthening corporate parenting responsibilities and extending these to a broad range of public sector organisations.

Care-experienced young people want to see a range of public organisations being better equipped to provide support that works for them. They want to see corporate parenting responsibilities being threaded through the values, ethos and fabric of organisations: with professionals having a better understanding of care-experience; targeted offers of support; and the views and insights of care-experienced young people being at the heart of service development and improvement.

Most of all, young people have told us that they want corporate parenting responsibilities to be taken seriously and deliver real positive change, not seen as tokenistic or a tick box exercise. Being a corporate parent should be seen as a privileged responsibility and organisations should be held to account for the extent to which they are fulfilling their responsibilities as a corporate parent.

“‘Would this be appropriate for my own child?’ should be the litmus test. It is about making decisions in our best interests.”

**Care-experienced young person,
aged 21, Midlands**

Recommendations

We recommend that:

- 1) The Government legislates to introduce a new set of more action-focused corporate parenting responsibilities, with a stronger legal weighting¹, to replace the existing corporate parenting principles.²
- 2) The Department for Education develops and publishes statutory guidance setting out the requirements for new corporate parenting organisations and ways in which these can be fulfilled, the support available to them, how they will be held to account, and examples of best practice.
- 3) The Government legislates to confer corporate parenting responsibilities onto a broad range of public sector bodies and organisations.³
- 4) The Secretary of State for Education be given the power to confer corporate parenting responsibilities onto other public sector organisations in the future, in line with agreed criteria.
- 5) The Department for Education appoints and funds an independent organisation to provide training, advice, guidance and support to corporate parenting organisations to enable them to effectively fulfil their responsibilities and promote best practice.
- 6) Corporate parenting organisations be required to develop and publish corporate parenting plans every three years, and progress reports annually, and submit these to their relevant Government Department.
 - a. Corporate parenting plans should set out SMART objectives for how organisations will fulfil their corporate parenting responsibilities over this period, an action plan for delivery and how plans have been informed by the views of care-experienced young people.
- 7) The Department for Education should oversee and enforce the failure of any corporate parenting organisations to submit corporate parenting plans or progress reports using a range of enforcement measures.
- 8) The Government be required to develop and publish a cross-Government corporate parenting plan every three years, co-ordinated by the Department for Education, which brings together strategic objectives and plans from across Government Departments; as well as publishing an annual progress report.
 - a. The Secretary of State for Education should be required to make an annual statement to Parliament upon publication of the progress report to enable Parliamentary scrutiny of the Government's plans and progress.
- 9) An independent body such as the Children's Commissioner's Office be funded to develop and publish a shadow corporate parenting report every three years based on consultation with care-experienced young people about progress to date and areas for improvement.
- 10) Relevant regulators, inspectorates and ombuds-organisations ensure that assessments of how well corporate parenting organisations are complying with corporate parenting responsibilities are adequately reflected in relevant regulatory frameworks.

¹ Requiring new corporate parenting organisations to comply with new corporate parenting responsibilities, so far as this is consistent with the exercise of their other functions, instead of just having regard to principles.

² We have set out our recommendations for the proposed wording of new corporate parenting responsibilities in Box A below.

³ We have set out a list of the organisations that we recommend become corporate parenting organisations in Box B below.

- 11) An independent body such as the Children's Commissioner's Office be given additional powers to hold corporate parents to account, including powers to:
 - a. receive complaints about flagrant or systemic breaches of corporate parenting responsibilities;
 - b. compel information from corporate parenting organisations as part of investigations into complaints;
 - c. write to a corporate parenting organisation setting out remedial action that they must take to ensure compliance with corporate parenting responsibilities; and
 - d. undertake enforcement action or penalties if requested remedial action is not taken.
- 12) The Department for Education consult further with care-experienced children and young people about renaming 'corporate parenting' and potential alternative options.
- 13) The Government funds and implements a workforce development programme to upskill frontline professionals who work with care-experienced children and young people, including building their understanding of the impact of childhood trauma.
- 14) The Government improves and increases the collection of data relating to children and young people's outcomes, which is disaggregated by care experience.



Box A: Proposed corporate parenting responsibilities

It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions:

- 1) to act in the best interests, and promote the physical and mental health, well-being and safety, of care-experienced children and young people;
- 2) to proactively identify and respond to the views, wishes and feelings of care-experienced children and young people, including about service improvement;
- 3) to assess the needs of care-experienced children and young people for services and support it provides, and any barriers, stigma or discrimination they may face;
- 4) to take a trauma-informed approach, and to adapt or introduce policies, services or opportunities to meet the needs of care-experienced children and young people and address any barriers, stigma or discrimination they face;
- 5) to promote high aspirations and seek to secure the best outcomes for care-experienced children and young people, and prepare them for adulthood;
- 6) to promote, protect and fulfil the full rights of care-experienced children and young people, including those contained in the UN Convention on the Rights of the Child;
- 7) to act in ways that promote and protect the stability and security of care-experienced children and young people in their home lives, relationships, education, employment or finances;
- 8) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to care-experienced children and young people.

Box B: List of public sector organisations that we recommend are appointed as corporate parents under new legislation

- All tier-one local authorities in England and district councils
- Metro Mayors
- Department for Health and Social Care, NHS England, the Care Quality Commission, all Integrated Care Boards, and all NHS Trusts (including Foundation Trusts, Mental Health Trusts, Ambulance Service Trusts and others)
- Department for Education, Ofsted, the Office for Students, schools (including maintained schools, academies, free schools and alternative provision), further education providers, and higher education institutes and providers
- Department for Levelling Up, Housing and Communities, and housing associations
- Department for Work and Pensions, and Job Centre Plus
- Ministry of Justice, police forces, Youth Justice Board, His Majesty's Prisons and Probation Service, and Police and Crime Commissioners
- Department for Digital, Culture, Media and Sport, Arts Council, and Sport England
- Department for Transport and regional transport authorities
- The Home Office
- His Majesty's Treasury, and the Cabinet Office

Part 1: Strengthening corporate parenting responsibilities

a) Establishing a consistent set of strong corporate parenting responsibilities

The existing corporate parenting principles that apply to local authorities in England are a set of high-level aspirations that reflect the type of support that local authorities are expected to provide to children in care and young care leavers.⁴ This requirement applies to all staff employed by the local authority and its partners, when carrying out functions in relation to care-experienced children and young people.⁵

The care-experienced young people who participated in our inquiry generally appreciated the breadth of the current principles, which cover several different areas of their lives—from health and wellbeing, to education, housing, relationships, employment and their own wishes, feelings

and preferences. Young people also generally welcomed the aspirational element of the current principles.

However, the current principles were seen as too vague, and not specific or measurable enough, so it is not immediately clear what action corporate parents are required to take to meet the principles. Moreover, under current legislation local authorities are only required to ‘have regard to’ the corporate parenting principles: many felt that this could effectively be seen as a tick-box exercise, with corporate parents being required to mark their own homework rather than deliver real change. Throughout the inquiry, we heard there is considerable variation in how local authorities approach being a corporate

Corporate parenting principles - Section 1(1) of the Children and Social Work Act 2017

A local authority in England must, in carrying out functions in relation to the children in care and care leavers, have regard to the need:

- (a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;
- (b) to encourage those children and young people to express their views, wishes and feelings;
- (c) to take into account the views, wishes and feelings of those children and young people;
- (d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;
- (e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;
- (f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;
- (g) to prepare those children and young people for adulthood and independent living.

⁴ [Children and Social Work Act 2017](#), c. 16. All online sources throughout the report were accessed on 15th February 2024.

⁵ Department for Education (2018) [Applying corporate parenting principles to looked-after children and care leavers: Statutory guidance for local authorities](#)

parent and several young people reported that their local authority was not adequately fulfilling the existing corporate parenting principles.

“The council may do some of these things but not everyone or to the best of their ability. For instance they ensure the safety of children... but create instability.”

**Care-experienced young person,
Yorkshire**

Making corporate parenting responsibilities clearer and more action-focused would provide clarity to corporate parents about exactly what they are required and expected to do. This would also help to improve accountability and transparency, by ensuring that care-experienced young people have a better understanding of what they can expect from corporate parents.

“They also should be more specific to be measurable and, therefore, accountable. These are too abstract to really be accountable.”

**Care-experienced young person,
aged 24, East of England**

Throughout our inquiry, there was also a strong consensus that the legal weighting of corporate parenting responsibilities should be strengthened in legislation, so that corporate parents have a duty to comply with a set of corporate parenting responsibilities, rather than having regard to a set of principles.

“Get rid of ‘have regard to’ and replace with a mandatory duty / obligation”

Care-experienced young person

The current corporate parenting principles, which only apply to local authorities in England, were originally drafted specifically to reflect the breadth and types of support that local authorities are expected to provide to children in care and care leavers. For example, the fourth principle is about helping young people to gain access to services provided by the local authority and its partners. If corporate parenting is to be extended across the public sector, corporate parenting responsibilities need to be re-written to reflect more generally the ways in which a range of public bodies can positively impact on the lives and life chances of care-experienced young people.

“Care can be a very stressful and challenging time for young people so show them that you are there for them and on their side.”

**Care-experienced young person,
South East**

The young people that we heard from generally wanted corporate parents to be ambitious about their future and potential, and for them to be ‘pushy parents’—trying their hardest to improve care-experienced young people’s opportunities, experiences and outcomes. Young people wanted the ethos of being a corporate parent to be acting in a way that you would deem to be good enough for your own child.

“‘Would this be appropriate for my own child?’ should be the litmus test. It is about making decisions in our best interests.”

**Care-experienced young person,
aged 21, Midlands**

Recommendation – We recommend that the Government legislates to introduce a new set of more action-focused corporate parenting responsibilities, with a stronger legal weighting, to replace the existing corporate parenting principles.*

* N.B. We have set out our recommendations for the proposed wording of new corporate parenting responsibilities in Box A, below.

b) Ensuring that corporate parenting responsibilities reflect the ways in which public bodies can positively support care-experienced young people

It is important that any amendments to corporate parenting responsibilities reflect the different ways that public sector organisations can provide support and services to positively improve the lives and life chances of care-experienced young people, recognising the adversity, instability and specific challenges that they may have experienced.

Based on what we heard throughout our inquiry, there are some additional requirements that we think need to be included within a revised set of corporate parenting responsibilities to meaningfully improve the scaffolding of support for care-experienced young people.

i) Reducing the stigma, prejudice and discrimination that care-experienced young people face

One strong recurrent theme throughout our evidence sessions was the persistent stigma, prejudice and discrimination that care-experienced children and young people face in different areas of their lives.

Throughout our inquiry, we heard examples of how care-experienced young people have encountered widespread negative stereotypes about children in care; and how they have been treated differently by professionals and services—including teachers, the police and mental health services—because of prejudicial assumptions about them based on their care experience.

educational opportunities. It can reduce young people's engagement with services or lead to a distrust of professionals. Additionally, it can have a negative and long-term impact on their mental health, wellbeing, self-esteem and sense of identity.

"In Norfolk we have a narrative that being in care is actually your superpower."

Care-experienced person,
aged 30, East of England

Young people reported being treated as a label, rather than an individual.

Experiencing stigma, prejudice and discrimination can negatively impact on care-experienced young people in different ways. It can lead to poorer outcomes and reduced opportunities, compared to their non care-experienced peers, for example through being over-criminalised or misdiagnosed, or missing out on important social, emotional or

"You are seen as 'being naughty' or you are in care because you are naughty. They assume that you have a criminal record or are not able to hold a job down."

Care-experienced young person,
aged 25, North West

"[I experienced] loads of discrimination with the midwifery service... The whole part of my pregnancy I wasn't able to enjoy it, I was scared I was going to get my child taken off me. They think you aren't going to be a good mum. ... They should be treating you as an individual: they should do an assessment based on you, not a title."

Care-experienced young person

We think public services can play an important role in preventing the stigma, prejudice and discrimination that care-experienced young people face, such as by training professionals about care-experience

and trauma; tackling negative stereotypes; increasing the representation of care-experienced staff; promoting positive representations of care-experienced young people; and adopting a trauma-informed

“A public sector equality duty towards care-experienced people should exist within the corporate parenting duties rather than in the Equality Act (2010)”

**Barnardo’s,
in response to our call for evidence**

approach to their services, and this should be reflected in any revised corporate parenting responsibilities.⁶

“Making sure the organisations don’t treat young people differently and that they actively listen to what care experienced young people have to say. ... They should train all staff on stigma around care and the unfairness of this.”

**Care-experienced young person,
Yorkshire**

ii) Taking a trauma-informed approach to service delivery

Many care-experienced children and young people will have experienced trauma, adversity and complexity before entering the care system, and potentially during their time in care. For example, the main category of need when entering care was abuse or neglect for two-thirds of the 83,840 children in care on 31st March 2023.⁷ Trauma can significantly impact on care-experienced young people’s mental health and wellbeing, their sense of safety and security, and their relationships with others. The impacts of trauma can be long-term, and trauma can recur or be triggered throughout childhood, adolescence or adulthood.

“Understanding trauma and it’s different forms and how to address it lovingly”

**Care-experienced young person,
London**

Throughout our inquiry, we heard examples of where professionals or public services acted in ways that have made care-experienced young people feel unsafe or have re-triggered their feelings or experience of trauma. This included breaking confidentiality about a young person’s care-experience; using stigmatising language or prejudicial treatment; a lack of transparency

about policies or eligibility criteria; and being unaware of the widespread impact of trauma on care-experienced young people.

“There needs to be more trauma-informed training and approaches from professionals working with care-experienced children and young people, especially within the police”

**Care-experienced young person,
London**

“Although it should be a given, all services should mandatory work by a trauma informed guideline when working with care experience people”

**Care-experienced young person,
London**

To improve care-experienced young people’s interactions with public services, and to prevent the risk that these interactions are harmful or traumatic, we think it is essential that corporate parents be required to adopt a trauma-informed approach and for all relevant frontline professionals to have training on care-experience and the impact of trauma.

⁶ Throughout the inquiry, several respondents also pointed to the voluntary adoption of care-experience as a protected characteristic by numerous local authorities across Great Britain as a positive example.

⁷ Department for Education (2023) [Children looked after in England, including adoptions: reporting year 2023](#)

iii) Increasing co-production and ensuring that services are designed, delivered and evaluated in collaboration with care-experienced young people

Care-experienced young people are experts in their own lives. More than anybody else, they are best placed to identify the barriers or disadvantages that they face, or how policies or services can be improved for them.

Care-experienced young people want to be involved in decisions that affect their lives, including decisions about the type of support available to them and how this is provided. Young people told us they want public bodies to proactively seek their views about how services can be improved and to be kept informed about how their feedback is being used.

“Need to be answerable to people with lived experience... [Services] have to listen to us and be accountable”
Care-experienced young person

Throughout our inquiry, we heard examples of how some public bodies ensure that their work is actively and meaningfully informed by the views of care-experienced young people. Ofsted uses the findings from its annual point-in-time surveys with care-experienced young people to shape its inspection frameworks and to inform decisions about the scheduling of inspections.⁸ Similarly, Social Work England engages with people with lived experience of children’s social care, including those with experience of the care system, through its National Advisory Forum. The forum provides expert advice, support and challenge to the work of Social Work England, by acting as a critical friend, and making recommendations to the senior and executive leadership teams.⁹ NHS Leicester, Leicestershire and Rutland Integrated Care Board (ICB) has involved care-experienced young people in the recruitment process for lead nurses for children in care.¹⁰

From Frontline, we heard that, as part of the delivery of its three-year training programme for social workers, it works with Care-Experienced Assessors, who take part in the recruitment of programme participants, including by sitting on interview panels. Frontline also said that it works with care-experienced young people as members of its Steering Group, which influences the design and delivery of the programme.¹¹

Co-production can have many benefits: it can lead to better services; it can mitigate or eradicate barriers; it can create opportunities and improve young people’s experiences and outcomes; and significantly, it can empower young people by providing more agency, control and choice. We think it is important that, as part of revised corporate parenting responsibilities, corporate parents be required to proactively and meaningfully listen and respond to the views of care-experienced young people, and work collaboratively with young people to improve services and policies.

“[Services should be] “including care experienced young people in co-production ... from the start, not just bringing them in right at the end”
Care-experienced young person, North East

“[Organisations should provide] feedback—if something can’t be done, ‘explain why’”
Care-experienced young person, South West

⁸ Ofsted (2020) [Ofsted launches point-in-time surveys](#)

⁹ Social Work England (2023) [Our National Advisory Forum](#)

¹⁰ NHS Leicester, Leicestershire and Rutland ICB, response to survey for public bodies

¹¹ Frontline, response to call for evidence

iv) Promoting and upholding the rights and entitlements of care-experienced children and young people

One of the consistent themes that we heard throughout the inquiry is that care-experienced children and young people face numerous barriers to the fulfilment of their existing legal rights and entitlements. Many care-experienced young people reported not being made aware of their rights and entitlements, or not being informed about them at an appropriate time and in an appropriate manner. Others reported facing barriers in their rights being upheld, such as delays in accessing advocacy provision or reduced contact with social care professionals due to busy workloads or high staff churn. We also heard about the postcode lottery, with significant variation in service offers and provisions in different areas, particularly in relation to local authority services.

We think that as part of revised corporate parenting responsibilities, all corporate parent organisations should be required to promote, protect and fulfil the rights and entitlements of care-experienced young people, including their human rights, as contained within the UN Convention on the Rights of the Child.¹² Professionals working in those organisations should be aware of relevant rights and entitlements, and support care-experienced young people to understand and access them.

“40% of young care leavers said they don’t have a pathway plan or don’t know if they have one or not, despite it being statutory requirement.”

MyBnk,
in response to our call for evidence

“Workers should explain to young people what they are entitled to as children in care and care leavers”

Care-experienced young person,
East of England

“UNCRC should become UK law and form foundations of any set of CP principles”

The Rees Centre,
in response to our call for evidence

¹² The UK ratified, or agreed to follow, the UN Convention on the Rights of the Child in 1991. This means that public bodies should already protect, respect and fulfil the human rights contained in the Convention. The UN CRC, like other international human rights treaties, have not been incorporated into domestic law, however, meaning there is not currently any domestic legal redress when these rights are breached. For further information, see Equality and Human Rights Commission (2023) [Convention on the Rights of the Child](#)

Box A: Proposed corporate parenting responsibilities

It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions:

- 1) to act in the best interests, and promote the physical and mental health, well-being and safety, of care-experienced children and young people;
- 2) to proactively identify and respond to the views, wishes and feelings of care-experienced children and young people, including about service improvement;
- 3) to assess the needs of care-experienced children and young people for services and support it provides, and any barriers, stigma or discrimination they may face;
- 4) to take a trauma-informed approach, and to adapt or introduce policies, services or opportunities to meet the needs of care-experienced children and young people and address any barriers, stigma or discrimination they face;
- 5) to promote high aspirations and seek to secure the best outcomes for care-experienced children and young people, and prepare them for adulthood;
- 6) to promote, protect and fulfil the full rights of care-experienced children and young people, including those contained in the UN Convention on the Rights of the Child;
- 7) to act in ways that promote and protect the stability and security of care-experienced children and young people in their home lives, relationships, education, employment or finances;
- 8) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to care-experienced children and young people.

c) What corporate parents should do to improve opportunities, experiences and outcomes for care-experienced young people

Throughout our inquiry we heard examples of measures or actions that care-experienced young people would like to see corporate parents take to level the playing field and improve their opportunities, experiences and outcomes, including:

- Providing high quality and mandatory training to professionals that work with care-experienced young people about care-experience and childhood trauma;
- Proactively and meaningfully engage with care-experienced young people about how services could be improved;
- Identifying the needs of care-experienced young people and any specific barriers or challenges they face in or when accessing services;
- Adapting services or policies to meet the needs of care-experienced young people, or to address the barriers or challenges they face;
- Providing bespoke, free or discounted services and opportunities for care-experienced young people, including training and employment opportunities;
- Improving the collection and recording of data about care-experienced young people's access to services and outcomes, to inform policy and practice interventions;
- Increasing the representation of care-experienced staff; and
- Collaborating with other public organisations to ensure smoother transitions and greater continuity of support.

For any reforms to be successful, new corporate parenting organisations must be provided with clarity about what they are required to do to ensure that they are fulfilling their responsibilities as corporate parents. Statutory guidance should be developed for corporate parenting organisations to set out these requirements in detail. This guidance should strike the right balance between having clear, measurable requirements and allowing flexibility for corporate parents to determine what measures they should take based on an understanding of their organisation's overall aims, function and remit, and the views of care-experienced young people.

We think that statutory guidance should provide illustrative examples to help corporate parents to understand the different types of interventions or adaptations they could introduce and the potential impact of these. Throughout this report, we highlight positive examples of how some public organisations are already adapting their services or policies to respond to the needs and views of care-experienced young people. We also suggest some specific changes that individual public bodies could make to positively impact on these young people.

Recommendation – We recommend that the Department for Education develops and publishes statutory guidance setting out the requirements for new corporate parenting organisations and ways in which these can be fulfilled, the support available to them, how they will be held to account, and examples of best practice.

i) Key enablers

Throughout our inquiry, we have identified two specific enablers that are essential to ensuring that extending corporate parenting responsibilities to a range of public bodies delivers real positive change for care-experienced young people.

Enabler 1: Upskilling the workforce of professionals who work with care-experienced children and young people, including building their understanding of the impact of childhood trauma.

Enabler 2: Improving the collection and recording of data, disaggregated by care experience, to better understand care-experienced young people's access to services and outcomes.

Enabler 1: Upskilling the workforce of professionals who work with care-experienced young people

One consistent theme that we have heard throughout our inquiry is that all frontline professionals who work with care-experienced children and young people, and leaders, should receive professional training to ensure they have a fundamental understanding of care-experience and the impact of childhood trauma.

Many respondents felt that this is essential to ensuring that services and professionals have positive interactions and engagement with care-experienced young people, and that they are equipped to understand, identify and respond to the specific challenges and barriers that they face. More consistent professional development could play a role in reducing stigma, as well as improving young people's relationships with professionals and experience of using services. It could also lead to improvements in trauma-informed practice in key services such as the police, health, justice and education.

Reflecting its importance, we think that statutory guidance should make clear that providing training and professional development to wider staff workforces about care-experience is a fundamental way of fulfilling corporate parenting responsibilities.

This could be provided as separate training modules or included within existing mandatory training and development. Where possible, training could be co-developed or delivered by care-experienced young people.

"[There should be training] to understand what it actually means to be a care leaver"

Care-experienced young person,
South East

Given the centrality of professional development to the success of these reforms, we recommend that the Government also develop and implement a workforce development programme to provide a baseline understanding of the care system across all relevant frontline professionals.

"Better understanding of experiences through training delivered by young people with lived experience"

Care-experienced young person,
Yorkshire

Recommendation – We recommend that the Government funds and implements a workforce development programme to upskill frontline professionals who work with care-experienced children and young people, including building their understanding of the impact of childhood trauma.

Enabler 2: Improving data collection about care-experienced young people's outcomes

There remains a lack of robust data about the outcomes of care-experienced children and young people and their access to or participation in services. For example, there is no national data available about the number of care-experienced young people in receipt of universal credit¹³, and there is no consistent data about the prevalence of mental ill health amongst care-experienced children and young people.¹⁴ This lack of robust data can create significant barriers to evidence-based policy-making, and can make it difficult for organisations to monitor the impact of strategies to improve support for care-experienced young people.

Corporate parents should be encouraged to improve and increase the collection of disaggregated data to better understand care-experienced young people's access to services and outcomes, and the barriers they face. This data should be used to inform

planning and prioritisation, so that corporate parents can focus their efforts on measures that are most likely to positively impact on care-experienced young's lives, deliver the biggest impact, or address persistent barriers. It should also be used to benchmark and track progress, and be used in progress reports to demonstrate the impact of different strategies.

To support corporate parents, statutory guidance should include advice on best practice for data collection including the need to respect confidentiality and allowing young people to self-identify as care-experienced. Moreover, we recommend that alongside reforms to corporate parenting, the Government takes action to improve and increase the collection of data relating to care-experienced young people's outcomes and experiences.

Recommendation – We recommend that the Government improves and increases the collection of data relating to children and young people's outcomes, which is disaggregated by care experience.

¹³ See [Parliamentary Question UIN 67](#), answered on 15th November 2023.

¹⁴ See NHS Digital (2022) [Mental health of children and young people in England 2022 – wave 3 follow-up to the 2017 survey](#)

ii) Principles of best practice

Additionally, there are some specific principles of best practice that we think should be reflected in statutory guidance for corporate parents.

Principle 1: Providing ongoing support beyond the age of 25

Principle 2: Communicating consistently, clearly and appropriately with care-experienced young people

Principle 3: Understanding the impact of intersectionality

Principle 4: Collaborating with other corporate parents to identify and address barriers

Principle 1: Providing ongoing support beyond the age of 25

One consistent theme raised throughout our inquiry was that all support for care-experienced people should not end at the arbitrary age of 25. Several people highlighted that the support provided by parents and families is lifelong and not conditional on age; the support provided to care-experienced children and young people should mirror this.

“Life-long support, because that’s what parenting involves”

**CoramBAAF,
in response to our call for evidence**

Many care-experienced young people will have experienced trauma and adversity before entering into care or during their time in care and the impact of this trauma may last beyond the age of 25. Furthermore, some care-experienced people face may face additional barriers compared to their non-care-experienced peers later in life, through an absence of familial support, such as when buying their first home or raising children.

“Care doesn’t end. As corporate parents, you should be with us for longer than 25.”

**Care-experienced young person,
East of England**

In Scotland, although the legislation requires relevant organisations to fulfil the corporate parenting responsibilities for care-experienced children and young people to the age of 25, there have been some examples of corporate parents voluntarily choosing to extend support offers to care-experienced people of all ages. For instance, in 2020, the Student Awards Agency Scotland (SAAS) removed the upper age limit of 26 for their Care Experienced Bursary, “allowing those with care experience to enter further or higher education when they are ready, regardless of age”.¹⁵ Similarly, in England, North Lincolnshire Council has extended its offer of lifelong advice and support to all care leavers, irrespective of age.¹⁶

“Unless new CP responsibilities apply to care-experienced adults of all ages, the extension of corporate parenting will have the effect of changing the age that the care cliff exists at”

Care-experienced person, in response to our call for evidence

We recognise that existing legal rights and entitlements only apply to care-experienced young people aged 25 and under. However, at a minimum, statutory guidance should encourage corporate parents to consider extending support offers for care-experienced people beyond the age of 25.

¹⁵ SAAS (2021) *Corporate Parenting Plan 2021*, p. 5.

¹⁶ North Lincolnshire Council (2022), *Lifelong promise to Care Leavers*

Principle 2: Communicating consistently, clearly and appropriately with care-experienced young people

Throughout the inquiry, we heard from care-experienced young people about the way that they would want corporate parents to communicate with them. Positive, consistent and appropriate communication can help to build trust and improve young people's experiences of working with services or professionals.

"Strong communication for our young people to keep them updated and listen to. Instead of them feeling forgotten and not heard"

Care-experienced young person

Young people told us that it is important that professionals communicate with them proactively and regularly so they are kept informed and updated. Communication should always be age-appropriate and meet any communication needs, so that all children and young people can receive and

understand information, and are able to communicate their views, wishes and feelings. Furthermore, care-experienced children and young people should be told how services and professionals will communicate with them; and they should be supported to understand who to contact, and how to contact them, if they have any issues or questions.

"Corporate parents shouldn't just be available 9am-5pm Monday to Friday"

Care-experienced young person

"Take account of the fact that many care-experienced young people aren't able to fully give voice to the issues they're experiencing"

Care-experienced young person, in response to our call for evidence

Principle 3: Understanding the impact of intersectionality

We all have a variety of intersectional identities, characteristics and experiences. Throughout our inquiry, we heard examples of how care-experienced young people have experienced multiple or compound disadvantages, barriers or prejudice related to their intersectional identities.

"[Corporate parents should] really celebrate young people's achievements, difference, cultural and diverse needs and backgrounds"

Care-experienced young person

For example, we heard that children in care have experienced racism or loneliness after being moved to homes or communities that do not reflect their cultural, ethnic or religious

heritage; how care-experienced young people have faced prejudice from professionals on the basis of negative stereotypes of how they will parent; and the barriers that care-experienced young people subject to immigration controls face in accessing public support.

"To find homes where young people are able to be 100% themselves—including LGBTQIA+ affirmative care"

Care-experienced young person

It is important that corporate parents don't view or treat care-experienced young people as a homogenous group. They should ensure that their plans and strategies are informed by an understanding of the impact of

intersectionality on care-experienced young people's needs; and take action to identify and address any specific barriers that groups or individuals may face.

“To respect individuals in care regardless of their gender, pronouns, identities, trauma and experiences”

Care-experienced young person

Principle 4: Collaborating with other corporate parents to identify and address barriers

To improve the infrastructure of appropriate and tailored support for care-experienced young people, it is important that corporate parents don't work in silos. Corporate parents should be encouraged to share best practice and learning with each other; and, importantly, to work collaboratively to identify and address the barriers that care-experienced young people face, and ensure that they don't fall through gaps between different public services.

“[Corporate parents should] act in a joined up way across organisations and between organisations”

Care-experienced young person

Who Cares Scotland? highlighted that some of the most impactful measures taken by corporate parents in Scotland have been collaborative approaches by two or more corporate parenting organisations.¹⁷

Throughout our inquiry we also heard a number of positive examples of organisations working together to improve support or remove barriers for care-experienced young people.

Barnardo's highlighted how Metro Bank has developed a process to help care-experienced young people to open bank accounts, which instead of requiring photo identification and proof of address involves communication between the banking team and the local authority's leaving care team to verify the identity of a care leaver.¹⁸

In Cheshire, youth justice services have worked closely with local partners to develop a protocol which aims to reduce the over-representation of care experienced children in the youth justice system.¹⁹ Within this, there is a recognition and duty placed on all partners to prioritise the welfare of care experienced children.

¹⁷ Who Cares Scotland? evidence provided to inquiry

¹⁸ Metro Bank (2021) [Metro Bank Helps Care Leavers Become Financially Independent](#)

¹⁹ Youth Justice Resource Hub (2021) [Pan Cheshire Protocol: Reducing the Unnecessary Criminalisation of Children in Care](#)

d) Delivering real change: developing corporate parenting plans and reporting on progress

The aim of extending corporate parenting responsibilities across the public sector should be to significantly strengthen the scaffolding of support around care-experienced young people. To achieve this, it is integral that corporate parenting organisations strategically and proactively consider how they can introduce or adopt policies and services to meaningfully improve the lives, opportunities, experiences or outcomes for care-experienced children and young people.

Building on the approach adopted in Scotland, we recommend that corporate parents be required to develop and publish corporate parenting plans every three years, setting out the actions they will take to fulfil their corporate parenting responsibilities and improve the lives and life-chances of care-experienced young people. Statutory guidance should provide a framework for how corporate parenting plans should be developed and what they should include; the focus should be on delivering impact as opposed to developing tokenistic plans that continue business as usual.

Corporate parents should be encouraged to be ambitious in their plans; and plans should be actively and meaningfully informed by the views of care-experienced young people, or co-produced with them. The plans should include specific, measurable, achievable, relevant and time-bound objectives for fulfilling the different corporate parenting responsibilities, as well as an action plan for how these objectives will be achieved. A corporate parenting plan should be the blueprint for an organisation's role as a corporate parent and consequently should reflect the breadth of its remit, functions and workforce: corporate parenting responsibilities should be threaded through the fabric of the organisations wider work.

“When developing plans, children and young people should be involved and be at the heart of plans”

Care-experienced young person

Recommendation – We recommend that corporate parenting organisations be required to develop and publish corporate parenting plans every three years, and progress reports annually, and submit these to their relevant Government Department.

Corporate parenting plans should set out SMART objectives for how organisations will fulfil their corporate parenting responsibilities over this period, an action plan for delivery and how plans have been informed by the views of care-experienced young people.

To measure and track progress in delivering plans, and to provide greater accountability and transparency, we also recommend that corporate parents be required to develop and publish annual progress reports to update on the progress in implementing plans or any significant changes. Annual progress reports should also include any relevant data relating to the outcomes of care-experienced young people, or their access to and experience of services, to benchmark and monitor progress

over time. We recommend that corporate parenting plans and progress reports are submitted to the relevant Government Departments and are used by relevant regulators as evidence when assessing the extent to which organisations are complying with their corporate parenting responsibilities.

The process of corporate parenting organisations strategically considering what

action they can take to improve support or services for care-experienced young people, or how they can better respond to their needs and views, is the cornerstone of effective corporate parenting. Consequently, we think it is important that the development and publication of plans and progress reports be mandatory for all corporate parents. There should be a range of enforcement measures or penalties for corporate parenting organisations that fail to submit plans or reports²⁰, akin to the enforcement action for organisations that fail to report their gender pay gap information.²¹

“Children want age appropriate, accessible, bite sized and child-friendly information about how they will be supporting children in care and care leavers”

Care-experienced young person

Recommendation – The Department for Education should oversee and enforce the failure of any corporate parenting organisations to submit corporate parenting plans or progress reports using a range of enforcement measures.

²⁰ To reduce the bureaucratic burden for the Department for Education of enforcing the submission of corporate parenting plans or reports, it may be necessary to exempt schools from the enforcement action for failure to report. In 2022/23 there were over 24,000 schools in England. See Department for Education (2023) [Education and training statistics for the UK](#). Schools should still be required to develop and publish corporate parenting plans and progress reports, and this should be considered as vital evidence in assessments as part of school Ofsted inspections about the extent to which they are fulfilling their corporate parenting responsibilities.

²¹ See Equality and Human Rights Commission (2023) [Gender pay gap: our enforcement action](#)

Part 2: Who should be corporate parents?

One of the strongest recurring themes we heard from care-experienced young people throughout our inquiry was that they wanted corporate parenting to be meaningful and deliver real change that positively impacts on their lives; rather than being tokenistic or abstract. Consequently, we have used the following criteria when assessing which public bodies should be named as corporate parents:

- organisations which regularly interact or engage with care-experienced children or young people;²² and
- organisations which have the capacity to introduce or adapt policies or services, which could have a meaningful positive impact on the lives or life chances of care-experienced children and young people.

Recommendation – We recommend that the Government legislates to confer corporate parenting responsibilities onto a broad range of public sector bodies and organisations.

Throughout our inquiry, several care-experienced young people expressed a strong view that organisations should not make a profit from being corporate parents, and that enabling profit-making organisations to become corporate parents could provide a conflict of interest and undermine young people's trust in the system.

We recommend that corporate parenting responsibilities should only be extended to public sector bodies or organisations to reflect the responsibility that the state has to providing care and support to care-experienced young people. Private and voluntary sector organisations can, of course, play an integral role in providing valuable care or support to care-experienced children and young people. Many private and voluntary sector organisations are already signed up to the Care Leaver Covenant²³ and we would encourage the extension of this scheme and other voluntary schemes to enable organisations to commit to provide support for care-experienced children and young people.

In this section, we set out the public bodies and organisations that we recommend are appointed as corporate parents. These assessments are made with reference to the remit, aims and functions of each organisation, and with reference to the evidence we received of existing good practice within these organisations in relation to care-experienced children and young people.

The following sectors are all considered in turn:

• National and local government	• Housing
• Health	• Transport
• Education	• Arts and Culture
• The criminal justice system	• The Benefits System
• The immigration system	• Providers of children's social care

²² Either organisations that engage or interact with a broad range of care-experienced children and young people, or those that engage or interact frequently with a smaller representation of care-experienced children and young people.

²³ See Care Leaver Covenant (2024) [Care Leaver Covenant Overview](#)

Importantly, it should be noted that the list of organisations recommended for appointment as corporate parents in this section is not exhaustive. We recommend that the Secretary of State for Education be given the power to appoint other corporate parents in the future by statutory instrument, including public bodies who have expressed an interest in becoming corporate parents, in line with agreed criteria. This criterion should include the extent to which care-experienced children and young people are supportive of the organisation becoming a corporate parent.

Recommendation – We recommend that the Secretary of State for Education be given the power to confer corporate parenting responsibilities onto other public sector organisations in the future, in line with agreed criteria.

Care-experienced children and young people told us that being appointed as a corporate parent should be seen as a privilege, not as a legal tick-box exercise or bureaucratic requirement. We hope that all corporate parents embrace and nurture this view of corporate parenting. To serve care-experienced children and young people is, indeed, a privilege.

“A collaborative approach with other organisations rather than just the council is really important because it does take a village raise a child, and if we had housing organisations, the NHS, the police, similar to what Scotland has, young people would feel so much more supported and they would receive the help they need without jumping through hoops.”

Care-experienced young person

Box B: List of public sector organisations that we recommend are appointed as corporate parents under new legislation

- All tier-one local authorities in England and district councils
- Metro Mayors
- Department for Health and Social Care, NHS England, the Care Quality Commission, all Integrated Care Boards, and all NHS Trusts (including Foundation Trusts, Mental Health Trusts, Ambulance Service Trusts and others)
- Department for Education, Ofsted, the Office for Students, schools (including maintained schools, academies, free schools and alternative provision), further education providers, and higher education institutes and providers
- Department for Levelling Up, Housing and Communities, and housing associations
- Department for Work and Pensions, and Job Centre Plus
- Ministry of Justice, police forces, Youth Justice Board, His Majesty’s Prisons and Probation Service, and Police and Crime Commissioners
- Department for Digital, Culture, Media and Sport, Arts Council, and Sport England
- Department for Transport and regional transport authorities
- The Home Office
- His Majesty’s Treasury, and the Cabinet Office

National and Local Government

As well as providing children's social care services, local authorities provide a range of targeted and universal services that can benefit care-experienced children and young people from housing services, to leisure centres, participation networks, advocacy services and local welfare assistance schemes.

Under existing legislation, all tier-one local authorities and district councils are corporate parents. Throughout our inquiry, we heard many examples of how local authorities, as corporate parents, have adapted or introduced policies or services to positively impact care-experienced children and young people in their areas. These included: a number of local authorities offering council tax discounts or exemptions to care leavers;²⁴ a pilot to address digital poverty in Salford;²⁵ a service run by Suffolk County Council to provide apprenticeships, employment and work experience opportunities to care leavers within the Council;²⁶ and a leaving care hub run by the London Borough of Waltham Forest, which includes drop-in support, cooking sessions, coaching and the option to book an appointment with a therapist.²⁷

On the other hand, several respondents to our inquiry highlighted ways in which they felt local authorities were not adequately fulfilling their corporate parenting responsibilities. We recommend that local authorities remain as corporate parents under any new legislation. However, it is important that local authorities are adequately held to account about the extent to which they are fulfilling their corporate parenting responsibilities, and this should be strongly reflected within Ofsted's inspections of local authority children's services.

"The council may do some of these things but not everyone or to the best of their ability. For instance they ensure the safety of children by keeping them alive but creates instability"

Care-experienced young person,
North East

Given the remit of their powers and functions in improving housing, skills, transport and other local services, we also recommend that Metro Mayors and combined authorities in areas that have been granted some level of devolution are named as corporate parents.

National government as the executive body of the state has a responsibility for ensuring the safety of care-experienced children and young people, and promoting their health, wellbeing and best interests. As we have heard throughout this inquiry and in our previous work, care-experienced children and young people face persistent and structural barriers, adversity and disadvantages across a range of areas of life. To drive transformative and joined up reform there needs to be a cross-Government strategic approach to identifying and addressing the barriers, challenges and disadvantages that care-experienced children and young people face.

We have heard throughout the inquiry that appointing relevant Government Departments as corporate parents could make a significant difference in addressing the inequalities that care-experienced young people face. In line with our suggested principles for appointing corporate parents, we recommend that the Government Departments that have the biggest capacity to make changes that positively impact on the lives and life chances of care-experienced young people should be appointed as

²⁴ Department for Education (2020) [National Implementation Advisor for Care Leavers' second report: the decade of the care leaver](#)

²⁵ Greater Manchester Combined Authority (2022) [New pilot launched to address digital poverty for care leavers in Salford](#)

²⁶ Staff member from Suffolk County Council, in response to our call for evidence.

²⁷ London Borough of Waltham Forest, in response to our survey for public bodies.

corporate parents. We have listed below the relevant Government Departments that we recommend are named as corporate parents and the rationale for each is explored throughout this chapter.

The prospective role of the Treasury and Cabinet Office is not explored further within

the following chapter. However, they have been included as relevant Government Departments due to their respective strategic roles in overseeing public spending, including funding for children's social care, and ensuring the effective running of Government.

“The Civil Service Care Leaver Internship Scheme is a good example of how public bodies can deliver their corporate parenting responsibilities in practice.

The scheme offers care leavers a 12-month internship in a central Government department and an opportunity for this position to be permanent after 12 months.

Care leavers can develop their skills, confidence and begin successful careers through the scheme, which has already supported over 800 care leavers and 80% of internships have been converted to permanent positions.

... The scheme has no qualification requirements”

National Youth Advocacy Service (NYAS), in response to call for evidence

Recommendation – We recommend that all tier-one local authorities, district council, Metro Mayors and combined authorities in England are named as corporate parenting organisations, along with the following Government Departments: Department for Education; Department of Health and Social Care; Department for Levelling Up, Housing and Communities; Ministry of Justice; Department for Work and Pensions; Department for Transport; Department for Digital, Culture, Media and Sport; Home Office; HM Treasury; and the Cabinet Office.

Health

We all rely on the NHS. It supports us to improve our health and wellbeing, to keep mentally and physically well, and to get treatment when we are ill.

Health inequalities mean that care-experienced people are more likely than others to rely on the NHS, both as children and as adults. This is particularly true in the area of mental health, where it is estimated that almost half of all children in care meet the criteria for a mental health diagnosis.²⁸ We know that these health inequalities persist long into adulthood: research has found that care-experienced people are more likely to suffer poor health for decades after leaving care.²⁹

“Mental health is also a key area highlighted by young people we support. We have worked with many young people who have described the challenges they experienced navigating care and poor mental health. There is distrust, a lack of explanation and understanding based on some of the language and jargon used.”

Leicestershire Cares,
in response to call for evidence

At the same time, we have heard from care-experienced young people about the barriers they face in accessing healthcare, such as struggling to register for healthcare services, including GPs, dentists and opticians, and how this can be exacerbated when being moved between different areas. We also heard of care-experienced young people having to go without treatment as they couldn't afford prescriptions, whilst others have struggled to meet clinical thresholds or had long waits for mental health treatment, due to oversubscribed CAMH services.

“There is currently a charge per item on prescription, which is £9.65, and this can make healthcare unaffordable for many young people who have left care. ... A care experienced person from Dorset said that they have missed taking their medication due to this being unaffordable for them”

Care-experienced young person,
aged 19, South West

“Delays and disruptions to diagnoses to care-experienced young people, especially for neurodiversity, who are regularly moving and beginning new relationships with each move with staff and healthcare professionals”

Care-experienced young person

Positively, we also heard examples of health services adapting their policies and services to better meet the needs of care-experienced young people, or collaboration between local authorities and local NHS services. Several Integrated Care Boards (ICBs) and local authorities have provided free prescriptions to care leavers.³⁰ NHS Leicester, Leicestershire and Rutland ICB has a dedicated health team for children in care, including medical, nursing and support staff; as well as a specific policy and pathway for children in care who may miss appointment or be at risk of not engaging with services, to reflect meet their individual needs and circumstances.³¹

The evidence we collected included widespread support for a wide range of organisations in the healthcare sector becoming corporate parents. Participants highlighted a number of ways that healthcare bodies could improve support, services and

²⁸ NICE (2021) [Guidance: Looked-after children and young people](#)

²⁹ Nuffield Foundation (2021) [Policy Briefing: The lifelong health and well-being of care leavers](#)

³⁰ See, for example, NHS North East London, [Free prescriptions for care leavers in North East London](#), and NHS Black Country Integrated Care Board (2023) [Free prescriptions for care leavers in the Black Country](#)

³¹ NHS Leicester, Leicestershire and Rutland ICB, evidence received in response to survey for public bodies

outcomes for care-experienced young people, including mandatory training for frontline professionals about care-experienced and childhood trauma, the collection of more consistent and comprehensive data to better understand health outcomes, and bespoke pathways or targeted support to improve access to high quality, timely and appropriate healthcare support.

The NHS is a large and complex system. No single NHS organisation, acting as a sole corporate parent for healthcare, would be able to fully realise the sector's potential to positively impact the lives of care-

experienced people. Consequently, we recommend that a number of NHS bodies are named as corporate parents, including those that set national and regional policy and practice, and those that commission, provide and regulate services regularly used by care-experienced young people.

“Looked after children and care leavers to have priority when registering for GP, and bypass the waiting lists for therapy etc”

Care-experienced young person,
South East

Recommendation – We recommend that the Department for Health and Social Care, NHS England, the Care Quality Commission, all Integrated Care Boards, and all NHS Trusts (including Foundation Trusts, Mental Health Trusts, Ambulance Service Trusts and others) are named as corporate parenting organisations.

Education

The education system is one of the most vital public services for care-experienced children and young people. Education plays a crucial role in shaping all children's development and can significantly impact on future life outcomes. As a universal service, it can also play a vital role in safeguarding children and enabling them to explore their identities and develop important relationships and support networks. For children in care, school can be a mainstay at a time when they may be experiencing adversity, complexity or trauma in their home lives.

Care-experienced children and young people face a range of challenges that can negatively impact on their education. Children continue to face high levels of instability within the care system, which can significantly disrupt their education. For example, in 2023, 25,850 children in care experienced multiple placements, almost a third of all children in care in England.³² In 2018/19, the latest year for which data is available, 11% of all children in care in England experienced a mid-year school move.³³ This instability can impact on children's confidence, motivation and mental health.³⁴ Furthermore, the Education Select Committee has reported concerns that some schools have blocked the admissions of children in care.³⁵ Research by Ofsted has also highlighted that children living in residential children's homes are much more likely to be in unregulated education or not in education than other children.³⁶

"Activities like family trees, mother's day cards can be upsetting/difficult"

Care-experienced young person

Care-experienced children and young people continue to experience disproportionately poor outcomes within the education system, including lower attendance at school, higher rates of exclusion and lower attainment.³⁷ Care-experienced young people are also less likely to start or complete university degrees than their non-care-experienced peers.³⁸ In 2021/22, 14% of children who had been in care for at least 12 months had progressed to higher education by the age of 19, compared to 47% of all young people at the same age.³⁹

"Teachers shouldn't treat us like we are 'special' and fragile. Teachers should push us to do better, rather than limiting us due to stigma"

Care-experienced young person

Throughout our inquiry, we have heard about welcome initiatives to improve the provision of tailored support for care-experienced students, particularly at university. For example, the University of York has enabled care leavers to access accommodation all year round and has acted as a rent guarantor to care leavers and estranged students. The National Network for the Education of Care Leavers (NNECL) launched its Quality Mark in 2021, which is a framework for universities and colleges to demonstrate their support for the inclusion and success of care-experienced students.⁴⁰

We also heard from the BBC about a series the corporation released on BBC Teach—an online platform for teachers—aimed at enabling teachers to provide the best support

³² Department for Education (2023) [Children looked after in England, including adoptions: reporting year 2023](#)

³³ Children's Commissioner (2020) [Stability Index 2020: Technical report](#)

³⁴ Department for Education (2023) [Children looked after in England including adoptions](#)

³⁵ House of Commons Education Committee (2022) [Educational poverty: how children in residential care have been let down and what to do about it](#)

³⁶ Ibid.

³⁷ Department for Education (2023) [Widening participation in higher education: Academic year 2021/22](#)

³⁸ University of York (2024) [University of York Rent Guarantee Scheme](#)

³⁹ Department for Education (2023) [Widening participation in higher education](#)

⁴⁰ NNECL (2023) [NNECL Quality Mark](#)

possible to care-experienced children.⁴¹ Through a collection of short films, the series provides a suite of information, advice and guidance for teachers supporting care-experienced children.

Improving care-experienced children and young people's access to high quality education that is responsive to their needs and experiences could have a transformative impact on their lives and life chances. There was widespread support for educational providers being appointed as corporate parents to strengthen support at all levels of education for care-experienced students. In addition to adapting services and policies to better meet the needs of care-experienced

young people, and introducing interventions to improve outcomes, several respondents highlighted that educational providers should also do more to raise awareness of the impact of care-experience and to address stigma, such as through mandatory training for teachers and ensuring that students learn about care-experience through the national curriculum.

"We should learn about care experience in school - would fit well in a citizenship or PHSE class. Making it mandatory in curriculum would raise awareness"

Care-experienced young person

Recommendation – We recommend that the following public bodies are all named as corporate parenting organisations: the Department for Education, Ofsted, the Office for Students, schools (including maintained schools, academies, free schools and alternative provision), further education providers, and higher education institutes and providers are all named as corporate parenting organisations.

⁴¹ BBC Teach (2023) [Teacher Support: Supporting care-experienced children](#)

Criminal justice system

Care-experienced children and young people interact with the criminal justice system in numerous ways and are disproportionately likely to receive a criminal conviction, for example, evidence shows that care-experienced young people born in 1994 were four times more likely to have received a criminal conviction by the age of 24, compared to their non-care-experienced peers.⁴²

Throughout our inquiry, we heard from care-experienced young people of traumatic experiences with the police, such as when being taken into care, or when in a mental health crisis. Other young people reported being subject to unnecessary violence, or receiving prejudicial or inappropriate treatment from the police or criminal justice institutions. Many respondents thought that care-experienced young people are over-criminalised and we heard examples of the police being called for incidents that wouldn't apply to other young people, such as when they were late home, or smashed a lamp in their children's home.

"Because many care-experienced young people have extremely negative interactions with the police early on in life and have a feeling of distrust and insecurity with the police. This intersects with race"

Care-experienced young person

There are examples of public organisations in the criminal or youth justice sector adapting or introducing tailored policies and interventions to improve support, services and outcomes for care-experienced young people. For example, His Majesty's Prison and Probation Service (HMPPS) has published a strategy for care-experienced people, which includes the development of a policy framework to provide advice and guidance to staff about how to support care-

experienced people; better liaison and collaboration with partners, including Personal Advisers; and the publication of guidance about how prisons, probation and local authorities can work together to support people with care experience in custody and on probation.

The police helped me when I was in crisis and signposted me to the support I needed. I want them to be a corporate parent and have to do that for all care-experienced young people"

Care-experienced young person, aged 26, East of England

However, much more needs to be done to address the disparities. From the evidence we collected, care-experienced young people expressed more distrust of the police and prison service, than any other public service. Several respondents did not think that the police or prison service should be appointed as corporate parents, due to this lack of trust and concerns about discrimination.

"Having the police as a corporate parent could create more understanding [amongst officers] and enable a more trauma-informed approach in policing generally."

Care-experienced person, aged 33, North West

It is our view that conferring corporate parenting responsibilities on organisations responsible for the criminal and youth justice systems could have a significant positive impact on care-experienced young people, by requiring these bodies to strategically consider what they can do to better identify and respond to the needs and views of care-experienced young people. One crucial and urgent improvement would be the roll-out of

⁴² Office for National Statistics (2022) [The education background of looked-after children who interact with the criminal justice system: December 2022](#)

mandatory training for all frontline professionals to increase their understanding of the impact that being in care, or

experiencing childhood trauma, has on an individual.

“There needs to be robust support and cohesive service provision in prison to support rehabilitation. This means that care experienced people need to have access to education and health services in prison so that they stand the best chance of not re-offending when they leave.

... Equally, the Ministry of Justice needs to have oversight of why care experienced people are coming into prison and review whether there are other case disposal options available to them.”

Frontline, in response to our call for evidence

Recommendation – We recommend that the Ministry of Justice, police forces, Youth Justice Board, His Majesty’s Prisons and Probation Service, and Police and Crime Commissioners are all named as corporate parenting organisations.

The Immigration System

There are record numbers of unaccompanied asylum-seeking children (UASC) within the care system: the number of UASC children in care in England increased by 42% between 2019 and 2023; and in 2023, almost a tenth of all children in care were unaccompanied asylum-seeking children.⁴³

Unaccompanied asylum-seeking children have often faced high levels of adversity and trauma⁴⁴, and may experience additional challenges in the care system, including linguistic or cultural barriers.

Research in 2021 found that one in ten children in care and more than 10,000 young care leavers in England had unresolved immigration or citizenship issues.⁴⁵ We know that the uncertainty caused by delays to immigration applications can have significant adverse impacts on children and young people, in the form of:

- mental health impacts, which can also compound recent traumas experienced by these children and young people;⁴⁶ and
- the denial of rights and entitlements to a whole range of support, from housing and education support for children in care, to employment support and student finance for care leavers.

“The Home Office should protect UAS Children, who should not be housed in hotels, who should not be segregated from other children in care, and who should be protected by the provisions of the Children Act.”

**The Rees Centre,
in response to our call for evidence**

“For young people subject to immigration control, there’s also a very abrupt cut off in support after turning 18 years old if they don’t have leave to remain status. There should be continued support systems in place”

Care-experienced young person

In response to our inquiry, some respondents raised concerns about the suitability of the Home Office as a corporate parent due to potential conflicts of interest, and the possibility of immigration decisions not being in the best interests of a child, or to promote their wellbeing, stability or safety.

“... an adverse Home Office decision affecting a child or young person’s safety and stability, fundamentally conflicts with corporate parenting responsibilities.”

**CoramBAAF,
in response to our call for evidence**

It is vital that unaccompanied asylum-seeking children have equal right to the protections and safeguards afforded to children under the Children Act 1989, and it is our paramount belief that local authorities should remain solely responsible for the safety, care and wellbeing of these children.

However, it is also our view that the Home Office becoming a corporate parent could lead to improvements in the way that children and young people who are subject to immigration controls are supported. In particular this could be achieved through measures such as: greater collaboration between local authorities and Home Office staff in addressing the barriers faced by this

⁴³ Department for Education (2023) [Children looked after in England including adoptions](#)

⁴⁴ Wood, S. et al. (2020) [Adverse Childhood Experiences in child refugee and asylum seeking populations](#). Public Health Wales NHS Trust, pp. 8-14.

⁴⁵ South London Refugee Association and Coram Children’s Legal Centre (2021) [Taking Care: How local authorities can best address immigration issues of children in care](#)

⁴⁶ The Independent Review of Children’s Social Care (2022) [Final Report](#), p. 172.

group of young people, quicker immigration decisions, trauma-informed practice, mandatory training for Home Office staff about the impact of childhood trauma, and a

review of existing policies to ensure that they are in the best interests of, and safeguard, all children in care facing uncertainty over their immigration status.

Recommendation – We recommend that the Home Office is named as a corporate parenting organisation.

Housing

Young people are often made to leave care before they are ready and much earlier than other young people. In 2023, almost 11% of all children in care were living in independent or semi-independent settings.⁴⁷ Furthermore, only 20% of care leavers aged 19-21 were living with parents, relatives or former foster carers in 2023,⁴⁸ whilst comparatively the average age that young people leave the parental home across England is 23.⁴⁹ This means that, for young people leaving care without the safety net of a parental home, access to safe, affordable and stable housing could not be more crucial.

However, too many care leavers face persistent barriers to accessing appropriate housing. We have heard from young people that there is a lack of affordable housing options available to them, and how they haven't been given adequate support to develop the skills they need to live independently, budget effectively and manage their bills.⁵⁰ We also heard from care-experienced young people how they have struggled to secure social housing, as they were not deemed to have a local connection to an area they had been moved to under local authority or housing association allocation policies.⁵¹

“Care experienced young people often struggle when moving in to independence. There is a lack of dedicated support around managing a tenancy and adapting to life on your own with all of these new responsibilities”

**Leicestershire Cares,
in response to our call for evidence**

The vast majority of young people in England, aged 16-24, who are not living within their family home live in private rented accommodation.⁵² However, we have heard from care-experienced young people that they have been unable to move into the private-rented sector, as they couldn't provide a guarantor or a deposit. Some local authorities do provide guarantor and deposit schemes for young people leaving care, but this is far from universal.

“Safe and stable housing is a key area of need for care-experienced young people, with many living in unsuitable and unsafe accommodation currently. The waiting lists for post-18 housing are often incredibly long and young people face being moved from their areas of safety in order to access a space. This is fundamentally unjust and has a massive impact on the outcomes of care-experienced young people”

**Care-experienced staff at Frontline,
in response to our call for evidence**

Care-experienced young people are at a much greater risk of facing or experiencing homelessness than their non-care-experienced peers, and this risk has been increasing in recent years. In 2022-23, 3,710 care leavers aged 18-20 faced homelessness, an increase of 33% from four years earlier.⁵³ During the inquiry, we heard from a young person who became homeless after not having any accommodation outside of term-time whilst at university.

⁴⁷ On 31st March 2023, 2,300 children in care were living in independent settings, and a further 6,680 were living in semi-independent settings. Department for Education (2023) [Children looked after in England, including adoptions: reporting year 2023](#)

⁴⁸ Ibid.

⁴⁹ Office for National Statistics (2019) [Milestones: journeying into adulthood](#)

⁵⁰ MyBnk, in response to our call for evidence.

⁵¹ Under current legislation, a care leaver under the age of 21 will have a local connection to an area that they have been moved to, that is different to their responsible local authority, when they have lived there for at least two years, including some time before they turned 16. See Department for Levelling Up, Housing and Communities (2018) [Homelessness code of guidance for local authorities: Chapter 10 – Local connection and referrals to another housing authority](#)

⁵² Ministry of Housing, Communities and Local Government (2020) [English housing survey, private rented sector: 2019-20](#)

⁵³ Become (2023) [Press release: 33% increase in homelessness among care leavers](#)

“Councils should have a statutory duty to be a guarantor for young people to secure housing”

Care-experienced young person,
aged 22

Living in adequate housing is a human right^{bb}, and it is essential that this right is fulfilled for all care-experienced young people to ensure that they are able to live happy, healthy lives and make a positive start to adulthood. We think that extending corporate parenting responsibilities to the Department for Levelling Up, Housing and Communities (DLUHC) and housing associations could

lead to real improvements.^{bb} For example, DLUHC could introduce legislative reforms to reduce care leaver homelessness, such as automatically extending priority need to all care leavers under 25, exempting care leavers from homelessness intentionality rules and guaranteeing that all care leavers are deemed to have a local area connection in any area that they live or have close connections.

“When they are fixing your water etc and you can't stay there, there should be temporary accommodation available for care experienced [young people]”

Care-experienced young person

Recommendation – We recommend that the Department for Levelling Up, Housing and Communities, and housing associations are named as corporate parenting organisations.

^{bb} See Article 11 of the International Covenant on Economic, Social and Cultural Rights, which was adopted in 1966 and first ratified by the UK in 1976. See Office of the High Commissioner for Human Rights (OHCHR), [International Covenant on Economic, Social and Cultural Rights](#)

^{bb} Although housing associations are officially classed as private bodies, we suggest that they are included as prospective corporate parenting organisations, as an exception, given their role in providing a public function: providing social housing on behalf of the state. Their quasi-public role has been recognised in different ways, for example housing associations are required to comply with the Human Rights Act 1998. See EHRC (2011), [Human rights at home: Guidance for social housing providers](#) and Ward Hadaway (2019), [Social Housing Speed Read – Can a housing association be considered a public authority?](#)

Transport

Public transport is vital for accessing education, work and personal support networks, and research confirms its importance for wellbeing.^{b6}

This is all especially true for care-experienced children and young people, who may have little control over where they live and can end up living further away from the people and places that matter to them as a result. Care-experienced children and young people also face higher-than-average levels of loneliness, meaning that access to public transport—as a key way of reaching important personal connections—is especially crucial.^{b7}

“... it can be particularly challenging [for care leavers] to afford access to public transport: the average cost of a weekly bus pass for example is £18.”

Barnardo's,
in response to our call for evidence

Despite this, many care-experienced children and young people face barriers to accessing public transport, with serious impacts on their opportunities and wellbeing.

“... we know that Care experienced youth face a number of barriers to being active, including... transport (63%)...”

Sport England,
in response to our call for evidence

We have already seen examples of relatively simple measures aimed at addressing this, such as schemes that provide free bus travel

to care leavers in Greater Manchester and Greater London. However, the existing support available across the country is inconsistent and, from what we have seen, largely focused on bus travel only.

“A number of local authorities have started to provide schemes which provide access to free bus travel to care-experienced young people including Greater Manchester and Cornwall however, support is sporadic and a Freedom for [sic] information request by Barnardo's last year revealed that the majority of local authorities don't provide support for all care leavers.”

Barnardo's,
in response to our call for evidence

The transport sector can do more to ensure that care-experienced children and young people are able to access public transport irrespective of (a) where in the country they live, and (b) the form(s) of public transport they rely on to get to the things that matter to them.

We think that the Department for Transport and regional transport authorities^{b8}, such as Transport for London, that set national and regional transport policy, and commission, plan, deliver and oversee local services have a key role to play, in collaboration with local authorities. By taking steps to better identify and address the barriers that care-experienced young people face in accessing public transport, they can positively impact on these young people's wellbeing, relationships and full participation in society.

Recommendation – We recommend that the Department for Transport and regional transport bodies in England are named as corporate parents.

^{b6} Delbosc (2012) [The role of well-being in transport policy](#)

^{b7} Baker et al. (2019) [Our Lives Beyond Care: Care leavers' views on their well-being in 2018](#)

^{b8} There are eight regional transport bodies in England: England's Economic Heartland, Midlands Connect, Peninsula Transport, Transport East, Transport for London, Transport for the North, Transport for the South East, Western Gateway. Transport Action Network (2023) [Summary of Regional Transport Bodies](#)

Arts, Culture and Sport

There is broad evidence that accessing regular arts, culture or leisure activities can positively impact on young people's wellbeing, development and creativity.⁵⁸ For care-experienced young people being part of social or leisure groups – such as playing sports, or attending drama, music or dancing groups – can be a protective factor: it can enable them to pursue their interests, hobbies or creativity; develop their skills and confidence; lead to the development of important peer relationships; and help them to integrate into new communities.

During our inquiry we heard examples of organisations who have introduced policies or programmes to improve care-experienced young people's access to and participation in creative, cultural or leisure pursuits. These include local authorities providing free or discounted gym or leisure passes⁵⁹, and bespoke programmes like [‘My Creative Track’](#) – a framework developed by The Mighty Creatives to support care-experienced young people to engage with a journey of arts and cultural experiences.⁶¹

“Leisure passes for care leavers should be provided to give young people chances to meet people and support their mental health”

**Care-experienced young person,
North East**

Unfortunately, however, support is variable across different geographical areas; and care-experienced young people can also face a range of barriers to accessing high quality arts, cultural or leisure activities, including

low self-confidence, transport and money.⁶² We have heard how children in care have had been uprooted and moved out of their communities, disrupting their hobbies or interests, and ending their participation with sports teams or other social groups. Furthermore, some young people highlighted the lack of opportunities they have had to pursue careers in creative industries, such as the media, drama and sports, due to not being able to benefit from familial connections, or not being able to afford to take unpaid internships or work experience.

“[There is a] postcode lottery with access to gyms and creative arts industries”

**Care-experienced young person,
South West**

All care-experienced young people should have equal opportunities to pursue the hobbies, interests and careers they want to; and have equal access to high quality arts, cultural and sports activities. Local authorities have an integral role to play in improving access to arts, culture and sport at a local level. However, we think there should be a more concerted and strategic approach at a national level to identify and address the barriers that care-experienced young people face in this area. Given their collective roles in setting national policy, providing funding, and undertaking research, development and campaigns, we think that the Department for Digital, Culture, Media and Sport, the Arts Council and Sport England have the potential to transform care-experienced young people's access to art, culture and sport.

Recommendation – We recommend that the Department for Digital, Culture, Media and Sport (DCMS), Sport England and the Arts Council are named as corporate parents.

⁵⁸ House of Commons Digital, Media, Culture and Sport Committee (2019) [Changing Lives: the social impact of participation in culture and sport](#)

⁵⁹ For example, Wigan Council provide free entry to care leavers to gyms, swimming and exercise classes. See Wigan Council, [Health and Wellbeing for Care Leavers](#)

⁶¹ The Mighty Creatives (2023) [My Creative Track – A Pathway to Arts and Culture](#)

⁶² MyBnk, in response to our call for evidence

Employment and benefits

On average, care-experienced young people are expected to move into adulthood at a much earlier age than their non-care-experienced peers, and are consequently more likely to have greater financial responsibilities from an earlier age than other young people and without the same familial financial or practical support.

At the same time, care-experienced young people are less likely to be in education, employment or training than their peers. In 2023, 38% of care leavers aged 19-21 were not in education, employment or training⁶³, compared to around 13% of all young people aged 19-21.⁶⁴ Services that support young people to find employment and training can be vital in helping them to develop their skills, confidence and careers. Similarly, welfare benefits can be a lifeline in enabling care-experienced young people to have an adequate standard of living, and to prevent them falling into poverty or debt.⁶⁵

“DWP should employ a ‘Care Specialist’ for every borough / local authority that works specifically with care-leavers”

Care-experienced young person,
aged 22

The Department for Work and Pensions (DWP) has already introduced some tailored measures to adapt policies, support and services for care-experienced young people. One example is the appointment of a Single Point of Contact for care leavers in every Jobcentre, who acts as the main point of liaison with local authority leaving care teams.⁶⁶ Another example is the exemption for all care leavers under the age of 25 from the Shared Accommodation Rate.⁶⁷

However, throughout our inquiry, we have heard that care-experienced young people still face barriers to accessing benefits and employment support, and have had negative experiences of services. Research from The Children’s Society in 2017 highlighted that care leavers were disproportionately likely to receive a benefit sanction: they were three times more likely to be sanctioned compared to non-care-experienced young people, and five times more likely than the average adult claimant.⁶⁸ There is no official data about the number of care leavers who receive sanctions on universal credit to track whether there has been any progress in this respect.

“While some of our practitioners report having a good working relationship with Job Centre staff, some care leavers we support continue to report not feeling their specific needs were understood, for example the fact they lack access to family support which may make it difficult to find someone to take them to interviews or help them to fill out forms.”

Barnardo’s,
in response to our call for evidence

Other respondents highlighted that the under-25 rate of universal credit is not sufficient for care leavers who are living independently and have no other financial support, and that this could lead to them taking out high-interest loans and falling into debt or starting their adult lives in poverty.

“Most of the young people we work with do not have positive experiences of ... job centre plus.”

My Bnk,
in response to our call for evidence

⁶³ Department for Education (2023) [Children looked after in England including adoptions](#).

⁶⁴ Office for National Statistics (2023) [Young people not in education, employment or training \(NEET\), UK: May 2023](#)

⁶⁵ Care-experienced young people are at a greater risk of falling into debt. Smith, N. (2023) [No Bank of Mum and Dad: the impact of the cost-of-living crisis on care-experienced young people](#)

⁶⁶ Department for Work and Pensions (2023) [Department for Work and Pensions: Care Leaver Covenant offer](#)

⁶⁷ Ibid.

⁶⁸ Children’s Society (2017) [Claiming after care: Care leavers and the benefits system](#)

There are a number of adaptations that the DWP or Job Centre Plus (JCP+) could take, as prospective corporate parents, to improve support and outcomes for care-experienced young people. For example:

- The DWP could collect and record data about the number of care leavers in receipt of universal credit, or who have received sanctions, to better monitor outcomes;
- Following the precedent of the exemption to the Shared Accommodation Rate, the DWP could exempt care leavers from the under-25 rate of universal credit to reflect the absence of familial financial support.
- Job Centre Plus could roll out mandatory training to any frontline staff to increase their knowledge about care-experience, and to improve trauma-informed practice; and
- There could be more consistent collaboration between JCP+ and local authorities to improve tailored employment opportunities or skills development for care-experienced young people, such as through targeted jobs fairs.

Recommendation – We recommend that the Department for Work and Pensions, and Job Centre Plus are named as corporate parents.

Providers of Children's Social Care

Foster carers, residential workers and other providers of children's social care can develop strong, nurturing and loving relationships with children in care. They can provide vital care, love and dedication: going the extra mile to fight for the opportunities and support that make all the difference. The relationships that they form with children in care can be a lifeline and last a lifetime.

There are existing regulations, such as the children's homes regulations and quality standards⁶⁹ and the national minimum standards for fostering services⁷⁰, which set out the minimum standards or requirements for providers of different care settings. Many of the requirements of corporate parenting responsibilities are already reflected in some form within these regulations and providers are already inspected and held to account on the extent to which they are fulfilling these as part of Ofsted inspections.⁷¹ For example, the children's homes quality standards includes requirements for staff to help children to express their views, wishes and feelings, and to take these into account in relation to decisions affecting them; to promote their health and wellbeing; to protect them from harm and keep them safe.⁷²

Although it is clear that children's social care providers have significant capacity to introduce measures that could positively impact on the lives and life chances of care-experienced young people, it is our view that conferring corporate parenting responsibilities on care providers would not materially improve the support that they provide or drive behaviour change, given their existing regulatory frameworks.

Additionally, some of the young people that we heard from throughout the inquiry expressed concern or unease about the potential for care providers to become their corporate parents. For example, this could have a harmful impact if a care placement breaks down, a child is moved to another home or distant location, or if a trusted relationship breaks down following the end of a placement.

We do not recommend that providers of children's social care be named as corporate parenting organisations.

⁶⁹ Department for Education (2015) [Guide to the Children's Homes Regulations, including the quality standards](#)

⁷⁰ Department for Education (2011) [Fostering Services: National Minimum Standards](#)

⁷¹ See Ofsted (2021) [Social Care Common Inspection Framework \(SCCIF\)](#)

⁷² [The Children's Homes \(England\) Regulations 2015](#), ch. 1, reg. 4.

Part 3: How should corporate parents be supported?

If the full potential of corporate parenting is to be realised for care-experienced children and young people, a range of support measures should be put in place to capacity-build new corporate parenting organisations and to ensure that they are equipped to fulfil their new corporate parenting responsibilities.

Care-experienced young people want to see corporate parents being better equipped to provide support that works for them. They want to see corporate parenting responsibilities being threaded through the values, ethos and fabric of organisations, and being acted on at every level; with the views and insights of care-experienced young people at the heart of service development and improvement. To be an effective corporate parent, an organisation and its workforce must develop an understanding of the needs and experiences of care-experienced children and young people, including the impacts of past trauma. For many public bodies the transition to become corporate parents will require a period of learning, development and culture change.

“All new Corporate Parents should receive training designed and delivered by care experienced young people so that they know what being a Corporate Parent really means and to raise awareness of care experienced children and young people's lives”

A children's social care professional,
in response to our call for evidence

In addition to the development and publication of statutory guidance for corporate parents, we recommend that an independent organisation be appointed by the Government to provide collective and tailored advice, guidance and support to corporate parenting organisations similar to the role currently carried out by Who Cares Scotland? in Scotland. The support of an expert organisation could help to drive and support the implementation of these reforms by building a forum for corporate parents to learn from each other and those with lived experience, and to establish a collaborative culture of learning, improvement and innovation.

“The appointment of a body who would support public bodies in developing their services for care leavers. When corporate parenting principles were extended to public bodies in Scotland Who Cares Scotland worked with public bodies to develop plans and a similar arrangement would be beneficial in England.”

Barnardo's,
in response to our call for evidence

Recommendation – We recommend that the Department for Education appoints and funds an independent organisation to provide training, advice, guidance and support to corporate parenting organisations to enable them to effectively fulfil their responsibilities and promote best practice.

The support provided to corporate parenting organisations by this independent organisation should include the following functions.

Training - The development and roll-out of training, and learning resources on corporate parenting responsibilities and requirements, the needs and experiences of care-experienced children and young people, trauma-informed practice, co-production, and how to develop impactful and ambitious corporate parenting plans that meet or exceed legislative requirements;

Sharing of learning and best practice - The development of a corporate parenting forum and the sharing of best practice, so that different corporate parenting organisations can learn from each other, connect and collaborate;

Advice and support - Providing information, advice and guidance to corporate parents, including in relation to the development of corporate parenting plans, and seeking the views or involvement of care-experienced young people; as well as responding to specific queries.

Through the responses to our survey for public bodies, we have heard that public organisations would welcome a range of support measures to help them to respond more strategically and compassionately to the views and needs of care-experienced young people, including training, guidance, advice and the sharing of best practice.

To ensure that the appointed independent organisation is equipped to effectively fulfil the functions outlined above, we think it is important that they are provided with sufficient and sustainable funding; and are appointed for a substantial period to provide the stability required to develop their expertise, and build strong working relationships with corporate parents. The role and functions of the independent supporting organisation should be clearly outlined in statutory guidance for corporate parents to raise awareness of the support and training available to them.

“Learning from good practice examples of how other similar bodies to ourselves do this”

Sport England,
in response to our public bodies survey

Unlike the Scottish approach, we think it is important that the independent organisation appointed to provide support, advice and training to corporate parents does not also play a role in holding corporate parents to account. This would prevent conflicts of interest and enable the organisation to develop and maintain positive working relationships with corporate parents, based on transparency, collaboration and learning.

Part 4: How should corporate parents be held to account?

The success of reforms to corporate parenting will depend on the extent to which new corporate parents are incentivised to comply with their new responsibilities. Robust accountability measures are needed to guarantee compliance and drive behaviour change. Throughout our inquiry, care-experienced children and young people have resoundingly told us that reforms will only be effective if they include strong accountability measures.

In this report, we are recommending a suite of measures, which taken together will instil a culture of learning, improvement and accountability for corporate parents without being resource-intensive or an overly-bureaucratic burden on public bodies.

“Young people’s lived experiences will not improve unless corporate parents hold themselves accountable and drive forward”

Care-experienced young person

“[Corporate parents should be] legally and financially responsible—they should be held to same account as biological parents, so if they are neglecting young people’s rights they could be done for neglect.”

Care-experienced young person, aged 25, North West

The six measures that we recommend in this section are set out in the box below.

- 1) **Stronger legislation** – corporate parenting responsibilities should be given a stronger legislative weighting.
- 2) **Strategic planning and reporting** – all corporate parents should be required to develop and publish plans setting out the actions they will take to comply with corporate parenting responsibilities, and annual progress reports on the implementation of these plans should be published to increase transparency and accountability.
- 3) **Assessment of compliance through regulatory frameworks** – the extent to which organisations are complying with their corporate parenting responsibilities should be assessed as part of their relevant regulatory or inspection frameworks.
- 4) **Increased transparency and scrutiny of the Government’s progress in improving support, services and outcomes for care-experienced young people**
- 5) **Putting young people’s voices and views at the heart of corporate parenting**
- 6) **Accountability and recourse for care-experienced young people** – there should be more centralised accountability and recourse where there are serious concerns about compliance.

1) Stronger legislation

Corporate parenting responsibilities should be given a stronger legislative weighting than the current corporate parenting principles: organisations should be expected to comply with corporate parenting responsibilities rather than have ‘regard to’ them.

2) Strategic planning and reporting

All corporate parents should be required to develop and publish plans setting out the actions they will take to comply with corporate parenting responsibilities; SMART objectives for improving support, services or outcomes for care-experienced young people; and how these objectives will be achieved.

We recognise that it takes time to implement change, whether rolling out training programmes or embedding new data metrics, so corporate parenting plans should be developed and published every three years.

However, to increase transparency and accountability about these responsibilities being embedded into the day-to-day operation of organisations, corporate parents should also be required to publish annual

progress reports on the implementation of plans, which should include any relevant outcomes data to track the impact of changes.

It should be mandatory for corporate parents to develop, publish and submit corporate parenting plans and we recommend that a range of enforcement measures or penalties are established for corporate parents that don’t comply with this requirement.

“Have a roadmap of what they will do and by when and hold them accountable for these deadlines”

Care-experienced young person,
Yorkshire

Recommendation – We recommend that the Department for Education oversee and enforce the failure of any corporate parenting organisations to submit corporate parenting plans or progress reports using a range of enforcement measures.

3) Assessment of compliance through regulatory frameworks

Effective regulation can play a significant role in driving behaviour change. The extent to which organisations are complying with their corporate parenting responsibilities should be assessed as part of their relevant regulatory or inspection frameworks.

We are proposing that some specific regulators be appointed as corporate parents, such as Ofsted and the Care Quality Commission, given their existing role in inspecting services that provide care or support to care-experienced children and young people. In other sectors, we would expect the relevant Government Departments to encourage regulators to adapt regulatory frameworks to adequately reflect new corporate parenting legislation.

Recommendation – We recommend that relevant regulators, inspectorates and ombuds-organisations ensure that assessments of how well corporate parenting organisations are complying with corporate parenting responsibilities are adequately reflected in relevant regulatory frameworks.

4) Increased transparency and scrutiny of the Government's progress in improving support, services and outcomes for care-experienced young people

To provide a comprehensive and joined-up approach, we recommend that a cross-Government corporate parenting plan be developed every three years to summarise the Government's overarching strategy for corporate parenting. This should be additional to individual Departmental plans and demonstrate the main objectives and plans being taken across Government to improve support, services and outcomes for care-experienced young people.

We recommend that an annual progress report is published, which includes relevant data about the experiences and outcomes of care-experienced young people to track progress. To enable Parliamentary scrutiny of Government's plans and progress, we recommend that the Secretary of State for Education be required to provide an annual statement to Parliament upon publication of the annual progress report.

Recommendation – We recommend that the Government be required to develop and publish a cross-Government corporate parenting plan every three years, co-ordinated by the Department for Education, which brings together strategic objectives and plans from across Government Departments; as well as publishing an annual progress report.

The Secretary of State for Education should be required to make an annual statement to Parliament upon publication of the progress report to enable Parliamentary scrutiny of the Government's plans and progress.

5) Putting young people's voice and views at the heart of corporate parenting

In Scotland, the Scottish Government develops and publishes a corporate parenting progress report every three years. Whilst this can be a helpful celebration of the positive action being taken by corporate parents across the country, it does not allow for effective challenge or constructive feedback, and unfortunately doesn't always chime with the experiences or views of care-experienced children and young people.

We have heard consistently that corporate parents should be accountable to care-experienced children and young people. Corporate parenting plans should be meaningfully informed by the views of care-experienced young people. Additionally, we recommend that an independent body, such

as the Office of the Children's Commissioner for England be resourced to develop a shadow corporate parenting report every three years, based on consultation with care-experienced young people about progress to date, areas for improvement, and what care-experienced young people would like to see from their corporate parents in the future. This shadow report should be shared with corporate parents and should be used to inform their future planning.

"Need to be answerable to people with lived experienced - have to listen to us and be accountable"

Care-experienced young person

Recommendation – We recommend that the Children's Commissioner's Office be funded to develop and publish a shadow corporate parenting report every three years based on consultation with care-experienced young people about progress to date and areas for improvement.

6) Accountability and recourse for care-experienced young people

Outside of existing regulatory frameworks and the proposed reporting frameworks, there should be more centralised accountability and recourse for care-experienced young people where there are serious concerns about compliance. This could be, for example, if a corporate parent has eligibility criteria for service provision that indirectly discriminates against care-experienced young people, or if an organisation's decision-making or conduct has a detrimental impact on care-experienced young people's wellbeing, safety or stability.

We recommend that an independent body, such as the Children's Commissioner's Office be granted additional powers, set out in legislation, to receive and raise complaints about flagrant or systemic breaches of corporate parenting responsibilities, and to be able to require corporate parents to take specific action to rectify this and ensure compliance.

Recommendation – We recommend that the Children's Commissioner's Office be given additional powers to hold corporate parents to account, including powers to:

- receive complaints about flagrant or systemic breaches of corporate parenting responsibilities;
- compel information from corporate parenting organisations as part of investigations into complaints;
- write to a corporate parenting organisation setting out remedial action that it must take to ensure compliance with corporate parenting responsibilities; and
- undertake enforcement action or penalties if requested remedial action is not taken.

Part 5: Should corporate parenting be renamed?

The name ‘corporate parenting’ is controversial. Throughout the inquiry we have heard consistently that care-experienced young people have mixed views and feelings about the term ‘corporate parenting’.

A minority of the children and young people we heard from were supportive of the name because it conveyed, in fairly literal terms, the nature and limitations of corporate parenting. Others thought that the term ‘corporate parenting’ already had some currency or public understanding and that this was helpful for consistency when implementing reforms.

“From my understanding a local authority is a ‘corporate parent’ exactly because they are a care corporation and they can’t be a mum or a dad”

Care-experienced young person

However, a much greater number of children and young people shared concerns that the term was inappropriate or problematic. We heard that the word ‘corporate’, as a term felt too cold and impersonal.

“We believe the concept of ‘corporate parenting’ encourages detached and dispassionate language and terminology and works against what children consistently say they want from care – to feel loved, secure, to understand their identity and their past and to be connected to people who appreciate and value them and stay in their lives.”

**Article 39,
in response to our call for evidence**

In direct contradiction to this, other children and young people felt that the term ‘corporate’ was appropriate precisely because it captured the fact that corporate parenting is not a form of parenting in the usual sense, instead being characterised by the involvement of corporations with which care-experienced children and young people usually do not have a personal relationship.

The term ‘parenting’ was the more controversial of the two. A small number of children and young people supported the use of the term, feeling that it was important to convey the idea that corporate parents should act, in some sense, as parents, and that they should take their responsibilities as corporate parents as seriously as they would take direct parental responsibility.

However, the majority of children and young people we heard from took the opposite view. Some said that they felt uncomfortable with the use of the term ‘parenting’ to describe their relationship with corporations. Many pointed out that corporate parenting is not and never will be anything like ‘parenting’ in the usual sense of the word, and that this made the use of the term inappropriate.

Other children and young people pointed out that, for many, being in care does not mean having no parent, that they still had a significant and important relationship with their biological parent(s) and that the use of the term ‘parenting’ to describe their relationship with corporations created a conflict with their feelings about their relationship with their biological parent(s).

We heard very clearly that the term ‘parenting’ is an emotive one, and that many children and young people were uncomfortable with its use in the name ‘corporate parenting’.

“Article 39 has previously suggested ‘shared parenting’ as possible new terminology, since this recognises the continuing role of birth parents for many children (and adults), and also signals the collective responsibilities of different professionals and organisations in the life of a child or an adult.”

Article 39,
in response to our call for evidence

“At the end of the day, they are not your parent, and never will be.

A parent is the person who helps you set up your room for university, with a tear in their eye. A parent is the person who brings you soup and holds your hand when you are ill. A parent is someone who holds you when you are scared, and who tells you they are proud of you.

As much as we want there to be, there will never be this same connection between a corporate parent and a young person in care.

Why? Because the young person will always know that that person gets paid to do what they do.”

Care-experienced young person, aged 19, South West

When evaluating the success of reforms to corporate parenting, much will depend on what corporate parenting means to care-experienced young people, and the use of a term which can feel jarring or stigmatising could negatively effect this. The Independent Review of Children’s Social Care recommended that corporate parenting be renamed to community parenting. We recommend that there is further consultation with care-experienced young people about renaming corporate parenting and potential alternative options. Some of the alternatives suggested throughout our inquiry include:

- Community parenting
- Shared parenting
- Community champions
- Community guardians
- Care-experienced champions
- Collective guardians
- Collective parenting
- Care-experienced support network
- Corporate care-givers
- Appointed advocates

Recommendation – We recommend that the Department for Education consult further with care-experienced children and young people about renaming ‘corporate parenting’ and potential alternative options.

Recommendations

We recommend that:

- 1) The Government legislates to introduce a new set of more action-focused corporate parenting responsibilities, with a stronger legal weighting⁴³, to replace the existing corporate parenting principles.
- 2) The Department for Education develops and publishes statutory guidance setting out the requirements for new corporate parenting organisations and ways in which these can be fulfilled, the support available to them, how they will be held to account, and examples of best practice.
- 3) The Government legislates to confer corporate parenting responsibilities onto a broad range of public sector bodies and organisations.
- 4) The Secretary of State for Education be given the power to confer corporate parenting responsibilities onto other public sector organisations in the future, in line with agreed criteria.
- 5) The Department for Education appoints and funds an independent organisation to provide training, advice, guidance and support to corporate parenting organisations to enable them to effectively fulfil their responsibilities and promote best practice.
- 6) Corporate parenting organisations be required to develop and publish corporate parenting plans every three years, and progress reports annually, and submit these to their relevant Government Department.
 - a. Corporate parenting plans should set out SMART objectives for how organisations will fulfil their corporate parenting responsibilities over this period, an action plan for delivery and how plans have been informed by the views of care-experienced young people.
- 7) The Department for Education should oversee and enforce the failure of any corporate parenting organisations to submit corporate parenting plans or progress reports using a range of enforcement measures.
- 8) The Government be required to develop and publish a cross-Government corporate parenting plan every three years, co-ordinated by the Department for Education, which brings together strategic objectives and plans from across Government Departments; as well as publishing an annual progress report.
 - a. The Secretary of State for Education should be required to make an annual statement to Parliament upon publication of the progress report to enable Parliamentary scrutiny of the Government's plans and progress.
- 9) An independent body, such as the Children's Commissioner's Office be funded to develop and publish a shadow corporate parenting report every three years based on consultation with care-experienced young people about progress to date and areas for improvement.
- 10) Relevant regulators, inspectorates and ombuds-organisations ensure that assessments of how well corporate parenting organisations are complying with corporate parenting responsibilities are adequately reflected in relevant regulatory frameworks.

⁴³ Requiring new corporate parenting organisations to comply with new corporate parenting responsibilities, so far as this is consistent with the exercise of their other functions, instead of just having regard to principles.

- 11) An independent body, such as the Children's Commissioner's Office be given additional powers to hold corporate parents to account, including powers to:
 - a. receive complaints about flagrant or systemic breaches of corporate parenting responsibilities;
 - b. compel information from corporate parenting organisations as part of investigations into complaints;
 - c. write to a corporate parenting organisation setting out remedial action that they must take to ensure compliance with corporate parenting responsibilities; and
 - d. undertake enforcement action or penalties if requested remedial action is not taken.
- 12) The Department for Education consult further with care-experienced children and young people about renaming 'corporate parenting' and potential alternative options.
- 13) The Government funds and implements a workforce development programme to upskill frontline professionals who work with care-experienced children and young people, including building their understanding of the impact of childhood trauma.
- 14) The Government improves and increases the collection of data relating to children and young people's outcomes, which is disaggregated by care experience.



Appendix A: Proposed corporate parenting responsibilities

It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions:

- 1) to act in the best interests, and promote the physical and mental health, well-being and safety, of care-experienced children and young people;
- 2) to proactively identify and respond to the views, wishes and feelings of care-experienced children and young people, including about service improvement;
- 3) to assess the needs of care-experienced children and young people for services and support it provides, and any barriers, stigma or discrimination they may face;
- 4) to take a trauma-informed approach, and to adapt or introduce policies, services or opportunities to meet the needs of care-experienced children and young people and address any barriers, stigma or discrimination they face;
- 5) to promote high aspirations and seek to secure the best outcomes for care-experienced children and young people, and prepare them for adulthood;
- 6) to promote, protect and fulfil the full rights of care-experienced children and young people, including those contained in the UN Convention on the Rights of the Child;
- 7) to act in ways that promote and protect the stability and security of care-experienced children and young people in their home lives, relationships, education, employment or finances;
- 8) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to care-experienced children and young people.

Appendix B: Our proposed list of corporate parents

List of public sector organisations that we recommend are appointed as corporate parents under new legislation

- All tier-one local authorities in England and district councils
- Metro Mayors
- Department for Health and Social Care, NHS England, the Care Quality Commission, all Integrated Care Boards, and all NHS Trusts (including Foundation Trusts, Mental Health Trusts, Ambulance Service Trusts and others)
- Department for Education, Ofsted, the Office for Students, schools (including maintained schools, academies, free schools and alternative provision), further education providers, and higher education institutes and providers
- Department for Levelling Up, Housing and Communities, and housing associations
- Department for Work and Pensions, and Job Centre Plus
- Ministry of Justice, police forces, Youth Justice Board, His Majesty's Prisons and Probation Service, and Police and Crime Commissioners
- Department for Digital, Culture, Media and Sport, Arts Council, and Sport England
- Department for Transport and regional transport authorities
- The Home Office
- His Majesty's Treasury, and the Cabinet Office

Appendix C: Methodology

The APPG's Corporate Parenting Inquiry was co-ordinated by Become, the national charity for children in care and young care leavers, which acts as secretariat to the APPG.

The Inquiry ran from July 2023 to January 2024, with evidence being collected between July and October 2023.

Research Questions

The Inquiry had three separate evidence-gathering streams, which collectively investigated the following research questions:

- How should the corporate parenting responsibilities be adapted and strengthened?
- Which organisations should be corporate parents, which should not, and why?
- Are there examples of good practice where a public body has:
 - collected feedback from and listened to the views of care-experienced children and young people,
 - adapted their policies, practices or services in order to better serve and support care-experienced children and young people,
 - provided specific support services for care-experienced children and young people, or
 - provided ringfenced opportunities, such as employment, training or grants?
- How should corporate parents be supported?
- How should corporate parents be held to account?
- Should corporate parenting be renamed?

Evidence Gathering

In total, the Inquiry received evidence or heard from **more than 200 individuals and organisations**. This was done using three separate methods, each of which are set out below.

1) Sessions for Care-Experienced Children and Young People

In total, we conducted 14 sessions between August and October 2024 to hear the views of care-experienced children and young people about the proposals to reform corporate parenting in England.

This included six regional sessions covering all regions in England: London, the Midlands, the North West, Yorkshire and the North East, the South West, and South East and East of England.

We also held a number of sessions aimed at particular groups of care-experienced young people, including those from minoritised ethnic groups, those who identify as LGBTQI+, disabled children and young people, care-experienced young parents, and young people who have been subject to immigration control. These sessions were intended to provide a safe space to discuss the particular needs, experiences and views of children and young people belonging to those groups.

We held three separate sessions with groups of care-experienced young people who are part of participation groups with Drive Forward Foundation, Sister System and Leaders Unlocked.

We also received and included the views, insights and quotes from care-experienced young people who had attended separate engagement sessions held by Become, Coram Voice and the National Care Leaving Benchmarking Forum, which is run by Catch22.¹⁴

In total, we heard from 167 care-experienced children and young people.

2) Call for Evidence

We also issued a call for evidence, which was open to any individuals and organisations with views or evidence about corporate parenting in England.

We received responses from a wide variety of individuals, including care-experienced young people and adults, professionals, academics, foster carers, parents, carers, and members of the public.

We also received evidence from a variety of organisations including local authorities, public bodies, charities and research institutions.

3) Survey for Public Bodies

Through a separate survey, we collected evidence from public bodies in England.

This survey had a particular focus on identifying existing good practice, as well as understanding what support public bodies would need as prospective corporate parents and to be able to deliver the strongest impact in improving support, services and outcomes for care-experienced young people.

Evidence Coding and Analysis

During the coding and analysing of evidence, all sources of evidence were treated equally—no weighting was applied and responses from individuals were handled identically to responses from organisations and public bodies. The findings and recommendations contained in this report are therefore a reflection of the full body of evidence that we collected from all sources.

Whilst we have endeavoured to reflect the evidence as comprehensively as possible, we have not been able to include every opinion and viewpoint expressed in the various sources of evidence. Throughout the report, as far as possible, we have tried to highlight where there have been significant differences of opinion, or consensus on any particular issues.

¹⁴ Some of these sessions were carried out prior to the start of the inquiry, between March and August 2023.

Acknowledgements

The APPG would like to thank all of the more than 200 individuals and organisations who contributed their experiences, views and recommendations to the Inquiry.

A total of 185 individual people provided input, of whom 167 were care-experienced children and young people. We particularly want to thank these children and young people for sharing their views, experiences and ideas as part of the inquiry.

We would also like to thank the 23 organisations—including public bodies, charities, research institutions and others—that provided evidence.

Our thanks goes to the APPG Officers for chairing regional sessions for care-experienced young people: Steve McCabe, MP for Birmingham, Selly Oak; Tim Loughton, MP for East Worthing and Shoreham; Edward Timpson CBE KC, MP for Eddisbury; and Rachael Maskell, MP for York Central.

Thanks to all of the individuals, not named here, who responded to our call for evidence. Thanks also to the organisations who responded to our call for evidence and our survey for public bodies, including:

- Article 39
- Barnardo's
- BBC
- CoramBAAF
- Coram Voice
- The Department for Education
- The Department for Health and Social Care
- Frontline
- Haringey CYPS
- HM Treasury
- Leicestershire Partnership NHS Trust
- London Borough of Waltham Forest
- The Mighty Creatives
- MyBnk
- National Leaving Care Benchmarking Forum (NLCBF)
- National Youth Advocacy Service (NYAS)
- NHS Leicester, Leicestershire and Rutland ICB
- The Office of the Children's Commissioner for England
- Ofsted
- The Rees Centre, University of Oxford
- Social Work England
- Sport England

Our special thanks also goes to Chloe Dobson and Lynsey Emery at Who Cares? Scotland for their insightful contributions and support for this Inquiry.

Thanks also to the many organisations that supported the young people's workshops, including the Drive Forward Foundation, Leaders Unlocked, and Sister System.

Finally, thanks to Become, the national charity for children in care and young care leavers, without which this Inquiry would not have been possible. As secretariat to the APPG, Become co-ordinated this Corporate Parenting Inquiry. Particular thanks go to Matt Blow, Policy & Public Affairs Manager at Become and Senior Clerk to the APPG for overseeing this Inquiry, to Mark Paul and Simone Connolly for their research and writing, and to Jo Petty and Henrietta Imoreh for overseeing the participation of care experienced children and young people.

BECOME.

THE CHARITY FOR CHILDREN IN CARE
AND YOUNG CARE LEAVERS



for Care-Experienced
Children and Young People

Contact

You can find out more about the APPG for Care-Experienced Children and Young People and join our mailing list by visiting: <https://becomecharity.org.uk/become-the-movement/appg/>

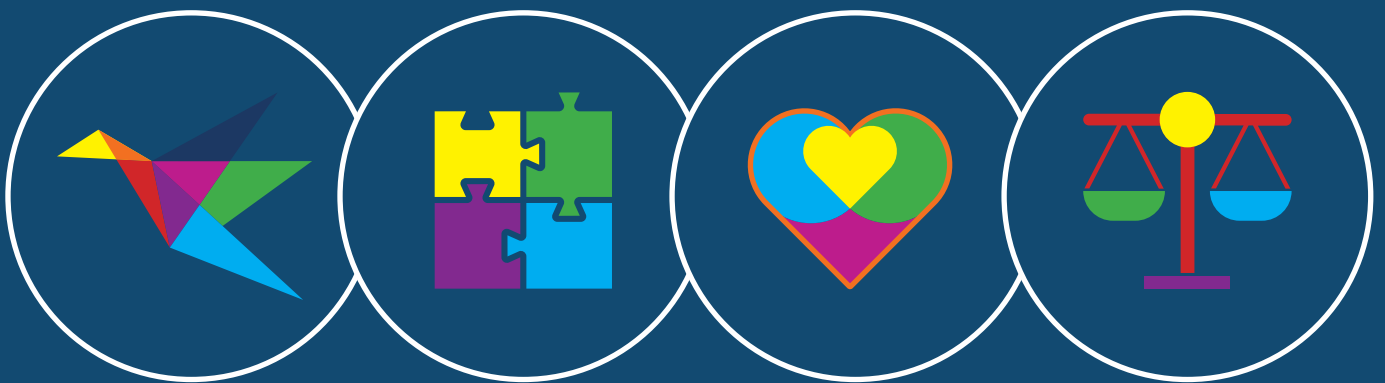
You can also e-mail us at appg@becomecharity.org.uk

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A Rights-Respecting Approach to Justice for Children and Young People: **Scotland's Vision and Priorities**



This paper has been prepared by the Scottish Government and the Youth Justice Improvement Board. The priorities are based on the views of children, young people, key stakeholders and partners.



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Ministerial Foreword



The vision for children and young people and accompanying action plan represent a shared foundation between the Scottish Government, key partners and children and families to work together to ensure that the rights of children in Scotland are protected and upheld, and to prevent children and young people from being involved in behaviour which leads them into conflict with the law.

In addition, Scotland must ensure that those already involved in such behaviour are fully supported to deal with its causes and effects, and that this continues throughout their journey towards the most positive destinations possible.

The vision also supports this Government's commitment to publishing and implementing a new strategy for youth justice and to making sure that no under-18s, who should not be there, are held in young offenders institutions.

We have seen many achievements over the last 12 years since the introduction of the whole system approach and the move to a preventative strategy.

Partners across the care and justice sectors have worked hard over the lifetime of the last youth justice strategy, [Preventing Offending: Getting it Right for Children and Young People](#), to ensure that positive changes have taken effect, and that the momentum of the improvements prior to the strategy were continued. Despite progress made over the years, there is still more to be done to ensure that all children and young people – regardless of any harm they have caused or are accused of causing – are respected, supported and their rights protected and upheld.

There are obstacles still to overcome as highlighted by recent reports such as The Independent Care Review's '[The Promise](#)', the [Expert Review of the Provision of Mental Health Services at HMP&YOI Polmont](#) and '[Rights Respecting? Scotland's approach to children in conflict with the law](#)'.

In Scotland we must do more to avoid criminalising our children; we must ensure that their rights are upheld and that they are supported to flourish and contribute positively to their communities. We must also do more to ensure systematic protections for the rights and interests of victims, particularly where those victims are themselves children.

The challenge over the last year due to the COVID-19 pandemic has added a further layer of complexity to what is an already multifaceted challenge to the workforce. We will capitalise on the hard work which has been achieved over the years and will encourage all those working with children and young people to understand their role in making change happen. Now is the time to get it right for all of our children and young people in Scotland.

Clare Haughey MSP

Minister for Children and Young People



1. Introduction

In Scotland we have an ambition 'to be the best place in the world to grow up'. We want all of our children and young people to feel safe, protected, loved and supported at every point in their life. Preventing children and young people from going down a path where they are in conflict with the law and supporting them appropriately, constructively and effectively when they do, has been integral to our agenda for over a decade. This follows Getting it Right for Every Child (GIRFEC) and a multi-agency Whole System Approach (WSA) assisting not only the child but anyone affected, along with their family and wider community.

Delivery of our approach to youth justice in Scotland has been rooted in addressing the needs of children and young people, using lay but specially trained panel members, emphasising the role of the family, and adopting preventative and educational approaches as per [Lord Kilbrandon's report](#) in 1964. Wherever possible and appropriate, Scotland seeks to ensure that children are diverted away from formal measures with alternative interventions/services available, such as the use of early and effective measures. Alongside this approach it should be the case that victims are better supported and that awareness of all alternative routes, and the rationale for them, is raised and well profiled.

Over the last 12 years, this move to a more preventative approach has delivered a remarkable 75% reduction in children referred to the Children's Reporter on offence grounds, an 85% reduction in the number of children and young people prosecuted in Scotland's courts and a 93% reduction in 16- and 17-year-olds being sentenced to custody. These positive reductions, with their benefits for children and their communities, are the results of a sustained collective commitment by local authorities and key partners across a range of sectors, professions and disciplines.

[The Promise](#) published in February 2020 states that a fundamental shift is required in how decisions are made with children and families. The Promise goes on to observe that despite good intentions, far too many children and families within the care system have experienced a fractured system that operates only when they are facing crisis.

A new approach to youth justice in Scotland is required, which continues to align with UNCRC, proceeds from a rights-respecting approach, supports all children under the age of 18 and young people up to age 26 to participate in decisions about them, directs positive support to families, and offers that support through safe and caring relationships.

The Promise's key findings and calls to action for youth justice are centred on avoiding and stopping the criminalisation of care-experienced children. Whilst working to prevent criminalisation of all children, Scotland must develop a more progressive, rights-based youth justice approach which builds on the Kilbrandon principles and makes them a reality for all. Meeting the imperatives of the Promise requires a fundamental shift in focus, time, commitment, resourcing and underlying structures.



There is a recognition that Scotland should work to move away from 'cliff edges' determined by chronological age, whereby children and young people must transfer from one system to another when they reach a certain age. More needs to be done to ensure cross-over of services, interventions, supports and systems and more gradual transitions between these services and systems ensuring that supports and interventions are based on developmental ability and capacity rather than age. Improved collaboration with youth justice and adult services has been a key priority for a number of years. This is reflected in [Justice in Scotland: Vision and Priorities](#), published in 2017. This continued collaborative working, to provide smooth transitions and assist delivery of services beyond the age of 18 is, therefore, required.

The continuation of early intervention and prevention is important, with wrap-around support for families and children and young people provided at the earliest opportunity, including increased provision around education and mental health and consideration of planning and decision making through family networks such as family group decision making.

[Rights Respecting? Scotland approach to children in conflict with the law](#) concludes that Scotland would benefit from thinking about children in conflict with the law from the perspective of rights. All children are rights holders and these rights must be upheld in line with the United Nations Convention of the Rights of the Child (UNCRC). The UNCRC sets out the fundamental rights of children, which must be adhered to. The Scottish Government is committed to incorporating UNCRC into domestic law in Scotland. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill passed its final stage in the Scottish Parliament on 16 March 2021. The Bill will commence six months after Royal Assent. This is about recognising and upholding a child's rights alongside presenting needs.

The definition of a child and the complexity of landscape for those under the age of 18 who are in conflict with the law, require attention, but to arrive at comprehensive rights-respecting solutions the focus of the vision defines children as under age 18 and young people up to age 26.

The needs of victims, particularly child victims, must also be addressed. It is important to acknowledge that many of these children are often the same, that victimisation itself contributes to further offending, and research, including that by the [Howard League](#) from 2016, shows that those who cause harm are often victims themselves first.

The COVID-19 pandemic has affected all, including children and young people. Services and systems have had to adapt to a 'new norm' with the long-term effects of the pandemic currently unknown, but it is clear that services and systems have adapted and changed during the pandemic and will continue to do so.

National Performance Framework

Scotland's National Performance Framework aims to create a more successful country, give opportunities to all people living in Scotland, increase wellbeing, create sustainable and inclusive growth, reduce inequalities and give equal importance to economic, environmental and social progress. This is underpinned by core values - to treat all our people with kindness, dignity and compassion, respect the rule of the law and act in an open and transparent way. The framework sets out national outcomes with progress



being measured against 81 national indicators. The outcomes which are specifically relevant to this agenda are:

- we grow up loved, safe and respected so that we realise our full potential;
- we live in communities that are inclusive, empowered, resilient and safe;
- we are well educated, skilled and able to contribute to society;
- we are healthy and active;
- we respect, protect and fulfil human rights and live free from discrimination.

Youth Justice Strategy 2015-2020

In June 2015 the Scottish Government published the Youth Justice Strategy '[Preventing Offending: Getting it right for children and young people](#)' (the strategy). The aims of the strategy were to support the overarching vision, via commitments under three key priority themes: advancing the whole system approach; improving life chances; developing capacity and improvement.

The strategy was broad in scope but at its heart was a child-centred, preventative approach which emphasised multi-agency partnership working aimed at:

- helping communities to feel safe from crime and disorder;
- improving life chances for children and young people involved in or at risk of offending;
- enabling all children and young people to be confident individuals, effective contributors, successful learners and responsible citizens.

Progress made under the five-year strategy is outlined in the [Youth Justice Strategy Preventing Offending: Getting it right for children and young people 2015-2020 Delivery of the priorities](#). The report highlights work still to be addressed around advancing WSA, collation of data, a need to address mental health issues, speech, language and communication needs, and child criminal exploitation in Scotland.



2. Vision

We want Scotland to be the best place in the world to grow up, where all children and young people are loved, treated with respect, have their voices heard, their rights respected and their outcomes improved.

Children, young people and their families are supported at an early stage through early intervention and preventative approaches.

For those who come into conflict with the law, their rights must be upheld, their life chances improved and services and systems must support them effectively to address their needs and the circumstances which have led to their behaviour, in order to achieve positive outcomes. Children are diverted away from the criminal justice system, wherever possible and appropriate, in order to avoid the criminalisation of their behaviour, but receive effective support to attend to any needs underlying the harmful conduct. For the small minority who will go through the criminal justice system then they are meaningfully supported to participate and understand the system and processes.

Support and information for victims is enhanced with work undertaken to ensure that victims are appropriately protected irrespective of the age of the person who has caused the harm or the system that deals with them.

Providing trauma-informed approaches and continued commitment to partnership approaches are core to achieving this vision for Scotland.



3. Outcomes and Priorities

There are a number of outcomes and priorities to be achieved to deliver on the vision and to ensure that all children and young people in Scotland are supported to achieve better outcomes in the future. This is reliant on the commitment of all, with resources and planning placed in areas which offer the supports required to make a difference.

Outcomes

In Scotland we want to work towards achieving the following outcomes by 2024.

- **Rights** of all children are upheld and they are supported to **understand** what this means for them and what to expect.
- Children and young people are supported to actively **participate** and **engage** in the decisions which affect them.
- **Victims** are supported and their rights are upheld, with specific attention paid to child victims and their families.
- Children are diverted away from the Criminal Justice System to appropriate alternative supports through the continued delivery of the **Whole System Approach**.
- To the extent possible and appropriate, no under-18s are remanded or sentenced to detention a young offenders institute.
- We have the required **data and evidence** on children and young people, to inform better inform policy and practice so that children and young people benefit.
- Children and families are **supported at an early stage** to improve their life chances with their **wellbeing** and **mental health** needs addressed.
- **Speech, language and communication needs** for all children and young people are taken in to consideration both when assessing individual needs and adapting information and communication used in formal processes.



Priorities

Key priorities have been highlighted as areas to be addressed in order to meet the outcomes by 2024.

[Consultation with stakeholders](#), children and young people was key to informing these priorities. Not only was it important to hear the views of those working directly with children and young people, but it was also important to hear from those who are most affected - the children and young people themselves. The views gathered were imperative to the development of this vision and priorities paper. Initial engagement took place with the Youth Parliament in March 2020 and in August the Scottish Government enlisted the support from the Scottish Throughcare and Aftercare Forum/ Children and Young People's Centre for Justice (CYCJ) Youth Justice Voices participation project. Members of their youth-led steering group 'YouthJustUs' became Youth Justice Visionaries to develop a guide to be used by practitioners working with children and young people. They also carried out engagement sessions and sought views from children and young people including those in secure care. Children and young people in HMP&YOI Polmont were also asked for their thoughts and opinions through one-to-one phone calls and group sessions delivered by Barnardos.

Based on the evidence and information provided throughout the engagement process with both stakeholders and children and young people, the following priorities have been established.

Rights and Understanding

- Services provided to children and their families uphold their rights, through all aspects of work, in line with UNCRC requirements and Scottish Government legislation, including monitoring services to ensure rights are being upheld.
- Support to be offered to children and families to understand and know their rights so they can exercise them.
- Promotion of better public understanding and awareness of children and young people in conflict with the law and the systems in place to support them.
- For those who go through the Criminal Justice System their experience should be meaningful and participative; one which educates, improves, understands and upholds the rights of children and young people.
- All children and young people should be able to access services to address trauma, abuse, neglect and communication needs.
- Provision should be made to ensure professionals/services are taking into account additional support needs, including speech, language and communication needs, to improve their life chances.
- Provide activities and opportunities for children and young people to engage in education, gain employment and to have stable housing options as a necessity.



Participation and Engagement

- Improve participation and engagement of children and young people ensuring that they have developmentally appropriate participation opportunities to help shape the decisions, services and supports that affect them. This will include addressing barriers to engagement, providing access to information and processes in language that they understand and taking account of cultural differences or disabilities and any communication needs.

Victims

- Information and support for victims is enhanced, considering good practice, whilst respecting data protection and confidentiality rights. This includes access to restorative justice approaches where appropriate, regardless of the age of the person responsible or the outcome of the case.
- Support must be trauma-informed and tailored to the needs of all participants.
- Children and young people at risk of criminal or sexual exploitation are supported through increased understanding of the nature, scale and extent of the issue and awareness raising with practitioners and communities.

Whole System Approach

- Continue to deliver a reinforced and reinvigorated WSA to under-18s - with cohesion and integrity in all its elements, supporting the development of the workforce to deliver effective multi-agency partnerships and creating lasting systems and culture change. In particular this will involve supporting social work and wider workforce to:
 - develop a consistent approach to early and effective interventions;
 - work with those whose behaviour presents a high risk of harm to others - including embedding Care and Risk management processes.
- To the extent possible, no under-18s are detained in young offender institutions, including those on remand, with secure care and intensive residential and community-based alternatives being used, where therapeutic trauma-informed approaches are required for the safety of the child or those around them and where community alternatives are available for those who require additional support.
- Extend WSA to those beyond the age of 18 providing access to support up to age 26 where possible and appropriate.
- Raise the age of referral to the Principal Reporter to 18 for all children with a presumption against under-18s in the Criminal Justice System, consistent with the Lord Advocate's prosecution policy. Where this is not possible, they must be treated in a way that is trauma-informed and recognises their age and stage of development.

Data and Evidence

- Data on children and young people is recorded, gathered and analysed in order to evidence the need for change and guide further improvements in policy and practice and to ensure that improvements are sustained.



Early Intervention and Support

- Children and families are supported at an early stage to assess, identify and respond to wellbeing needs, to reduce stigma and improve their life chances and outcomes.
- Relationships are built and access to services to address adverse childhood experiences (ACEs), trauma and other challenging experiences is improved through the delivery of trauma-informed approaches, youth work, gender-based approaches and effective multi-agency partnerships.
- All children and young people have timely access to appropriate services to address mental health issues.
- Workforces are supported to develop and continually address the needs of children and young people in Scotland.

These priorities will be broken down into tangible actions to be delivered between June 2021 and June 2024. Details of the actions to be delivered in year one are contained within the [action plan](#) which accompanies this vision. The action plan is a live document which will evolve over the years of delivery. Whilst not everything can be achieved in year one, upholding children's rights - whether as victims or as those responsible for harm to others - will be central.

Challenges and Barriers to Success

A lack of investment and resources in services for children and young people are a barrier to achieving high quality provision in Scotland, including gaps in adequate provision such as mental health pathways for children and young people in conflict with the law, increased waiting times for mental health support, along with an inconsistent approach to delivery across Scotland.

Other challenges include 'siloes' working and information sharing issues. Structural inequalities such as poverty and discrimination are also concerns along with cultural and attitudinal barriers to how children and young people in conflict with the law are perceived and also how they are assisted based on age. A degree of flexibility is required around delivery to meet local needs, including acknowledgement around differences in rural and island services along with variations in resourcing levels and access to training.

A lack of alternatives to custody is a challenge which needs to be addressed. This includes not only alternatives to young offenders institutions for under-18s and in particular those on remand but also includes community provisions.

In order to address these challenges we need to consider the specific interventions required and how we assess wider need. We need strong partnerships and multi-agency responses and further funding and investment in this area, including wider legislative change. In order to justify such investment and shift in resources we need reliable and consistent data and intelligence to be able to understand the issues and factors facing children and young people such as life challenges, offending patterns and behaviour and the role these play in bringing children and young people into conflict with the law.



Links to Wider Landscape and Policy Development

The issues raised by children and young people coming into conflict with the law is a complex landscape which covers a vast array of overarching themes and policy drivers such as poverty, GIRFEC, community justice, safer communities, criminal justice, housing, and health. Since the start of the COVID-19 pandemic in 2020 we have seen how quickly things can change and how practice and policy needs to be flexible to adapt in order to respond to the needs of children and young people at every point. Annex A provides details of the links between areas of interest and highlights the importance of a joined up approach to working across a number of different platforms.



4. Delivery and Governance

The development of this vision and priorities document is set against the backdrop of the COVID-19 challenge. Organisations and working practices have adapted over this time, in order to meet the demands which COVID-19 has brought. This adaptation will continue as developments unfold.

Multi-Agency Partnership Working

Continuing to build on the strong partnerships which have been developed over the years will be key to delivering the priorities. Ensuring that the workforce continues to develop and that professionals are skilled, qualified and confident to provide the supports children, young people and families need.

Together we will deliver this vision for children and young people in Scotland through continued collaborative working.

Action Plan

An agreed [action plan](#) accompanies this vision to deliver the vision and priorities outlined. The action plan will be a rolling document, with flexibility built in to adapt the plan to address the drivers within the Promise and incorporation of UNCRC and other new priorities as they emerge.

Child-Friendly Version

A child-friendly version of this document will be developed by young people.

Evidence and Data

The vision and priorities are underpinned by the [views](#) and information provided by both partners and children and young people with experience of the system. We will continue to use evidence and data available and listen to the views of those directly affected, in order to inform the priorities for year two and beyond.

Youth Justice Standards

[Standards for youth justice](#) have been revised and published alongside this vision and priorities document. The standards outline minimum expectations for all strategic and operational services delivering youth justice in the community, secure care and YOI.

Governance/Collective Leadership

The Youth Justice Improvement Board (YJIB) made up of membership from Crown Office and Procurator Fiscal Service (COPFS), Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS), Police Scotland, Third Sector, CYCJ, COSLA and Social Work Scotland will work together with those with lived experience to support and oversee delivery of the vision and action plan.

Groups will be identified and set up to address the priorities and deliver on the actions outlined in the accompanying action plan.

Monitoring and reporting arrangements to YJIB and to the Promise Oversight Board will be put in place.



Annex A

Drivers and Policy Links

The following details some of the key areas affecting children and young people in Scotland and work being undertaken either within the Scottish Government or elsewhere to address the needs of children, young people, their families and wider communities.

The Promise

The Scottish Government remains fully committed to deliver on its pledge to care-experienced people in Scotland by accepting and responding to the care review conclusions. Keeping the Promise requires both immediate action to improve experiences and outcomes for children, young people and their families who are currently in or on the edge of care and also requires action over the longer term to improve the level of support for families from birth through to adulthood to significantly reduce the numbers of families coming into the care system.

Our approach to keeping the Promise will drive our work to recovering and renewing children's services after COVID-19. The work to implement the Promise will be underpinned by the incorporation into Scots Law of the UNCRC.

We are committed to creating a structure that can facilitate the re-design of whole system approaches to care and support. This begins with embedding the commitments that have already been made to care-experienced people into policy and delivery, with significant and intensive work across the entirety of government policy.

We have supported the establishment of a non-statutory company – The Promise Scotland. Their purpose is to support and have oversight to enable the full implementation of the Care Review's conclusions.

The Promise Scotland published [The Plan 21-24](#) on 31 March, the first of three, three-year plans. Collectively these plans will lay out Scotland's route-map to implement all of the Independent Care Review by 2030, and #KeepThePromise. The Plan 21-24 outlines five key priorities areas requiring focus and action; A Good Childhood; Whole Family Support; Supporting the Workforce; Planning, and; Building Capacity. Youth Justice is a specific theme within A Good Childhood where action must be taken to avoid and stop the criminalisation of care-experienced children.

The £4m Promise Partnership Fund launched on 1 February 2021. This fund is being administered by the CORRA Foundation on behalf of the Scottish Government. The Promise Scotland helped to shape the process and the Decision Makers Panel were a group with lived experience of Scotland's care system. The aim of the fund is to help organisations with early intervention and to deliver changes to better support children, young people and families in or on the edges of care. A further £4m is committed for 2021/22 and baselined for future investment.



Family Support Delivery Group

The Scottish Government and SOLACE jointly established a Children and Families Collective Leadership Group (CLG) to consider the impacts of the pandemic on children, young people and families especially those in the most challenging circumstances, and the actions that need to be taken in response. The CLG developed a vision and blueprint for holistic family support and set out a number of recommendations for action that are aligned with the implementation of The Promise.

The Family Support Delivery Group are responsible for progressing the vision and blueprint. The group are progressing key areas for action, for example: considering how best to prioritise the allocation of funding to family support; how to ensure that the principles of holistic family support are embedded within policies, frameworks and strategies across Government; and how to progress a new approach to commissioning, planning and service design with third sector and local government. We are also drafting a summary of the blueprint and vision to help articulate the key principles of delivering good family support for all involved in the delivery and planning of family support at a local or national level.

Secure Care Pathways and Standards

The [Secure Care Pathway and Standards](#) were launched in October 2020. For the first time they set out what all children in or on the edges of secure care in Scotland should expect across the continuum of intensive supports and services. The standards have been co-produced with a range of key stakeholders, including children and young people with experience of secure care and the STARR group.

The standards provide a framework for ensuring the rights of children and young people are respected and when implemented will improve experiences and outcomes for children before, during and after their secure care experience.

SPS Vision for Young People in Custody

With partners, the Scottish Prison Service has refreshed its co-produced [Vision for Young People in Custody](#) to reflect evidence on the greater complexity of the needs of young people who come into custody as well as the changing landscape of youth justice in Scotland. First published in 2014, with its central premise being to help young people in custody prepare for a positive future, it has guided SPS work at both a strategic and local level and considerable progress has been made in implementing the Vision. It will guide SPS work with 16 or 17 year olds for as long as children of this age are in its care.

Child Sexual Abuse and Exploitation (CSAE)

We continue to work with operational and Third Sector partners to tackle CSAE and improve our understanding of the interactions with wider youth justice and child welfare objectives, in line with UNCRC obligations and the objectives of the Promise.

Children's Hearings and Advocacy

The statutory scheme for [children's advocacy for children's hearings](#) was introduced in November 2020. After a strong start to these new services, attention is already being given to how they can be further reinforced and extended.



Age of Criminal Responsibility

While important provisions in the Age of Criminal Responsibility (Scotland) Act 2019 have already commenced, work will continue towards full implementation later in 2021. In parallel, the Advisory Group established under that Act will consider the issues raised by, and potential implications of, progressive further increases in age.

We will also work towards ensuring that access to trauma-informed recovery, support and justice will be provided to children under the age of criminal responsibility who have caused harm.

16- and 17-Year-Olds

Currently in Scotland only a 16- or 17-year-old who is already subject to a compulsory supervision order, an open referral to the Reporter, or where guilt has been accepted/established by a court, can be referred to the children's hearings system. Raising the age at which any person can be referred to the Reporter on offence or welfare grounds to 18 would remove this anomaly. This will require an amendment to primary legislation and a need for further safeguards to be put in place to support those children and any victims. We will advance this agenda on the basis of strong encouragement from the late 2020 public and professional consultation.

Justice in Scotland: Vision and Priorities (2017)

The Vision and Priorities document, agreed jointly by the Scottish Government and key justice organisations, sets out collective priorities to ensure a just, safe and resilient Scotland, with established priorities for 2017 to 2020. The document focuses specifically on prevention and early intervention. Justice in Scotland: Vision and Priorities is accompanied by a [Delivery Plan](#) that sets out actions to help progress the priorities.

This includes work to further support child witnesses, including through the greater use of pre-recorded evidence, strengthened Joint Investigative Interviews with the development of a new 'Scottish Child Interview Model', and our commitment to explore how a Barnahus concept could operate in the context of Scotland's healthcare, criminal justice and child protection systems. Justice in Scotland: Visions and Priorities is currently being reviewed and its approach will be complementary to that adopted within this vision and action plan.

National Strategy for Community Justice (2016)

The strategy provides a shared vision to help partners and communities work together effectively to improve community justice outcomes.



HM Chief Inspector's Expert Review Of The Provision Of Mental Health Services, For Young People Entering And In Custody At HMP & YOI Polmont

The purpose of the expert review was to review arrangements for young people, both untried and convicted, with mental health and wellbeing needs, entering and in custody.

[The review](#) was published by HM Chief Inspector for Prisons on 21 May 2019 alongside the routine inspection report for HMP&YOI Polmont. The review highlighted two high level strategic issues.

- The lack of proactive attention to the needs, risks and vulnerabilities of those on remand and in early days of custody.
- The systemic inter-agency shortcomings of communication and information exchange across justice, which inhibit the management and care of young people entering and leaving HMP&YOI Polmont.

An Action Group consisting of relevant officials from across Scottish Government, the Scottish Prison Service and the NHS have been overseeing the progress across the recommendations.

Outputs include the refreshed vision for Young People in Custody, a new health and wellbeing strategy for those in our care and the development of a self-harm policy. SPS also stopped the routine body searching of all young people under 18 in custody.

The Scottish Government has also committed through Action 15 of the Mental Health Strategy to increase access to the overall mental health workforce by 800 additional staff in key settings. This is supported by investment of £35 million by 2021-22.

Mobile phones and virtual visits have been rolled out to ensure families stay connected in lieu of in-person visits across the estate for all during the COVID-19 pandemic.

Restorative Justice Action Plan (2019)

The Restorative Justice Action Plan was developed collaboratively with Community Justice Scotland with input from stakeholders across the sector, including from those involved with Youth Justice.

The Vision is for Restorative Justice to be available across Scotland to all those who wish to access it, and at a time that is appropriate to the people and cases involved. Approaches taken must be consistent, evidence-led, trauma-informed and of a high standard. This seeks to ensure the needs of persons harmed and their voices are central, and supports a reduction in harmful behaviour across our communities.

Successful delivery of the Action Plan will require input from, and collaboration with, a wide range of organisations and people. To this end, the Scottish Government is funding a post in Community Justice Scotland and a post in the Children's and Young People's Centre for Justice (CYCJ) to support the delivery of the Action Plan. In addition, a Restorative Justice Stakeholder Group has been set up, that includes representatives from the National Youth Justice Advisory Group, Scottish Children's Report Administration (SCRA), and Children's Hearings Scotland (CHS).



Sentencing Guidelines

The Scottish Sentencing Council is developing a guideline on the sentencing of young people. A draft guideline was subject to public consultation in 2020. Responses to the consultation are under consideration and it is hoped that the guideline will be finalised for submission to the High Court for approval later in 2021. Drawing on research into cognitive development, the guideline as consulted on defines a young person as someone under the age of 25. It requires courts to consider how a young person's level of maturity may affect their level of blame for an offence, and to have regard to rehabilitation as a primary consideration in sentencing a young person.

Poverty

The Child Poverty Act 2017 sets statutory child poverty reduction targets to be met by 2030. We published our first [Tackling Child Poverty Delivery Plan](#) in March 2018, backed by a £50m fund. In this we committed a range of concrete actions to make progress on our ambitious targets. We will set out plans for further action in our second Tackling Child Poverty Delivery Plan, to be published in March 2022.

In 2019-20 we invested nearly £2 billion in support for low income households, including over £672 million targeted specifically at children. In our response to COVID-19 we have committed over £500 million to support people and communities impacted by the pandemic, including support for low income families. Our 2021/22 Budget commits a further £23.3 million for our Tackling Child Poverty Fund. We have started making payments of the new 'game changing' Scottish Child Payment for children from low income households - worth £40 every 4 weeks for each child under 6.

Homelessness

Ending Homelessness Together

In November 2018, the [Ending Homelessness Together High Level Action Plan](#) was published jointly with COSLA and sets out our actions in response to the Homelessness and Rough Sleeping Action Group's (HARSAG) recommendations to end homelessness and transform temporary accommodation in Scotland. Actions include:

- **We will develop preventative pathways for the groups at highest risk of rough sleeping and homelessness, including young people and people leaving public institutions.** Where pathways have already been developed, such as the SHORE standards (Sustainable Housing on Release for Everyone) for people leaving prison, we will support local authorities and delivery partners in their implementation.
- **We will ensure a clear, effective focus on preventing and responding effectively to youth homelessness.**



Prison Leavers

The Sustainable Housing on Release for Everyone ([SHORE](#)) standards were published on 5 December 2017. The SHORE standards have been developed by the Scottish Prison Service (SPS) and partners to outline minimum standards for housing advice, information and support for people serving custodial sentences to ensure that the housing needs of individuals are handled in a consistent way across Scotland. The Standards aim to provide a mutually agreed protocol which will detail the multi-agency integration required to secure sustainable housing outcomes. It sets out good practice in the coordination between the SPS and housing providers, and the planning of offenders' housing needs within custody, so that actions will be taken in a planned manner, reducing the instances of emergency homelessness wherever possible.

SG Justice and SG Housing officials are working with SPS, Community Justice Scotland and local authorities in a process to review the implementation of SHORE and to also revise and update the SHORE Standards, which will also consider the potential to develop more specialised guidance for young prisoners.

Young People

The [Youth Homelessness Prevention Pathway](#), developed by members of A Way Home Scotland, the national coalition to end youth homelessness, was published on 22 March 2021. The report includes recommendations which, if implemented can make homelessness rare, brief and non-recurring for young people aged 16-25. The pathway addresses the needs of young people who are most vulnerable to homelessness and includes a section on young people in conflict with the law. The pathway recognises that youth homelessness is more than just a housing issue and calls for change across youth, welfare, health, justice, housing, homelessness and the children and families sectors and departments at both a national and local level. The pathway has 16 recommendations across 5 tiers of prevention: universal prevention; targeted prevention; crisis prevention; emergency response; and recovery and housing stability. One of the recommendations states:

- **No young person should be discharged from public services (Justice, Health or Care) into homelessness. Systems for discharge planning should be created which take account of housing availability and waiting times and ensure that they have a person to support the transition.**

Scottish Government officials are currently working with partners to consider the implementation of the recommendations with in the report.



Mental Health Strategy

The Scottish Government's [Mental Health Strategy](#), published in March 2017, is a 10-year strategy which aims to work on achieving parity between mental and physical health. Within the Strategy, there are specific commitments in relation to children and young people involved in offending. We know that children and young people involved in and/or at risk of offending may have mental health problems, but not necessarily a mental illness. Work to address offending must take account of, and address, mental health issues as part of improving outcomes.

Our [Transition and Recovery Plan](#), 'Mental Health – Scotland's Transition and Recovery', published in October 2020, sets out a number of actions to support children and young people's mental health. This includes the implementation of our CAMHS Service Specification, the re-starting of our improvement programme of work, and a specific action on improving our understanding of the prevalence of self-harm which will guide our policy approach moving forwards.

Further actions listed to improve children and young people's mental health include:

- emotional wellbeing;
- signposting to help and support;
- Perinatal and Infant Mental Health Programme Board;
- children and families workforce;
- students' mental health;
- emotional distress;
- CAMHS access improvement;
- the Promise;
- community support;
- access to perinatal and infant mental health services.

Looking ahead to transition and recovery, the mental health of children, young people and their families is to the fore of our thinking. Respecting, protecting and fulfilling the rights of children, young people and families is crucial, and as we develop and deliver our mental health response to COVID-19, the voices and experiences of children, young people and their families will remain central. This will be both in terms of how we support good mental wellbeing, and how we provide the right help and support. We acknowledge that evidence suggests children and young people's mental health and wellbeing, as well as that of their parents or carers, may be particularly affected by the impact of COVID-19. We will continue to put in place support such as Aye Feel, Parent Club and Solihull Online, to mitigate this impact.



An Independent Review into the Delivery of Forensic Mental Health Services in Scotland made a number of recommendations in February 2021 including in relation to children and young people. We will contribute to implementing agreed recommendations.

We will go further and look at the mental health support for those who fall out with secure care, who are at risk of offending, accused of offending and those who have offended. Given the vast prison demographic this will take into account young people and touch on work already carried out by Scottish Prison Service in relation to young people.

Drug and Alcohol

Scotland's alcohol and drug strategy 'Rights, Respect and Recovery' (RRR) has a specific focus on the needs of children, young people and their families who are affected by alcohol/drug use. Parental/family alcohol and drug use is a commonly recognised adverse childhood experience (ACE), which (without support) can have potential long-term impacts on children's health and wellbeing into adulthood. Understanding and addressing this impact is crucial to safeguarding children and young people.

There are a range of activities underway to deliver on commitments from the RRR strategy which includes development of a framework for local partnerships to implement a consistent approach across Scotland to support children, young people and families who are affected by alcohol/drug use. This framework is being developed following consultation with children, young people and families through [Ask the Family](#). This framework recognises that each family member, should be supported in their own right as well as part of the family to help them recover. The framework will publish in August 2021 and we will work closely with Alcohol and Drug Partnerships and other local partners to support their development of high-quality holistic family support services which is underpinned by family-inclusive practice.

A working group has been established to develop a comprehensive approach to early intervention amongst young people who are at risk, through deprivation, inequality or other factors of developing problem alcohol/drug use. This group meets in June for the first time (reporting in Summer 2022). They will involve young people in this work, which includes learning about their experiences, before recommending approaches for local partnerships that will best meet their needs.



National Guidance for Child Protection in Scotland

The Scottish Government has been working with stakeholders and partners from across education, social work, health, justice and the third sector to revise Scotland's national guidance on child protection. The revision, a recommendation from the Child Protection Improvement Programme, has been undertaken to ensure that the guidance is consistent with the legislative and policy framework and current practice developments. The process of review and the drafting of the national guidance has involved extensive engagement with stakeholder groups and individuals including a public consultation, to ensure that it takes full account of developments and new thinking. The revision has been overseen by a strategic Steering Group which has provided regular updates to the National Child Protection Leadership Group.

This non-statutory national guidance describes responsibilities and expectations for all involved in protecting children in Scotland. The guidance firmly locates child protection within the wider context of The Promise, UNCRC, GIRFEC and family support. It sets out how agencies should work together with parents, families and communities to prevent and protect children from harm caused by abuse and neglect. It aims to provide a national framework for services and local inter-agency forums such as Chief Officer Groups and Child Protection Committees to develop further in their local multi-agency protocols, training plans and procedures. The guidance also aims to serve as a useful resource for practitioners on particular areas of practice and signposts where additional information can be found.

The final guidance will be published on the Scottish Government website in summer 2021. In addition, as a supporting resource, 18 practice insights will also be published. These are reflections on practice which provide additional detail and links to research on particular topics. The National Guidance underpins local multi-agency child protection procedures, guidance and training which will need to be updated as result of the revision. Child Protection Committees, supported by Child Protection Committees Scotland, the Scottish Government and a range of other partners will lead this work on implementation and adaptation. The aim is that every child in Scotland should receive a consistent experience while allowing a degree of local variability in how those standards are implemented.

Adverse Childhood Experiences (ACEs) and Trauma

[Evidence](#) shows the clear associations between experiencing adversity and trauma in childhood and victimisation and criminalisation later in life. Supporting children affected by ACEs and trauma is important for preventing offending and re-offending. The Scottish Government is undertaking [work to better prevent and mitigate ACEs](#), including delivery of a [National Trauma Training Programme](#).

Expert Group on Preventing Sexual Offending Involving Children and Young People

The Scottish Government published the Expert Group's [report](#) in 2020, which contains findings relating to the nature, causes and frequency of harmful sexual behaviour by children towards other children, and sets out 19 proposals for further action. Some of the proposals sit under existing programmes of work, including support to increase the age of referral to the Children's Reporter. A sub-group of the National Child Protection Leadership Group was established in 2021 to consider and support successful delivery of the remaining proposals, and offer advice, further expert input and oversight.



Youth Work

The National Youth Work Strategy, developed jointly by the Scottish Government, Education Scotland and YouthLink Scotland, aims to set out our ambitions for improving outcomes for children and young people through youth work. It also aims to ensure that we harness and build on our partnerships across the youth work sector and develop what we know works well in delivering vibrant and effective youth work practice. The Strategy recognises the contribution that youth work makes towards the National Outcomes and the wide range of activities and policies that impact on young people's lives; it also recognises that both universal and more targeted specific work have equal validity and importance. The new strategy is under development and has been co-produced by representative young people and national stakeholders.

Developing the Young Workforce: Scotland's Youth Employment Strategy (2014)

Scotland's Youth Employment Strategy sets out how the Scottish Government will implement the recommendations from the Commission for Developing Scotland's Young Workforce (DYW), including the commitment to reduce the 2014 level of youth unemployment by 40% by 2021 - a target that was met 4 years early in 2017. Together with Getting It Right For Every Child and the Curriculum for Excellence, DYW is the key policy approach through which the Scottish Government is creating excellence and equity in Scottish education.

Education

The joint Scottish Government and Convention of Scottish Local Authorities (COSLA) [Additional Support for Learning Action Plan](#) (2020) action plan outlines how the recommendations of the [additional support for learning review](#) (2020) will be delivered. Actions include the development of a national vision statement for success in learning and education for children and young people who have additional support needs and the development of a measurement framework which seeks to value and increase visibility of their diverse range of achievements.

New, children's rights-based, non-statutory guidance is being developed by the [physical intervention working group](#) on the use of physical interventions in schools, including the practices of restraint and seclusion. The guidance aims to increasing practitioners' understanding of children's rights in relation to practice, promote the use of early intervention, preventative and de-escalation approaches and reduce the misuse of restraint and seclusion in schools. The working group is also developing a standard dataset for recording and monitoring incidents in all local authorities. A public consultation on the draft guidance is due to launch in 2021.



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PARLIAMENT OF VICTORIA

**Children, Youth and Families Amendment
(Supporting Stable and Strong Families) Bill 2025**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill 2025

A Bill for an Act to amend the **Children, Youth and Families Act 2005** to provide for responsibilities of supporting stable and strong families partners in relation to supporting stable and strong families and to consequentially amend the **Child Wellbeing and Safety Act 2005** and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Children, Youth and Families Act 2005** to provide for responsibilities of supporting stable and strong families partners in relation to supporting stable and strong families; and

5

- 5 (b) to amend the **Child Wellbeing and Safety Act 2005** to expand the functions of the Children's Services Co-ordination Board in relation to supporting stable and strong families responsibilities.

2 Commencement

- 10 (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 30 September 2026, it comes into operation on that day.

Part 2—Amendment of Children, Youth and Families Act 2005

3 Definitions

- 5 (1) In section 3(1) of the **Children, Youth and Families Act 2005** insert the following definitions—
- 10 *"non-statutory commitments* means the expectations of, and commitments by, a Minister that are not within the remit of the Minister's functions, duties and powers under an Act;
- outcome areas* means the following outcome areas—
- 15 (a) health;
- (b) education;
- (c) justice;
- (d) housing;
- (e) Aboriginal self-determination;
- (f) employment;
- 20 (g) any other outcome area referred to in section 20L(2)(b) or 20O(2)(b);
- outcome measures* means the outcome measures referred to in section 20L(2)(b);
- 25 *primary functions, duties and powers*, in relation to a SSSF partner, means their functions, duties and powers other than as a SSSF partner under this Act or any other Act;
- SSSF group* has the meaning given by section 20F;
- 30 *SSSF partner* has the meaning given by section 20E;
-

SSSF plan means a plan prepared under section 20J;

SSSF progress report means a report prepared under section 20O;

5 ***SSSF responsibilities*** means the duties of a SSSF partner under section 20I;

SSSF scheme means the supporting stable and strong families scheme in Chapter 2A;".

10 (2) In section 3(1) of the **Children, Youth and Families Act 2005**, after paragraph (ac) of the definition of ***child*** insert—

"(aca) in the case of Chapter 2A, a person under the age of 18 years; and".

4 New Chapter 2A inserted

15 After Chapter 2 of the **Children, Youth and Families Act 2005** insert—

"Chapter 2A—Supporting stable and strong families responsibilities

Part 2A.1—General

20 **20C Objects of this Chapter**

The objects of this Chapter are to create a SSSF scheme—

- 25 (a) to support collective responsibility and a whole-of-government approach to child wellbeing and safety; and
- (b) to consider the wellbeing and best interests of vulnerable children and care leavers by SSSF partners considering SSSF responsibilities; and

- 5
- (c) to enable early intervention and provide more timely and adequate services to support families caring for vulnerable children; and
- (d) to support family preservation and family reunification for persons engaged with child protection; and
- (e) to co-ordinate a multi-agency approach to child wellbeing and safety; and
- 10 (f) to promote enhanced accountability of SSSF partners through SSSF plans and SSSF progress reports.

20D Effect of this Chapter

- 15 (1) The Parliament does not intend by this Chapter—
- (a) to create in any person any legal right; or
- (b) to give rise to, or that it be taken into account in, any civil cause of action; or
- 20 (c) to affect in any way the interpretation of any Act or law in force in Victoria; or
- (d) to affect the validity, or provide grounds for review, of any judicial or administrative act or omission.
- 25
- (2) Without limiting subsection (1), the primary functions, duties and powers of a person prevail over any functions, duties and powers of that person as a SSSF partner.
- 30 (3) Without limiting subsection (1), if this Chapter conflicts or is incompatible with any other Act, the other Act prevails to the extent of the conflict or incompatibility.
-

20E Meaning of *SSSF partner*

In this Chapter, a supporting stable and strong families partner (***SSSF partner***) means a natural person who is—

- 5 (a) a Minister; or
- (b) a Department Head within the meaning of section 4(1) of the **Public Administration Act 2004**; or
- (c) the Chief Commissioner of Police; or
- 10 (d) a prescribed person or a person who is a member of a prescribed class of person.

20F Meaning of *SSSF group*

In this Chapter, the supporting stable and strong families group (***SSSF group***) means the following persons—

- 15 (a) vulnerable children and care leavers;
- (b) parents of, and other family members who reside in a household with, vulnerable children subject to a family preservation order;
- 20 (c) in relation to vulnerable children subject to a family reunification order—
 - 25 (i) the parents of the vulnerable children with whom the vulnerable children will be reunified; and
 - (ii) other family members who will
 - 30 reside in a household with the vulnerable children after reunification in accordance with the order.

20G Meaning of care leavers and vulnerable children

(1) In this Chapter—

5 *care leavers* means persons under the age of 25 years who have left the care of the Secretary and—

(a) live independently; or

(b) are of an age, or intend, to live independently;

10 *vulnerable children* includes—

(a) a child who is or has been subject to a report under section 28, 33(2), 183, 184 or 185; and

(b) a child who—

15 (i) receives or has received services from a community service; or

20 (ii) requires but has not received services from a community service; and

25 (c) a child whose primary family carer (within the meaning of section 3 of the **Commission for Children and Young People Act 2012**)—

(i) receives or has received a service from a community service; or

30 (ii) requires but has not received services from a community service.

- 5 (2) For the purposes of paragraphs (b) and (c) of the definition of *vulnerable children* in subsection (1), a child or primary family carer is taken to require a service from a community service if—
- (a) the service would likely increase the safety or improve the wellbeing of the child; or
- 10 (b) an expert in the area of a SSSF partner's remit has identified that the person would likely require a service from a community service.

Part 2A.2—Functions and responsibilities of SSSF partners

15 20H Functions of SSSF partners

- (1) The functions of a SSSF partner who is a Minister under this Chapter are—
- (a) to prepare a SSSF plan and take any actions specified in the SSSF plan; and
- 20 (b) to prepare a SSSF progress report; and
- (c) subject to subsection (3), to consider their SSSF responsibilities in preparing a SSSF plan.
- 25 (2) The function of a SSSF partner other than a Minister under this Chapter is, subject to subsection (3), to consider their SSSF responsibilities in taking actions specified in the SSSF plan.
- 30 (3) A SSSF partner must not perform a function under subsection (1) or (2) to the extent that the performance of the function conflicts, or is incompatible, with the performance or exercise of—
-

- (a) the SSSF partner's primary functions, duties and powers; and
 - (b) any duties the person may have at common law or in equity.
 - 5 (4) To avoid doubt, a SSSF partner is not required to consider their SSSF responsibilities in the performance or exercise of their primary functions, duties and powers.
 - 10 **20I SSSF responsibilities**

For the purposes of section 20H, a SSSF partner has the following responsibilities—

 - (a) to deliver or facilitate the delivery of services to the SSSF group, including—
 - 15 (i) to assess the needs of the SSSF group; and
 - (ii) to identify and assist parents and caregivers of children and care leavers in the SSSF group at the earliest opportunity to meet the needs of children and care leavers; and
 - 20 (iii) to provide access to health, education, welfare and other services appropriate to the needs of the SSSF group;
 - 25 (b) to promote the physical, psychological, emotional, cultural and developmental wellbeing of children and care leavers in the SSSF group by promoting decisions and actions that will prioritise the best interests of the children and care leavers;
 - 30
-

- 5
- (c) to promote equality of opportunity for children and care leavers in the SSSF group for whom there are welfare concerns by delivering or facilitating the delivery of services that provide the same opportunities that peers of the children and persons have;
- 10
- (d) in relation to Aboriginal persons in the SSSF group—

(i) to have regard to and apply the recognition principles; and

(ii) to recognise and support the cultural identity of those persons;
- 15
- (e) to monitor the outcomes, and report on the effectiveness, of services provided to the SSSF group.

Part 2A.3—Supporting stable and strong families plans and progress reports

20

Division 1—Supporting stable and strong families plans

20J SSSF plan to be prepared

- 25
- (1) A SSSF partner who is a Minister must first prepare one or more supporting stable and strong families plans (*SSSF plan*) in relation to the Minister's primary functions, duties and powers within 12 months after the commencement of this Chapter.

- 5 (2) After preparing one or more SSSF plans under subsection (1), a SSSF partner who is a Minister must prepare one or more SSSF plans in relation to the Minister's primary functions, duties and powers within 2 years after each SSSF plan was last prepared.
- 10 (3) Despite subsections (1) and (2), a SSSF partner who is a Minister must prepare one or more SSSF plans in relation to the primary functions, duties and powers of the SSSF partner not already addressed in a SSSF plan prepared under this section—
- 15 (a) in the case of the Minister who is appointed by the Governor to be a Minister of the Crown after the commencement of this Chapter, within 12 months after that appointment; or
- 20 (b) in any other case, within 12 months after the Minister is conferred the primary functions, duties and powers.
- 25 (4) Despite subsections (1) and (2), after preparing one or more SSSF plans under subsection (3), a SSSF partner who is a Minister must prepare one or more SSSF plans in relation to the primary functions, duties and powers the subject of the SSSF plan prepared under subsection (3) within 2 years after the SSSF plan was prepared under subsection (3).
- 30 (5) For the purposes of complying with this section, 2 or more Ministers may prepare a joint SSSF plan in relation to the primary functions, duties and powers of the Ministers.
-

- (6) Nothing in this Chapter limits the operation of the **Administrative Arrangements Act 1983**.

Note

5 Section 41A of the **Interpretation of Legislation Act 1984** provides that the power to make an instrument includes the power to repeal, revoke, rescind, amend, alter or vary the instrument in the exercise of that power.

20K SSSF plans—process for preparing

- 10 (1) Before preparing a SSSF plan, a SSSF partner who is a Minister must consider any potential conflict or compatibility issue with the SSSF partner's primary functions, duties and powers.
- 15 (2) Before preparing a SSSF plan, a SSSF partner who is a Minister must take into account guidance provided by the Children's Services Co-ordination Board established under Part 5 of the **Child Wellbeing and Safety Act 2005** in relation to supporting stable and strong families.
- 20 (3) Before preparing a SSSF plan, a SSSF partner who is a Minister must have regard to—
- 25 (a) any advice or opinions given to the SSSF partner by another Minister in relation to—
- (i) SSSF responsibilities; or
- (ii) the proposed contents of the SSSF
- 30 plan; and
- (b) the intersection between SSSF responsibilities and Government priorities.
-

- (4) A SSSF partner must comply with any prescribed requirement for preparing a SSSF plan.

20L SSSF plans—contents

- 5 (1) A SSSF plan must set out—
- (a) a vision statement of the SSSF partner and measurable objectives that focus on the wellbeing and development of children and care leavers in the SSSF group; and
- 10 (b) a detailed plan of actions to be taken, and by whom, to achieve the objectives specified in the plan, including—
- 15 (i) how resources are to be allocated to take the actions; and
- (ii) specific actions that are to be taken by any or all SSSF partners who have SSSF responsibilities in relation to a Minister's—
- 20 (A) primary functions, duties and powers; and
- (B) non-statutory commitments; and
- 25 (c) a statement of how regard has been given by the SSSF partner to outcome measures across outcome areas in determining the plan of actions to be taken; and
- 30 (d) processes for monitoring the taking of actions specified in the SSSF plan, including—
- (i) evaluating outcomes of actions taken; and
-

- 5
- (ii) recommending changes to the SSSF plan to improve its effectiveness; and
- (e) if a SSSF partner's functions under section 20H(1) or (2) conflict, or are incompatible, with their primary functions, duties and powers or duties at common law or in equity—
- 10
- (i) the extent of the conflict or incompatibility; and
- (ii) that no actions are to be taken in relation to the functions under section 20H(1) or (2) to the extent of the conflict or incompatibility; and
- 15
- (f) how the SSSF partner has given regard to the matters specified in section 20K(3); and
- (g) any other prescribed matter.
- 20
- (2) In determining a plan of actions in a SSSF plan under subsection (1), a SSSF partner must have regard to—
- 25
- (a) the SSSF partner's SSSF responsibilities in relation to one or more, or all the, classes of persons in the SSSF group; and
- (b) prescribed outcome measures across outcome areas (including any prescribed outcome areas) related to the SSSF group.
- 30
- (3) A SSSF plan meets the requirements of subsection (1) if the SSSF plan sets out a vision statement and detailed plan of actions in relation to—
-

- (a) one or more classes of persons in the SSSF group; or
- (b) all the classes of persons in the SSSF group.

5

20M Transmission of SSSF plans to the Parliament

- (1) A SSSF partner who is a Minister must first cause a copy of a SSSF plan to be transmitted to each House of the Parliament within 12 months after the commencement of this Chapter.
- (2) If a SSSF partner who is a Minister has transmitted a SSSF plan under this section, the SSSF partner must cause a copy of a SSSF plan to be transmitted to each House of the Parliament within 2 years after the commencement of the last SSSF plan that was transmitted.
- (3) If 2 or more Ministers have prepared a SSSF plan under section 20J(5), the Ministers are taken to comply with subsections (1) and (2) if the SSSF plan is transmitted to each House of the Parliament in the period specified in subsection (1) or (2) (as the case requires).
- (4) The responsible Minister, by Order published in the Government Gazette, may grant an extension of the period specified in subsection (1) or (2) of up to 12 months by which time a SSSF partner who is a Minister must transmit to each House of the Parliament a copy of a SSSF plan under those subsections if the responsible Minister considers that exceptional circumstances specified in the Order apply.

5

10

15

20

25

30

BILL LA INTRODUCTION 2/12/2025

20P Transmission of SSSF progress reports to the Parliament

- 5
- (1) A SSSF partner who is a Minister must transmit to each House of the Parliament a SSSF progress report prepared under section 20O.
- 10
- (2) A SSSF partner who is a Minister may transmit a SSSF progress report in relation to a SSSF plan laid before each House of the Parliament under section 20M together with a SSSF plan to each House of the Parliament.
- 15
- (3) If a SSSF partner who is a Minister transmits to each House of the Parliament a SSSF progress report and SSSF plan under subsection (2), the Minister is taken to have complied with section 20M.
- 20
- (4) The clerk of each House of the Parliament must cause a SSSF progress report or SSSF plan to be laid before the House on the day on which it is received or on the next sitting day of the House.

Part 2A.4—SSSF scheme review

20Q Review of SSSF scheme

- 25
- (1) The Minister must cause an independent review of the SSSF scheme under this Chapter to commence 5 years after the first day on which all the provisions of this Chapter have commenced.
- 30
- (2) Without limiting the matters for review under this section, the following must be considered—
- (a) the impact of the provisions in this Chapter;

- 5 (b) an assessment of whether the SSSF scheme has been successfully implemented.
- 10 (3) In addition to the matters specified in subsection (2), the Minister may request that the operation of this Chapter be reviewed in isolation or together with the other Chapters in this Act.
- 15 (4) The review is to be completed within 12 months after the day on which it commences.
- (5) The report on the review conducted under this section must be laid before each House of the Parliament within 6 months after it is given to the Minister."

5 Regulations

After section 600(1)(h) of the **Children, Youth and Families Act 2005** insert—

- 20 "(ha) SSSF responsibilities, including prescribing—
- (i) SSSF partners; and
- (ii) outcome measures in relation to outcome areas; and
- (iii) outcome areas; and
- 25 (iv) requirements of SSSF partners in preparing SSSF plans; and
- 30 (hb) prescribing outcome measures for SSSF plans that differ according to circumstances and by which SSSF partners or class of SSSF partners the measures are to be had regard; and".
-

Part 3—Amendment of Child Wellbeing and Safety Act 2005

6 Definitions

5 In section 3(1) of the **Child Wellbeing and Safety Act 2005** insert the following definitions—

"*outcome areas* has the same meaning as it has in the **Children, Youth and Families Act 2005**;

10 *outcome measures* has the same meaning as it has in the **Children, Youth and Families Act 2005**;

SSSF group has the same meaning as it has in the **Children, Youth and Families Act 2005**;

15 *SSSF partner* has the same meaning as it has in the **Children, Youth and Families Act 2005**;

SSSF plan has the same meaning as it has in the **Children, Youth and Families Act 2005**;

20 *SSSF responsibilities* has the same meaning as it has in the **Children, Youth and Families Act 2005**;"

7 Functions of the Board

25 (1) In section 15 of the **Child Wellbeing and Safety Act 2005**—

(a) in paragraph (b), for "levels." **substitute** "levels; and";

(b) after paragraph (b) **insert**—

30 "(c) to advise the Minister on matters relating to SSSF partners, including in relation to—

- 5
- (i) the intersection between SSSF responsibilities and Government priorities; and
- (ii) the preparation of SSSF plans and whether new or revised outcome measures across outcome areas may be required; and
- 10
- (d) to issue guidance to SSSF partners in relation to the preparation of SSSF plans, including—
- (i) the content and form of SSSF plans; and
- 15
- (ii) key priorities to be addressed in SSSF plans, including identifying and addressing the needs of persons who are members of a class of persons in the SSSF group in SSSF plans.
- Note**
- 20
- See Chapter 2A of the **Children, Youth and Families Act 2005**."
- (2) At the end of section 15 of the **Child Wellbeing and Safety Act 2005** insert—
- 25
- "(2) To the extent known, the Children's Services Co-ordination Board must consider the views of persons who are, or have been, in the SSSF group for the purposes of giving the Minister advice under subsection (1)(c)."

Part 4—Repeal of this Act

Part 4—Repeal of this Act

8 Repeal of this Act

This Act is **repealed** on 30 September 2027.

Note

5

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Children, Youth and Families Amendment (Supporting Stable and Strong Families) Bill 2025

Endnotes

Endnotes

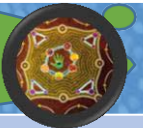
1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

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Queensland Care Services Outcomes Framework

Vision : Children and young people in care are safe and healthy, have a sense of belonging and wellbeing, and achieve to their potential

Domains	 Safe & Nurtured	 Connected	 Achieving	 Healthy	 Resilient
Aspirations	<i>Children and young people feel cared for and nurtured in stable environments, safe from abuse, neglect, violence and threat</i>	<i>Children and young people feel a strong sense of identity and belonging, have stable and long lasting relationships with family and friends and are connected to culture and community</i>	<i>Children and young people learn and develop to their full potential</i>	<i>Children and young people make healthy lifestyle choices and access health care services</i>	<i>Children and young people have strong social and interpersonal skills and feel confident to pursue life goals and manage challenges</i>
Principle of cultural integrity in care Culturally responsive and safe care is about being part of a family, community and extended network and knowing where you belong. Culture and identity as a concept is dynamic and to be prioritised as part of every child's day to day life (SNAICC 2011)					
Outcomes	- Protected from abuse, neglect and exposure to violence - Nurtured and cared for - Living in stable and predictable environments	- Positively connected to family, culture and community - Feel a sense of identity and belonging	- Attend and engage in education - Meeting developmental milestones - Engage in, and benefit from, recreational activities - Developing independence and life skills	- Physically healthy - Emotionally and mentally healthy - Leading an active and healthy lifestyle	- Feel confident and have social skills - Possess coping skills and an ability to manage adversity - Display positive and appropriate behaviour
Critical Success Indicators	Children and young people will live in homes where: - They are not being harmed and they are physically safe - Their material needs are met - They feel cared for, nurtured and valued - Their dignity and rights are respected - They lead a violence free life	Children and young people will: - Have quality relationships with family, friends and other significant people - Know their life history and have a sense of identity - Feel connected and have a sense of cultural and spiritual belonging to their community - Have opportunities to engage in social, cultural and community events and activities	Children and young people: - Are ready for school at entry age - Attend and engage in schooling - Achieve national educational standards - Have age and developmentally appropriate life skills - Develop and progress personally, socially and educationally - Have career aspirations	Children and young people: - Access services and treatment that meet their physical, dental, sexual and mental health needs - Access services and treatment that meet needs related to a disability or their development - Experience improvements to their health and wellbeing - Do not misuse drugs and alcohol - Learn to independently make healthy lifestyle choices	Children and young people: - Access services and treatment that meet their therapeutic needs - Have positive relationships and treat other people with respect - Pursue recreational and extra-curricular activities - Engage in decision-making about their lives - Contribute to and support the community and others - Engage in positive and law-abiding behaviour - Have confidence and are able to successfully deal with life challenges - Have goals and feel optimistic about their future

MEASURES OF SUCCESS

Domains	 Safe & Nurtured  Connected		 Achieving	 Healthy	 Resilient
Child Measures	✓ Length of time in placement ✓ Permanent placement ✓ Number of placements to date ✓ Substantiated standards of care matters ✓ Do not experience violence or trauma	✓ Positive and supportive relationships ✓ Lives with their siblings ✓ Lives with kinship carer ✓ Regular family contact ✓ Regular engagement in community activity ✓ Regular visit to community ✓ Has a cultural support plan including information from the individual, family and community perspective ✓ Lives with a carer from the same cultural background ✓ Has a comprehensive record of their family through genogram and ecomap including parents, mob, ancestors, family, community, and country	✓ Attachment to school ✓ Attends school , Kindergarten or early childhood education regularly or is engaged in training or employment ✓ Most recent overall NAPLAN score at or above national minimum standard ✓ Academic performance steady or improving ✓ Transition to independence planning ✓ Identifies possible career or future hopes and the necessary steps to achieve these ✓ Has access to resources for adulthood, including safe accommodation	✓ Overall health ✓ Immunisation schedule up to date and in accordance with the National Immunisation Program ✓ Has a comprehensive health and development assessment ✓ Has a child health passport ✓ Physical activity and nutritional consumption meets national recommendations ✓ Has had a dental check-up within 12 months ✓ Has access to health care including general, mental, dental, sexual and allied health care ✓ Alcohol and drug use has minor impact	✓ Self-regulation and prosocial behaviour ✓ Social and emotional confidence ✓ Has access to therapeutic services ✓ Participated in the development/review of their current case plan ✓ Regular social/recreation activities ✓ No escalation in behavioural issues at school or child care ✓ Participated in transition to independence planning and have plans for adulthood ✓ No or reduced involvement in illegal activities
Service Measures	✓ Children are stable in placements ✓ Children in permanent homes ✓ Number of placements to date ✓ Substantiated standards of care matters	✓ Children have positive and supportive relationships ✓ Children living with siblings ✓ Children living with kinship carers ✓ Children having regular family contact ✓ Children living with carer from same cultural background ✓ Children engaged in community activities ✓ Children with cultural support plan including information from the individual, family and community perspective ✓ Children visiting their community ✓ Children who have information about land, totem, language, history, stories and custom ✓ Length of time in placements	✓ Children have attachment to school ✓ Children are attending school Kindergarten or early childhood education regularly or is engaged in training or employment ✓ Children are at or above the NAPLAN minimum standard ✓ School exclusions ✓ Transition to independence planning	✓ Children fully immunised ✓ Children with comprehensive health and development assessments ✓ Children with a child health passport ✓ Children meeting recommended physical activity and nutritional consumption ✓ Children are engaging in sport regularly ✓ Children with a dental check-up within 12 months ✓ Children have access to health care including general, mental, dental, sexual and allied health ✓ Young people using alcohol and drugs with minor impact	✓ Children's social and emotional confidence ✓ Children accessing therapeutic services ✓ Children's participation in the development and review of their case plan ✓ Children engaged in social and recreational activities ✓ Young people's participation in their transition to independence planning ✓ No or reduced involvement in illegal activities
Organisational Measures	✓ Children are stable in their placement ✓ Children in permanent homes ✓ Substantiated standards of care matters ✓ Length of time in placements	✓ Children have positive and supportive relationships ✓ Children living with siblings ✓ Children living with kinship carers ✓ Children having regular family contact ✓ Children living with carer from same cultural background ✓ Children engaged in community activities ✓ Children with cultural support plan including information from the individual, family and community perspective ✓ Children visiting their community ✓ Children who have information about land, totem, language, history, stories and custom ✓ Length of time in placements	✓ Children have attachment to school ✓ Children are attending school Kindergarten or early childhood education regularly or is engaged in training or employment ✓ Children are at or above the NAPLAN minimum standard ✓ School exclusions ✓ Transition to independence planning	✓ Children are fully immunised ✓ Children have comprehensive health and development assessments ✓ Children with a child health passport ✓ Children meeting recommended physical activity and nutritional consumption ✓ Children with a dental check-up within 12 months ✓ Children have access to health care including general, mental, dental , sexual, allied health ✓ Young people using alcohol and drugs with minor impact	✓ Children's social and emotional confidence ✓ Children accessing therapeutic services ✓ Children's participation in development and review of case plan ✓ Children engaged in social and recreational activities ✓ Young people's participation in their transition to independence planning ✓ No or reduced involvement in illegal activities

‘Crossover Kids’: Vulnerable Children in the Youth Justice System

Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children’s Court

The Sentencing Advisory Council bridges the gap between the community, the courts and the government by informing, educating and advising on sentencing issues.

The Sentencing Advisory Council is an independent statutory body established in 2004 under amendments to the *Sentencing Act 1991*. The functions of the Council are to:

- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council's written views on the giving, or review, of a guideline judgment.

Council members come from a broad spectrum of professional and community backgrounds. Under the *Sentencing Act 1991*, Council members must be appointed under eight profile areas:

- two people with broad experience in community issues affecting the courts
- one senior academic
- one highly experienced defence lawyer
- one highly experienced prosecution lawyer
- one member of a victim of crime support or advocacy group
- one person involved in the management of a victim of crime support or advocacy group who is a victim of crime or a representative of victims of crime
- one member of the police force of the rank of senior sergeant or below who is actively engaged in criminal law enforcement duties
- the remainder must have experience in the operation of the criminal justice system.

For more information about the Council and sentencing generally, visit:

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‘Crossover Kids’: Vulnerable Children in the Youth Justice System

Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children’s Court

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Abbreviations

CALD Culturally and linguistically diverse

CYF Act *Children, Youth and Families Act 2005* (Vic)

Glossary¹

Accused A person who is charged with a criminal offence.

Average A measure of central tendency also known as the 'mean'. The average is equal to the sum of a set of values divided by the number of values in the set. For example, in the following set of values: 1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7, the 11 values add to 44, so the mean is 4 (44 divided by 11 = 4). In this report, a reference to an average is a reference to a mean, unless otherwise specified.

Case In this report, one or more charges against a person that are sentenced at the one hearing.

Charge In this report, a single proven count of an offence.

Child In this report, a person who is aged 10–17 inclusive at the time of an alleged offence and aged under 19 when proceedings for the offence commence in the Children's Court: *Children, Youth and Families Act 2005* (Vic) s 3(1).

Child and family information, referral and support teams (Child FIRST) Referral and support teams that link vulnerable children, young people and their families to integrated family services.

Child protection In this report, the Victorian child protection service.

Child protection order In this report, a collective description for four categories of orders made by the Family Division of the Children's Court of Victoria under the *Children, Youth and Families Act* (Vic) ('CYF Act'): protection orders, interim accommodation orders, therapeutic treatment orders and permanent care orders.

Child protection report In this report, a report to the child protection service raising concerns that a child is in need of protection.

1. Terms relating to child protection are primarily drawn from Department of Health and Human Services, 'DHHS.vic' (dhhs.vic.gov.au, 2019) <<https://dhhs.vic.gov.au/>> at 20 May 2019 and Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services, *Out-of-Home Care Education Commitment: A Partnering Agreement Between Department of Health and Human Services, Department of Education and Training, Catholic Education Commission of Victoria, Independent Schools Victoria, Victorian Aboriginal Child Care Agency, Centre for Excellence in Child and Family Welfare* (2018) 3–5.

Child protection service (Victoria), the	A service with functions including investigating reports that a child is at risk of harm and issuing a protection application in the Children's Court if the child's safety cannot be ensured within the family. The child protection service is part of the Department of Health and Human Services.
Council, the	The Sentencing Advisory Council.
'Crossover kid'	A term that has been used (along with 'crossover child') in past research to describe children with involvement in both the criminal justice system and the child protection system. There is no uniform definition of 'crossover kids'. This project examines several different categories of child protection involvement for sentenced and diverted children.
Detention	Confinement in a youth justice centre (offenders aged 15–20) or a youth residential centre (offenders aged under 15) under the CYF Act.
Discharge	A sentence type that involves the conviction of an offender and discharge without conditions. Discharge is available under the <i>Sentencing Act 1991</i> (Vic) in adult courts (Magistrates' Court, County Court or Supreme Court), in contrast to a sentence available under the CYF Act for children in the Children's Court.
Dismissal	An order under which a child is found guilty of an offence and the court dismisses the charge without recording a conviction and without conditions (<i>Children, Youth and Families Act 2005</i> (Vic) s 360(1)(a)).
Diversion	A pre-plea option that allows a child who completes a diversion plan to have their charges discharged without a criminal record. The Children's Court grants an adjournment under the CYF Act for the child to participate in and complete a diversion program.
Diverted	In this report, a child who has been granted an adjournment by the Children's Court to participate in and complete a diversion program.
Family Services	Support and assistance services to vulnerable children, young people and their families in cases where there are concerns about the wellbeing of the child or young person (0–17 years, including an unborn child) or their family. ² Integrated family services operate alongside child and family information, referral and support teams (Child FIRST), and both are funded by the Department of Health and Human Services.

2. Better Health Channel, 'Family and Child Support Services' (betterhealth.vic.gov.au, 2018) <<https://www.betterhealth.vic.gov.au/health/ServicesAndSupport/family-and-child-support-services>> at 20 May 2019.

Fine A sentence that requires an offender to pay a sum of money to the state. For children aged under 15, the maximum fine is one penalty unit for one offence (or the statutory maximum penalty for the particular offence, whichever is the lowest) and two penalty units for more than one offence. For children aged 15 or over, the maximum fine is five penalty units for one offence (or the statutory maximum penalty for the particular offence, whichever is the lowest) and 10 penalty units for more than one offence (*Children, Youth and Families Act 2005* (Vic) s 373).³

In this report, the data relating to fines does not include data from the Children and Young Persons Infringement Notice System (CAYPINS) under Schedule 3 of the CYF Act. Only fines imposed as a sentence in the Children's Court are included in the data.

First sentence The first sentence recorded for a child in the study group on or after 1 July 2004.

Foster care Temporary care of children in a family setting with trained, assessed and accredited foster carers.⁴

Good behaviour bond An order under which the court postpones the sentencing of a child for up to one year (or up to 18 months if the child is aged 15 or over, and the circumstances are exceptional). During this period, the child must be of good behaviour and meet any special conditions imposed by the court. When making the order, the court specifies a bond amount. If the child complies with the order, the court dismisses the charge, does not record a conviction and does not require the child to pay the bond amount. If the child fails to comply with the order, the court may require payment of the bond amount or may resentence the child for the original charges (*Children, Youth and Families Act 2005* (Vic) ss 367–372).

Imprisonment A sentence available under the *Sentencing Act 1991* (Vic) for adults, in contrast to a sentence of detention available under the CYF Act for children. In this report, the term *imprisonment* describes a custodial sentence that is served immediately, as distinct from a sentence of imprisonment that is partially or wholly suspended.

Index offender In this report, a person sentenced or diverted in the Children's Court of Victoria in 2016 or 2017 for at least one charge.

Index sentence In this report, an index offender's first sentence or diversion in the Children's Court in 2016 or 2017. If an offender was sentenced once in 2016 or 2017, that sentence is the index sentence. If an offender was sentenced more than once in 2016 or 2017, the earliest sentence is the index sentence.

3. For the financial year 1 July 2018 to 30 June 2019, one penalty unit is valued at \$161.19: Treasurer, 'Notice Under Section 6, Fixing the Value of a Fee Unit and a Penalty Unit', in Victoria, *Victoria Government Gazette*, No. S 145, 29 March 2018. The value of a penalty unit is adjusted each year in line with inflation.

4. Department of Health and Human Services, 'Families & Children: Foster Care' (dhhs.vic.gov.au, 2019) <<https://services.dhhs.vic.gov.au/foster-care>> at 13 May 2019.

Interim accommodation order	An interim (temporary) order made under section 262 of the CYF Act after a protection application has been issued and the court has decided that an interim order is needed to keep the child safe until the application is determined. When making an interim accommodation order, the court is required to consider the best interests principles under section 10 of the CYF Act, including that the child is only to be removed from their parent if there is an unacceptable risk of harm to the child (<i>Children, Youth and Families Act 2005</i> (Vic) s 10(3)(g)). These orders specify where the child must live until the next court date and usually include conditions (the court may impose conditions in the best interests of the child) (<i>Children, Youth and Families Act 2005</i> (Vic) s 263). ⁵
Investigation (by child protection service)	An investigation of a matter following an allegation that a child is at risk of harm. Every report made to the child protection service (raising concerns about a child's welfare) is assessed by a child protection practitioner in an intake service. The child protection practitioner gathers information and assesses whether the child appears to be in need of protection. If the child is assessed to be at significant risk of harm, the report is investigated. If child wellbeing concerns exist, child protection may refer the child and family to family services or other specialist supports.
Kinship care	Out-of-home care provided by a child's relatives ('kin') or a member of the child's social network ('kith'). This definition is broader than the strict definition of 'kinship' (relating to family relationships).
Known to child protection	In this report, a term used to describe a child who has been the subject of at least one report to the child protection service.
Median	A measure of central tendency. The median is the middle value in an ordered set or a distribution of values. For example, in the following set of values: 1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7, the median value is 4, representing a midpoint where half of the values (1, 2, 2, 3, 3) are below the median and half of the values (5, 5, 6, 6, 7) are above the median. If a set has an even number of values, the two middle values (sometimes defined as the <i>lower median</i> and the <i>upper median</i>) are averaged to find the median.
Mean	A measure of central tendency, also known as the <i>average</i> .
Out-of-home care	A temporary, medium or long-term living arrangement for children and young people who cannot live with one or both parents and who are on statutory care orders or voluntary child care agreements. Children and young people living in statutory out-of-home care may be subject to a child protection investigation, protective intervention or a Children's Court order (and have oversight by the Department of Health and Human Services). ⁶

5. See further Department of Health and Human Services, 'Families & Children: Child Protection Orders' (dhhs.vic.gov.au, 2017) <<https://services.dhhs.vic.gov.au/child-protection-orders>> at 13 May 2019.

6. Department of Health and Human Services, 'Children, Youth & Families – Child Protection Orders' (dhhs.vic.gov.au, 2018) <<https://providers.dhhs.vic.gov.au/out-home-care>> at 13 May 2019.

Permanent care order	An order made by the Children's Court appointing a specified person or persons as having parental responsibility for the child, usually to the exclusion of all others. Following the granting of a permanent care order, the child protection service (Department of Health and Human Services) is no longer involved (<i>Children, Youth and Families Act 2005</i> (Vic) ss 319–327).
Prior offence	In this report, a term used to describe a sentenced charge or case that occurred before an offender's index sentence in 2016 or 2017.
Probation	An order requiring an offender to report to a youth justice unit, obey the instructions of a youth justice worker and refrain from offending. The order must not last for more than one year (or more than 18 months for offences with a maximum penalty of more than 10 years) and cannot extend beyond the offender's 21st birthday. The order can include special conditions, such as counselling and treatment programs (<i>Children, Youth and Families Act 2005</i> (Vic) ss 380–386).
Protection order	A final order made under section 275 of the CYF Act where the court has found a child to be in need of protection under section 274 of the CYF Act (or there is a substantial and irreconcilable difference between the child and their carer). See also section 162 of the CYF Act for the circumstances in which a child may be found to be in need of protection. A protection order under section 275 includes an order requiring a person to give an undertaking, a family preservation order, a family reunification order, a care by Secretary order or a long-term care order. The available orders changed substantially with the introduction of the <i>Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014</i> (Vic); the relevant provisions commenced operation in March 2016.
Residential care	Out-of-home care provided by paid staff, usually in a residential home accommodating up to four children. As at January 2016, there were 240 residential care homes operating in Victoria, accommodating 442 children and young people. The Department of Health and Human Services funds a variety of community service organisations to run these facilities on its behalf. ⁷
Secure welfare	Out-of-home care in a secure welfare service (a lock-up facility accommodating up to 10 young people). Secure welfare is an option of 'last resort' where there is 'a substantial and immediate risk of harm' to a child. ⁸ The maximum period a child can be placed in secure welfare is 21 days with one further extension of 21 days available (<i>Children, Youth and Families Act 2005</i> (Vic) s 263(2)(b)).

7. Victoria Legal Aid, *Care Not Custody: A New Approach to Keep Kids in Residential Care out of the Criminal Justice System* (2016) 5.

8. *Children, Youth and Families Act 2005* (Vic) ss 173(2)(b), 263(1)(e). See further [2.16]; Judicial College of Victoria, '13.2.5.5 – Placement in a Secure Welfare Service', *Children's Court Bench Book* (Judicial College of Victoria, 2018) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#60790.htm>> at 13 May 2019; Department of Health and Human Services, 'Secure Welfare Service', *Child Protection Manual* (Department of Health and Human Services, 2018) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/service-descriptions/out-home-care/secure-welfare-service>> at 13 May 2019.

Sentenced and diverted children	Children who were sentenced or diverted in the Children's Court of Victoria in 2016 or 2017 for at least one charge.
Study group	In this report, the group of 5,063 offenders who were sentenced or diverted for at least one charge in the Children's Court in 2016 or 2017. Each child was counted only once. If a child had more than one sentence or diversion in the two-year study period, the first sentence or diversion was counted as the <i>index sentence</i> .
Study period	In this report, the period from 1 January 2016 to 31 December 2017 inclusive.
Substantiation (by the child protection service, Department of Health and Human Services)	The substantiation of a report to the child protection service. A report is substantiated if upon investigation of the report the protective intervener is satisfied based on one or more of the grounds defined in section 162 of the CYF Act that the child is in need of protection. If necessary, the child protection service will issue a protection application in the Children's Court.
Therapeutic treatment order	A court order requiring a child aged 10–14 (inclusive) who has exhibited sexually abusive behaviour to participate in an appropriate therapeutic treatment program (<i>Children, Youth and Families Act 2005</i> (Vic) ss 244–258). On 29 March 2019 (after the study period for this report), therapeutic treatment orders were extended to include children aged 15–17 (inclusive). ⁹
Unborn child report	A confidential report to the child protection service before a child is born. If a woman is pregnant and a person has a significant concern for the wellbeing of her child after that child's birth, that person may make an unborn child report. The person may also make a confidential referral to a child and family information, referral and support team (Child FIRST).
Undertaking (accountable or unaccountable)	A sentencing order for up to one year requiring agreement from the child to abide by certain conditions. At the end of the order, the court dismisses the charge that the child has been found guilty of. An accountable undertaking means the child may have to return to court if the order is breached. An unaccountable undertaking means the child does not have to return to court if the order is breached (<i>Children, Youth and Families Act 2005</i> (Vic) ss 363–366).
Voluntary child care agreement	An agreement entered into under part 3.5 of the CYF Act whereby the parent retains guardianship but places the child in out-of-home care. ¹⁰

9. *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic) ss 3–13.

10. Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services (2018), above n 1, 5.

Youth attendance order	An alternative order to detention for offenders aged 15–20. The order requires an offender to report to youth justice and comply with intensive reporting and attendance requirements. The order may last for up to one year, but it cannot extend past the offender's 21st birthday. The court may attach special conditions, such as education, counselling or treatment, or may direct that the offender engage in community service. The offender must not reoffend during the order. If the order is breached, the offender may be sent into detention (<i>Children, Youth and Families Act 2005</i> (Vic) ss 397–409).
Youth control order	A sentencing order available in the Children's Court for children who would otherwise be sentenced to detention because of the serious or ongoing nature of their offending, but who have potential to be rehabilitated with support and supervision. ¹¹ The youth control order became available on 1 June 2018 (after the study period for this report).
Youth justice centre order	An order for offenders aged 15–20 for detention in a youth justice centre for a maximum of two years for a single offence or three years for more than one offence (<i>Children, Youth and Families Act 2005</i> (Vic) ss 412–413). While detained, offenders participate in education and/or programs that address their offending behaviour. Temporary leave may be granted for specific purposes, such as work (<i>Children, Youth and Families Act 2005</i> (Vic) s 485). From 30 November 2017 (towards the end of the study period for this report), the maximum penalty increased to three years for one offence and four years for more than one offence, as part of a suite of youth justice reforms.
Youth residential centre order	An order for offenders aged under 15 for detention in a youth residential centre for a maximum of one year for a single offence or two years for more than one offence. While detained, offenders participate in education and/or programs that address their offending behaviour (<i>Children, Youth and Families Act 2005</i> (Vic) ss 410–411). Temporary leave may be granted for specific purposes, such as work (<i>Children, Youth and Families Act 2005</i> (Vic) s 485).
Youth supervision order	An order requiring an offender to be under a higher level of supervision than for a probation order but under a lower level of supervision than for a youth attendance order. Conditions include attending a youth justice unit, participating in programs, reporting to youth justice, obeying the instructions of a youth justice worker and refraining from offending. The order must not last for more than one year – or more than 18 months for offences with a maximum penalty of more than 10 years – and cannot extend beyond the offender's 21st birthday (<i>Children, Youth and Families Act 2005</i> (Vic) ss 387–395).

11. Victoria, 'Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017', *Parliamentary Debates*, Legislative Assembly, 25 May 2017, 1502 (Martin Pakula, Attorney-General); *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) pt 3.

Executive summary

This is the first of two reports by the Sentencing Advisory Council looking at the child protection backgrounds of children who received a sentence or diversion in the Victorian Children's Court in 2016 or 2017.

The project aims to explore the pathways that lead children as young as 10 into the criminal justice system and better understand the vulnerable backgrounds of children who are sentenced in the Children's Court.

Research questions

The report answers the following questions:

1. **Prevalence of 'crossover kids' in the youth justice system:** What proportion of children sentenced or diverted in the Children's Court in 2016 and 2017 (the 'study group') were known to the child protection service? Specifically, in the period from 18 June 1996 to 3 September 2018, what proportion of children:
 - (a) were the subject of a child protection report?
 - (b) were the subject of a child protection report that was investigated?
 - (c) were the subject of a child protection report that was substantiated?
 - (d) were the subject of a child protection order made in the Children's Court?
 - (e) experienced out-of-home care, including residential care?
2. **Over-representation of Aboriginal and Torres Strait Islander children:** What proportion of sentenced and diverted children known to the child protection service were Aboriginal and Torres Strait Islander children?
3. **Sentence type and child protection involvement:** What proportion of children sentenced to specific sentence types were known to the child protection service?
4. **Age at first sentence and child protection involvement:** Are children first sentenced at a young age more likely than older children to be known to the child protection service?

Aim

This report aims to identify the proportion of sentenced and diverted children who are known to the child protection service and the sentence types associated with higher rates of children with child protection backgrounds. The broader aim of the report is to inform sentencing practice and policy in several ways, including providing evidence that may assist in:

- identifying the principles, purposes and factors that are relevant to sentencing children and reflect their circumstances and the factors that contributed to their offending;
- evaluating and improving the effectiveness of current sentencing options and understanding why sentenced children reoffend; and
- understanding why particular aspects of the sentencing process or sentencing orders may be challenging for children who have experienced trauma, have little or no family support and/or do not have stable living circumstances.

Beyond sentencing, the findings of this report have broader implications in terms of identifying earlier (pre-sentence) opportunities for intervention, understanding the way that children cross from the child protection system into the youth justice system, examining criminal justice responses to children (such as the age of criminal capacity) and identifying initiatives for preventing or halting the criminalisation of children in care.¹² While such issues are critically important, they are beyond the scope of the analysis in this report.

‘Crossover kids’

The term *crossover kid* or *crossover child* has been used in past research to describe children with involvement in both the criminal justice system and the child protection system. There is no uniform definition of crossover kids. Instead of labelling one particular group as ‘crossover kids’ and limiting the study to those children (for example, children who have been the subject of a child protection order), this project examines several different categories of child protection involvement for sentenced and diverted children. This report focuses on children who were sentenced or diverted in the Victorian Children’s Court in the calendar years 2016 and 2017 and analyses the proportion of children who experienced the following in the 22-year period from June 1996 to September 2018:

- (a) They were the subject of at least one report to the child protection service, including unborn child reports¹³ (this count includes uninvestigated and unsubstantiated reports).
- (b) They were the subject of at least one *investigated* report, which involves contact between the child and the child protection service.
- (c) They were the subject of at least one *substantiated* report.
- (d) They were the subject of at least one child protection order made in the Children’s Court.
- (e) They experienced out-of-home care, including the proportion of children who experienced residential care.

12. Previous studies have raised concerns about children in out-of-home care being charged with offences for behaviour that would not result in criminal charges if it happened in a child’s family home. See Chapter 1.

13. *Children, Youth and Families Act 2005* (Vic) ss 29, 32. See Chapter 1, n 35.

Study group

There were 5,063 children in the study group, which comprised all children who offended between the ages of 10 and 17 (inclusive) and received a sentence or diversion in the Victorian Children's Court in the 2016 or 2017 calendar years (the 'study period').

The Council classified a child's first (or only) sentence or diversion in the study period as their 'index sentence'. Each child was counted once only.

The study group includes 3,404 sentenced children and 1,659 children dealt with under the diversion program.

Of the 5,063 children in the study group, 617 children were aged 10–14 at their index sentence (12%), and 4,446 children were aged 15 or older at their index sentence (88%). The study group included 1,273 girls (25%) and 3,790 boys (75%).

What is child protection?

Any person who has a significant concern for the wellbeing of a child may make a report to the Victorian child protection service of the Department of Health and Human Services or to a member of the police force.

The test for whether a child is 'in need of protection' is set out in section 162 of the *Children, Youth and Families Act 2005* (Vic) ('CYF Act'). A child is in need of protection if the child has been abandoned, the child's parents are dead or incapacitated (for example, admitted to hospital) or the child has suffered, or is likely to suffer, harm and the child's parents have not protected the child or are unlikely/unable to protect the child.

Every report made to the child protection service raising concerns about a child's welfare is assessed by a child protection practitioner in an intake service. The child protection practitioner gathers information and decides whether the report should be investigated by assessing whether, in their view, the child appears to be in need of protection using the test in section 162 of the CYF Act. An investigation requires contact with the child who is the subject of the report.¹⁴ After investigating, if the child protection service is satisfied on reasonable grounds that the child is in need of protection, a decision may be made to substantiate the report. If necessary, the child protection service will also issue a protection application in the Children's Court.

Five key aspects of the child protection system are examined in this study:

- (a) reports to the Victorian child protection service raising concerns about possible abuse, neglect, harm or risk to a child, including uninvestigated and unsubstantiated reports;
- (b) investigated reports;
- (c) substantiated reports;
- (d) child protection orders, which are court orders that give the Department of Health and Human Services responsibility for particular aspects of the child's welfare; and
- (e) out-of-home care, which is a temporary, medium or long-term living arrangement for children who cannot live with their families.

14. Department of Health and Human Services, 'Investigation Phase: Advice', Child Protection Manual (Department of Health and Human Services, 2017) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/investigation/investigation-phase>> at 4 December 2018.

Research Question 1: What proportion of children sentenced or diverted in the Children's Court in 2016 and 2017 were known to the child protection service?

(a) How many children were the subject of a child protection report?

Over **1 in 3** sentenced and diverted children had been the subject of a report to the Victorian child protection service.

Of the 5,063 children in the study group, 38% (1,938 children) were the subject of at least one report to the Victorian child protection service at any time in the 22-year period from June 1996 to September 2018 (including uninvestigated and unsubstantiated reports).

Of the 1,938 children who were the subject of a child protection report, 89% had been the subject of multiple reports to the child protection service raising concerns about their safety and wellbeing, and 30% were the subject of 10 or more reports.

(b) How many children were the subject of an *investigated* report?

Of the 1,938 children who were the subject of a child protection report, over three-quarters (79%) had at least one report *investigated* by the child protection service (1,538 children or 30% of the study group).

(c) How many children were the subject of a *substantiated* report?

Of the 1,938 children who were the subject of a child protection report:

- around two-thirds (66%) had at least one report *substantiated* by the child protection service (1,286 children or 25% of the study group); and
- 41% were the subject of more than one *substantiated* report, and 12% had four or more substantiated reports in their lifetime.

(d) How many children were the subject of a child protection order?

In this report, the term *child protection order* is used to refer collectively to four categories of orders made by the Family Division of the Children's Court of Victoria under the CYF Act:

1. protection orders (see [2.8]–[2.9]);
2. interim accommodation orders (see [2.10]);
3. permanent care orders (see [2.11]); and
4. therapeutic treatment orders (see [3.13]–[3.15]).

Almost one in five children in the study group (18% or 892 people) were the subject of at least one child protection order made in their lifetime. This comprised almost half of the 1,938 children who were reported to the child protection service (46% or 892 children). Almost all these children were the subject of at least one protection order, which is a final order made by the Children's Court once satisfied that the child is in need of protection based on one or more grounds in section 162 of the CYF Act) (833 children or 16% of the study group).

Around 1 in 6 sentenced and diverted children were the subject of a protection order at some point in their lifetime, after the Children's Court found them to be in need of protection.

The 892 children who were the subject of at least one child protection order had a number of key characteristics:

- 97% (866 children) were found at least once by the Children's Court to be at an *unacceptable risk of harm* (resulting in an interim accommodation order involving out-of-home care)¹⁵ and/or to be *in need of protection* (resulting in a protection order).¹⁶ These 866 children comprised 17% (over one in six) of the sentenced and diverted children in the study group. Many of these children are likely to have been immediately removed from their families by police or child protection practitioners at least once in 'the most serious of circumstances where [the] child has suffered significant harm, or is at imminent risk of significant harm'.¹⁷ Aside from indications of neglect or abuse, the risk of harm may also relate to circumstances such as the death or incapacitation of a child's parent;
- 94% were the subject of multiple child protection orders (interim and/or final), almost two-thirds (65%) had five or more child protection orders in their lifetime and one-third (33%) had 10 or more child protection orders in their lifetime, suggesting ongoing concerns for their safety and wellbeing within parental care, in many instances requiring changes to their care arrangements;
- 87% had at least one order involving out-of-home care;
- 26% had been the subject of a care by Secretary order or guardianship to Secretary order, signifying that they were unlikely to be able to return to their families; and
- less than 6% were placed on permanent orders – 5.6% were the subject of a long-term care order, long-term guardianship to Secretary order and/or permanent care order.

(e) How many children experienced out-of-home care?

Out-of-home care is a temporary, medium or long-term living arrangement for children and young people who cannot live with their parents and who are on child protection orders.

In total, 767 children (15% of the study group) had at least one recorded out-of-home care placement in their lifetime, whether before, during or after their offence and sentence. Most of these 767 children experienced more than one out-of-home care placement in their lifetime:

- around four in five children had more than one placement; and
- around one in two children had five or more placements.

15. An interim (temporary) order is made after a protection application has been issued and the court determines that an interim order is needed to keep the child safe until the child protection application is determined (see further [2.10]).

16. A protection order is a final order made after the Children's Court is satisfied that the child is in need of protection under one of the grounds in *Children, Youth and Families Act 2005* (Vic) s 162 (see further [2.8]).

17. Department of Health and Human Services, 'Immediate Removal of a Child: Advice', Child Protection Manual (Department of Health and Human Services, 2016) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/investigation/immediate-removal-child>> at 8 March 2019. See [5.47].

Nearly **1 in 6** sentenced or diverted children experienced out-of-home care.

1 in 10 sentenced or diverted children experienced residential care.

1 in 2 children who experienced out-of-home care had 5 or more placements.

The number of placements includes respite care placements (temporary short-term placements) that occur between other longer-term placements but does not include respite care placements that occur within, or parallel to, longer term placements (for example, where a child's primary out-of-home care placement is supported by the child being periodically looked after by a second set of carers).

Of the 767 children who had experienced out-of-home care, 525 had spent time in residential care (68%), which was the most prevalent placement type. This amounted to 10% of the study group.

When out-of-home care placement types were examined on a particular day (30 June 2017), children in care in the study group were far more likely to be in residential care than children aged 10–17 in care in the general Victorian out-of-home care population. Specifically:

- of the 4,230 children within the general population (aged 10–17) who were in out-of-home care on 30 June 2017, 10% were in residential care; and
- of the 213 children in the study group of sentenced and diverted children (aged 10–17) who were in out-of-home care on 30 June 2017, 58% were in residential care.

This is a particularly striking finding. It is consistent with previous research suggesting that children who have experienced residential care are over-represented in the youth justice system.

Research Question 2: What proportion of sentenced and diverted children known to the child protection service were Aboriginal and Torres Strait Islander children?

Sentenced and diverted children who were the subject of a child protection report were **8 times** more likely than the general population to be Aboriginal and Torres Strait Islander children.

Sentenced and diverted children who had experienced out-of-home care were **11.5 times** more likely than the general population to be Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander children comprised:

- 1.6% of Victorian people aged 10–20 on 30 June 2016;
- 13% of the 1,938 sentenced and diverted children who were the subject of a child protection report;
- 18% of the sentenced and diverted children who were the subject of at least one child protection order; and
- 19% of sentenced and diverted children who experienced out-of-home care.

These findings suggest a substantial over-representation of Aboriginal and Torres Strait Islander children at the intersection of the child protection and youth justice systems.

Of the children who experienced out-of-home care, Aboriginal and Torres Strait Islander children were more

likely than non-Aboriginal and Torres Strait Islander children to have spent time in kinship care and less likely to have spent time in residential care.

Research Question 3: What proportion of children sentenced to specific sentence types were known to the child protection service?

Children sentenced to the most severe sentence types were more likely than other sentenced and diverted children to have a child protection history. However, care must be taken in interpreting this finding. A child's experience of child protection would not be expected to *directly* lead to a more severe sentence than one imposed on children with no child protection history. On the contrary – it is likely to be a mitigating factor that a child has experienced trauma, harm, abuse, loss or removal from their family into out-of-home care. Nevertheless, child protection involvement may *indirectly* contribute towards the over-representation of children with child protection backgrounds in the more severe sentencing options.

Custodial orders

The Council found that children sentenced to custodial orders were the most likely to be known to the child protection service. Just under half (49%) were the subject of at least one child protection report. Children sentenced to custodial orders had the same rates of child protection orders (24%) and out-of-home care (23%) as children sentenced to supervised community orders. Children sentenced to custodial orders had the highest rate of residential care (20%).

Of children sentenced to a custodial order:

1 in 2 were the subject of a child protection report.

1 in 4 were the subject of a child protection order.

1 in 5 experienced residential care.

Diversion

There was little difference between the proportion of sentenced children and the proportion of diverted children who had been the subject of a report to the child protection service, which may be surprising given diversion's role to keep less serious offenders away from the youth justice system. The gap between sentenced children and diverted children widened as the level of child protection involvement increased.

Fines

The proportion of fined children who were the subject of a child protection report was noticeably lower than the proportion of diverted children and the proportion of children who received all other sentence types: 23% of fined children were the subject of at least one child protection report, 9% were the subject of a child protection order and 8% experienced out-of-home care. The lower proportion of fined children known to the child protection service is likely to reflect circumstances around:

- the offence – for example, fines are the most common disposition for transit offences, which had the lowest proportion of children known to the child protection service; and
- the offender – for example, a fine may be very difficult for a child in out-of-home care to pay and virtually impossible to enforce, rendering it meaningless as a sentence (it is unlikely that the court would impose a fine if a child clearly lacked the capacity to pay).

Over-representation of Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children were over-represented in every sentence type and child protection category. This finding is consistent with previous research (see further [4.41]–[4.46]).

Aboriginal and Torres Strait Islander children comprised about **1 in 3** of the children sentenced to a custodial order who had been the subject of a child protection order or had experienced residential care.

The greatest over-representation of Aboriginal and Torres Strait Islander children occurred at the intersection between the most severe sentence type (custodial orders) and the most serious end of the child protection system (child protection orders, out-of-home care and residential care). Aboriginal and Torres Strait Islander children comprised 1.6% of the 808,556 Victorian people aged 10–20 on 30 June 2016.¹⁸ In contrast, of the 165 children sentenced to a custodial order (a youth residential centre order or a youth justice centre order), Aboriginal and Torres Strait Islander children comprised:

- 21% of children sentenced to a custodial order who had been the subject of a report to the child protection service (17 children);
- 35% of children sentenced to a custodial order who had been the subject of a child protection order (14 children); and
- 33% of children sentenced to a custodial order who had experienced residential care (11 children).

Research Question 4: Are children first sentenced at a young age more likely than older children to be known to the child protection service?

The younger children were at first sentence, the more likely they were to be known to the child protection service. Of the 438 children who were first sentenced aged 10–13:

- 54% were the subject of at least one child protection report (238 children);
- 38% were the subject of at least one child protection order (168 children);
- 33% experienced out-of-home care (146 children); and
- 26% experienced residential care (112 children).

Of children first sentenced aged 10–13:

1 in 2 were the subject of a child protection report.

1 in 3 experienced out-of-home care.

1 in 4 experienced residential care.

These findings are particularly concerning when considered alongside the findings of the Council's 2016 youth reoffending study that the younger children are at their first sentence, the more likely they are to reoffend generally, reoffend violently and receive a sentence of adult imprisonment before their 22nd birthday.¹⁹

18. Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*, cat. no. 3238.0.55.001 (2018) (Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, states and territories, single year of age, 30 June 2016, Table 2: Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Victoria, single year of age (to 65 and over), 30 June 2016(a)).

19. Sentencing Advisory Council, *Reoffending by Children and Young People* (2016) 52.

Concluding observations

On any given day, the Criminal Division of the Children's Court is likely to sentence children who are known to the Victorian child protection service due to their experience of trauma, abuse, harm, neglect, parental death or incapacitation or the risk of harm.

Research has established that a child's experience of abuse and trauma can disrupt healthy brain development and can cause children to remain 'hyper-vigilant' and reactive to perceived threats and triggers. This can have consequences for a child's emotional and behavioural regulation.

For children removed from their families into out-of-home care, this may also include removal from the child's community, friends and school, and their experience of care can compound the trauma that they have already experienced. Previous research also suggests that children in care may be more likely to be prosecuted for behaviour that would usually be dealt with in the family home, contributing to their over-representation among sentenced and diverted children.

Childhood trauma is, therefore, clearly relevant to sentencing, particularly when there is a nexus between the trauma and a child's offending. The focus on rehabilitation in the Children's Court requires an understanding of the context of a child's offending and the role played by circumstances such as abuse, separation from family and the experience of out-of-home care.

The Court of Appeal has specified that the matters to be taken into account in sentencing a child under section 362 of the CYF Act require the sentencing court to consider 'the effect of the proposed sentence on the child ... and to impose a sentence which fits the young offender as much as – or perhaps even more than – it fits the crime'.²⁰ Section 362 includes the need to strengthen the relationship between the child and the child's family and the desirability of allowing the child to live at home.²¹ However, the section is silent in relation to a child who currently is not safe with their family and who cannot live at home. There is no requirement in section 362 for the court to take into account:

- the child's experience of abuse, trauma, neglect, parental death, loss, removal from family or experience of out-of-home care and how these circumstances relate to the child's offending;
- the need to ensure that the child has a safe, stable and secure place to live; or
- the need to protect the child from harm or the risk of harm.²²

In light of the prevalence of children with child protection backgrounds in the youth justice system, further legislative guidance on the way that a sentencing court may take into account a child's background and experience of trauma may be valuable.

20. *CNK v The Queen* [2011] 32 VR 641, [4]–[16].

21. *Children, Youth and Families Act 2005* (Vic) ss 362(a)–(b).

22. *Children, Youth and Families Act 2005* (Vic) s 362. The list of reports and other matters to be taken into account by a court in sentencing a child is set out in *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 5.

1. About this project

Background

- I.1 This is the first of two reports by the Sentencing Advisory Council ('the Council') examining the child protection backgrounds of children who were sentenced or diverted²³ in the Victorian Children's Court in 2016 or 2017.
- I.2 The project builds on the Council's research report *Reoffending by Children and Young People in Victoria* (2016), which found that age at first sentence is strongly associated with future contact with the criminal justice system. The younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently and be sentenced to a term of adult imprisonment before their 22nd birthday. Children who were first sentenced at a young age proceeded to commit a disproportionate volume of all youth crime.²⁴
- I.3 One limitation of the 2016 report was the lack of data on the backgrounds of the children in the study, particularly on whether they had experienced, or were at risk of, abuse, harm or neglect or had spent time in out-of-home care. Indeed, data availability (or unavailability) has been the main limitation on the scope and development of research into children involved in both the youth justice system and the child protection system:

The pronounced lack of quality research in relation to the consequences of 'care-criminalisation' is a matter of particular concern. The studies that have been conducted into juvenile offending have seldom sought to understand why children offend while in care or to examine the criminogenic processes that propel them into the justice system at such disproportionate rates ... Australian research into the involvement of children in [out-of-home care] in the criminal justice system is particularly lacking.²⁵

Aim

- I.4 This project aims to explore the pathways that lead children as young as 10 into the criminal justice system and better understand the vulnerable backgrounds of children who are sentenced or diverted in the Children's Court. The research is intended to provide evidence to inform policy makers, the judiciary and the community about the backgrounds of children who have had contact with both the child protection system and the youth justice system.

23. Children's Court youth diversion is a pre-plea option that allows a child who completes the diversion plan to have their charges discharged without a criminal record. The court grants an adjournment under the *Children, Youth and Families Act 2005* (Vic) for the child to participate in and complete a diversion program. The diversion program started as a 12-month pilot program before becoming available in all Victorian Children's Court locations from January 2017. It was given a formal statutory basis under *Children, Youth and Families Act 2005* (Vic) ss 356B–356K, which were introduced by the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic). See further Judicial College of Victoria, '27.2.1.1 – Youth Diversion Programs', Children's Court Bench Book (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#66518.htm>> at 1 March 2019. The youth diversion program targets children 'charged with low-level offences with little or no criminal history who would otherwise be sentenced to an outcome not requiring supervision with the youth justice service. Prior to [Children's Court youth diversion] most would leave court without an intervention to assist them to develop the knowledge, skills and attitudes to manage their lives effectively without further offending': Children's Court of Victoria, 'Youth Diversion' (childrenscourt.vic.gov.au, 2019) <<https://www.childrenscourt.vic.gov.au/jurisdictions/criminal/youth-diversion>> at 14 March 2019.

24. Sentencing Advisory Council (2016), above n 19, 27 (Table 5), 30–31 (Figure 19). See further [4.9]–[4.10].

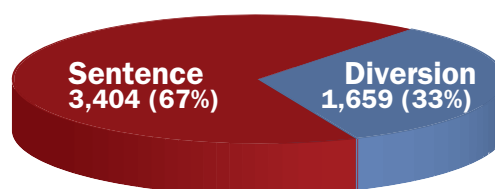
25. Kath McFarlane, 'Care-Criminalisation: The Involvement of Children in Out-of-Home Care in the New South Wales Criminal Justice System' (2018) 51(3) *Australian & New Zealand Journal of Criminology* 412, 426. See also Kath McFarlane, 'Improving Data Collection to Better Support Children in Out-of-Home Care at Risk of Offending' (aifs.gov.au, 2017) Child Family Community Australia <<https://aifs.gov.au/cfca/2017/10/18/improving-data-collection-better-support-children-out-home-care-risk-offending>> at 13 May 2019.

- I.5 Identifying the proportion of sentenced children who have experienced abuse, harm or the risk of harm, and out-of-home care – and the sentence types associated with higher rates of children with child protection backgrounds – can inform sentencing practice and policy in several ways, including providing evidence that may assist in:
- identifying the sentencing factors relevant to children that reflect their circumstances and the factors that contributed to their offending;
 - identifying the purposes and principles relevant to sentencing children;
 - evaluating the appropriateness and effectiveness of current sentencing options and understanding why sentenced children reoffend;
 - improving the effectiveness of sentencing options as a mechanism to interrupt the progression of child offenders both through the youth justice system and into the adult criminal justice system;
 - understanding why particular sentencing orders or aspects of the sentencing process may be challenging for children who have experienced trauma, have little or no family support and/or do not have stable living circumstances; and
 - identifying more effective, evidence-based interventions that enhance rehabilitation and support the reduction of reoffending.
- I.6 The findings of this project have broader implications beyond sentencing. They may assist with identifying earlier (pre-sentence) opportunities for intervention, understanding the way that children cross from the child protection system into the youth justice system and identifying initiatives for preventing or halting the criminalisation of children in care.²⁶ The findings may also provide evidence that is relevant to examining other aspects of the child protection system, such as managing children's behaviour in out-of-home care, and the youth justice system, such as the age of criminal capacity. While such issues are critically important, they are beyond the scope of the analysis in this report.

Study group

- I.7 There were 5,063 children in the study group, which comprised all children who offended between the ages of 10 and 17 (inclusive) and received a sentence or diversion²⁷ in the Victorian Children's Court in the 2016 or the 2017 calendar year.
- I.8 The Council classified a child's first (or only) sentence or diversion in 2016 or 2017 as their *index sentence*. Each child was counted once only.
- I.9 The study group includes 3,404 sentenced children and 1,659 children dealt with under the diversion program (Figure 1). While diversion is not a sentencing order *per se*, it requires a child to take responsibility for the offence. It is therefore included in this report as a disposition used by the Children's Court to respond to alleged offending by a child.

Figure 1: Study group, by most severe court order at index sentence (diversion or sentence) 5,063 children

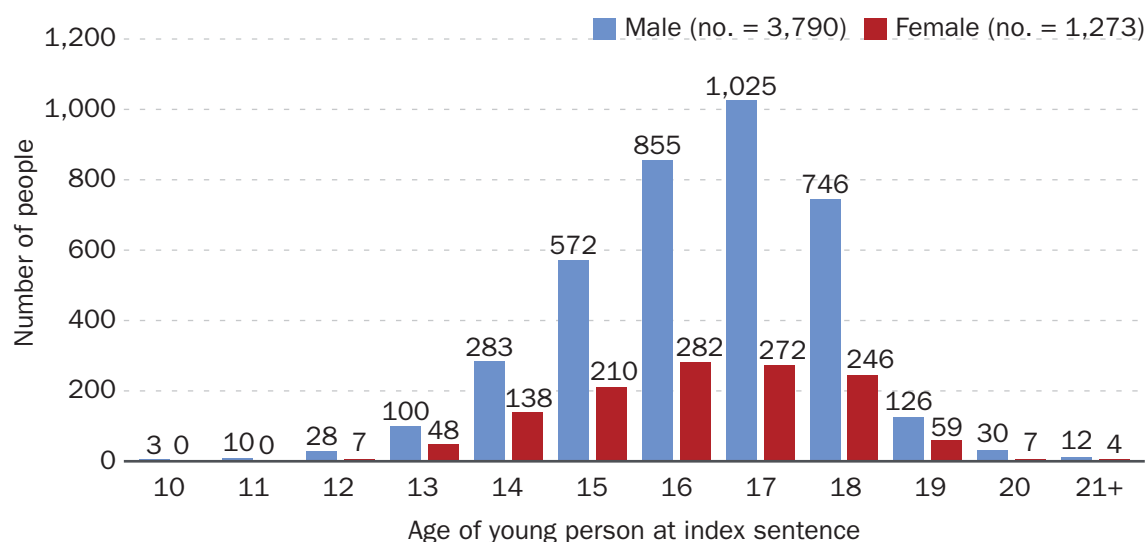


26. Previous studies have raised concerns that children in out-of-home care are being charged with offences for behaviour (often trauma-related) that would not result in criminal charges if it happened in a child's family home, for example, a child being charged with criminal damage for throwing a cup (see further [4.25]–[4.29]). Concerns about the criminalisation of the behaviour of children in care were also raised by roundtable participants (see for example, [5.106]–[5.107]).

27. Children who are 'diverted' are granted an adjournment to participate in and complete a diversion program under the CYF Act. For information about the youth diversion program, see above n 23.

- I.10 In addition to children who received diversion, the study group includes children sentenced to low-end orders such as fines and good behaviour bonds. Low-end orders and diversion make up the bulk of dispositions imposed in the Children's Court.²⁸ One hypothesis is that the inclusion of these low-end orders might result in a considerably lower proportion of children known to child protection than in other studies.²⁹
- I.11 At the same time, the child protection 'net' in the Council's project is wider than that in other studies. The Council included any report to the child protection service in a child's lifetime, rather than limiting child protection history to a few years or to child protection orders only, out-of-home care only or only cases in which the child protection involvement was contemporaneous with the criminal justice involvement (for example, in the same two-year period). This wider net was accounted for by differentiating the degree of child protection involvement that children in the study group had experienced.
- I.12 Some children in the study group were aged 18–20 by the date of their first sentence, although they were under 18 at the time of their offence. These children have been included in the study group. They are described in this report as 'children' despite their age at first sentence because they were children at the time of their offending. A small group of 30 children were excluded from the study group because their age at the time of their first sentence was unknown or could not be verified. As these 30 children accounted for only 0.6% of the original group of 5,093 children, their exclusion is unlikely to affect results.
- I.13 Of the 5,063 children in the study group, 617 children were aged 10–14 at their index sentence (12%) and 4,446 children were aged 15 or older at their index sentence (88%). The study group included 1,273 girls (25%) and 3,790 boys (75%) (Figure 2).

Figure 2: Children in the study group, by age at index sentence, 2016 and 2017



28. For example, in the Council's youth reoffending study, 80% of children sentenced in 2008–09 received low-end (unsupervised) orders (dismissal, discharges, undertakings, good behaviour bonds and fines): Sentencing Advisory Council (2016), above n 19, 15. In this report, the data relating to fines does not include data from the Children and Young Persons Infringement Notice System (CAYPINS) under *Children, Youth and Families Act 2005* (Vic) sch 3. Only fines imposed as a sentence in the Children's Court are included in the data.

29. For example, the Australian Institute of Health and Welfare found that, in the four-year period from 1 July 2013 to 30 June 2017, 47.7% of the 7,776 Australian young people under youth justice supervision (a custodial or supervised community order) also received child protection services (see Figure 8). While the Council's study group included Victorian children who received any sentence type or diversion, the Australian Institute of Health and Welfare's study included only children who received the most severe sentence types (custodial or supervised community orders): Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 1 July 2013 to 30 June 2017*, Data Linkage Series no. 24 (2018) 6. In that report, child protection data 'is restricted to investigated notifications, child protection orders and out-of-home care. Excluded are notifications that were not investigated; child protection orders that were "other" or "not stated"; and living arrangements that do not constitute out-of-home care': *ibid* 3. Chapter 6 of the current report examines the prevalence of child protection backgrounds among children sentenced to different sentence types.

Research questions

1.14 This is the first report for this project ('Report 1'). In it, the Council addresses the following four research questions:

Research Question 1: Prevalence of 'crossover kids' in the youth justice system

What proportion of children sentenced or diverted in the Victorian Children's Court in 2016 and 2017 (the 'study group') were known to the child protection service? Specifically, in the period from 18 June 1996 to 3 September 2018, what proportion of children:

- (a) were the subject of a child protection report?
- (b) were the subject of a child protection report that was investigated?
- (c) were the subject of a child protection report that was investigated and substantiated?
- (d) were the subject of a child protection order made in the Family Division of the Children's Court?³⁰
- (e) experienced out-of-home care, including residential care?

Research Question 2: Over-representation of Aboriginal and Torres Strait Islander children

What proportion of the sentenced and diverted children known to the child protection service were Aboriginal and Torres Strait Islander children?

Research Question 3: Sentence type and child protection involvement

What proportion of children sentenced to specific sentence types were known to the child protection service?

Research Question 4: Age at first sentence and child protection involvement

Are children first sentenced at a young age more likely than older children to be known to the child protection service?

30. In this report, the term child protection order is used in a broad sense to refer collectively to four categories of orders made by the Family Division of the Children's Court of Victoria under the *Children, Youth and Families Act* (Vic): (1) protection orders (see [2.8]–[2.9]), (2) interim accommodation orders (see [2.10]), (3) permanent care orders (see [2.11]) and (4) therapeutic treatment orders (see [3.12]–[3.14]).

I.15 Report 2 of the project will examine:

- age and gender differences in child protection factors (for example, are children who are younger at first sentence more likely to have also been younger at the time of their first report to the child protection service?);
- the relative timing of child protection involvement and youth justice involvement (for example, were children who experienced out-of-home care more likely to first offend before, during or after their first out-of-home care placement?);
- associations between child protection factors and youth justice factors;
- regional differences in the prevalence of sentenced children who are known to the child protection service; and
- the principles applicable to the consideration of child protection issues when sentencing children.

What is a ‘crossover kid’?

I.16 The term *crossover kid* or *crossover child* has been used in past research to describe children with involvement in both the criminal justice system and the child protection system.³¹ As Victoria Legal Aid has pointed out, however, the term ‘crossover kid’ is ‘not a term of art’ and there is no uniform definition of ‘crossover kid’.³² The term is used in different ways in different studies to describe children crossing between the criminal justice system and the child protection system. One of the most common applications of the term is as a descriptor of children who are charged with criminal offences while also the subject of a child protection application in the Family Division of the Children’s Court.³³ Another common usage of the term is to describe children in out-of-home care who face criminal charges. Victoria Legal Aid gives numerous examples of how the term *crossover kids* is used, including:

young people facing criminal charges where they:

- have a contemporaneous protection application in the Family Division of the Children’s Court
...
- are on a current protection order which is supervised by the Department of Human Services
...
- have recently been on a protection order that has expired
- have ever been on a protection order that has expired
- have never been on a protection order but their criminal issues can be considered to relate to current protective issues
- have any combination of the above in addition to being the subject of proceedings in the family law courts.³⁴

31. For information about Victoria’s child protection system, see Chapter 2.

32. Suzanne Bettink, ‘Crossover Kids in Victoria: Problems for the Children’s Court of Victoria in Taking an Integrated Approach to Young People with Multiple Issues’ (Paper presented at Doing Justice for Young People: Issues and Challenges for Judicial Administration in Australia and New Zealand, the Australasian Institute of Judicial Administration, Brisbane, 23–25 August 2012).

33. See Chapter 3 for discussion of the Family Division and Criminal Division of the Children’s Court.

34. Bettink (2012), above n 32, 1–2.

- 1.17 Exactly which group of children is defined as *crossover kids* usually depends on the data available to a particular researcher. The Council was provided with comprehensive child protection data in relation to the children who had been the subject of at least one child protection report. Instead of labelling one group as 'crossover kids' and limiting the study to those children (for example, children who had been the subject of a child protection order), the Council identified a number of broad categories of child protection involvement and examined each category separately throughout the report. This report focuses on children who were sentenced or diverted in the Victorian Children's Court in the calendar years 2016 and 2017 and separately analyses the levels of child protection involvement experienced by the study group in the 22-year period from June 1996 to September 2018. This includes the proportion of children who:
- (a) were the subject of at least one report to the child protection service (this includes uninvestigated and unsubstantiated reports and unborn child reports³⁵);
 - (b) were the subject of at least one investigated report (this involves contact between the child and the child protection service);
 - (c) were the subject of at least one substantiated report;
 - (d) were the subject of at least one child protection order made in the Children's Court; and
 - (e) experienced out-of-home care (including the proportion of children who experienced residential care).
- 1.18 A key group of children examined in this report comprises sentenced and diverted children who had experienced out-of-home care, which is a particularly vulnerable subset of the broader study group. Previous research has identified issues in relation to the over-representation and criminalisation of children in out-of-home care, particularly residential care (see discussion at [4.21]–[4.29]). In this report, children in the study group who had experienced out-of-home care are described as the *care group*.
- 1.19 The analysis in each section of this report makes clear which aspect of child protection is under discussion.

The Council's approach

- 1.20 The project has a *retrospective* research design that examines the child protection history of a cohort of children who were sentenced in the Children's Court in 2016 or 2017.

Data

- 1.21 The 5,063 children in the study group were drawn from the Children's Court Courtlink database.³⁶ The project links 22 years of data from the child protection system in the Department of Health and Human Services: from 18 June 1996 (the date of the earliest report about a child in the study group) to 3 September 2018 (the date of the data extraction, although the most recent record was dated 1 September 2018).

35. If a woman is pregnant and a person has a significant concern for the wellbeing of her child after that child's birth, that person may make a confidential report to child protection (under the *Children, Youth and Families Act 2005* (Vic) s 29) or a confidential referral to a child and family information, referral and support team (Child FIRST) before the child is born (*Children, Youth and Families Act 2005* (Vic) s 32). The 'intent of the legislation is to prevent future harm and reduce the likelihood of child protection intervention after the child's birth by working earlier and in partnership with the mother and appropriate support services to address the need or risk factors': Department of Health and Human Services, 'Unborn Child Reports: Advice', *Child Protection Manual* (Department of Health and Human Services, 2018) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/intake/unborn-child-reports>> at 6 May 2019.

36. Four times a year, Court Services Victoria sends the Council extracts from the Courtlink case management system containing sentencing data from the Criminal Division of the Children's Court. The Council has sentencing data from July 2004 onwards.

This data was matched with sentencing data from the Children's Court Courtlink database and the Council's own reoffending database.

- I.22 Matching child protection and sentencing data allowed the Council to determine the prevalence (and level) of child protection involvement for sentenced and diverted children. It also allowed the Council to analyse the backgrounds of children at the nexus of the two systems, examine their offending patterns and sentences, and compare the offending profiles of children who were, or were not, known to the child protection service.
- I.23 The Council did not have data on remand,³⁷ education factors, mental health or impairment, disability, culturally and linguistically diverse (CALD) backgrounds, or the rate at which charges were withdrawn or struck out due to submissions relating to *doli incapax* (see further [3.30]). The data on gender was restricted to the categories of *male* and *female*. Data on non-binary gender categories is not currently available.
- I.24 Previous research suggests that Aboriginal and Torres Strait Islander children are over-represented among children in the child protection system, out-of-home care and the youth justice system. The Council has data on Aboriginal and Torres Strait Islander status for children who were the subject of a report to the child protection service. The Council did not have data on Aboriginal and Torres Strait Islander status for children who were not known to the child protection service.
- I.25 The methodology for this report is set out in Appendix 2.

Consultation

- I.26 The Council met separately with representatives of the Department of Health and Human Services, the Children's Court, Monash University, Victoria Legal Aid, Jesuit Social Services, Victoria Police and the Crime Statistics Agency to discuss the project. The Council again met with representatives of the Department of Health and Human Services and the Children's Court to discuss the findings. The Council also conducted two roundtable consultation meetings to discuss the report findings with key youth justice and child protection stakeholders. Roundtable participants included representatives of Charles Sturt University (Centre for Law and Justice), the Commission for Children and Young People, CREATE Foundation, the Department of Health and Human Services, the Human Rights Law Centre, Jesuit Social Services, the Law Institute of Victoria, Monash University (Social Work Department), the Children's Court Bar Association, the Justice-involved Young People Network, The University of Melbourne, Victoria Police, Victoria Legal Aid, Whitelion, Youth Justice (Department of Justice and Community Safety), Youth Law and Youth Support and Advocacy Service (YSAS).

37. The Council will be examining the use of remand for children in a separate report.

Research gaps that this project seeks to address

- I.27 A number of important studies in Victoria and elsewhere have examined the care-to-criminalisation pathway and issues relating to crossover kids.³⁸
- I.28 This project (including the upcoming second report) seeks to build on previous research in this area, focusing on questions that previously have been difficult to answer due to the unavailability of data. By linking the full child protection histories of all children sentenced or diverted in a two-year period, the Council has been able to analyse:
- **all sentenced children** in a given period (2016 and 2017), not just a defined subset, such as children sentenced in a particular court location or to a particular sentence type. The inclusion of children with no known child protection history provides a point of comparison with children who have a child protection history;
 - **all sentencing orders**, not just the most severe, so that children sentenced for **less serious offences**, such as criminal damage, are included. The project also includes children who received a diversion in the Children's Court;³⁹
 - children sentenced in **every Children's Court location in Victoria**;
 - each child's **full child protection history** from birth (including unborn child reports) not merely child protection involvement that was proximate to the criminal hearing;
 - the **level of child protection involvement**, including the number of reports to the child protection service, the number of reports that were substantiated, the proportion of children who were the subject of at least one child protection order and the proportion of children who experienced out-of-home care, including whether they were in out-of-home care on the date of the offence; and
 - **associations between child protection factors, criminal justice factors and personal characteristics**. Child protection factors include principal harm reported or substantiated, age at first child protection report, number of child protection reports, out-of-home care, and time from first report to first investigated or substantiated report. Criminal justice factors include offence type, prior offences, chronicity of offending and criminal justice outcome. Personal characteristics include age at first sentence and gender. For example, this project will look for associations between the type of harm or risk reported about the child and the type of offending in which the child engaged, and between a child being in out-of-home care and particular offences.

38. See for example, Victoria Legal Aid (2016), above n 7, I; McFarlane (2018), above n 25; Anna Stewart et al., *Pathways from Child Maltreatment to Juvenile Offending*, Trends and Issues in Crime and Criminal Justice no. 241 (2002); Anna Stewart et al., 'Transitions and Turning Points: Examining the Links between Child Maltreatment and Juvenile Offending' (2008) 31(1) *Child Abuse & Neglect* 51; Malvaso et al., 'The Child Protection and Juvenile Justice Nexus in Australia: A Longitudinal Examination of the Relationship between Maltreatment and Offending' (2017) 64 *Child Abuse & Neglect* 32; Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 2015–16*, Data Linkage Series no. 23 (2017); Judy Cashmore, 'The Link between Childhood Maltreatment and Adolescent Offending: Systems Neglect of Adolescents' (2011) 89 *Family Matters* 31, 35.

39. For information about diversion see above n 23.

2. What is child protection?

- 2.1 The Victorian child protection service is part of the Victorian Department of Health and Human Services and is responsible for child protection in Victoria. Its functions include:
- receiving reports regarding children in need of protection;
 - investigating allegations that a child is at risk of harm;
 - referring children and families to services that assist in providing the ongoing safety and wellbeing of children;
 - applying to the Children's Court for a child protection order if the child's safety cannot be ensured within the family;
 - supervising children on child protection orders granted by the Children's Court; and
 - providing and funding 'accommodation services, specialist support services, and adoption and permanent care to children and adolescents in need'.⁴⁰
- 2.2 Five key aspects of the child protection system examined in this report are:
- (a) **reports** to the child protection service raising concerns about possible abuse, neglect, harm or risk to a child;
 - (b) **investigation** of reports by child protection practitioners;
 - (c) **substantiation** of reports;
 - (d) **child protection orders** – court orders that give the Department of Health and Human Services responsibility for particular aspects of the child's welfare;⁴¹ and
 - (e) **out-of-home care** – a temporary, medium or long-term living arrangement for children who cannot live with their families.

Reports to the child protection service

Who may make a report to the child protection service?

- 2.3 Any person may make a report to the Victorian child protection service or to a member of the police force if the person has a significant concern for the wellbeing of a child, even if the child has not yet been born.⁴² Some professionals, including but not limited to teachers, doctors, nurses and police officers, *must* report physical and sexual abuse to the child protection service.⁴³

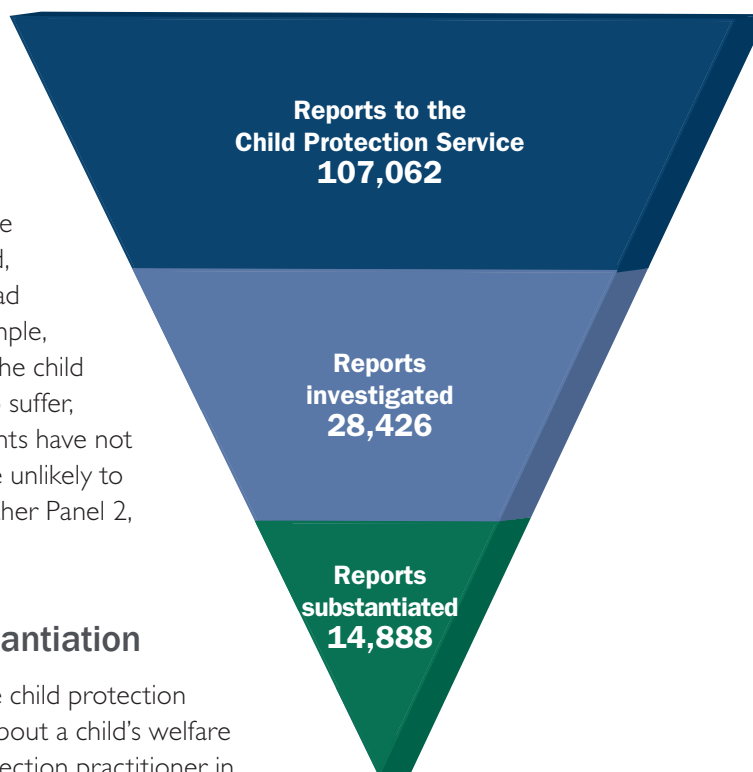
40. Department of Health and Human Services, 'Families & Children: Child Protection' (services.dhhs.vic.gov.au, 2019) <<https://services.dhhs.vic.gov.au/child-protection>> at 13 May 2019.

41. A range of interim and final orders are available for the protection of children. For the purpose of this report, they will be grouped together as 'child protection orders', consistent with the classification on the Department of Health and Human Services website: Department of Health and Human Services (2017), above n 5. In this report, the term 'child protection order' is used as a collective description for four categories of orders made by the Family Division of the Children's Court of Victoria under the *Children, Youth and Families Act* (Vic) ('CYF Act'): protection orders, interim accommodation orders, therapeutic treatment orders and permanent care orders. For a description of the key interim and final child protection orders relevant to children in the study group, see Chapter 5.

42. *Children, Youth and Families Act 2005* (Vic) ss 28–29, 181, 183. The *Children, Youth and Families Act 2005* (Vic) establishes two pathways for people to report or refer an unborn child where they have 'a significant concern for the wellbeing of the child after his or her birth': (1) confidential reports to child protection about unborn children (section 29) and (2) confidential referrals to the child and family information, referral and support teams (Child FIRST) about unborn children (section 32). The 'intent of the legislation is to prevent future harm and reduce the likelihood of child protection intervention after the child's birth by working earlier and in partnership with the mother and appropriate support services to address the need or risk factors': Department of Health and Human Services (2018), above n 35.

- 2.4 Section 162 of the *Children, Youth and Families Act 2005* (Vic) ('CYF Act') sets out the grounds for finding a child in need of protection. Grounds for protection include that the child has been abandoned, the child's parents are dead or incapacitated (for example, admitted to hospital) or the child has suffered, or is likely to suffer, harm and the child's parents have not protected the child or are unlikely to protect the child (see further Panel 2, [3.7]).

Figure 3: Reports to the Victorian child protection service, 2015–16⁴⁵



Investigation and substantiation

- 2.5 Every report made to the child protection service raising concerns about a child's welfare is assessed by a child protection practitioner in an intake service. The child protection practitioner decides whether the report should be *investigated*, after gathering information and assessing whether the child appears to be in need of protection (see further [5.18]–[5.21]). Where child wellbeing concerns exist, the child protection service may refer the child and family to family services or other specialist supports as a response.⁴⁴ After investigating, if the child protection service is satisfied on reasonable grounds that the child is in need of protection, a decision may be made to *substantiate* the report (see further [5.25]–[5.27]). If necessary, the child protection service will issue a protection application in the Children's Court.
- 2.6 In 2015–16, 107,062 reports were made to the Victorian child protection service, including reports by police, schools, social workers, medical practitioners and family. Of these reports, 27% were investigated by the child protection service and 14% of reports were substantiated (meaning that 52% of *investigated* reports were substantiated) (Figure 3).

43. Department of Health and Human Services (2019), above n 40; *Children, Youth and Families Act 2005* (Vic) 182. In response to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse, mandatory reporting was expanded to include additional professional groups. The following reporter groups were, or will be, mandated to report a reasonable belief of child physical or sexual abuse, commencing on the following dates: out-of-home care workers (excluding voluntary foster and kinship carers) on 1 March 2019; early childhood workers on 1 March 2019; youth justice workers on 1 March 2019; registered psychologists on 1 March 2019; school counsellors on 31 January 2020.

44. Child FIRST (child and family information, referral and support teams) and integrated family services are funded by the Department of Health and Human Services to provide support and assistance to vulnerable children, young people and their families in cases where there are concerns about the wellbeing of the child or young person (0–17 years, including an unborn child) or their family: Better Health Channel (2018), above n 2.

45. Australian Institute of Health and Welfare, *Child Protection Australia 2015–16*, Child Welfare Series no. 66 (2017) 22 (table 3.1) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/data>> at 13 May 2019; Australian Institute of Health and Welfare, *Data Tables: Child Protection Australia 2015–16*, Child Welfare Series no. 66 (2017) Data Table S5 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/data>> at 13 May 2019.

Child protection order

2.7 In this report, the term *child protection order* is used to refer collectively to four categories of orders made by the Family Division of the Children's Court of Victoria under the CYF Act:

1. protection orders (see [2.8]–[2.9]);
2. interim accommodation orders (see [2.10]);
3. permanent care orders (see [2.11]); and
4. therapeutic treatment orders (see [3.13]–[3.15]).

Protection orders

2.8 Protection orders are final orders made after the Children's Court is satisfied that the child is in need of protection under one of the grounds in section 162 of the CYF Act (see further Panel 2, [3.7]). A protection order gives the Department of Health and Human Services responsibility for particular aspects of the child's welfare.

2.9 Extensive changes to child protection orders came into effect on 1 March 2016. These changes were:

intended to reduce the time children spend in out-of-home care before permanent arrangements are in place for their care. Where possible, this will be achieved by children returning home safely within specified timelines. Where it is not safe for a child to return home permanently, alternative ongoing care arrangements will be found.⁴⁶

Interim accommodation orders

2.10 Interim accommodation orders are interim (temporary) orders made under section 262 of the CYF Act after a protection application has been issued by the Department of Health and Human Services and the court has decided that an interim order is needed to keep the child safe until it determines the application. When making an interim accommodation order, the court is required to consider the best interests principles under section 10 of the CYF Act, including that the child is only to be removed from their parent or parents if there is an unacceptable risk of harm to the child. These orders specify where the child must live until the next court date and usually include other conditions.⁴⁷

Panel 1: Child protection

Legally, a child or young person who has been harmed or neglected, or is at risk of harm or neglect must be protected. Child abuse includes:

- hurting or threatening to hurt a child physically, sexually or emotionally;
- exposing a child to the risk of significant physical, sexual or emotional harm, such as:
 - witnessing family violence;
 - allowing a child sex offender to be in the home;
 - having care of a child while under the influence of alcohol or drugs or whilst living with an untreated mental health issue;
- neglecting a child, for example:
 - insufficient food, clothing, shelter or necessary medical care;
 - failing to properly supervise the child.

Source: Victoria Legal Aid, 'Child Protection' (legalaid.vic.gov.au, 2019) <<https://www.legalaid.vic.gov.au/find-legal-answers/child-protection>> at 16 November 2018.

46. Department of Health and Human Services, *Children's Court Orders Are Going to Change: Permanency for Children Fact Sheet* (2015).

47. *Children, Youth and Families Act 2005* (Vic) s 263. The court may impose conditions in the best interests of the child under *Children, Youth and Families Act 2005* (Vic) s 263(7). See further Department of Health and Human Services (2017), above n 5.

Permanent care orders

- 2.11 Permanent care orders are made by the Children's Court when the criteria set out in section 319 of the CYF Act are satisfied. The order involves the appointment of a specified person or persons as having parental responsibility for the child, usually to the exclusion of all others.⁴⁸ *Parental responsibility* means all the duties, powers, responsibilities and authority that, by law or custom, parents have in relation to children.⁴⁹ Following the granting of a permanent care order, the Victorian child protection service is no longer involved.

Out-of-home care

- 2.12 Out-of-home care is 'a temporary, medium or long-term living arrangement for children and young people who cannot live with their parents'.⁵⁰
- 2.13 Out-of-home care can be voluntarily and informally arranged (without intervention by the courts or government), or it can be statutory (where a child protection order is in place).⁵¹ In this report, the term *out-of-home care* is used to describe *statutory* out-of-home care (where a child protection order has been made).
- 2.14 There are three broad categories of out-of-home care:
1. home-based care;
 2. care in a residential service; and
 3. independent living.

Home-based care

- 2.15 Home-based care is care provided 'in the home of a carer, who is reimbursed (or who has been offered but declined reimbursement) for the cost of care of that child'.⁵² Types of home-based care include the following:
- **Foster care** is temporary care of children in a family setting with trained, assessed and accredited foster carers⁵³ who are 'authorised and reimbursed (or [were] offered but declined reimbursement) by the state/territory for the care of the child'.⁵⁴ The Department of Health and Human Services 'fund[s] foster care agencies to recruit and support foster carers'.⁵⁵
 - **Kinship care** is out-of-home care provided by a child's relatives or friends. Kinship care is 'the preferred placement type for children who cannot live with their parents'.⁵⁶ Some kinship care arrangements are informal, for example, a grandparent looking after a child because the child is not able to live with their parents.

48. *Children, Youth and Families Act 2005* (Vic) ss 319–327.

49. *Children, Youth and Families Act 2005* (Vic) s 3 (definition of 'parental responsibility').

50. Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services (2018), above n 1, 5.

51. *Ibid*; Department of Education and Training, 'What Is Out-of-Home Care?' (education.vic.gov.au, 2018) <<https://www.education.vic.gov.au/school/teachers/health/Pages/whatoohc.aspx>> at 19 December 2018.

52. Australian Institute of Health and Welfare, *Child Protection Australia 2016–17*, Child Welfare Series no. 68 (2018) 75.

53. Department of Health and Human Services (2019), above n 4.

54. Australian Institute of Health and Welfare (2018), above n 52, 74.

55. Department of Health and Human Services (2019), above n 4.

56. Department of Health and Human Services, 'Families & Children: Kinship Care' (services.dhhs.vic.gov.au, 2018) <<https://services.dhhs.vic.gov.au/kinship-care>> at 29 October 2018.

Other kinship care involves formal placements made after child protection intervention and, in some cases, a child protection order.⁵⁷ In this report, data on kinship care placements includes formal placements only.

- **Permanent care** (also referred to as a *third-party parental responsibility order*) is a permanent placement for children who cannot return home to their families. The Children's Court makes permanent care orders appointing a specified person or persons as having parental responsibility for the child (see [2.11]).⁵⁸ While a permanent care order is similar to an adoption, unlike adoption it is not a voluntary placement. Also unlike adoption orders, permanent care orders expire when the child turns 18.⁵⁹

Care in a residential service

2.16 Unlike home-based care, care in a residential service involves placement in a residential home intended for the care for children. Care is provided by paid staff.⁶⁰ In Victoria, there are two types of residential services:

- **Residential care** is out-of-home care provided by paid staff, usually in a residential home accommodating up to four children. As at January 2016, there were 240 such homes operating in Victoria, accommodating 442 children. The Department of Health and Human Services funds a variety of community service organisations to run these facilities on its behalf.⁶¹
- **Secure welfare service** is placement in a secure facility as an option of 'last resort' if there is 'a substantial and immediate risk of harm' to a child, 'containment is deemed necessary, and ... the broader protection and care network cannot manage or reduce the risks to the child'. The aim of secure welfare is to keep children safe for a brief and limited time period while a suitable plan is established 'to reduce the risk of harm and return [children] to the community as soon as possible, in a safe and planned way'.⁶² The maximum period a child can be placed in secure welfare is 21 days with one further extension of 21 days in exceptional circumstances.⁶³ Children placed in a secure welfare service are also required to have another type of out-of-home care placement.

Independent living

2.17 Independent living involves 'accommodation where the child lives independently, such as private boarding or as the lead tenant in a household'.⁶⁴ Some of the data used in this project groups independent living together with foster care. The number of children in independent living among the Council's study group was estimated to be very small (less than 1%), and grouping these children with children in foster care is unlikely to affect the findings in this report.

57. Ibid.

58. *Children, Youth and Families Act 2005* (Vic) s 3 (definition of 'parental responsibility'); Australian Institute of Health and Welfare (2018), above n 52, 74.

59. Children's Court of Victoria, 'Court Orders' (childrenscourt.vic.gov.au, 2019) <<https://www.childrenscourt.vic.gov.au/jurisdictions/child-protection/court-orders>> at 13 May 2019.

60. Australian Institute of Health and Welfare (2018), above n 52, 79.

61. Victoria Legal Aid (2016), above n 7, 5.

62. Parkville College, 'Ascot Vale Campus, Secure Welfare | Parkville College' (parkvillecollege.vic.edu.au, 2016) <http://parkvillecollege.vic.edu.au/?page_id=42> at 1 March 2019; *Children, Youth and Families Act 2005* (Vic) s 263(1)(e). See further [5.100]; Judicial College, *Children's Court Bench Book* <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/60790.htm>> [13.2.5.5]; Department of Health and Human Services (2018), above n 6; Australian Institute of Health and Welfare (2017), above n 38, 2.

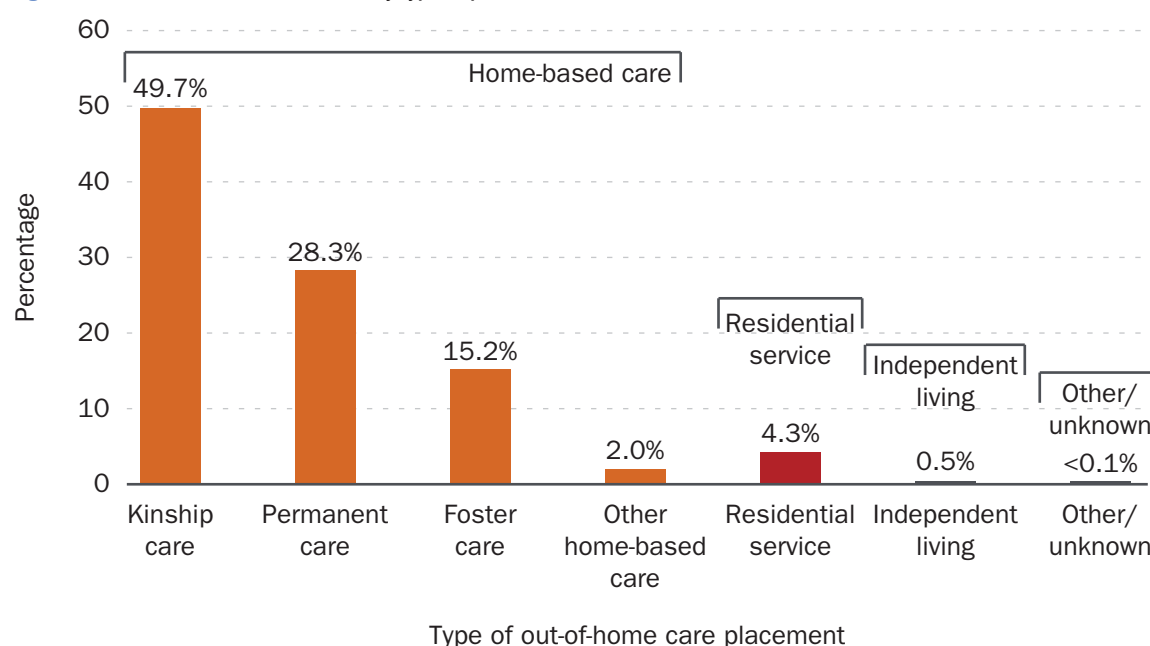
63. *Children, Youth and Families Act 2005* (Vic) ss 264(2), 267(3)(c).

64. Australian Institute of Health and Welfare (2018), above n 52, 75.

What are the most common types of out-of-home care?

2.18 Of the 10,312 children in out-of-home care in Victoria on 30 June 2017, 95.2% were in 'home-based' care, with around half of those 10,312 children in kinship care (Figure 4). A further 4.3% of children were in care in a residential service (residential care or secure welfare) and the remaining 0.5% of children in out-of-home care were in independent living (Figure 4).

Figure 4: Children in out-of-home care, by type of placement, Victoria, 30 June 2017, 10,312 children⁶⁵



2.19 The Australian Institute of Health and Welfare analysed the relationship between children and their carers for children in kinship care in Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory. The Institute found that around half (52.5%) of the children in kinship care were placed with a grandparent, 20% with an aunt or uncle and 17.2% with a non-relative, such as a neighbour or friend. A further 5.3% were placed with another relative who was not a grandparent, aunt, uncle or sibling, 1.6% were placed in the care of a sibling and 0.1% were placed with someone with whom they had another 'Indigenous kinship relationship'. The remaining 3.4% of children in kinship care were placed with 'other' kinship carers (not belonging to any of the previously mentioned relationship types).⁶⁶

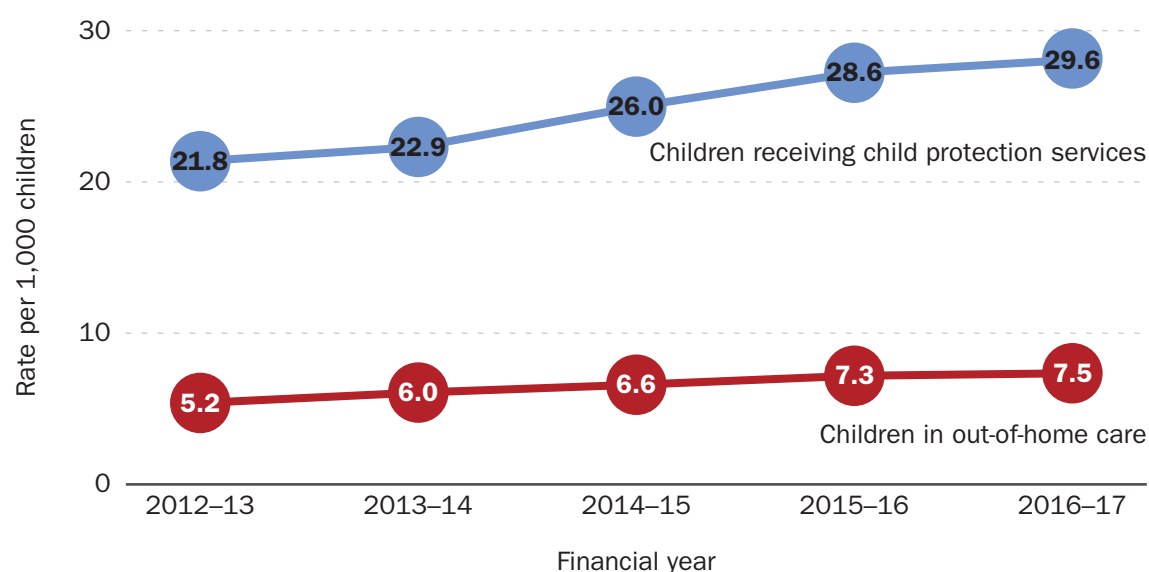
65. Australian Institute of Health and Welfare, *Data Tables: Child Protection Australia 2016–17*, Child Welfare Series no. 68 (2018) Table S36 <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data>> at 1 March 2019.

66. Ibid Table S37. The carer–child relationship for the final 3.4% of children in kinship care was categorised as 'other'.

More children are receiving child protection services

- 2.20 Recent evidence suggests that the number of children receiving child protection services each year in Australia is growing, and the rate is increasing more for Aboriginal and Torres Strait Islander children.⁶⁷ The rate of reports to child protection services was recently described as a 'health crisis' in South Australia.⁶⁸
- 2.21 In Victoria, the number and rate of children receiving child protection services increased from 27,272 in 2012–13 (a rate of 21.8 per 1,000 children aged 0–17) to 40,415 in 2016–17 (29.6 per 1,000 children aged 0–17) (Figure 5).⁶⁹
- 2.22 Of the 40,415 children who received child protection services in Victoria in 2016–17:
- 27,979 were the subject of an investigated report to the child protection service (a rate of 20.5 per 1,000 children);
 - 16,264 were on care and protection orders (a rate of 11.9 per 1,000 children); and
 - 13,001 were in out-of-home care (9.5 per 1,000 children).⁷⁰

Figure 5: Rate of children in the child protection system, per 1,000 children, Victoria, 2012–13 to 2016–17⁷¹



67. Australian Institute of Health and Welfare (2018), above n 52, 16. 'Children receiving child protection services' is defined as one or more of the following occurring within the reporting period: an investigation of a notification, a child being on a child protection order or a child being in out-of-home care. It is not a total count of these three areas, but a count of unique children across the three areas: *ibid* 10.

68. Rebecca Puddy, 'Australia Facing an "Epidemic of Child Abuse and Neglect", According to Experts', ABC News (online) 16 September 2018 <<http://www.abc.net.au/news/2018-09-16/australia-facing-an-epidemic-of-child-abuse-and-neglect/10233898>> at 17 September 2018.

69. Australian Institute of Health and Welfare (2018), above n 52, 63. See above n 67 for the definition of 'children receiving child protection services'.

70. Australian Institute of Health and Welfare (2018), above n 65, Table 2.1. Children receiving child protection services and children in substantiations were measured in financial years. Children on child protection orders and in out-of-home care were measured as at 30 June each year. When a report is made to child protection services, the case is assessed to decide a) whether an investigation is required, b) whether referral to support services is more appropriate or c) whether no further protective action is necessary. A substantiation means there is sufficient reason (after an investigation) to believe the child has been, is being, or is likely to be abused, neglected or otherwise harmed: Australian Institute of Health and Welfare (2018), above n 52, 3.

71. *Ibid* 65.

The number of children in out-of-home care is increasing

- 2.23 The number and rate of children in out-of-home care in Victoria has also increased, from 6,542 in 2012–13 (5.2 per 1,000 children aged 0–17) to 10,312 in 2016–17 (a rate of 7.5 per 1,000 children aged 0–17) (Figure 5).⁷²

72. Australian Institute of Health and Welfare (2018), above n 52, 63. See also Victoria Legal Aid (2016), above n 7, 5, citing Philip Cummins et al., *Report of the Protecting Victoria's Vulnerable Children Inquiry* (2012) 233. For a description of out-of-home care see [2.12]–[2.19].

3. The Children's Court of Victoria

3.1 The Children's Court of Victoria has two divisions dealing with children and young people.⁷³ The modern Children's Court – with separate family and criminal divisions – stems from a review by the Child Welfare Practice and Legislation Review Committee, established in 1982 by the Victorian Government and chaired by Dr Terry Carney of Monash University.⁷⁴

3.2 The Committee's final report in 1984 recommended a number of changes to the structure and jurisdiction of the Children's Court, including a clear distinction between child protection matters (heard in the family division) and the criminal division of the court. A key reason for creating two completely separate divisions was to address the previous practice of triggering a child protection response by 'charging' a child with being in need of protection.⁷⁵ At the time, there was often little physical or procedural separation between children under state protection and children in the criminal justice system:

One of the most significant issues addressed in the Carney Report was the failure of the previous system to distinguish between children in need of protection and young people who were offending against the criminal law. Not only did the Court buildings and the Court processes and outcomes not make any clear distinction between these two classes of children, the institutions in which they were placed were often the same. Babies, children and young persons before the Court were *charged* with being in need of protection and if this charge was found proved it would appear on [the child's] police criminal history sheet.⁷⁶

3.3 Consistent with the report's recommendations, the objectives of the resulting legislation included:

to maintain and strengthen the distinction between the Family Division and the Criminal Division of the Children's Court, so as to ensure that their procedures, standards of proof and dispositions reflect the fundamental difference in the nature of child protection and juvenile justice proceedings.⁷⁷

3.4 More recently, a new statement inserted in the *Children, Youth and Families Act 2005* (Vic) ('CYF Act') recognises the 'considerable and lasting harm caused by historical child welfare recording practices' and 'the significant personal and intergenerational harm caused'.⁷⁸ The statement of recognition provides that:

[h]istorically, the child welfare and criminal justice systems in Victoria were not clearly differentiated. As a result, children often experienced historical care and protection applications made by the State as criminal proceedings, and care and protection orders made by courts were recorded by the State on criminal records ...

73. The *Children, Youth and Families Act 2005* (Vic) outlines the structure and constitution of the Children's Court. For a history of the Children's Court, see Children's Court of Victoria, 'History' (childrenscourt.vic.gov.au, 2019) <<https://www.childrenscourt.vic.gov.au/about-us/history>> at 13 May 2019.

74. Child Welfare Practice and Legislation Review Committee (Victoria), *Child Welfare Practice and Legislation Review: Report* (1984).

75. Child Welfare Practice and Legislation Review Committee (Victoria), *Child Welfare Practice and Legislation Review: Report. Volume 2: Equity and Social Justice for Children, Families and Communities* (1984) 238.

76. Peter Power, *Children's Court Research Materials* (2016) [1.1].

77. Victoria, 'Children and Young Persons Bill', *Parliamentary Debates*, Legislative Assembly, 8 December 1988, 1150 (Peter Spyker, Minister for Community Services).

78. Victoria, 'Victims and Other Legislation Amendment Bill 2018', *Parliamentary Debates*, Legislative Assembly, 25 July 2018, 2323 (Martin Pakula, Attorney-General).

in cases where the child had not committed a crime, or been convicted or found guilty of a criminal offence, and in many instances before the child had reached the age of criminal responsibility. In many cases, crimes were committed against a child and instead of the perpetrator being held to account, the child was subject to a historical care and protection order, despite the child not having committed any crime. This has led to adverse lifelong consequences for many of those children.⁷⁹

- 3.5 The statement also recognises that Aboriginal children were disproportionately affected by these recording practices.⁸⁰

Family Division of the Children's Court

- 3.6 The **Family Division** hears:

- applications relating to the protection and care of children at risk;⁸¹ and
- applications for intervention orders.

Grounds for child protection

- 3.7 The grounds on which the Children's Court may find a child in need of protection are set out in section 162 of the CYF Act (Panel 2).
- 3.8 Antisocial or offending behaviour by a child is not a specified ground for finding a child in need of protection, although such behaviour could contribute to a finding that a child is at risk of physical or emotional harm. In the absence of other concerns about the safety or welfare of the child or other family members, offending behaviour by a child would generally be addressed through the youth justice system, not the child protection system.
- 3.9 Examples of situations where behaviour by a child may attract both a child protection response and a youth justice response include:
- a child who exhibits violent behaviour in their home, for example, towards their parent(s) or sibling;
 - alleged criminal behaviour by a child or where a child is missing from the home in the context of criminal offending and police have child protection concerns when investigating;
 - a child who exhibits sexually abusive behaviour(s); and
 - a child who has a criminal matter in the Criminal Division of the Children's Court and the court has child protection concerns and exercises its power under the CYF Act to refer a matter to the Secretary for investigation.

79. *Children, Youth and Families Act 2005* (Vic) s 592A, inserted by *Victims and Other Legislation Amendment Act 2018* (Vic) s 35. This statement was inserted after campaigning and advocacy by children who were dealt with under the previous system and who are still facing the repercussions. The Victorian Government also committed to expunging these records from people's criminal records: *Children, Youth and Families Act 2005* (Vic) ss 592E–592I, inserted by *Victims and Other Legislation Amendment Act 2018* (Vic) s 35. See Stephanie Anderson, 'Children Charged with Needing Protection Call for Apology', *ABC News* (online) 15 November 2017 <<http://www.abc.net.au/news/2017-11-15/calls-to-clear-criminal-records-of-care-leavers-records/9150384>> at 27 August 2018; Danny Tran, 'Victoria Will Address "Historical Injustice" of Criminal Records for Former Wards of the State', *ABC News* (online) 24 July 2018 <<https://www.abc.net.au/news/2018-07-24/victorians-with-criminal-history-over-welfare-get-record-wiped/10026194>> at 13 May 2019; Miki Perkins, 'Criminal Records That Branded Children and Babies as Criminals to Be Expunged', *The Age* (Melbourne) 2 December 2017 <<https://www.theage.com.au/national/victoria/criminal-records-that-branded-children-and-babies-as-criminals-to-be-expunged-20171127-gztguo.html>> at 8 October 2018.

80. *Children, Youth and Families Act 2005* (Vic) s 592A.

81. A person may make a report to the Secretary to the Department of Health and Human Services or to a member of the police force if the person has a significant concern for the wellbeing of a child, even if the child has not yet been born: *Children, Youth and Families Act 2005* (Vic) ss 28–29, 181, 183. Section 162 of the *Children, Youth and Families Act 2005* (Vic) sets out the grounds for finding a child in need of protection.

- 3.10 These examples are discussed further below. With the possible exception of children exhibiting sexually abusive behaviour, in none of these examples does child protection involvement take the place of youth justice proceedings.

Panel 2: When is a child in need of protection?

Section 162(1) A child is in need of protection if—

- (a) the child has been abandoned by their parents and after reasonable inquiries (i) the parents cannot be found, and (ii) no other suitable person can be found who is willing and able to care for the child;
 - (b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
 - (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from such harm;
 - (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from such harm;
 - (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from such harm;
 - (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.
- (2) The above harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances.

Violent behaviour by a child

- 3.11 In some cases, violent behaviour by a child, or a serious conflict between a child and the child's parents or carer may trigger the involvement of the child protection service, often as a secondary response after police involvement. For example, in a case of adolescent family violence in the home, Victoria Police may charge the child with an offence or offences and/or initiate an application for a family violence intervention order under the *Family Violence Protection Act 2008* (Vic). If the intervention order excludes the child from the home or the parents feel unable to cope with their child's behaviour and relinquish the child, the child protection service may become involved to find a suitable place for the child to live. Relinquishment of the child by their parents is in itself likely to be a traumatic experience for the child, even if triggered by the child's own violence, which itself may be trauma-related or relate to a brain injury, mental impairment or mental illness.⁸²

82. Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

Child protection concerns when investigating alleged criminal behaviour by a child

- 3.12 The child protection service might also be involved if police report concerns about a child's welfare when investigating offending by the child, for example, that the child appears to be neglected and/or unsupervised when police attend the child's home or the child is missing from the family home. The child may be immediately removed by police or child protection practitioners 'only in the most serious of circumstances where a child has suffered significant harm, or is at imminent risk of significant harm and the child's parents have not protected or are unlikely to protect them'.⁸³ For examples of circumstances requiring the immediate removal of a child, see Panel 10 (page 60).

Sexually abusive behaviour by a child

- 3.13 For children aged 10–17 (inclusive) who exhibit sexually abusive behaviour, a separate scheme allows their behaviour to be addressed by providing therapeutic treatment. The Secretary to the Department of Health and Human Services has the power to apply to the Children's Court for a therapeutic treatment order, which is a court order requiring the child to participate in an appropriate therapeutic treatment program.⁸⁴
- 3.14 If a court considers that there may be grounds for making a therapeutic treatment order for a child involved in a criminal matter, the court may refer the matter to the Secretary to the Department of Health and Human Services for investigation.⁸⁵ The Secretary must keep the Criminal Division of the Children's Court informed about whether the Secretary applies to the Family Division for a therapeutic treatment order, and if so, whether an order is made.⁸⁶ If the Family Division places the child on a therapeutic treatment order, the Criminal Division must adjourn the criminal proceedings to allow the child to complete the therapeutic treatment order, and if the court is satisfied that the child has attended and participated in the program, the court must discharge the child without any further hearing of the criminal proceedings.⁸⁷ Children appearing as an accused in criminal proceedings who have exhibited sexually abusive behaviours may also voluntarily participate in a therapeutic treatment program.⁸⁸
- 3.15 In the 2016–17 financial year, 11 therapeutic treatment orders were made in Victoria.⁸⁹

Criminal Division can refer a child to the child protection service

- 3.16 If a child appears as an accused in a criminal proceeding and the Criminal Division of the Children's Court considers that they may be in need of protection, the court may refer the matter to the child protection service to investigate whether there are grounds for making a protection application. The child protection service must investigate whether the child is in need of protection on one of the grounds set out in section 162 of the CYF Act.

83. Department of Health and Human Services (2016) above n 17.

84. Amendments to the *Children, Youth and Families Act 2005* (Vic) that came into effect in March 2019 extend the availability of the therapeutic treatment order regime to people aged 15–17 (during the study period for this report, the scheme applied only to children aged 10–14).

85. *Children, Youth and Families Act 2005* (Vic) s 349(2).

86. *Children, Youth and Families Act 2005* (Vic) ss 350–351.

87. *Children, Youth and Families Act 2005* (Vic) ss 353–354.

88. *Children, Youth and Families Act 2005* (Vic) s 354A. This provision was recently amended (after the end of the study period) to include children aged 15–17 (the scheme previously applied only to children aged 10–14): *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic) s 13.

89. Department of Health and Human Services, unpublished data.

The child protection service must report back to the court within 21 days that it has enquired into the matter. The child protection service must also indicate whether:

- the child is subject to a protection order, a therapeutic treatment order or a therapeutic treatment (placement) order; or
- a protection application or application for a therapeutic treatment order or a therapeutic treatment (placement) order has been made; or
- it is satisfied that no protection application or application for a therapeutic treatment order or a therapeutic treatment (placement) order is required.⁹⁰

- 3.17 The referral power is intended to bridge the gap between the two divisions, providing a mechanism for protecting children in the youth justice system whom the Criminal Division views as at risk. However, there is a perception among some youth justice stakeholders that such referrals are rare and seldom result in ongoing child protection involvement with the child:

Referrals of children in the Criminal Division for protective investigation are uncommon, and the responses by the department are usually in the form of a letter indicating that the department has no protective concerns that warrant intervention. It is extremely rare for these referrals to result in child protection becoming involved with a child or a protection application being issued.

This may not represent a lack of understanding or willingness on the part of protective workers, but rather resourcing constraints within the statutory child protection services.⁹¹

Child protection matters take priority over criminal matters

- 3.18 If a child has both a child protection matter and a criminal matter, the child protection matter is prioritised and must be dealt with before charges in the Criminal Division proceed, unless the court orders otherwise.⁹² This provision has been described as a recognition that 'protective issues could have an impact on children's behavior so ... these issues should be clarified before deciding on the appropriate way to deal with the child's charges'.⁹³
- 3.19 While the outcome in the Family Division may inform the approach in the Criminal Division, these two aspects of the child's life are dealt with separately, even if they are intrinsically related. As a consequence, the Criminal Division may not be provided with sufficient information on the protective concerns about the child and the extent to which the criminal behaviour relates to those concerns.⁹⁴ There is also the potential for delays in the finalisation of the criminal matter due to the need to hear the child protection matter first.

90. *Children, Youth and Families Act 2005* (Vic) ss 349–350; Department of Health and Human Services, 'Referral from Children's Court: Criminal Division', *Child Protection Manual* (Department of Health and Human Services, 2016) <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/intake/referral-childrens-court-criminal-division>> at 20 March 2019.

91. Bettink (2012), above n 32, 7.

92. *Children, Youth and Families Act 2005* (Vic) s 522(2).

93. Bettink (2012), above n 32, 4.

94. *Ibid* 7.

Homelessness, inadequate accommodation, bail and remand

- 3.20 The majority of children in youth justice detention in Victoria have not yet been sentenced. Of children aged 10–17 in detention in Victoria 'on an average day' in 2016–17, approximately 69% were unsentenced (86 out of 124 children in detention), compared with 68% nationally.⁹⁵ Most (98%) unsentenced children in detention in Australia at that time were on remand.⁹⁶ Previous research suggests that children who have experienced abuse, neglect and out-of-home care are significantly over-represented among children on remand.⁹⁷
- 3.21 One limitation of separate criminal and family divisions in the Children's Court is that this may hamper the court's ability to respond to crossover kids in a coordinated, holistic way, particularly for children who are homeless or in out-of-home care as a result of abuse, neglect, risk and/or extreme conflict with their parents.
- 3.22 A particular concern in numerous Australian jurisdictions is that maltreated children, especially those in out-of-home care, may inadvertently be treated more punitively in the criminal justice system; for example, they may find it more difficult to secure bail due to a lack of stable accommodation and family support.⁹⁸ In his 2008 report on the Inquiry into child protection services in New South Wales, James Wood noted that:
- one problem which was repeatedly brought to the notice of the Inquiry has been the difficulty in securing accommodation for young people who might otherwise have been released on bail, but cannot be released because they do not have stable accommodation or are unable to return home because of family breakdown or safety or neglect risks.⁹⁹
- 3.23 Concerns about the use of remand for children with child protection backgrounds were also raised by the Australian Law Reform Commission in their family violence review:
- Specialist children's courts deal with both criminal and care matters in relation to juveniles, so that there might be thought to be few gaps in the system affecting these children. However, issues often arise where a young person appears as a defendant in the court's criminal jurisdiction. While the personal circumstances of the young person may suggest that there are child protection concerns in relation to the young person, such as the fact that the young person is unable to go home, the court cannot compel the child protection agency to find suitable accommodation for a young person for whom it has no parental responsibility. The court has no other option but to remand the young person in detention, until trial—even where imprisonment is an unlikely outcome. The problem seems to lie in the bifurcation of administrative responsibility for child protection and juvenile justice.¹⁰⁰
- 3.24 The risk that children may be remanded because of the 'lack of appropriate accommodation outside the juvenile justice system' has been described as 'a central issue in juvenile justice policy'¹⁰¹ and 'one of the indicators of "systems neglect" of adolescents in need of care in the child protection and juvenile justice systems'.¹⁰²

95. Australian Institute of Health and Welfare, *Youth Justice in Australia 2016–17*, Child Welfare Series no. 68 (2018) 15 (Figure 5.1); Australian Institute of Health and Welfare, *Data Tables: Youth Justice in Australia 2016–17*, Child Welfare Series no. 68 (2018) Table S110a.

96. Ibid 15. As the current report examines the backgrounds of *sentenced* children, the findings do not include children who have been remanded in custody but have not yet been sentenced (unsentenced children).

97. See for example, Australian Institute of Health and Welfare (2018), above n 29, 6; Youth Parole Board, *Annual Report 2017–18* (2018) 15.

98. Cashmore (2011), above n 38, 35. See also Bettink (2012), above n 32, 6; McFarlane (2018), above n 25, 421; Julie Stubbs, 'Re-Examining Bail and Remand for Young People in NSW' (2010) 43(3) *Australian And New Zealand Journal of Criminology* 485, 494, 498; UnitingCare Burnside, *Releasing the Pressure on Remand: Bail Support Solutions for Children and Young People in New South Wales* (2009) 3; Katrina Wong et al., *Bail Me Out: NSW Young Offenders and Bail* (2009) 7.

99. James Wood, *Report of the Special Commission of Inquiry into Child Protection Services in NSW: Volume 2* (2008) 558 [15.8].

100. Australian Law Reform Commission, *Family Violence: A National Legal Response* (2010) 974 [20.159].

101. Ibid 974 [20.157].

102. Cashmore (2011), above n 38, 35.

- 3.25 In Victoria, if a child is charged with a criminal offence, bail must not be refused to the child on the sole ground that they do not have adequate accommodation.¹⁰³ However, in practice, a child's accommodation arrangements and family support (or lack of family support) may be highly relevant to the assessment of a child's risk when deciding whether to grant bail.¹⁰⁴ It may be problematic for a court to release a child on bail before arrangements for the child's safe and supervised accommodation have been made. As one participant at Roundtable 2 pointed out, this effect can be self-perpetuating, particularly for children in temporary out-of-home care where a high demand for placements means that if a child is remanded that child may lose their placement, which may then increase the difficulty of securing bail for that child.¹⁰⁵ Options available to the court include making enquiries through bail support services (such as Youth Justice or Jesuit Social Services), standing the matter down to arrange a placement through the child protection service or making enquiries through the Court Support Coordinator; however, options for young people outside the child protection placement service are limited. The court must take into account any information or recommendation provided to it by a bail support service.¹⁰⁶
- 3.26 Another safeguard is that a child *must* be legally represented in certain proceedings, including a bail proceeding that is opposed by the police or prosecution.¹⁰⁷ A child's lawyer may liaise with youth justice workers and bail support services to put a plan in place to facilitate the granting of bail for the child, for example, by arranging accommodation.¹⁰⁸ A participant at Roundtable 1 commented that secure welfare was often used as a mechanism for obtaining bail for a child in care 'because it's certainly a better option, if they're looking for containment, than custody, because it's therapeutic', and when there is a risk of remand, it is the 'least worst option' for the child.¹⁰⁹ Another roundtable participant commented that police who initially oppose bail may drop their opposition when assured that a child will be placed in secure welfare.¹¹⁰

Criminal Division of the Children's Court

- 3.27 Recognition that children and young people share particular developmental characteristics that affect impulsivity and cognition underpins Victoria's specialist youth justice system. This system emphasises principles of rehabilitation over punishment. It is informed by the different and distinct nature of offending by children, compared with offending by adults. The moral culpability of children and young people is treated as markedly reduced because they are:

less mature – less able to form moral judgments, less capable of controlling impulses, less aware of the consequences of acts ... less responsible and therefore less blameworthy than adults.¹¹¹

103. *Bail Act 1977* (Vic) s 3B(3).

104. Bettink (2012), above n 32, 6; Cashmore (2011), above n 38, 35; McFarlane (2018), above n 25, 421; Stubbs (2010), above n 485, 494, 498; UnitingCare Burnside (2009), above n 98, 3; Katrina Wong et al. (2009), above n 98, 7.

105. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

106. *Bail Act* s 3B(2).

107. *Children, Youth and Families Act 2005* (Vic) s 525(2).

108. In some cases, the child's lawyer may view this as a preferable course of action to involving the child protection service: Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

109. Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

110. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

111. Lloyd Kingsley Newman, 'Juvenile Justice in South Australia', in Children's Court Advisory Committee (South Australia), *Annual Report 1983* (1983) 6–7. See also Power (2016), above n 76, [11.1]; Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., 2014) 925–933; Laurence Steinberg, 'Adolescent Development and Juvenile Justice' (2009) 5 *Annual Review of Clinical Psychology* 459; Chi Meng Chu and James Ogloff, 'Sentencing of Adolescent Offenders in Victoria: A Review of Empirical Evidence and Practice' (2012) 19(3) *Psychiatry, Psychology and Law* 325; *CNK v The Queen* [2011] 32 VR 641, 662 [77].

- 3.28 Victoria's youth justice system under the CYF Act reflects many of the rights enshrined in the Victorian *Charter of Human Rights and Responsibilities*, including children's rights when they are remanded in custody and their treatment if found guilty.¹¹² A key protection is the right of a child charged with a criminal offence to a procedure that takes account of their age and the desirability of promoting their rehabilitation. Another is the right, without discrimination, to such protection as is in the child's best interests and is needed by them by reason of being a child.¹¹³ These rights reflect the rights enshrined in the *United Nations Convention on the Rights of the Child*.¹¹⁴

Age of criminal responsibility

- 3.29 The Criminal Division of the Children's Court hears and determines charges against children and young people if the alleged offence was committed on or after the person's 10th birthday but before their 18th birthday. Children who are:
- aged under 10 are, at law, not criminally responsible and cannot be prosecuted for their behaviour;¹¹⁵
 - aged 10–13 (inclusive) are considered to be *doli incapax* (see [3.30]); and
 - aged 19 by the time the case commences in the Children's Court have their case transferred to the Magistrates' Court.¹¹⁶

Doli incapax

- 3.30 Children who are aged 10–13 (inclusive) at the time of an alleged offence are considered to be *doli incapax*. This means that they are presumed to be 'incapable of crime', unless the prosecution successfully rebuts the presumption and proves that the child knew that their conduct was morally wrong, as opposed to childish naughtiness or mischief.¹¹⁷ Crucially:

[t]he prosecution must point to evidence from which an inference can be drawn beyond reasonable doubt that the child's development is such that he or she knew that it was morally wrong to engage in the conduct. This directs attention to the child's education and the environment in which the child has been raised.

112. *Charter of Human Rights and Responsibilities Act 2006* (Vic). For example, the *Charter* requires an accused child who is detained (with or without charge) to be segregated from detained adults: *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 23(1). Accordingly, children who are remanded in custody by a court or bail justice must be placed in a remand centre that has been established for the detention of children: *Children, Youth and Families Act 2005* (Vic) ss 347(1), 478(a). The *Children, Youth and Families Act 2005* (Vic) sets out strict requirements for remanded children, such as that younger children are kept separate from older children (15 years or older) and that remanded children must be kept separate from children serving a period of detention except for certain circumstances. Remanded children are also entitled to have their developmental, medical, religious and cultural needs met. See further *Children, Youth and Families Act 2005* (Vic) s 482. In the *Charter*, a 'child' is defined simply as a person who is aged under 18: *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 3. See also *Baker (A Pseudonym) v DPP* [2017] VSCA 58 (22 March 2017) [96]–[99].

113. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17(2); *Baker (A Pseudonym) v DPP* [2017] VSCA 58 (22 March 2017).

114. *United Nations Convention on the Rights of the Child*, GA Res 44/25 (20 November 1989, adopted 2 September 1990) art 37(c).

115. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of 'child'), 344, 516. A minimum age of criminal capacity is a key protection in the *United Nations Convention on the Rights of the Child* (although the *United Nations Committee* has advised that international standards require a minimum age of 12). In all Australian states, the age of capacity is 10 years. In its 1982–84 child welfare review, the *Child Welfare Practice and Legislation Review Committee* originally proposed increasing the age of capacity from eight to 12 but were persuaded to set it at 10 for reasons that included ensuring parity between Australian states: *Child Welfare Practice and Legislation Review Committee* (Victoria) (1984), above n 75, 409–410. More recently, proponents of a 'change the age' movement are advocating the age of capacity be increased across Australian jurisdictions. See for example, Human Rights Law Centre, 'Explainer: Raising the Age' (hrlc.org.au, 2018) <<https://www.hrlc.org.au/factsheets/2018/2/8/explainer-raising-the-age>> at 12 February 2019; Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children: Research Report* (2013) 38–41.

116. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of 'child'), 516(4)–(5).

117. *R (A Child) v Whitty* (1993) 66 A Crim R 462; *RP v The Queen* (2016) 259 CLR 641 [8]–[9]; *R v ALH* [2003] 6 VR 276, 281. See further *Power* (2016), above n 76, [10.4].

No matter how obviously wrong the act or acts constituting the offence may be, the presumption [of *doli incapax*] cannot be rebutted merely as an inference from the doing of that act or those acts ... What suffices to rebut the presumption that a child is *doli incapax* will vary according to the nature of the allegation and the child. A child will more readily understand the seriousness of an act if it concerns values of which he or she has direct personal experience ... Answers given in the course of a police interview may serve to prove the child possessed the requisite knowledge. In other cases, evidence of the child's progress at school and of the child's home life will be required ... Rebutting [the] presumption directs attention to the intellectual and moral development of the particular child. Some 10-year-old children will possess the capacity to understand the serious wrongness of their acts while other children aged very nearly 14 years old will not.¹¹⁸

- 3.31 Therefore, as a matter of law, if a child who offended before the age of 14 was raised in an environment that included violence, dishonesty, sexual abuse or other forms of criminal behaviour, this environment is directly relevant to whether the child was aware that their offending conduct was morally wrong. Caution is needed in drawing inferences from the seriousness of the child's behaviour about whether the child knew the behaviour was morally wrong:

Even extreme sexual violence will not be enough, by itself, to show that the presumption is rebutted, as there may be other reasonable inferences besides a conclusion that the child knows the conduct is morally wrong. Such inferences might include the possibility that the child has been subjected to such conduct, or that the child does not realise it is seriously wrong to cause hurt or distress to another.¹¹⁹

Offences heard in the Criminal Division of the Children's Court

- 3.32 The Criminal Division of the Children's Court must hear and determine:

- all summary (less serious) offences alleged to have been committed by children and young people; and
- indictable (more serious) offences alleged to have been committed by children and young people, unless:
 - the offence is one of several homicide-related offences;¹²⁰
 - the child objects to the matter being heard summarily;¹²¹ or
 - the court considers at any stage that the charge is unsuitable to be heard and determined summarily due to exceptional circumstances, usually relating to the seriousness of the offence (this provision is to be used 'reluctantly');¹²² or

118. *RP v The Queen* (2016) 259 CLR 641 [8]–[9], [12].

119. Judicial College of Victoria, '9.4 – Child Accused', *Victorian Criminal Proceedings Manual* (Judicial College of Victoria, 2019) <<http://www.judicialcollege.vic.edu.au/eManuals/VCPM/27581.htm>> at 6 August 2018, citing *RP v The Queen* (2016) 259 CLR 641 [32]–[36].

120. The offences of murder, attempted murder, manslaughter, child homicide, arson causing death and culpable driving causing death must be dealt with in the Supreme Court or the County Court, although the Children's Court may conduct committal proceedings for these offences: *Children, Youth and Families Act 2005* (Vic) ss 516(1)(b)–(c), 356.

121. *Children, Youth and Families Act 2005* (Vic) s 356(3)(a).

122. *Children, Youth and Families Act 2005* (Vic) s 356(3)(b). Exceptional circumstances exist if the court considers that the sentencing options available to it under the CYF Act are inadequate to respond to the child's offending: *Children, Youth and Families Act 2005* (Vic) s 356A. See also *D (A Child) v White* [1988] VR 87, 93; *A Child v A Magistrate of the Children's Court & Others* (Unreported, Supreme Court of Victoria, Cummins J, 24 February 1992); *Victoria Police v CB* [2010] VChC 3 (24 June 2010); *C v Children's Court of Victoria & Anor* [2015] VSC 40 (19 February 2015); *DL (A Minor by His Litigation Guardian) v A Magistrate of the Children's Court and Others* (Unreported, Supreme Court of Victoria, 9 August 1994) 4; *Power* (2016), above n 76, [10.1]. A combination of factors may amount to exceptional circumstances: *Victoria Police v CB* [2010] VChC 3 (24 June 2010) [11], [14].

- the offence is a Category A serious youth offence that was committed when the child was aged 16 or over. The Children's Court may only hear and determine a Category A offence for a child aged 16 or over if all the following criteria are met:
 - » the prosecution or the child requests the charge be heard and determined summarily;
 - » the court is satisfied that the sentencing options available to it under the CYF Act are adequate to the child's offending; and
 - » it is in the interest of the victim that the charge be heard and determined summarily, or the accused is particularly vulnerable because of cognitive impairment or mental illness or there is a substantial and compelling reason why the charge should be heard and determined summarily.¹²³

Specialist responses for Aboriginal and Torres Strait Islander children

Panel 3: Koori court locations

The Children's Koori Court sits at:

- Melbourne
- Heidelberg
- Dandenong
- Mildura
- Latrobe Valley (Morwell)
- Bairnsdale
- Warrnambool
- Portland
- Hamilton
- Geelong
- Swan Hill
- Shepparton.

Source: www.childrenscourt.vic.gov.au

Children's Koori Court

- 3.33 The Children's Koori Court hears charges (other than sexual offences) within the jurisdiction of the Criminal Division where Aboriginal and Torres Strait Islander children plead guilty, intend to plead guilty or are found guilty.¹²⁴ Youth justice diversion is available in the Children's Koori Court.¹²⁵
- 3.34 The Children's Koori Court was established to provide a more inclusive and culturally relevant sentencing process for young Aboriginal and Torres Strait Islander children charged with offences, by involving Aboriginal Elders and other members of the Indigenous community in the court hearing (among other measures).¹²⁶ Like the Koori Divisions of the Magistrates' Court and the County Court, one of the aims of the Children's Koori Court is to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, including in custody.¹²⁷ The same sentencing laws apply in the Children's Koori Court as in the Children's Court.¹²⁸

123. *Children, Youth and Families Act 2005* (Vic) s 356(6). This provision was inserted by the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic). In determining whether there is a substantial and compelling reason why the charge should be heard and determined summarily, the court must have regard to the intention of parliament that a charge for a Category A serious youth offence should not normally be heard and determined summarily: *Children, Youth and Families Act 2005* (Vic) s 356(7).

124. *Children, Youth and Families Act 2005* (Vic) s 519. See further Jennifer Bowles, *Sentencing in the Children's Court of Victoria* (2013).

125. *Children, Youth and Families Act 2005* (Vic) s 518A(c)(iv).

126. *Children and Young Persons (Koori Court) Act 2004* (Vic) s 1; Victoria, 'Children and Young Persons (Koori Court) Bill', *Parliamentary Debates*, Legislative Assembly, 3 November 2004, 1196–1199 (Sherryl Garbutt, Minister for Community Services).

127. Victoria, *Parliamentary Debates*, Legislative Assembly, 3 November 2004, 1196 (Sherryl Garbutt, Minister for Community Services).

128. *Children, Youth and Families Act 2005* (Vic) s 517.

Other specialised responses

- 3.35 A number of programs aim to reduce the rate at which young Aboriginal people are involved in the criminal justice system. For example, the Koori Youth Justice Program employs Koori youth justice workers to support young Aboriginal people who are at risk of offending as well as those on community-based and custodial orders,¹²⁹ and the Koori Intensive Support Program provides 'intensive outreach support to assist young people to comply with bail conditions or conditions placed on deferred sentences'.¹³⁰ In addition, the Family Division of the Children's Court at Broadmeadows operates a 'Koori Hearing Day', providing culturally responsive hearings for Aboriginal and Torres Strait Islander families involved in child protection cases and improving adherence with the Aboriginal Child Placement Principle in the CYF Act.¹³¹

Recent youth justice changes

- 3.36 The last few years have seen the establishment or conclusion of a number of major reviews and inquiries relating to the youth justice system in Victoria,¹³² and elsewhere in Australia.¹³³ Recent changes to the youth justice system include:

- the statewide roll-out of the youth diversion program in Victoria;¹³⁴
- the introduction, and subsequent removal, of the offence of contravening a conduct condition of bail for children;¹³⁵
- changes to the power of the Children's Court to hear Category A offences committed by children aged 16 or over¹³⁶ (it is the intention of parliament that a charge of a Category A serious youth offence should not normally be heard and determined summarily in the Children's Court);¹³⁷

129. See further Department of Justice and Community Safety, 'Koori Youth Justice Programs' (justice.vic.gov.au, 2019) <<https://www.justice.vic.gov.au/justice-system/youth-justice/koori-youth-justice-programs>> at 13 May 2019.

130. Ibid.

131. Children's Court of Victoria 'Children's Court Family Division at Broadmeadows' <<https://www.childrenscourt.vic.gov.au/about-us/court-locations/childrens-court-family-division-broadmeadows>> at 8 May 2019. See further Judicial College of Victoria, '21.1 - "Marram-Ngala Ganbu" ("Koori Family Hearing Day")', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#60821.htm>> at 28 May 2019.

132. For example, the government has established an Aboriginal Youth Justice Taskforce led by the independent Commission for Children and Young People to 'examine the current care of Aboriginal young people within youth justice' and 'address the overrepresentation of Aboriginal young people in the criminal justice system': Minister for Families and Children, 'Creating A New Aboriginal Youth Justice Taskforce', Media Release (8 August 2018) <<https://www.premier.vic.gov.au/creating-a-new-aboriginal-youth-justice-taskforce/>> at 9 October 2018. Recent reports into youth justice issues include Victorian Auditor-General, *Managing Rehabilitation Services in Youth Detention* (2018); Victorian Equal Opportunity and Human rights Commission, *Aboriginal Cultural Rights in Youth Justice Centres* (2018); Penny Armytage and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending* (2017); Commission for Children and Young People, '...as a good parent would...': *Inquiry into the Adequacy of the Provision of Residential Care Services to Victorian Children and Young People Who Have Been Subject to Sexual Abuse or Sexual Exploitation whilst Residing in Residential Care* (2015).

133. For example, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) (tabled in the Northern Territory Parliament on 17 November 2017). See also Kathryn McMillan and Megan Davis, *Independent Review of Youth Detention: Report* (2016); Noetic Solutions, *Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice* (NSW) (2010); Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report 84 (1997).

134. For information about the youth diversion program, see above n 23.

135. Changes to the *Bail Act 1977* (Vic) in 2016 removed for children the offence of contravening any conduct condition of bail: *Bail Act 1977* (Vic) s 30A(3), inserted by *Bail Amendment Act 2016* (Vic) s 16(2). It remains an offence for a child to fail without reasonable cause to attend in accordance with their undertaking of bail or to commit an indictable offence while on bail: *Bail Act 1977* (Vic) ss 30(1), 30B. A raft of changes to the *Bail Act 1977* (Vic) commenced on 1 July 2018 after a 2017 review of the state's bail system. However, children were exempted from many of these changes.

136. Ordinarily, the Children's Court must hear and determine indictable (more serious) offences alleged to have been committed by children and young people, although there are exceptions to this rule: *Children, Youth and Families Act 2005* (Vic) s 356(6). In 2017, an exception relating to Category A offences committed by children aged 16 or over was added to section 356(6) by *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) s 23(2). The Children's Court may now hear Category A offences involving children aged 16 or over if certain criteria are met (see further [3.32]).

137. *Children, Youth and Families Act 2005* (Vic) s 356(7). If a child is charged before the Children's Court with a Category B serious youth offence committed when aged 16 or over, the court must consider whether section 356(3) has the effect that the offence should not be heard and determined summarily: *Children, Youth and Families Act 2005* (Vic) s 356(8).

- responsibility for the youth justice system moving from the Department of Health and Human Services, which also has responsibility for child protection, to the Department of Justice and Community Safety, effective 3 April 2017; and¹³⁸
- a new youth control order that became available on 1 June 2018 as a sentencing order in the Children's Court. The order is for children who would otherwise be sentenced to detention because of the serious or ongoing nature of their offending, but who have potential to be rehabilitated with support and supervision.¹³⁹

Sentencing principles

- 3.37 Section 362(1) of the CYF Act sets out the matters that the Children's Court must take into account in sentencing a child (Panel 4). These are quite different from the sentencing factors and purposes that apply to adult offenders.¹⁴⁰
- 3.38 The sentencing court must have regard to each of the specified matters to the maximum extent possible. The Court of Appeal has specified that these matters require the sentencing court to consider 'the effect of the proposed sentence on the child ... and to impose a sentence which fits the young offender as much as – or perhaps even more than – it fits the crime'.¹⁴¹
- 3.39 Although not specifically mentioned, the principle of rehabilitation underpins the first four matters set out in section 362(1), which include the preservation of family and home, the continuation of the child's education and employment, and the need to minimise stigma to the child.¹⁴² The focus on rehabilitation reflects the benefit to both the child and the community in directing the young person away from a potentially life-long pathway of antisocial conduct and criminal offending.¹⁴³
- First, the young offender's immaturity is seen as markedly reducing his/her moral culpability; secondly, custody can be particularly criminogenic for a young person, whose brain is still developing; and, thirdly, the very process of development and maturation which is under way is seen as providing a unique opportunity for rehabilitation and — hence — for minimising the risk of re-offending.¹⁴⁴
- 3.40 The last three matters in section 362 of the CYF Act are more focused on justice.¹⁴⁵ Applying only 'if appropriate', they require the court to have regard to the need to:
- ensure that the child is aware that they must bear a responsibility for any action by them against the law;
 - protect the community from the violent or wrongful acts of the child; and
 - deter children from committing offences in custody.¹⁴⁶

138. Youth Parole Board, *Annual Report 2016–17* (2017) viii.

139. Victoria, 'Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017, *Parliamentary Debates*, Legislative Assembly, 25 May 2017, 1502 (Martin Pakula, Attorney-General); *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) pt 3.

140. The sentencing factors and purposes that apply to sentencing adults are set out in *Sentencing Act 1991* (Vic) s 5.

141. *CNK v The Queen* [2011] 32 VR 641, 643–645 [4]–[16].

142. *Children, Youth and Families Act 2005* (Vic) ss 362(1)(a)–(d). For further discussion of the Children's Court jurisdiction and the principles that govern the sentencing of children and young people, see Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report* (2016).

143. *R v Evans* [2003] VSCA 223 (19 December 2003) [44] (Vincent JA).

144. *Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016) [8].

145. Freiberg (2014), above n 111, 926–928.

146. *Children, Youth and Families Act 2005* (Vic) ss 362(f)–(h). The *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) inserted section 362(1)(h) and amended section 362(1)(g) to require the court to consider the need to protect the community when sentencing Category A and Category B offences: *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) ss 24, 42(b).

Panel 4: Matters to be taken into account when sentencing a child (section 362)

- (1) In determining which sentence to impose on a child, the court must, as far as practicable, have regard to—
 - (a) the need to strengthen and preserve the relationship between the child and the child's family; and
 - (b) the desirability of allowing the child to live at home; and
 - (c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
 - (d) the need to minimise the stigma to the child resulting from a court determination; and
 - (e) the suitability of the sentence to the child; and
 - (f) if appropriate, the need to ensure that the child is aware that they must bear a responsibility for any action by them against the law; and
 - (g) the need to protect the community, or any person, from the violent or other wrongful acts of the child—
 - (i) in all cases where the sentence is for a Category A serious youth offence or a Category B serious youth offence; or
 - (ii) in any other case—if it is appropriate to do so;
 - (h) if appropriate, the need to deter the child from committing offences in remand centres, youth residential centres or youth justice centres.

3.41 The CYF Act also permits the court to have regard to 'any report, submission or evidence ... on behalf of the child who is to be sentenced',¹⁴⁷ allowing the court to consider submissions about the context of the offending and aggravating and mitigating factors.

3.42 The list of matters to be taken into account under section 362 of the CYF Act includes the need to strengthen the relationship between the child and the child's family and the desirability of allowing the child to live at home.¹⁴⁸ However, section 362 does not expressly require a sentencing court to take into account a child's experience of abuse, neglect, trauma, removal from family, loss or out-of-home care as context for that child's offending. Although the common law provides that childhood abuse may be relevant as a mitigating factor in sentencing,¹⁴⁹ the limited case law on the subject is generally in the context of adult offenders who were abused as children or offenders in their late teens facing sentencing for serious offences in the higher courts.¹⁵⁰

¹⁴⁷ *Children, Youth and Families Act 2005* (Vic) s 358(c).

¹⁴⁸ *Children, Youth and Families Act 2005* (Vic) ss 362(a)–(b).

¹⁴⁹ *R v AWF* [2000] 2 VR 1; *DPP v Walsh (A Pseudonym)* [2018] VSCA 172 (17 July 2018), [26]–[34]; *R v McKee & Brooks* (2003) 138 A Crim R 88, 92, 94; *R v Maschoe* [2000] VSCA 193 (11 October 2000) [4]; *DPP v Wilson* [2002] VSC 299 (24 July 2002) [23]–[24]; Freiberg (2014), above n 111, 310 [4.105].

¹⁵⁰ *Bugmy v The Queen* (2013) 249 CLR 571; *R v AWF* [2000] 2 VR 1; *DPP v Walsh (A Pseudonym)* [2018] VSCA 172 (17 July 2018) [26]–[34]; *R v McKee & Brooks* (2003) 138 A Crim R 88, 92, 94; *R v Maschoe* [2000] VSCA 193 (11 October 2000) [4]; *DPP v Wilson* [2002] VSC 299 (24 July 2002) [23]–[24]; *R v Fuller-Cust* [2002] 6 VR 496, 515, 531–533; *AH v The State of Western Australia* [2014] WASCA 228 (10 December 2014) [125]; *R v 'DP' (A Child)* [2003] WASCA 92 (6 May 2003) [56], [61]; *DPP v Tewksbury (A Pseudonym)* [2018] VSCA 38 (27 February 2018), [37]; *DBW (A Child) v The State of Western Australia* [2011] WASCA 206 (30 September 2011) [57], [60]–[61]; *DPP v Anderson* [2013] VSCA 45 (7 March 2013) [3], [59], citing *Hogarth v The Queen* [2012] 37 VR 658, 666 [30]–[31]; Freiberg (2014), above n 111, 310 [4.105].

- 3.43 There is a scarcity of written authority on, or academic consideration of, the approach to a child's experience of abuse, neglect, trauma, loss or out-of-home care in sentencing children, particularly in cases where the offending was committed contemporaneously to the child's abuse, neglect or experience of out-of-home care. There is also no express requirement for the sentencing court to have regard to the need to ensure that the child has a safe, stable and secure place to live. Nor is the court required to consider the impact of a decision on the stability of a child's out-of-home care placement or the need to strengthen and preserve the relationship between the child and the child's non-parental carer.
- 3.44 In fact, the CYF Act provides that a child's appearance in the Family Division of the Children's Court, including as a child in need of protection, should not be an *aggravating* factor in sentencing that child: the Criminal Division must not impose a more severe sentence than it would have imposed had the child not had a matter in the Family Division.¹⁵¹
- 3.45 A child's experience of abuse, neglect, trauma, removal from family, loss, out-of-home care or other vulnerability may be relevant to sentencing in the Children's Court in a number of ways, including:
- the consideration of the need to strengthen and preserve the relationship between the child and the child's family and the desirability of allowing the child to live at home under section 362 of the CYF Act;
 - the assessment of the child's moral culpability for the offence, including the degree to which it is appropriate to ensure that the child is aware that they must bear a responsibility for any action by them against the law;
 - the appropriateness of the need to deter the child from committing offences in remand centres, youth residential centres or youth justice centres;
 - the assessment of the child's risk in the context of an assessment of whether there is a need to protect the community from the child; and
 - as a general mitigating factor (at common law).

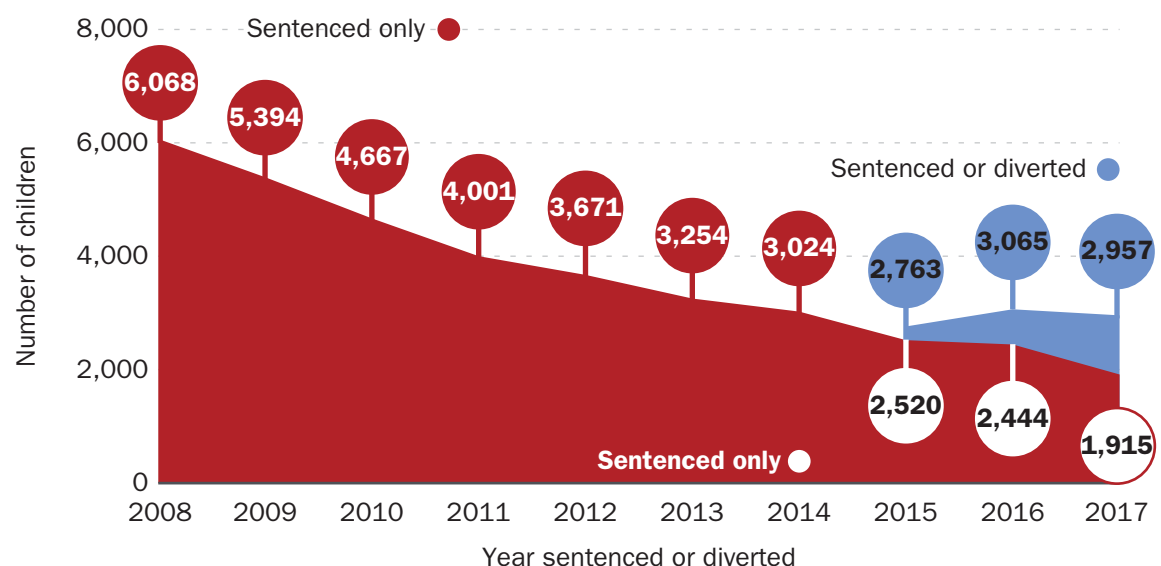
151. *Children, Youth and Families Act 2005* (Vic) s 362(2).

4. What do we know about offending by children in Victoria?

The number of children sentenced each year has decreased

- 4.1 The vast majority of children and young people do not commit crime,¹⁵² and many of those who do cease offending as they mature. In recent years, there has been a dramatic reduction in the number of children attending the Victorian Children's Court each year for sentencing. The annual number of sentenced children fell by over two-thirds between 2008 (6,068 children) and 2017 (1,915 children) (Figure 6).

Figure 6: People sentenced and diverted in the Children's Court, by year, 2008 to 2017



- 4.2 The youth diversion program is an alternative to a formal determination of guilt and sentence. The diversion program was run as a pilot program across seven Children's Court sites from 1 June 2015 to the end of December 2016,¹⁵³ before becoming available in all Victorian Children's Court locations on 1 January 2017 (halfway through the study period of this report).
- 4.3 Figure 6 includes diverted children in the total of children who faced 'consequences' in the Children's Court for their offences. There was a steady decline from 2008 to 2015. However, after the introduction of diversion, the number of children who faced consequences in the Children's Court for offending increased from 2,763 children in 2015 to 3,065 children in 2016 and 2,957 children in 2017. When diverted children are combined with sentenced children, the number of children dealt with by the Children's Court appears to have plateaued since 2015.

152. Only 1.4% of people aged 10–17 in Victoria were alleged by police to have committed a crime in 2015. This means that over 98% of young persons did not offend or were not detected by police. Once pre-court resolutions (for instance, acquittals, pre-charge diversion such as cautions and pre-sentence diversion) are filtered out, the percentage of people aged 10–17 who had an offence proven by a court in 2015 drops to just 0.6%: Sentencing Advisory Council (2016), above n 19, 2.

153. The pilot program incorporated four metropolitan Children's Court sites (Broadmeadows, Dandenong, Sunshine and Werribee) and three regional Children's Court sites (Ararat, Stawell and Ballarat): Stuart Thomas, Marg Liddell and Diana Johns, *Evaluation of the Youth Diversion Pilot Program (YDPP: Stage 3): Executive Summary* (2016) 3. See further above n 23.

- 4.4 A participant at Roundtable 1 queried whether some of the children who now receive diversion (requiring them to consent and to accept responsibility for the offence) might previously have had their charges discharged, for example, on the basis of *doli incapax*. The participant explained that agreeing to diversion sometimes reflected a child's wish to end the court process quickly by whatever means necessary, particularly when the child did not have family support at court to help them consider their options:
- From a practice perspective, we have a concern that a number of kids who were actually diverted and/or sentenced actually were *doli incapax* at the time, and they shouldn't have actually been diverted and/or sentenced, so there's that compounding effect on a young person's criminal history.¹⁵⁴
- 4.5 One participant queried 'how much of the offending that those 10–12 year olds are doing is care-related offending, as opposed to offending that ought to be responded to', with another adding 'yes that's the pathway into youth justice'.¹⁵⁵ Representatives of the Children's Court suggested that a choice to use diversion might facilitate access to supports not available if the *doli incapax* route were taken, and in this context, people steering children into the diversion program are usually well-intentioned. However, 'whilst you could understand that, children also have a right to the protection afforded by the *doli incapax* presumption, so you wouldn't want the availability of diversion to infringe on their fundamental rights'.¹⁵⁶
- 4.6 If the introduction of youth diversion has widened the net of children facing consequences for offences in the Children's Court, this may explain to some extent the plateauing from 2015 of children facing consequences for offences in the Children's Court as shown in Figure 6.

Children are less likely than adults to offend but more likely than adults to reoffend

- 4.7 While children generally have lower *offending* rates than adults,¹⁵⁷ once they are in the criminal justice system, young offenders have higher *reoffending* rates than their older counterparts.¹⁵⁸

The younger children are when first sentenced, the more likely they are to reoffend

- 4.8 The age at which a child is first sentenced in the criminal justice system is associated with the likelihood of that child reoffending.¹⁵⁹
- 4.9 The Council's 2016 report on reoffending by children found that the younger children are at their first sentence, the more likely they are to reoffend generally (Figure 7), to reoffend violently and to receive a sentence of adult imprisonment before their 22nd birthday.

154. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

155. Participants at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

156. Meeting with representatives of the Children's Court of Victoria (3 April 2019).

157. Sentencing Advisory Council (2016), above n 19, 2.

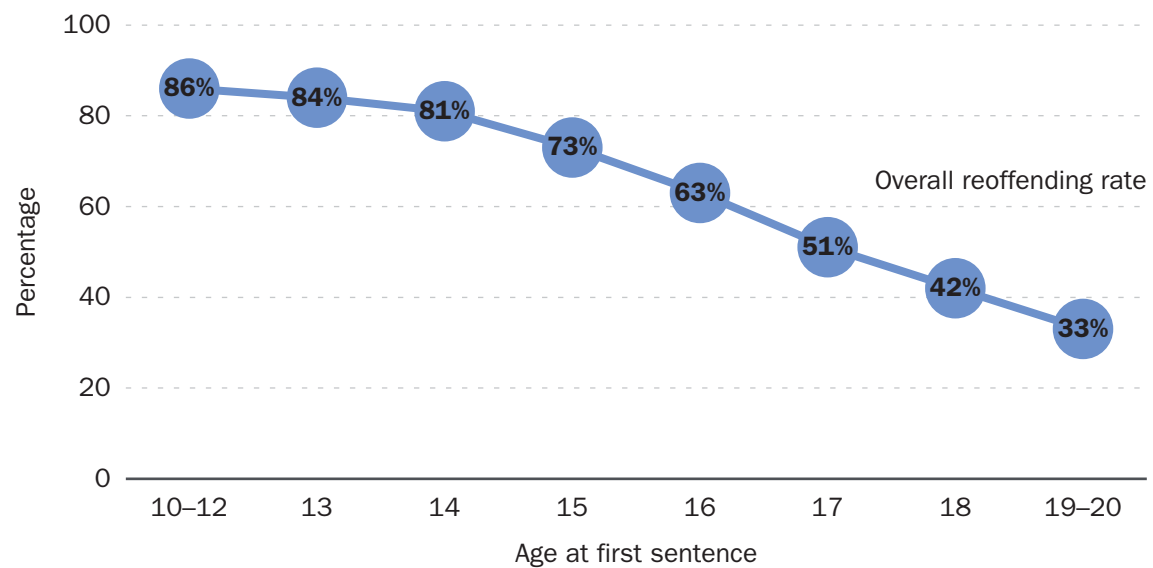
158. Ibid 2–4. For research on New South Wales, see Winifred Agnew-Pauley and Jessie Holmes, *Re-offending in NSW*, Bureau Brief no. 108 (2015). For research on New Zealand, see Arul Nadesu, *Reconviction Patterns of Released Prisoners: A 48-Months Follow-Up Analysis* (2008). For research on the United States, see Matthew R. Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (2014). For research on England and Wales, see Ministry of Justice, *Proven Reoffending Statistics Quarterly Bulletin: October 2013 to September 2014, England and Wales* (2016).

159. Sentencing Advisory Council (2016), above n 19, 25–26.

Children who were first sentenced aged 10–13 had particularly high reoffending rates, with over 80% reoffending at all and over 60% reoffending with an offence against the person.¹⁶⁰ The cohort of children first sentenced at a young age proceeded to commit a disproportionate volume of all youth crime.

- 4.10 Three-quarters of the children who were first sentenced aged 10–12 continued offending into the adult criminal jurisdiction, and 36% were sentenced to an immediate term of adult imprisonment before the age of 22.¹⁶¹

Figure 7: Reoffending rate, by age at first sentence¹⁶²



Children who offend are different from adult offenders

- 4.11 All children and young people have a range of challenges as they grow and develop. When combined with family dysfunction, abuse, neglect, exposure to violence, low socioeconomic conditions or negative peer influences, these challenges can contribute to antisocial behaviour and criminal offending. The Sentencing Council for England and Wales' *Sentencing Children and Young People* guideline explains that:

It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. When considering a child or young person's age their emotional and developmental age is of at least equal importance to their chronological age (if not greater).¹⁶³

¹⁶⁰. Ibid 27 (Table 5).

¹⁶¹. Ibid 30–31 (Figure 19).

¹⁶². Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria: Fact Sheet* (2016) 2; Sentencing Advisory Council (2016), above n 19, 26 (Figure 18).

¹⁶³. Sentencing Council for England and Wales, *Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery: Definitive Guideline* (2017) 4 [1.5].

- 4.12 Research also suggests that children make decisions differently from adults due to 'psychosocial immaturity'¹⁶⁴ and that 'the part of our brain responsible for impulse control, planning and decision-making (the prefrontal cortex) is not fully developed until we are about 25 years of age'.¹⁶⁵ Children's brain development is also affected by maltreatment, exposure to violence or other trauma, neglect, disrupted family bonds and attachment, and poverty.¹⁶⁶ This is particularly relevant to children in the youth justice system:

It is well recognised that children and young people are continuing to develop physiologically, psychologically and emotionally, and this must be taken into account when responding to their criminal offending. In addition, the small group of children and young people who enter the youth justice system experience increased vulnerability in a range of ways. Many children and young people in youth justice detention have a history of trauma, neglect and abuse, and child protection involvement. They are also more likely to experience family violence, have mental health problems or a disability, engage in drug and alcohol misuse, be disengaged from school and experience homelessness. Aboriginal and Torres Strait Islander children and young people experience intergenerational trauma and the continuing impacts of dispossession, colonisation and discrimination. Children and young people from refugee backgrounds may have experienced war and conflict, which can be compounded by experiences of displacement and the loss of family networks.¹⁶⁷

- 4.13 The criminal profile of children and young people who offend also differs from that of adults. Cunneen, White and Richards suggest that, unlike adult crime, crime by children and young people tends to be committed in groups and in public areas, and their offending often occurs close to where they live. Further, their offences tend to be attention-seeking, public and gregarious, episodic, unplanned and opportunistic.¹⁶⁸
- 4.14 According to Victorian Crime Statistics Agency data, offenders aged 10–14 are more likely than older offenders to commit property offences, are similarly likely to commit offences against the person and are less likely to commit drug offences, public order and security offences, and justice procedures offences (Table 1).

Table 1: Percentage of alleged offender incidents, by offence type and age group, January 2018 to December 2018¹⁶⁹

Age group	Property and deception offences	Crimes against the person	Drug offences	Public order and security offences	Justice procedures offences	Other offences
10–14	57.6	31.7	1.7	6.2	2.6	0.2
15–19	45.4	30.2	7.9	9.9	6.3	0.3
20–39	37.8	24.6	9.7	12.0	15.8	0.2
40+	28.6	31.9	6.7	12.0	20.4	0.4
All ^a	36.9	27.5	8.4	11.6	15.4	0.2

a. 'All persons' includes people of an 'unknown' age group.

164. Gene Griffin and Sarah Sallen, 'Considering Child Trauma Issues in Juvenile Court Sentencing' (2013) 34(1) *Children's Legal Rights Journal* 1, 2; Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty* (2003) 58(12) *American Psychologist* 1009, 1014.

165. Mark Marien, "'Cross-Over Kids': Childhood and Adolescent Abuse and Neglect and Juvenile Offending' (Paper presented at the National Juvenile Justice Summit, Melbourne, 26–27 March 2012) 2.

166. *Ibid* 3.

167. Australian Children's Commissioners and Guardians, *Statement on Conditions and Treatment in Youth Justice Detention* (2017) 9 (citations omitted).

168. Chris Cunneen et al., *Juvenile Justice in Australia* (5th ed., 2015) 55. See also Marien (2012), above n 165, 2.

169. Sentencing Advisory Council analysis of Crime Statistics Agency, *Data Tables – Alleged Offender Incidents – Year Ending December 2018* (2019) Table 8.

Most children known to child protection do not offend, but many children charged with offences are known to child protection

- 4.15 In Australia¹⁷⁰ and internationally,¹⁷¹ children involved in the child protection system have been found to be over-represented in the youth justice system.
- 4.16 A consistent theme of research into the overlap between youth justice and child protection is that, while most children who are known to child protection do not end up as offenders, a significant proportion of children who are charged with offences are known to child protection.
- 4.17 For example, in the four-year period from 1 July 2013 to 30 June 2017, 7.7% of the 48,379 Australian young people who received child protection services were also under youth justice supervision (a custodial or supervised community order) in the same period. In comparison, 47.7% of the 7,776 young people under youth justice supervision were also receiving child protection services (Figure 8, page 36).¹⁷²
- 4.18 Compared to the general population:
- young people who received child protection services were nine times more likely to be under youth justice supervision; and
 - young people under youth justice supervision were nine times more likely to be receiving child protection services.¹⁷³
- 4.19 Victorian children who received a child protection service were the least likely in Australia to be under youth justice supervision (5.4%).¹⁷⁴ However, 'this rate of youth justice supervision is still almost 11 times the rate for the age-equivalent Victorian population (0.5%).'¹⁷⁵ Children under youth justice supervision in Victoria were the most likely in Australia to have also received a child protection service during the same four-year period (60.4%). This is 'just over 10 times the rate of child protection among the age-equivalent Victorian population'.¹⁷⁶

170. Cashmore (2011), above n 38, 33; Australian Institute of Health and Welfare (2018), above n 29, 6; Youth Parole Board (2018), above n 97, 15; Catia Malvaso, 'Investigating the Complex Links Between Maltreatment and Youth Offending' (aifs.gov.au, 2017) Australian Institute of Family Studies <<https://aifs.gov.au/cfca/2017/08/30/investigating-complex-links-between-maltreatment-and-youth-offending>> at 8 October 2018; Adam Dean, 'Young People Involved in Child Protection and Youth Justice Systems' (aifs.gov.au, 2018) Australian Institute of Family Studies <<https://aifs.gov.au/cfca/2018/07/24/young-people-involved-child-protection-and-youth-justice-systems>> at 13 May 2019; Kath McFarlane, 'From Care to Custody: Young Women in Out-of-Home Care in the Criminal Justice System' (2010) 22(2) *Current Issues in Criminal Justice* 345; Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children, Summary Report* (2013) 20; Stewart et al. (2008), above n 38; Malvaso et al. (2017), above n 38; Devon Indig et al., *2009 NSW Young People in Custody Health Survey: Full Report* (2011) 31; Marien (2012), above n 165, 1, 6–8.

171. See for example, Department for Education (England), *Outcomes for Children Looked After by Local Authorities in England as at 31 March 2014*, Statistical First Release no. 49/2014 (2014) 18; Sentencing Council for England and Wales (2017), above n 163, 6 [1.16].

172. Australian Institute of Health and Welfare (2018), above n 29, 6. In that report, child protection data 'is restricted to investigated notifications, child protection orders and out-of-home care. Excluded are notifications that were not investigated, child protection orders that were 'other' or 'not stated' and living arrangements that do not constitute out-of-home care': *ibid* 3.

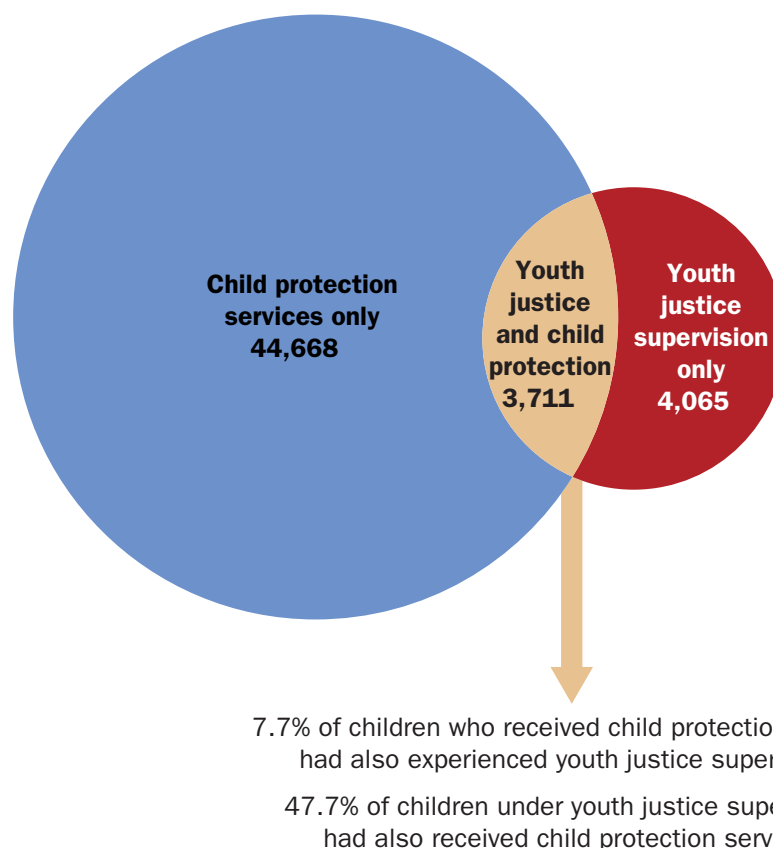
173. *Ibid* v. The data excludes New South Wales and the Northern Territory. The data includes only children who were aged 10–14 at 1 July 2013. Data is restricted to the period between 1 July 2013 and 30 June 2017. For data included in the definition of 'child protection services' see above n 67.

174. *Ibid* 10. In comparison, 7.7% of Australian children who had received a child protection service had also experienced youth justice supervision.

175. *Ibid*; Australian Institute of Health and Welfare, *Data Tables: Young People in Child Protection and under Youth Justice Supervision: 1 July 2013 to 30 June 2017*, Data Linkage Series no. 24 (2018) tables S3, S15.

176. Australian Institute of Health and Welfare (2018), above n 29, 11. In comparison, 47.7% of Australian children under youth justice supervision also received child protection services during the same four-year period: *ibid* 17.

Figure 8: Overlap between the child protection system and youth justice supervision: children in Australia who received child protection services, were under youth justice supervision, or both, 1 July 2013 to 30 June 2017¹⁷⁷



Source: Australian Institute of Health and Welfare, Young people in child protection and under youth justice supervision 1 July 2013 to 30 June 2017 (2018) Data Linkage Series no. 24. Cat. No. CSI 26, 7.

Excludes New South Wales and the Northern Territory. Includes only children who were aged 10–14 at 1 July 2013.

4.20 A Victorian Youth Parole Board survey of 209 males and 17 females detained on sentence and remand on 1 December 2017 showed that 37% were currently and/or previously subject to a child protection order.¹⁷⁸ Similarly, a 2015 Victorian study by Jesuit Social Services found that vulnerable and disadvantaged children and young people were highly overrepresented among those who were on remand. The study found that all 27 children who were first remanded aged 10–12 were known to the child protection service, and 14 of the 27 children were known to the child protection service before their third birthday. Jesuit Social Services concluded that:

[t]he justice system appears impotent in halting these children's trajectories, with most going on to experience substantial youth justice involvement. They belong in the welfare system not the justice system.¹⁷⁹

177. Australian Institute of Health and Welfare (2018), above n 29, 7 (Figure 2.1). Data is restricted to the period between 1 July 2013 and 30 June 2017. For data included in the definition of 'child protection services', see above n 67.

178. Youth Parole Board (2018), above n 97, 15–16.

179. Jesuit Social Services (2013), above n 170, 20. For more information about the Victorian Child Protection System and Child Protection Orders, see Department of Health and Human Services (2019), above n 40; Department of Health and Human Services (2017), above n 5.

Children in out-of-home care are more likely than other children to end up in the youth justice system

- 4.21 Australian and international evidence suggests that children who are placed in out-of-home care are 'grossly over-represented in the juvenile justice system'.¹⁸⁰ This is particularly the case for children placed in residential care.¹⁸¹
- 4.22 A 2016 study by Victoria Legal Aid examined the progression of children in out-of-home care into the criminal justice system. Looking at young people assisted by Victoria Legal Aid with child protection matters, the study found that:
- almost one in three young people who were placed in out-of-home care later returned to Victoria Legal Aid for assistance with criminal charges;
 - those placed in out-of-home care were almost twice as likely to face criminal charges as those who remained with their families; and
 - those placed in out-of-home care were more likely than other children to be charged with criminal damage for property-related offending.¹⁸²
- 4.23 A 2018 update by Victoria Legal Aid showed that, of the Victorian children placed in state residential care who had sought legal aid assistance for child protection matters, two out of every three also sought Victoria Legal Aid's help for criminal charges, and more than half (57%) of children in residential care faced criminal charges within 12 months of their residential care placement.¹⁸³
- 4.24 In 2007, Wise and Egger found that 21% of children aged 11–17 living in out-of-home care in Victoria had been cautioned or charged by police in the previous six months.¹⁸⁴

Why are children in care over-represented in the youth justice system?

- 4.25 The reasons why children known to child protection are over-represented among children who offend are many, complex and likely to vary from child to child. Considerable evidence demonstrates an association between child maltreatment and youth offending.¹⁸⁵

180. Marien (2012), above n 165, 1, 6–8. See also Australian Institute of Health and Welfare (2017), above n 38, 14; Victoria Legal Aid (2016), above n 7, 9; Commission for Children and Young People (2015), above n 132, 27; Indig et al. (2011), above n 170, 31; Kath McFarlane, 'Care-Criminalisation: The Involvement of Children in Out of Home Care in the NSW Criminal Justice System' (PhD Thesis, University of New South Wales, 2016); Elizabeth Fernandez et al., 'Children's Court Challenges and Possibilities: A Study of the Children's Court of New South Wales' (Paper presented at the Association of Children's Welfare Agencies (ACWA) Best Practice Forum, Sydney, 23 July 2014); Kelly Richards and Lauren Renshaw, *Bail and Remand for Young People in Australia: A National Research Project*, Australian Institute of Criminology Research and Public Policy Series no. 125 (2013); Sarah Wise and Samuel Egger, *The Looking After Children Outcomes Data Project: Final Report* (2008) 15.

181. Victoria Legal Aid, 'Action Needed to Stop Children in State Care Entering Youth Justice', Media Release (26 September 2018) <<https://www.legalaid.vic.gov.au/about-us/news/action-needed-to-stop-children-in-state-care-entering-youth-justice>> at 13 May 2019; McFarlane (2018), above n 25.

182. Victoria Legal Aid (2016), above n 7, 1. The study considered children who had been seen by Victoria Legal Aid for a child protection matter and compared children who were placed in out-of-home care with those whose child protection matter did not result in out-of-home care. Victoria Legal Aid found that 30% of those in out-of-home care returned to Victoria Legal Aid for assistance with a criminal charge, compared with 18% of those who remained with their family: *ibid* 9.

183. Victoria Legal Aid (2018), above n 182. These findings are consistent with a 2008 study by Wise and Egger, which found that of 614 surveyed children in out-of-home care in Victoria, 21% of children aged 10 or older had been cautioned, warned or charged by police in the last six months. Those in residential care were nine times more likely than children in home-based care to have had such criminal involvement: Wise and Egger (2008), above n 180, 15.

184. Wise and Egger (2008), above n 180, 15.

185. Stewart et al. (2002), above n 38; Cashmore (2011), above n 38; Hurren et al., 'Transitions and Turning Points Revisited: A Replication to Explore Child Maltreatment and Youth Offending Links within and across Australian Cohorts' (2017) 65 *Child Abuse & Neglect* 24; Malvaso et al. (2017), above n 38, 40; Adam Dean, *The Intersection between the Child Protection and Youth Justice Systems: CFA Resource Sheet* (2018).

Children with both child protection and criminal justice histories 'comprise a particularly complex at-risk and vulnerable population'.¹⁸⁶

While a number of risk factors have been identified as increasing the likelihood of juvenile offending, none are as consistent as the detrimental effect of child abuse and neglect.¹⁸⁷

- 4.26 The prior exposure of a child to severe maltreatment, neglect, offending and violence may increase the likelihood of the child engaging in trauma-related behaviour that may also constitute an offence (such as substance abuse or aggression).¹⁸⁸ Childhood trauma influences children's development and ability to regulate their behaviour. This might result in, for example, heightened vigilance, stress intolerance, antisocial behaviour and 'fight or flight' responses to triggers.¹⁸⁹
- 4.27 Child abuse and neglect have long been recognised as risk factors for juvenile offending. However, the association between maltreatment and offending is complex and 'can involve a range of factors that influence the risk of subsequent offending behaviour, including variations in the maltreatment experiences and placement in out-of-home care'.¹⁹⁰ Factors that may contribute to the over-representation of children in out-of-home care in the youth justice system include:
- circumstances arising from the experience of out-of-home care itself (this includes the potential for exposure to predatory adults or other children involved in high-risk and offending behaviour; increased trauma due to removal from family, friends, community and school and difficulties forming secure and stable relationships with carers);
 - reserving residential care as a measure of last resort (this results in residential care units grouping together some of the most traumatised, vulnerable, at-risk and complex-needs children, some of whom have ended up in residential care because other out-of-home care placements have been unable to manage their problematic behaviour);
 - multiple out-of-home care placements (this reduces the opportunity to form relationships with carers and for therapeutic treatment and interventions. There is evidence that a lack of stability and multiple out-of-home care placements increases the risk of subsequent offending); and
 - approaches to managing children's behaviour in out-of-home care, particularly residential care (this includes, for example, the use of police to locate and return children who have run away from care or to respond to problematic and trauma-influenced behaviours in circumstances that might not involve police if the child was living in their family home).¹⁹¹
- Victoria Legal Aid reported that:

186. Douglas Thomas et al., *When Systems Collaborate: How Three Jurisdictions Improved Their Handling of Dual-Status Cases* (2015) 3.

187. Stewart et al. (2002), above n 38, 1.

188. Ibid; McFarlane (2018), above n 25, 415; Mendes et al., *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System: Phase Three Report* (2014) 26; Joseph Ryan et al., 'Adolescent Neglect, Juvenile Delinquency, and the Risk of Recidivism' (2013) 42(3) *Journal of Youth and Adolescence* 454; Carolyn Smith et al., 'Adolescent Maltreatment and Its Impact on Young Adult Antisocial Behaviour' (2005) 29(10) *Child Abuse and Neglect* 1099; Victoria Legal Aid (2016), above n 7, 7.

189. New South Wales Government, *Joint Protocol to Reduce the Contact of Young People in Residential Out-of-Home-Care with the Criminal Justice System* (2016) 5, 15; Victoria Legal Aid (2016), above n 7, 11; Mendes et al. (2014), above n 188, 32–34; Griffin and Sallen (2013), above n 164, 9–10.

190. Dean (2018), above n 185.

191. Commission for Children and Young People (2015), above n 132, 14; Mendes et al. (2014), above n 188, 24–25; Victoria Legal Aid (2016), above n 7, 7; McFarlane (2010), above n 170, 345–346; Carol Hayden, 'Offending Behaviour in Care: Is Children's Residential Care a "Criminogenic" Environment?' (2010) 15(4) *Child & Family Social Work* 461; McFarlane (2017), above n 25. Joseph Ryan and Mark Testa, 'Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability' (2005) 27(3) *Children and Youth Services Review* 227; Stewart et al. (2002), above n 38; Joseph Ryan et al., 'Juvenile Delinquency in Child Welfare: Investigating Group Home Effects' (2008) 30(9) *Children and Youth Services Review* 1088; Marien (2012), above n 165, 12; Melissa Jonson-Reid and Richard Barth, 'From Placement to Prison: The Path to Adolescent Incarceration from Child Welfare Supervised Foster or Group Care' (2000) 22(7) *Children and Youth Services Review* 493.

[w]hile serious offending by young people may warrant a police response, we also see cases where police have been called to a residential facility to deal with behaviour by a young person that would be unlikely to come to police attention had it occurred in a family home. We have represented children from residential care who have received criminal charges for smashing a cup, throwing a sink plug or spreading food around a unit's kitchen ... the current practice in many residential care facilities of relying on police to manage disputes over behavioural incidents is leading to an excessive criminalisation of children in residential care – propelling them into the very criminal justice system they should be protected from.¹⁹²

4.28 The 2014 Victorian Auditor-General's report noted that:

[c]hildren in residential care have generally been exposed to multiple traumas in the form of family violence, alcohol and drug abuse, or sexual, physical and emotional abuse since they were very young. They may have a parent who is in prison or a struggling single parent with mental health issues. Some have been born to mothers who were very young, often with a violent partner. They usually have other siblings in care, and one of their parents may also have been in care as a child. They are usually known to child protection at an early age. They come to residential care typically as a young adolescent, having experienced a number of placements in home-based care that have since broken down or were only available for short periods of time.¹⁹³

4.29 The 1984 Carney review set out principles that guided its consideration of out-of-home care, including the principle that:

[i]n taking over the role of parents as custodians or guardians, the state acquires a new and onerous responsibility. In discharging this responsibility the state must maintain its commitment to provide a level of care which is equivalent to that provided by good parents. This includes providing individual caring treatment, and developing the intellect, character and emotional and physical health of the child. The standard of care expected of the state is no less than that which good parents would provide for their children.¹⁹⁴

Current initiatives to improve the outcomes of children in care

4.30 The last few years have seen 'unprecedented scrutiny of ... Victoria's out-of-home care system',¹⁹⁵ including the announcement of a number of major policy and legal changes to the child protection and out-of-home care systems.¹⁹⁶

4.31 In its 2016 *Roadmap for Reform*, the Victorian Government committed to reducing the use of residential care and 'transform[ing] it from a long-term placement option into a short-term "intensive trauma-informed behaviour support service"'.¹⁹⁷ As part of the *Roadmap for Reform* platform, Victoria Legal Aid has called for the adoption of a protocol between police and care providers to reduce the criminalisation of children in residential out-of-home care.¹⁹⁸

192. Victoria Legal Aid (2016), above n 7, 1, 3.

193. Victorian Auditor-General, *Residential Care Services for Children* (2014) ix.

194. Child Welfare Practice and Legislation Review Committee (Victoria) (1984), above n 75, 287.

195. Victoria Legal Aid (2016), above n 7, 3; Commission for Children and Young People, '...safe and wanted...': *Inquiry into the Implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (2017); Commission for Children and Young People (2015), above n 132; Victorian Auditor-General (2014), above n 193; Cummins et al. (2012), above n 72.

196. For an overview of key changes and reforms that are planned or underway within child protection systems across Australia since July 2010, see Sarah Wise, *Developments to Strengthen Systems for Child Protection across Australia*, CFCA Paper no. 44 (2017).

197. Victoria Legal Aid (2016), above n 7, 15. See further Victorian Government, *Roadmap for Reform: Strong Families, Safe Children – The First Steps* (2016); Victorian Government, *Roadmap for Reform: Children and Families – Progress and Directions 2018* (2018).

198. Victoria Legal Aid (2016), above n 7, 15–16.

- 4.32 The Department of Health and Human Services, the Department of Justice and Community Safety, Victoria Police and out-of-home care providers are currently working in partnership to develop an agreement entitled *Working Together to Reduce the Criminalisation of Young People in Residential Care*. The agreement, which is under development, aims to focus on alternative approaches to criminal charges and promote services that prevent further progression into the justice system.
- 4.33 The *Building Resilience in Children and Young People Initiative* is a collaborative approach between the Department of Health and Human Services, Department of Justice and Community Safety and Victoria Police. It aims to reduce the levels of criminalisation of children in residential care by:
- reducing the frequency of police attending incidents involving young people living in residential care;
 - promoting alternative means to laying criminal charges for managing behavioural issues; and
 - improving relationships, communication and information-sharing between local police and residential services.¹⁹⁹
- 4.34 The initiative includes a pilot project called *Community around the Child*, which provides intensive training to local residential care workers, care team members and police. While the pilot is currently being evaluated, early signs appear promising: there have been fewer children reported missing from residential care, there has been a reduced police callout rate to residential houses, and there has been less contact with police and a reduction in combative and aggressive behaviour by children participating in the project.²⁰⁰

The timing of trauma may influence the likelihood of offending

- 4.35 The timing of a child's experience of abuse or neglect is relevant to their likelihood of becoming involved in the youth justice system.²⁰¹ In particular:
- children whose maltreatment persists from childhood into adolescence or ... starts in adolescence are much more likely to be involved in crime and the juvenile justice system than those whose maltreatment was limited to their childhood.²⁰²
- 4.36 Childhood transitions, such as starting primary school and moving from primary school to high school, have also been found to be significant in 'children's exposure to maltreatment and their subsequent likelihood of offending'.²⁰³ Providing supports to enhance the ability of vulnerable children to perform well and feel positive about school decreases the likelihood of children engaging in antisocial behaviour.²⁰⁴

199. Richard Watkins and Soula Kontomichalos-Eyre, 'Community around the Child' (Presentation at the 2018 ANZSOC Conference, The University of Melbourne, 3 December 2018).

200. Renee O'Donnell et al., 'Community around the Child in Out of Home Care' (Presentation at the Crime Prevention and Communities Conference, Australian Institute of Criminology, Melbourne, 7–8 June 2018); Watkins and Kontomichalos-Eyre (2018), above n 199.

201. Cashmore (2011), above n 38, 33–34; Marien (2012), above n 165, 11; Malvaso (2017), above n 170; Malvaso et al. (2017), above n 38, 33.

202. Cashmore (2011), above n 38, 31. See also Hurren et al. (2017), above n 185, 24–26; Catia Malvaso et al., 'Risk Factors That Influence the Maltreatment–Offending Association: A Systematic Review of Prospective and Longitudinal Studies' (2016) 31 *Aggression and Violent Behavior* 1; Malvaso et al. (2017), above n 38, 33.

203. Cashmore (2011), above n 38, 34–36.

204. Ibid 37–38.

Childhood trauma is usually accompanied by multiple areas of disadvantage that contribute to offending

- 4.37 Children who have suffered maltreatment and, in some cases, removal into out-of-home care are not only more likely to end up in the criminal justice system but are also at increased risk of experiencing poor outcomes in other areas of life. Such children may be at a greater risk of experiencing homelessness, poor physical and mental health, issues relating to their intellectual functioning, disability, poor education outcomes, difficulties in accessing employment and housing, lower emotional, financial and social support, and higher rates of substance abuse and early parenthood.²⁰⁵
- 4.38 The factors that accompany child maltreatment may play a part in increasing the child's risk of offending. For example, there are established links between child maltreatment and youth homelessness, and between youth homelessness and offending.²⁰⁶ Children and young people who are homeless 'have often experienced complex and multiple traumas, and are particularly vulnerable to ... [both] victimisation and offending'.²⁰⁷ The risk of homelessness for child victims of abuse and neglect, or for children who have experienced out-of-home care, may also partially explain their over-representation on remand (see [3.20]–[3.26]).
- 4.39 Childhood disadvantage may also be associated with an increased likelihood that children alleged to have committed offences will be charged by police rather than given a police caution. For example, in a 2017 study, the Crime Statistics Agency reported on 5,981 children alleged to have committed an offence between 1 April 2015 and 31 March 2016 and found that children were more likely to be charged than cautioned if they were Aboriginal and Torres Strait Islander children, had a history of family violence (either as victim or perpetrator) and lived in more socioeconomically disadvantaged postcodes.²⁰⁸ However, this finding is complex. A charge outcome was also associated with offence type and prior history, which are likely to figure strongly in police decisions to charge or caution a child.²⁰⁹ Regardless of considerations of causality, the study suggests that children who are charged with an offence and therefore proceed to the Children's Court are likely to be more complex, disadvantaged and traumatised, commit more serious offending and have a higher likelihood of prior offending, compared with children who are kept out of the Children's Court by means of a police caution.
- 4.40 Concerns about the complex needs of young people in youth justice prompted the Victorian Youth Parole Board to comment that it is:
- imperative that the child protection and youth justice services work collaboratively to implement supports that will assist young people to overcome, as much as possible, the effects of traumatic experiences early in life.²¹⁰

205. Marien (2012), above n 165, 3–4; Griffin and Sallen (2013), above n 164, 6–7, 10–11; Philip Mendes, 'Young People Transitioning from State Out-of-Home Care: Jumping Hoops to Access Employment' (2009) 83 *Family Matters* 32, 33; Leah Bromfield and Alexandra Osborn, 'Getting the Big Picture: A Synopsis and Critique of Australian Out-of-Home Care Research', *Child Abuse Prevention Issues* no. 26 (2007); Leah Bromfield et al., *Out-Of-Home Care in Australia: Messages from Research* (2005) 6–7; Cashmore (2011), above n 38, 33–34; Victoria Legal Aid (2016), above n 7; Mendes et al. (2014), above n 188, 24, 32–39; Susan Baidawi and Rosemary Sheehan, 'Cross-Over Kids: Effective Responses to Children and Young People in the Youth Justice and Statutory Child Protection Systems' (forthcoming, 2019) 62–80. Anna Stewart and Emily Hurren, 'Child Maltreatment, Homelessness and Youth Offending' (aifs.gov.au, 2017) Australian Institute of Family Studies <<https://aifs.gov.au/cfca/2017/10/04/child-maltreatment-homelessness-and-youth-offending>> at 13 May 2019.

206. Stewart and Hurren (2017), above n 205.

207. Ibid.

208. Kimberley Shirley, *The Cautious Approach: Police Cautions and the Impact on Youth Reoffending*, In Brief no. 9 (2017) 10–11, 13.

209. Ibid 20.

210. Youth Parole Board, Annual Report 2014–15 (2015) 13.

Aboriginal and Torres Strait Islander children are over-represented in care and in custody

- 4.41 Evidence suggests that Aboriginal and Torres Strait Islander children are over-represented in Australia in both the child protection system, including out-of-home care,²¹¹ and the criminal justice system, including in custody.²¹² In Australia in 2014–16, Aboriginal and Torres Strait Islander children were 16 times more likely than other children to be both involved in the child protection system and under youth justice supervision.²¹³

Child protection system

- 4.42 In Victoria in 2016, Aboriginal children were 8.3 times more likely than non-Aboriginal children to be the subject of a child protection substantiation.²¹⁴ From June 2015 to June 2016, the number of Aboriginal children in out-of-home care increased by 24%, from 1,511 Aboriginal children as at 30 June 2015 to 1,876 Aboriginal children as at 30 June 2016 – ‘the highest number of children in care over the last decade’.²¹⁵ The Victorian Government reported in 2017 that, ‘we are not on track to close the gap’ in relation to child protection.²¹⁶
- 4.43 The new Victorian Aboriginal Children in Aboriginal Care program is one of a number of recent initiatives aiming to reduce the over-representation of Aboriginal children in care.²¹⁷ If the Children’s Court makes a child protection order for an Aboriginal child, the Secretary to the Department of Health and Human Services may authorise an approved Aboriginal Community Controlled Organisation to take on the responsibility of administering the child’s protection order, including case management, under the program.²¹⁸ The program is intended to:
- improve the support and decision making for Aboriginal children who have been placed on Children’s Court protection orders
 - maintain Aboriginal children’s cultural identity and promote connection to family, community and culture
 - support Aboriginal children to return home to parents or extended families where it is safe to do so, or support the identification of culturally safe alternative care
 - maintain connection to Country for Aboriginal children.²¹⁹

211. Australian Institute for Health and Welfare (2018), above n 52, vii, 14–15; Productivity Commission, *Report on Government Services 2017. Volume F: Community Services* (2017) 16.3; Natalie Lewis et al., *The Family Matters Report 2018: Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (2018) 9.

212. Australian Institute of Health and Welfare, *Youth Detention Population in Australia*, Bulletin no. 145 (2018) 2; Adam Dean (2018), above n 185, adapted from Australian Institute of Health and Welfare (2017), above n 38; Marien (2012), above n 165, 7–9.

213. Dean (2018), above n 185, Figure 3, adapted from Australian Institute of Health and Welfare (2017), above n 38, 9, 11. In these publications, ‘young people’ were restricted to those aged 10–16 on 1 July 2014. The data excludes New South Wales and the Northern Territory, and is limited to the period between 1 July 2014 and 30 June 2016.

214. Victorian Government, *Victorian Aboriginal Affairs Report 2017* (2017) 11. ‘In 2008, the Council of Australian Governments committed to implementing the National Indigenous Reform Agreement (NIRA). The aim of NIRA was to frame the task of “closing the gap” in Indigenous disadvantage and identified the objectives, outcomes, outputs, performance indicators and benchmarks that would address this, including Aboriginal health, early childhood development, education, housing, economic participation and governance and leadership. Efforts to close the gap in Victoria and implement the strategic areas identified in NIRA resulted in the Victorian Aboriginal Affairs Framework (VAAF):’ *ibid* 6.

215. *Ibid* 11.

216. *Ibid*.

217. For discussion of this and other recent initiatives, see Lewis et al. (2018), above n 211, 21–22, 45.

218. *Children, Youth and Families Act 2005* (Vic) s 18; Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services (2018), above n 1, 3.

219. Department of Health and Human Services, *Aboriginal Children in Aboriginal Care: Information Sheet* (2017) 1.

- 4.44 Alongside such initiatives, the government has increased funding to Aboriginal and Torres Strait Islander community-controlled organisations for family services. Their aim is to prevent children from coming to the attention of the child protection service and preserve children in parental care, with an early intervention focus.²²⁰ The 2018 Family Matters report notes that:
- Victoria has demonstrated high commitment to Aboriginal participation and self-determination and accountability to Aboriginal people. This is highlighted in its commitments to partnership through the *Wunguilwil Gapgapduir: Aboriginal Children and Families Agreement*, overseen by the Aboriginal Children's Forum, and through increasing investment in ACCO [Aboriginal Community Controlled Organisation] case management and the delegation of statutory child protection functions to ACCOs.²²¹

Youth justice system

- 4.45 In 2016 in Victoria, Aboriginal youth were also 'significantly over-represented in the justice system at 13 times the rate of non-Aboriginal Victorian youth', the Victorian Government acknowledging that it is 'not on track to close the gap' in justice supervision.²²² The reasons for the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system are many, complex and interrelated. Factors include:
- underlying issues that contribute to offending and criminal justice responses, including 'the continuing effects of colonisation', intergenerational trauma, systemic racism and high rates of poverty; and
 - offence patterns and criminal justice responses, for example, 'a greater likelihood of coming into contact with police and justice systems for Indigenous peoples'.²²³
- 4.46 The Royal Commission into Aboriginal Deaths in Custody found that:
- the high number of Aboriginal deaths in custody was related to the overrepresentation of Aboriginal people in the criminal justice system. The most significant cause of this overrepresentation was the extremely disadvantaged and unequal position of Aboriginal people within the broader society, which left them vulnerable to lifelong involvement with the justice system.²²⁴
- 4.47 Some of the specialist responses for Aboriginal and Torres Strait Islander children in the youth justice system are discussed at [3.33]–[3.35].

220. Premier of Victoria, 'Building a Strong Future for Aboriginal Children', Media Release (26 April 2018) <<https://www.premier.vic.gov.au/building-a-strong-future-for-aboriginal-children/>> at 13 May 2019. See further Department of Health and Human Services, *Wunguilwil Gapgapduir: Aboriginal Children and Families Agreement* (2018) 28–33.

221. Lewis et al. (2018), above n 211, 13.

222. Victorian Government (2017), above n 214, 14.

223. Dean (2018), above n 185. See also Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (2017), above n 133, vol. 1, 166–180; Harry Blagg et al., *Systemic Racism as a Factor in the Over-Representation of Aboriginal People in the Victorian Criminal Justice System* (2005).

224. Koori Justice Unit, Department of Justice, *Victorian Aboriginal Justice Agreement Phase 3* (2013) 10 (note 1). See also Cheryl Axleby, 'Indigenous Youth Incarceration: Ending the Injustice' (indigenoux.com.au, 2018) @Indigenoux <<https://indigenoux.com.au/indigenous-youth-incarceration-ending-the-injustice/#.XADE7YT5i70>> at 13 May 2019.

Children from culturally and linguistically diverse backgrounds are over-represented in the youth justice system

4.48 Evidence suggests that children from culturally and linguistically diverse (CALD) backgrounds are over-represented in custody. A recent Victorian youth justice review found that children and young people from CALD backgrounds comprised 39% of the custodial population.²²⁵

4.49 In their recent youth justice review, Penny Armytage and Professor James Ogloff AM observed that:

In Victoria some culturally and linguistically diverse (CALD) groups are also over-represented in youth justice, particularly Maori, Pacific Islander and South Sudanese young people. This over-representation suggests a need for culturally relevant and sensitive responses to address their offending that considers challenges experienced by these young people and their communities.

While the majority of migrants and refugees do not become involved in crime, occasionally second-generation migrants get caught in a cycle of offending. In past years, Vietnamese young people became involved in offending; currently it is South Sudanese Australians. The youth justice system has not responded to this group of young people effectively. Many are returning to the system multiple times. Youth consultations revealed that young African people feel targeted because of their skin colour and feel excluded from opportunities, which in turn drives their offending behaviour. An effective crime prevention approach must harness the strengths of the broader Sudanese community and build on the strengths of existing, albeit geographically limited, approaches.²²⁶

225. Victorian Auditor-General (2018), above n 132, 19.

226. Armytage and Ogloff (2017), above n 132, 9–10.

5. What proportion of sentenced and diverted children are 'crossover kids'?

5.1 This chapter addresses the first two research questions for the project.

Research Question 1: Prevalence of 'crossover kids' in the youth justice system

What proportion of children sentenced or diverted in the Victorian Children's Court in 2016 and 2017 (the 'study group') were known to the child protection service? Specifically, in the period from 18 June 1996 to 3 September 2018, what proportion of children:

- (a) were the subject of a child protection report?
- (b) were the subject of a child protection report that was investigated?
- (c) were the subject of a child protection report that was investigated and substantiated?
- (d) were the subject of a child protection order made in the Family Division of the Children's Court?
- (e) experienced out-of-home care, including residential care?

Research Question 2: Over-representation of Aboriginal and Torres Strait Islander children

What proportion of the sentenced and diverted children known to the child protection service were Aboriginal and Torres Strait Islander children?

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- 5.2 As discussed at [1.16]–[1.17], this report identifies broad categories of child protection involvement, rather than defining a particular group of children as 'crossover kids' and limiting the analysis to that group. Each category is examined separately in this chapter:
- (a) Children who were the subject of at least one child protection report (this includes uninvestigated and unsubstantiated reports and unborn child reports).
 - (b) Children who were the subject of an *investigated* report.
 - (c) Children who were the subject of a *substantiated* report.
 - (d) Children who were the subject of a child protection order.
 - (e) Children who experienced out-of-home care (this includes the proportion of children who experienced residential care).
- 5.3 This chapter also discusses differences in the findings relating to Aboriginal and Torres Strait Islander children and non-Aboriginal and Torres Strait Islander children for each of these child protection categories.

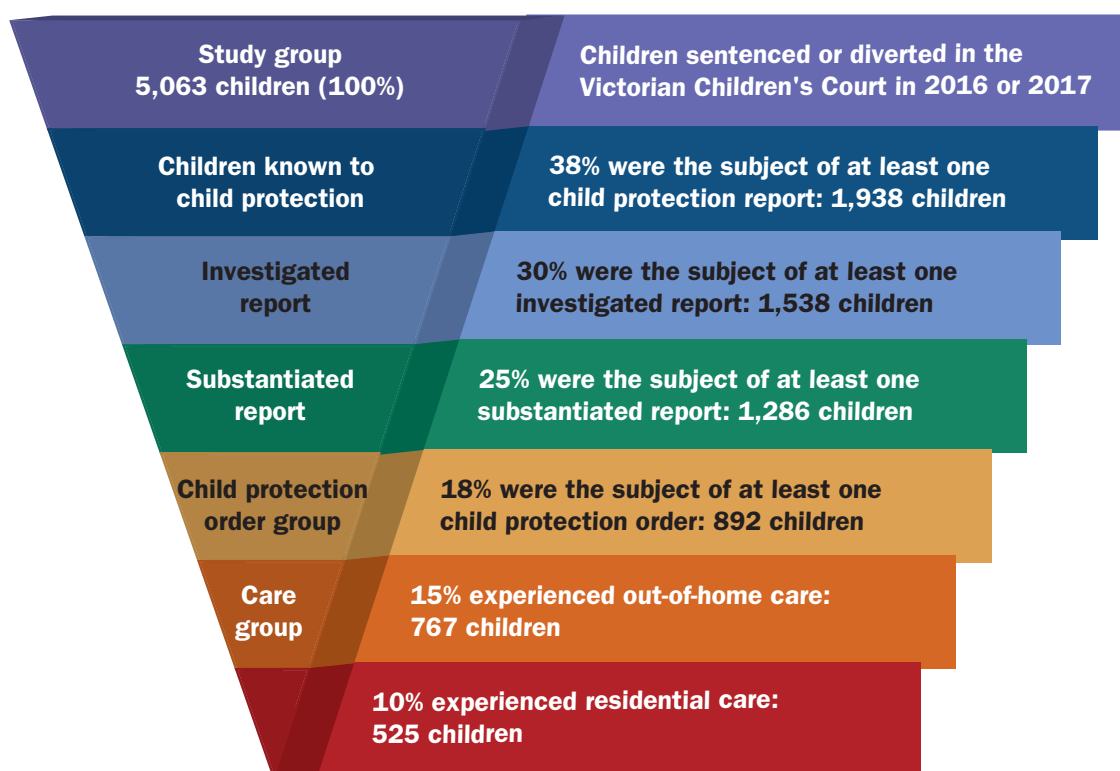
Overview

The prevalence of children known to the child protection service among sentenced and diverted children

5.4 Figure 9 provides an overview of the proportion of children in the study group who had experienced the different levels of child protection involvement at least once in their lifetime.²²⁷ Of the 5,063 sentenced and diverted children in the study group:

- 38% were the subject of at least one report to the Victorian child protection service, including uninvestigated and unsubstantiated reports;
- 30% were the subject of at least one investigated report;
- 25% were the subject of at least one substantiated report;
- 18% were the subject of at least one child protection order;
- 15% experienced out-of-home care; and
- 10% experienced residential care.

Figure 9: Prevalence and level of child protection involvement from 18 June 1996 to 3 September 2018, among children in the study group of children sentenced and diverted in 2016 and 2017



227. A child may be counted in multiple categories. If a child has no child protection history, that child is only counted in the top (study group) bar. If a child has been the subject of at least one child protection report, the child is also counted in the second (child protection report) bar. If the child has been the subject of at least one investigated report, the child is also counted in the third (investigated report) bar and so on.

- 5.5 Participants at both the Council's roundtables agreed that the findings shown in Figure 9 represent a high level of involvement of sentenced and diverted children with the child protection system. One participant described the finding as having 'huge' implications for the sentencing of children, both at an individual level and in terms of systemic challenges:

this is clearly a systemic issue that we are dealing with ... [i.e.] [t]he crossover issues and the pathway once you are in out-of-home care to a criminal offence, and then how it's dealt with.²²⁸

Proportion of sentenced and diverted children known to the child protection service who were Aboriginal and Torres Strait Islander children

- 5.6 Consistent with previous research (see [4.41]–[4.46]), Aboriginal and Torres Strait Islander children were substantially over-represented in the group of children known to the child protection service.
- 5.7 Of the 1,938 children in the study group who were the subject of at least one child protection report, 13% were Aboriginal and Torres Strait Islander children (Figure 10).²²⁹ This is a substantial over-representation given that on 30 June 2016, 1.6% of the 808,556 Victorians aged 10–20 were Aboriginal and Torres Strait Islander peoples (13,033 children).²³⁰ Of the 767 children who had experienced out-of-home care, around one in five (19%) were Aboriginal and Torres Strait Islander children. Participants at Roundtable 1 described the proportions of Aboriginal and Torres Strait Islander children shown in Figure 10 as 'a massive over-representation'.²³¹

Figure 10: Proportion of children in each child protection category who were Aboriginal and Torres Strait Islander children²³²

Report to child protection: 1,938 children	Children known to child protection	13% were Aboriginal and Torres Strait Islander children (253)
Investigated report: 1,538 children	Investigated report	15% were Aboriginal and Torres Strait Islander children (230)
Substantiated report: 1,286 children	Substantiated report	16% were Aboriginal and Torres Strait Islander children (205)
Child protection order: 892 children	Child protection order group	18% were Aboriginal and Torres Strait Islander children (164)
Out-of-home care: 767 children	Care group	19% were Aboriginal and Torres Strait Islander children (142)
Residential care: 525 children	Residential care	17% were Aboriginal and Torres Strait Islander children (87)

228. Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

229. Of the 1,938 children, 84.3% were categorised as 'non-Indigenous' and 2.7% were categorised as 'unknown/not stated'. The data provided by the Department of Health and Human Services for this project included information about the Aboriginal and Torres Strait Islander status of children who were known to child protection. Comparable data was not available for children who were not known to the child protection service.

230. Australian Bureau of Statistics (2018), above n 18.

231. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

232. The child protection categories depicted in Figure 10 are overlapping rather than distinct. For example, all the 1,286 children with a substantiated report would also have had an investigated report, and all the children with an investigated report would have had a report to the child protection service.

5.8 Compared with the Victorian population aged 10–20 on 30 June 2016:

- children in the study group who were the subject of at least one child protection report (1,938 children) were eight times more likely than the general population to be Aboriginal and Torres Strait Islander children; and
- children in the study group who had experienced out-of-home care (767 children) were 11.5 times more likely than the general population to be Aboriginal and Torres Strait Islander children.

(a) How many children were the subject of a child protection report?

Making a report to the child protection service

5.9 Any person may make a report to the Victorian child protection service or to a member of the police force if the person has a significant concern for the wellbeing of a child.²³³ Section 162 of the *Children, Youth and Families Act 2005* (Vic) ('CYF Act') sets out the grounds for finding a child in need of protection (See Panel 2, page 19).

What proportion of children in the study group were the subject of a child protection report (including uninvestigated and unsubstantiated reports)?

5.10 Of the 5,063 children in the study group, 38% or 1,938 children were the subject of at least one report to the child protection service, including unborn child reports made while the child's mother was pregnant with the child (Figure 9).

Study group

The study group for the project comprises 5,063 children sentenced or diverted at least once in 2016 or 2017. Each child was counted only once. If a child had more than one sentence in the two-year study period, the first sentence was counted as the index sentence.

5.11 The 1,938 children who were the subject of at least one child protection report included 400 children who did not have a report about them investigated by the child protection service. Therefore, a caution in considering these 400 children is that, while they were known to the child protection service, the reported issues in these cases did not meet the threshold for protective intervention. However, some such cases still involve a level of intervention. The child protection practitioner may provide advice or assistance to the child or their family or refer the child or family for service provision (for example, to family services).²³⁴ For these 400 children:

- 246 were the subject of more than one child protection report (61.5% of the 400 children);
- the number of uninvestigated reports made about them ranged from one to 23; and
- the average number of reports about them was 2.9, and the median was two.

233. *Children, Youth and Families Act 2005* (Vic) ss 28–29, 181, 183. See further [2.3].

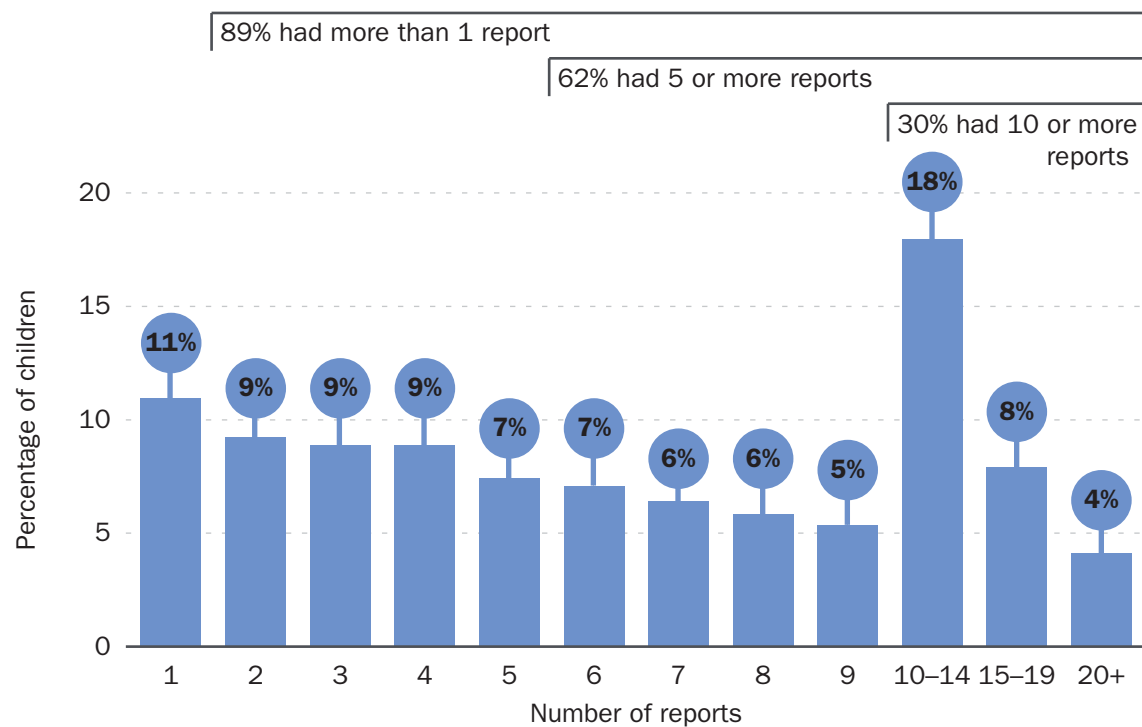
234. Department of Health and Human Services, 'Receiving and Processing Reports: Advice', *Child Protection Manual* (Department of Health and Human Services, 2018) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/intake/receiving-and-processing-reports>> at 20 March 2019.

Number of reports to the child protection service

5.12 Of the 1,938 children who were the subject of at least one child protection report:

- most were the subject of multiple reports to the child protection service raising concerns about their welfare (89%);
- over half (62%) were the subject of five or more reports; and
- 30% were the subject of 10 or more reports (Figure 11).

Figure 11: Percentage of 1,938 children known to the child protection service, by the number of reports about the child



5.13 Children who were the subject of at least one child protection report had a median of six child protection reports.

5.14 Aboriginal and Torres Strait Islander children had a higher median number of reports than non-Aboriginal and Torres Strait Islander children. The median was also higher for girls than for boys (Panel 5).

Panel 5: Aboriginal and Torres Strait Islander children: median number of reports

The median number of reports was higher for Aboriginal and Torres Strait Islander children (9 reports) than for non-Aboriginal and Torres Strait Islander children (6 reports).

The median number of reports were higher for girls than for boys:

- Aboriginal and Torres Strait Islander girls had a median of 9 reports, and Aboriginal and Torres Strait Islander boys had a median of 8 reports.
- Non-Aboriginal and Torres Strait Islander girls had a median of 7 reports, while non-Aboriginal and Torres Strait Islander boys had a median of 6 reports.

5.15 Roundtable participants suggested that the higher number of reports for Aboriginal and Torres Strait Islander children may reflect repeat concerns over the welfare of these children, and that many of the contributing factors might relate to the impact of intergenerational trauma, including:

- a predisposition of child protection to continue involvement in families with previous issues, including the protection of the parents when they were children;
- pre-existing trauma, health and welfare issues, coupled with insufficient assessment and treatment prior to contact with the criminal justice system; and
- institutional attitudes that labelled culturally appropriate parenting practices as being deficient (for example, extended families living together in the same home being deemed inappropriate because the house was 'too crowded' and children had to share rooms).²³⁵

5.16 Participants at Roundtable 2 generally agreed that the Victorian context mirrored the interstate experience described by one participant who reflected on her work with Aboriginal children appearing before the courts in other states:

every single young person had significant histories of trauma ... most of the kids get diverted and you don't ever see them again, but the ones that get to the courts – they'd been failed ... these kids had been failed by education, by health, and the Police were somehow picking up the pieces.²³⁶

5.17 The case study of 'Darcy', from a recent Monash University study of 300 children with youth justice and child protection involvement,²³⁷ provides insight into the type of case in which a child was the subject of multiple reports, started offending early and experienced residential care (Case Study 1).

(b) How many children were the subject of an investigated report?

Assessment and classification of reports

5.18 All reports to the child protection service are subjected to an intake assessment:

to make a professional judgement of risk and needs to determine whether the child may be in need of protection, and how urgent the matter is, or whether there are significant concerns for the child's wellbeing.²³⁸

235. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019); Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019). See also [5.36].

236. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

237. Baidawi and Sheehan (forthcoming, 2019), above n 205.

238. Department of Health and Human Services (2018), above n 234.

Case Study 1: 'Darcy'*

'Darcy is a 17 year-old Indigenous male with charges related to property damage, theft, and assault. His charges commenced at 12 years of age, and he was previously sentenced to two Good Behaviour Bonds and a Probation Order. A Magistrate noted some of Darcy's offending was 'very violent'. Darcy was first notified to Child Protection at birth, and had 16 notifications [reports] and four substantiations. In his early life, Darcy's mother was subject to a 12 month supervision order, during which he was often in the care of his grandparents until he was a toddler. Early protective concerns related to parental alcohol and substance abuse, transience, and severe family violence perpetrated by Darcy's father, who was imprisoned on multiple occasions for violence towards his mother, including attempted murder. At six, while Darcy was escaping family violence with his mother, she suddenly died from the impact of family violence. Darcy then lived initially with his father, who was subsequently jailed in relation to the violence against his mother. While residing with other family, Darcy was a victim of sexual abuse.

'Following his father's release, Darcy was returned to his care and was subsequently physically assaulted, including having weapons held to his throat. It was during this period at 9 years of age when Darcy began using cannabis, and was expelled from school in Grade 6 for fighting. Other schools were subsequently reluctant to enrol him. Soon after, Darcy first entered out-of-home care at age 12, after his father repeatedly contacted services asking that Darcy be taken away. Feeling rejected, Darcy was placed in residential care but often absconded to family, or to spend time with other homeless children in the city. Around this time his offending began. He was arrested for shoplifting, and stated that he had no clothes, no money and nowhere to go. Though he has a large care team, and has experienced some supportive kinship placements, Youth Justice and other services have challenges working with Darcy as he is often missing for weeks at a time and cannot be located.'

Reproduced with permission from Susan Baidawi and Rosemary Sheehan, 'Cross-Over Kids': *Effective Responses to Children and Young People in the Youth Justice and Statutory Child Protection Systems* (forthcoming, 2019) 34.

*Not the child's real name

- 5.19 The child protection practitioner responsible for the intake assessment gathers information and assesses whether the child is in need of protection, using the test set out in section 162 of the CYF Act (Panel 2, page 19). The child protection practitioner determines whether the reporter's concerns 'meet the threshold for further action of any kind by child protection' based on the intake contact (the discussion with the person who made the report) and consideration of any Victorian child protection history. If the practitioner decides that the report requires further action, the practitioner classifies the report based on the concerns raised (Panel 6).²³⁹
- 5.20 An investigation 'starts once a report is classified as a protective intervention report. It concludes when a decision is made on whether the report is substantiated' and must include direct contact with the child.²⁴⁰

239. Ibid.

240. Department of Health and Human Services, 'Investigation Policy', *Child Protection Manual* (Department of Health and Human Services, 2016) <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/investigation/investigation-policy>> at 20 March 2019.

Panel 6: Classification where intake report requires follow up

Protective intervention report:

where a child may be in need of protection from significant harm (either immediate or cumulative), or as a result of abandonment or a parent's death or incapacity, the report is to be classified as a protective intervention report (*Children, Youth and Families Act 2005* (Vic) s 30(1)(d) or s 187(1)(b)).

Child wellbeing report: where the issues relate to significant concern for a child's wellbeing, the report is to be classified as a child wellbeing report.

Unborn child report: where the report relates to significant concern for the wellbeing of an unborn child after the child is born, the report is to be classified as an unborn child report.

New allegations regarding a current client: where a contact at intake relates to an existing client and contains new allegations, the matter should be referred to the allocated practitioner or team and the procedures for recording and investigating a new allegation regarding a current client should be followed.

Therapeutic treatment report: where the report relates to a child aged 10 or over exhibiting sexually abusive behaviours it is to be classified as a therapeutic treatment report.

Source: Department of Health and Human Services, *Child Protection Manual*.

The purpose of an investigation

5.21 The purpose of an investigation is to:

assess the child and their circumstances to determine:

- the extent and nature of the reported concerns, or any other concerns that are identified during the investigation, and whether the child is in need of protection
- past and immediate risks to the child and the likelihood of future harm
- the most appropriate response to meet the needs of the child
- the most appropriate service response to assist the parents and family
- whether ongoing statutory intervention is required to meet the child's safety and developmental needs and to provide them with permanency.

This will involve gathering and analysing relevant information to determine whether significant harm to the child has occurred or is likely and whether the parents have not protected, or are unlikely to protect the child, and therefore whether the report is substantiated.²⁴¹

What proportion of reported children had a report investigated?

5.22 Over three-quarters (79%) of the 1,938 children who had been the subject of a child protection report had at least one report investigated in their lifetime (1,538 children or 30% of the study group) (Figure 9).

5.23 A number of participants at Roundtable 1 agreed that this investigation rate is high and suggested that this group of children are at the serious end of the child protection spectrum.²⁴²

5.24 The investigation rate was far higher for Aboriginal and Torres Strait Islander children than for non-Aboriginal and Torres Strait Islander children and higher for girls than for boys (Panel 7).²⁴³

241. Department of Health and Human Services (2016), above n 14.

242. Participants at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

243. In total, 52 children (2.7% of the 1,938 child protection report group) were removed from this analysis due to unknown Aboriginal and Torres Strait Islander status.

Panel 7: Aboriginal and Torres Strait Islander children: investigation rate

91% of Aboriginal and Torres Strait Islander children who were the subject of a child protection report had at least one report investigated (230 children) compared with 79% of reported non-Aboriginal and Torres Strait Islander children (1,296 children).

Girls were more likely than boys to have a report investigated:

- of the reported Aboriginal and Torres Strait Islander children, 98% of girls had a report investigated (89 girls) and 87% of boys had a report investigated (141 boys)
- of the reported non-Aboriginal and Torres Strait Islander children, 84% of reported girls had a report investigated (402 girls) and 78% of boys had a report investigated (894 boys).

(c) How many children were the subject of a substantiated report?

The decision to substantiate

- 5.25 Within 28 days of the child protection service receiving a child protection report, the protective intervener (the child protection practitioner conducting the investigation), in consultation with their team manager, must determine a case to be either:
- substantiated; or
 - not substantiated.²⁴⁴
- 5.26 The case is substantiated if the protective intervener 'is satisfied on reasonable grounds, based on one or more of the grounds defined in section 162 of the CYF Act that the child is in need of protection'.²⁴⁵ This:
- generally involves considering whether the child has experienced, or is likely to be at risk of, significant harm to their safety or development and will focus on current and past harm, and an assessment of likelihood of future harm. An assessment of a person's responsibility for causing harm or likely capacity to cause harm to a child is connected with the substantiation decision.²⁴⁶
- 5.27 For context, of the 107,062 reports made to the child protection service in the 2015–16 financial year, 27% were investigated and 14% were substantiated, meaning that 52% of investigated reports were substantiated (see further [2.5]).

244. Department of Health and Human Services, 'Substantiation: Advice', *Child Protection Manual* (Department of Health and Human Services, 2016) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/investigation/substantiation-and-risk-level>> at 13 May 2019.

245. Department of Health and Human Services, 'Decision on Outcome of Investigation', *Child Protection Manual* (Department of Health and Human Services, 2018) <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/investigation/decision-outcome-investigation>> at 13 May 2019.

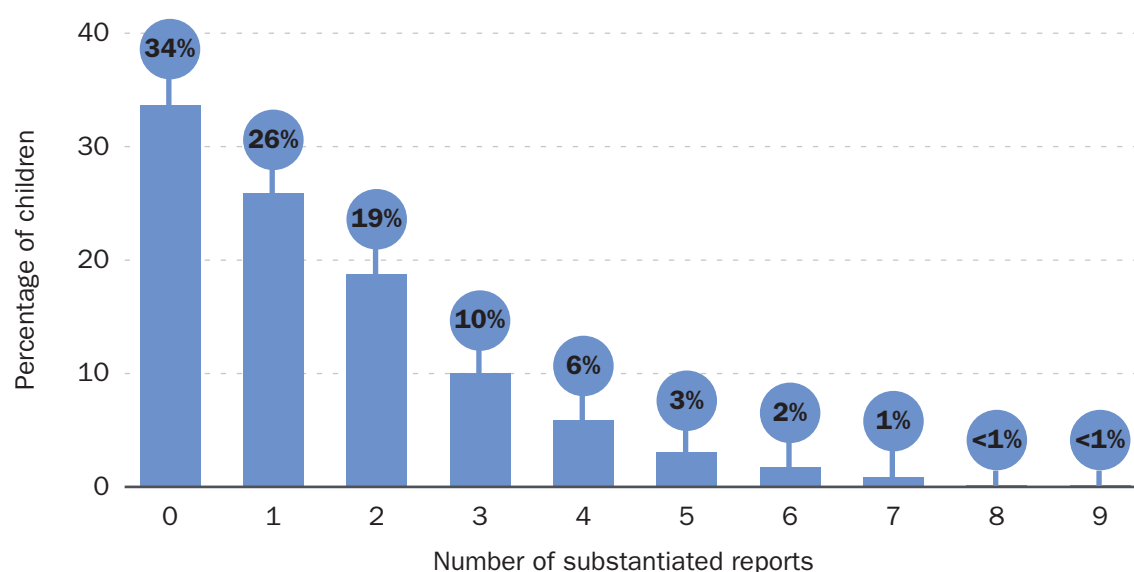
246. Department of Health and Human Services (2016), above n 244.

What proportion of reported children had a report substantiated?

5.28 Of the 1,938 children who had been the subject of a child protection report:

- two-thirds (66%) had at least one report substantiated by the child protection service. These children comprised 25% of the whole study group (Figure 9, page 46);
- 41% had two or more substantiated reports; and
- 12% had four or more substantiated reports in their lifetime (Figure 12).

Figure 12: Percentage of 1,938 children known to the child protection service, by number of substantiated reports about the child



5.29 Like the investigation rate (see further [5.24]), the substantiation rate was higher for Aboriginal and Torres Strait Islander children than non-Aboriginal and Torres Strait Islander children, and girls had a higher substantiation rate than boys (Panel 8).²⁴⁷

Panel 8: Aboriginal and Torres Strait Islander children: substantiation rate

Aboriginal and Torres Strait Islander children who were the subject of a child protection report were more likely to have a report substantiated (81% of reported Aboriginal and Torres Strait Islander children (205 children) had a report substantiated) than non-Aboriginal and Torres Strait Islander children (66% or 1,072 children).

Girls were more likely than boys to have a report substantiated:

- Of the reported Aboriginal and Torres Strait Islander children, 87% of girls had a substantiated report (79 girls) compared with 78% of boys (126 boys).
- Among the non-Aboriginal and Torres Strait Islander children, 73% of girls had a substantiated report (349 girls) compared with 63% of boys (723 boys).

247. A total of 52 children (2.7% of the 1,938 child protection report group) were removed from the analysis in Panel 8 due to unknown Aboriginal and Torres Strait Islander status.

(d) How many children were the subject of a child protection order?

Child protection order

- 5.30 After substantiating a report and deciding that further protective intervention is required, the Department of Health and Human Services may issue a protection application in the Children's Court.
- 5.31 In this chapter, the term *child protection order* refers collectively to four categories of orders made by the Family Division of the Children's Court of Victoria under the CYF Act:
1. protection orders (see [2.8]–[2.9]);
 2. interim accommodation orders (see [2.10]);
 3. permanent care orders (see [2.11]); and
 4. therapeutic treatment orders (see [3.13]–[3.15]).

What proportion of the *study group* had a child protection order?

- 5.32 Almost one in five children in the study group (18% or 892 children) were the subject of at least one child protection order in their lifetime (Figure 9).
- 5.33 In comparison, the rate of child protection orders in the general population of Victorian children is 8.9 per 1,000 children (0.9%), suggesting that children with current or previous child protection orders are over-represented in the youth justice system.²⁴⁸

What proportion of *reported children* had a child protection order?

- 5.34 Of the 1,938 children who were the subject of a child protection report, 46% were the subject of a child protection order at least once in their lifetime (892 children).
- 5.35 Like the investigation and substantiation rate, the rate of child protection orders was higher for Aboriginal and Torres Strait Islander children than for non-Aboriginal and Torres Strait Islander children and higher for girls than for boys (Panel 9).²⁴⁹

Panel 9: Aboriginal and Torres Strait Islander children: rate of child protection orders

Aboriginal and Torres Strait Islander children who were the subject of a child protection report were more likely to ultimately be the subject of a child protection order (65% or 164 children) than non-Aboriginal and Torres Strait Islander children (44% or 722 children).

Of the Aboriginal and Torres Strait Islander children who were the subject of a child protection report, 75% of the girls (68 girls) and 59% of the boys (96 boys) had a child protection order. Of the non-Aboriginal and Torres Strait Islander children, 57% of girls (274 girls) and 39% of boys (448 boys) were the subject of a child protection order.

248. Australian Institute of Health and Welfare (2018), above n 52, 38. The counting rules for the Australian Institute of Health and Welfare study are different in that they measure the number of Victorian children who were the subject of a child protection order on a particular day, whereas the Council has measured the number of children who were the subject of a child protection order at any time in their lifetime. The Council's next report will examine the number of children in the study group who were the subject of a child protection order on a particular day.

249. A total of 52 children (2.7% of the 1,938 child protection report group) were removed from the analysis in Panel 9 due to unknown Aboriginal and Torres Strait Islander status.

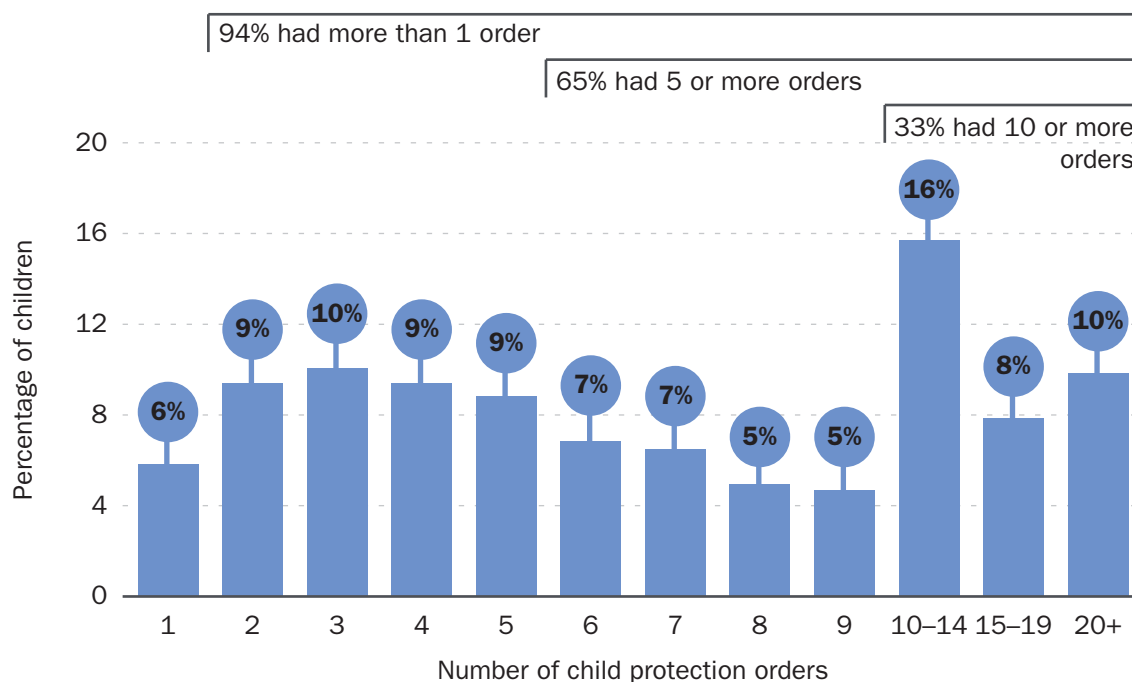
- 5.36 Youth justice stakeholders identified a range of factors that might explain the higher number of reports, rates of investigation, substantiation and child protection orders for Aboriginal and Torres Strait Islander children than for non-Aboriginal and Torres Strait Islander children. One roundtable participant commented that:

[t]here's a whole range of factors, [from] systemic racism at one end, and a whole raft of issues that are ultimately about intergenerational trauma ... [including] higher levels of multiple risk factors for children in some Aboriginal families, including substance abuse and family violence.²⁵⁰

Number of child protection orders

- 5.37 Of the 892 children in the child protection order group, 94% had more than one child protection order in their lifetime, around two-thirds (65%) had five or more orders in their lifetime and one-third (33%) had 10 or more child protection orders in their lifetime (Figure 13). The average (median) number of child protection orders was six, and the child with the highest number of unique child protection orders was the subject of 78 child protection orders.
- 5.38 Figure 13 includes both temporary orders (interim accommodation orders) and final orders (protection orders and permanent care orders) in the count of the number of child protection orders per child. Therapeutic treatment orders are also included, although only one child in the study group was the subject of a therapeutic treatment order. The count of orders shown indicates *new* court orders. Variations or extensions of *existing* orders are not captured in Figure 13.²⁵¹

Figure 13: The 892 children who were the subject of child protection orders, by the number of orders in their lifetime



250. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

251. The dataset includes an *Order ID* for each new court order made in respect of the child. The order retains the same *Order ID* if any variation or extension is made to it. Each *Order ID* in relation to a child is counted only once in Figure 13.

- 5.39 While acknowledging that this count includes interim orders, roundtable participants agreed that Figure 13 represented a high number of orders per child. One participant at Roundtable 1 suggested that changes in placement and other disruptions to continuity (such as multiple orders) might also have an effect on offending rates.²⁵²

Types of child protection orders: overview

- 5.40 The Children's Court has the power to make a broad range of orders for the protection of children, depending on the circumstances and the level of protection required.²⁵³
- 5.41 Extensive changes to the suite of available child protection orders came into effect on 1 March 2016 (during the study period for this report).²⁵⁴ These changes were:
- intended to reduce the time children spend in out-of-home care before permanent arrangements are in place for their care. Where possible, this will be achieved by children returning home safely within specified timelines. Where it is not safe for a child to return home permanently, alternative ongoing care arrangements will be found.²⁵⁵
- 5.42 Interim protection orders, custody to third-party orders and supervised custody orders were all abolished on 1 March 2016, and a number of other orders were renamed 'to more accurately reflect their intention'.²⁵⁶ For example, supervision orders became family preservation orders.²⁵⁷
- 5.43 As the current project includes child protection involvement over a child's lifetime, children in the study group are likely to have been the subject of both the previous protection orders and the new protection orders.
- 5.44 Figure 14 shows the types of orders made over the lifetime of the 892 children who were the subject of a child protection order (the 'child protection order group'). A child was counted if they had been the subject of a particular order in the 22-year period from 18 June 1996 to 3 September 2018. As most children were the subject of multiple orders in their lifetime, many children are counted in more than one order type.
- 5.45 The two main categories of child protection orders discussed in this section are:
- interim accommodation orders, which provide for the protection of the child prior to a decision being made about whether they are in need of protection;²⁵⁸ and
 - protection orders, which are orders made once the child has been found to be in need of protection.

252. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

253. Judicial College of Victoria, '13 – Orders in the Family Division', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59795.htm>> at 1 March 2019.

254. The orders were amended by the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic), with most changes becoming operative on 1 March 2016.

255. Department of Health and Human Services (2015), above n 46, 1.

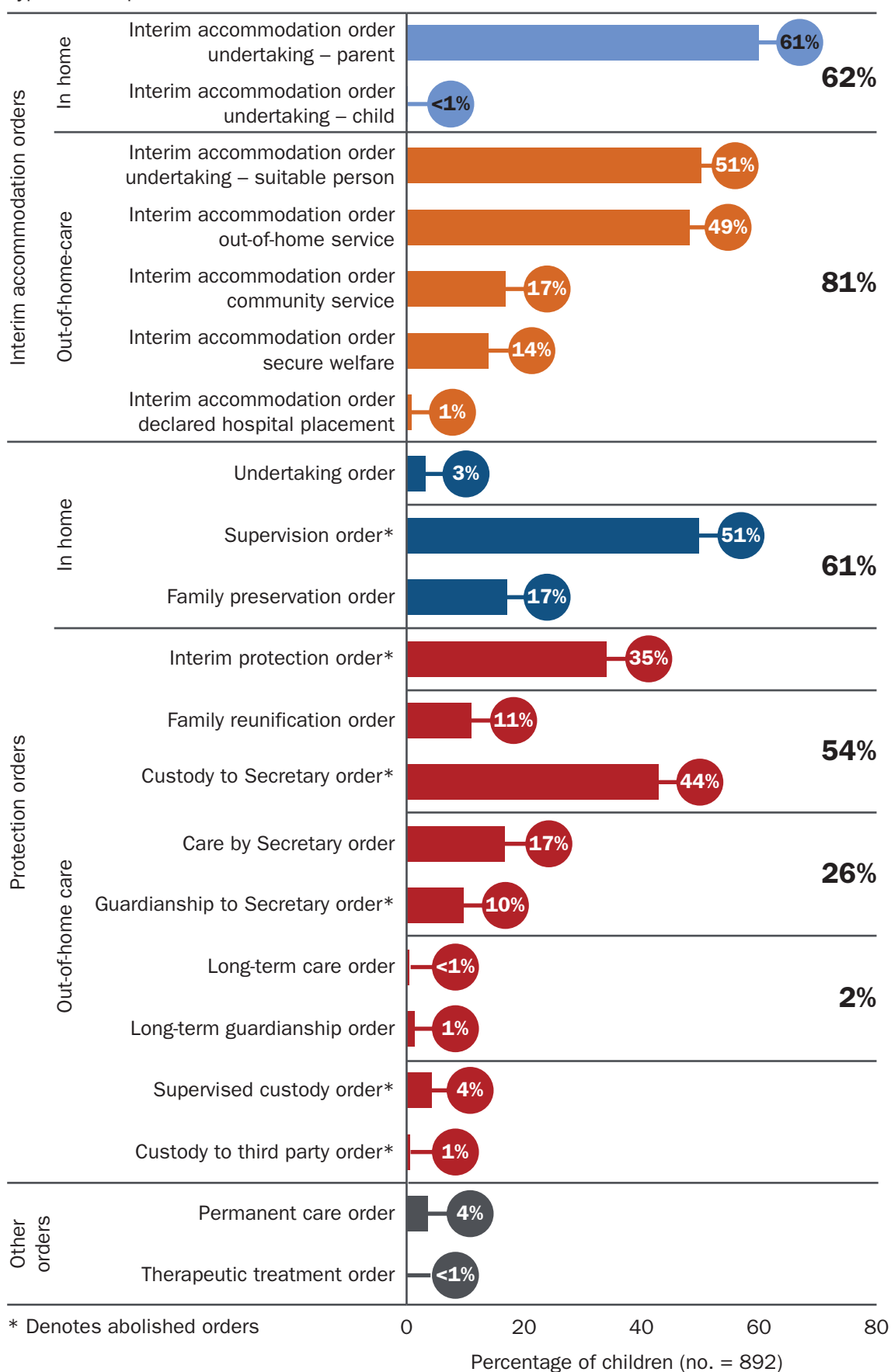
256. Victoria, 'Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014', *Parliamentary Debates*, Legislative Assembly, 7 August 2014, 2658 (Mary Wooldridge, Minister for Community Services).

257. Judicial College of Victoria, '13.3.5 – 2014 Amending Act Changes to Protection Orders', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59821.htm>> at 1 March 2019.

258. *Children, Youth and Families Act 2005* (Vic) s 262.

Figure 14: The 892 children who were the subject of a child protection order, by order type

Type of child protection order



Interim accommodation orders: children at risk

- 5.46 After the child protection service issues a protection application, the court may make an interim accommodation order, which is a temporary order that the court decides is needed to keep the child safe until it determines the child protection application.²⁵⁹ Interim accommodation orders cover where the child must live until the next court date and may involve:
- releasing the child, for example, into the care of their parent;
 - placing the child with a suitable person;
 - placing the child in an out-of-home care service, a secure welfare service or a declared hospital;
 - placing the child with a disability service provider; or
 - placing the child in a declared parent and baby unit.²⁶⁰
- 5.47 An application for an interim accommodation order may be made in a range of circumstances.²⁶¹ Many applications for interim accommodation orders are triggered by a child being taken into emergency care by police or child protection practitioners.²⁶² Children may be immediately removed by police or child protection practitioners 'only in the most serious of circumstances where a child has suffered significant harm, or is at imminent risk of significant harm and the child's parents have not protected or are unlikely to protect them'.²⁶³ See Panel 10 (page 60) for examples of circumstances requiring the immediate removal of a child. Interim accommodation orders can also be made following a protection application by notice or after another order has been breached.
- 5.48 When making an interim accommodation order, the court is required to consider the best interests principles under section 10 of the CYF Act, including that the child is only to be removed from their parent if there is an unacceptable risk of harm to the child (under section 10(3)(g)).²⁶⁴

259. *Children, Youth and Families Act 2005* (Vic) ss 10, 262. See for example, *Department of Human Services v DR* [2013] VSC 579 (25 October 2013); *DOHS v Ms K and Mr L* [2009] VChC 3 (18 May 2009); *Purcell v RM & Ors* [2004] VSC 14 (9 January 2004); Judicial College of Victoria, '8.2 – "Best Interests" Principles', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59762.htm>> at 1 March 2019.

260. *Children, Youth and Families Act 2005* (Vic) ss 263(1)(a)–(g). See further Department of Health and Human Services (2017), above n 5.

261. Section 262(1) of the *Children, Youth and Families Act 2005* (Vic) sets out the circumstances in which the court may make an interim accommodation order, for example, where the child has been placed in emergency care by a protective intervener (police or child protection practitioners): *Children, Youth and Families Act 2005* (Vic) s 262(1)(a); or if a protection application has been filed with the registrar: *Children, Youth and Families Act 2005* (Vic) s 262(1)(b). A protection application is made to the Family Division of the Children's Court for a finding that a child is 'in need of protection': *Children, Youth and Families Act 2005* (Vic) s 3(1).

262. Judicial College of Victoria, '13.2 – Interim Accommodation Order', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59803.htm>> at 18 February 2019. See also Department of Health and Human Services (2017), above n 5.

263. Department of Health and Human Services (2016), above n 17.

264. *Children, Youth and Families Act 2005* (Vic) ss 10, 262; see for example, *Department of Human Services v DR* [2013] VSC 579 (25 October 2013); *DOHS v Ms K and Mr L* [2009] VChC 3 (18 May 2009); *Purcell v RM & Ors* [2004] VSC 14 (9 January 2004); Judicial College of Victoria (2017), above n 259.

Panel 10: Examples of circumstances requiring immediate removal of child

- The child has sustained a serious physical injury without a satisfactory explanation and parents or caregivers are unable or unwilling to protect the child from further injury.
- The child has suffered sexual abuse, or there is a high likelihood that the child will suffer sexual abuse and the child's parents or caregivers are assessed as unable or unwilling to protect the child from further sexual abuse.
- A child is at immediate risk of significant harm.
- Parents are affected by substances that impact on their ability to care for their child.
- A young person places themselves at immediate risk of significant harm and their parents have not protected them or are unlikely to protect them.
- Conflict between a young person and their parents is extreme and has the potential to escalate and the young person is at immediate risk of significant harm.
- The home environment exposes the child to unreasonable risk of harm, and the parents have not protected them or are unlikely to provide a safe environment for the child.

Department of Health and Human Services, Child Protection Manual

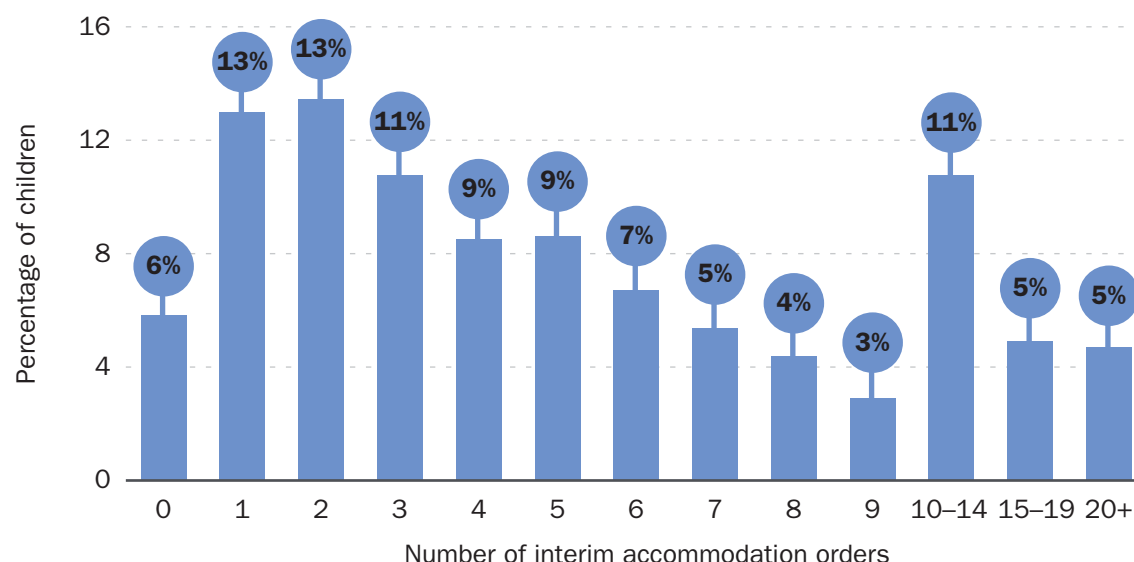
5.49 Figure 14 (page 58) shows the placement types of children on interim accommodation orders, grouped according to whether or not the placement involved out-of-home care. Of the 892 children who were the subject of at least one child protection order (the child protection order group):

- 61% were placed on at least one interim accommodation order on their parents undertaking, that is, not involving out-of-home care (548 children); and
- 81% were placed on at least one interim accommodation order involving out-of-home care (726 children). Placements with a suitable person or in an out-of-home care service were the most common placement types.²⁶⁵ This finding indicates that 81% of children placed on child protection orders (14% of the 5,063 sentenced and diverted children in the study group) were found by the court to be at an unacceptable risk of harm.

5.50 Overall, 94% of the 892 children in the child protection order group were placed on at least one interim accommodation order of any type in their lifetime (840 children) (Figure 15), and around one in five children were the subject of 10 or more interim accommodation orders in their lifetime. However, new interim accommodation orders do not necessarily equate to a new child protection matter; rather they are likely to reflect a change in placement type while the child protection hearing is still ongoing.

265. Interim accommodation orders involving out-of-home care included orders where the child was placed with a suitable person (51% of those with child protection orders), in an out-of-home care service (49%) or community service (17%), in secure welfare (14%) or in a declared hospital placement (1%).

Figure 15: The 892 children who had been the subject of at least one child protection order, by the number of interim accommodation orders in their lifetime



5.51 Some of the children who were the subject of interim accommodation orders involving out-of-home care are likely to have been removed from their families in circumstances in which they were perceived to have suffered significant harm, or be at an imminent risk of significant harm. Some interim accommodation orders might be made for reasons not directly indicative of abuse, such as the illness or incapacity of a sole carer. Regardless of the reason for the interim accommodation order, participants at both the Council's roundtables agreed that the removal of a child from the family home involves a level of disruption or trauma in its own right and this would have an effect on a child over and above their experiences once they entered out-of-home care.²⁶⁶

5.52 Of the children in the child protection order group, girls were more likely than boys to have been the subject of an interim accommodation order (Panel II). There were no significant differences between Aboriginal and Torres Strait Islander children and non-Aboriginal and Torres Strait Islander children.

Panel 11: Aboriginal and Torres Strait Islander children: interim accommodation orders

Of the children in the child protection order group, interim accommodation orders were imposed in relation to:

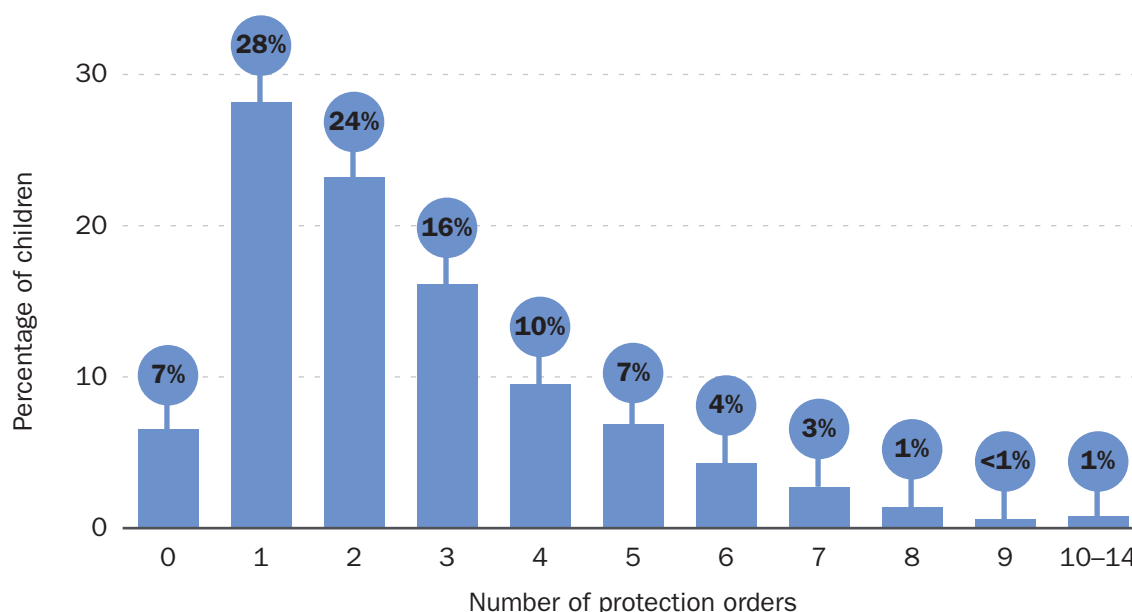
- 96% of both Aboriginal and Torres Strait Islander girls (65 girls) and non-Aboriginal and Torres Strait Islander girls (264 girls)
- 92% of Aboriginal and Torres Strait Islander boys (88 boys) and 93% of non-Aboriginal and Torres Strait Islander boys (417 boys).

266. Participants at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019); participants at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

Protection orders: children in need of protection

5.53 Almost one in five children in the study group (18% or 892 children) were the subject of at least one *child protection order* made in their lifetime (Figure 9). Of these 892 children, 93% (833 children) were the subject of at least one *protection order* – a final order made by the Children's Court once the court is satisfied that the child is in need of protection based on one or more grounds in section 162 of the CYF Act (Figure 16). In other words, 16% of all sentenced and diverted children in the study group were the subject of a protection order made by the Children's Court.

Figure 16: Children who had ever been the subject of a child protection order, by the number of protection orders in their lifetime (892 children)



Interim protection orders (abolished)

5.54 Interim protection orders (abolished from 1 March 2006)²⁶⁷ were made after the court was satisfied that a child was in need of protection and were used to trial a particular course of action for up to three months prior to a final protection order being made. Interim protection orders were made in relation to 35% of the children in the child protection order group (311 of 892 children).

Undertakings

5.55 A person, including a child, the child's parent or a person living with the child, may be required to enter into a written undertaking to do, or refrain from doing, certain things.²⁶⁸ The consent of the person giving the undertaking is required. Once an undertaking is made, the Department of Health and Human Services ceases to be involved in the matter.²⁶⁹

267. Interim protection orders made under the previous section 291 of the *Children, Youth and Families Act 2005* (Vic) were abolished upon repeal of former Division 9 of Part 4.9 of the *Children, Youth and Families Act 2005* (Vic).

268. Judicial College of Victoria, '13.4 – Undertaking', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59822.htm>> at 18 February 2019.

269. Undertakings are made under *Children, Youth and Families Act 2005* (Vic) ss 272, 278. A section 278 undertaking is a protection order, which means that it requires the protection application to be proven before it can be made. A section 272 undertaking is a 'common law' or 'no proof' undertaking that can be made without the protection application being proven: Judicial College of Victoria (2017), above n 268.

- 5.56 Undertakings were not a common order among the Council's study group. Of the 892 children in the child protection order group, only 3% had been the subject of an undertaking (Figure 14).

Family preservation orders (and supervision orders)

- 5.57 Family preservation orders are protection orders made after a protection application is proven. The order allows a child to remain in their parents' care while the protective concerns are addressed. The child lives with one or both parents who remain responsible for the child, and the order makes the Secretary to the Department of Health and Human Services responsible for the child's supervision. The 'objective is to help the family to make changes needed to keep the child safe at home so the family can stay together permanently'.²⁷⁰ Family preservation orders usually include conditions to be observed by the child or a parent of the child.²⁷¹ For example, the child or parent might be required to accept visits from the Department of Health and Human Services, cooperate with the Department, accept support services or go to family violence counselling.²⁷²
- 5.58 Of the 892 children in the child protection order group, 17% were the subject of a family preservation order and 51% were the subject of a (since abolished) supervision order. Overall, 61% of the child protection order group (11% of the study group) were the subject of at least one family preservation order and/or supervision order in their lifetime (545 children).
- 5.59 Aboriginal and Torres Strait Islander children in the child protection order group were more likely than non-Aboriginal and Torres Strait Islander children to be the subject of a supervision order and/or family preservation order (Panel 12).

Panel 12: Aboriginal and Torres Strait Islander children

Two-thirds (66%) each of Aboriginal and Torres Strait Islander boys (63 of 96 boys) and girls (45 of 68 girls) in the child protection order group were the subject of a supervision order and/or family preservation order.

A lower proportion of non-Aboriginal and Torres Strait Islander children were the subject of such orders (59% or 266 of 448 boys and 61% or 166 of 274 girls).

Family reunification orders (and custody to Secretary orders)

- 5.60 Family reunification orders give the Secretary to the Department of Health and Human Services parental responsibility for the sole care of the child for up to 12 months.²⁷³ The court may include conditions on the order.²⁷⁴ Family reunification orders are made where:
- the Court has decided that a child is in need of protection and cannot safely stay in their parents' care while the protective concerns are being addressed. This order grants parental responsibility for the child to the Secretary of the Department of Health and Human Services (the department), with the limitation that parents' agreement is needed about major long-term issues. It will usually include conditions.

270. Department of Health and Human Services (2017), above n 5.

271. *Children, Youth and Families Act 2005* (Vic) s 281(1). See further Judicial College of Victoria, '13.5.3 – Conditions of a FPO', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59828>> at 18 February 2019.

272. For more conditions, see Children's Court of Victoria, *Coloured Minutes Forms: Conditions (Pink Form)* (2019).

273. *Children, Youth and Families Act 2005* (Vic) s 287(1). See further Judicial College of Victoria, '13.6 – Family Reunification Order (Formerly Custody to Secretary Order)', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59837.htm>> at 18 February 2019.

274. *Children, Youth and Families Act 2005* (Vic) s 287(1)(d).

The child will stay in out of home care and the objective is for the child to be reunified with their parent/s once this has happened, and within 12 months, or up to 24 months where permanent reunification is likely by then.²⁷⁵

5.61 Family reunification orders replaced:

- interim protection orders to out-of-home care;
- custody to third party orders;
- supervised custody orders; and
- custody to Secretary orders where family reunification was the objective *and* the child had been in out-of-home care for less than two years (custody to Secretary orders were replaced by care by Secretary orders where ongoing out-of-home care was required *or* the child had been in out-of-home care for two years or more).²⁷⁶

Panel 13: Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander boys were more likely than other children to have been the subject of a family reunification or custody to Secretary order:

- 60% or 58 of 96 Aboriginal and Torres Strait Islander boys
- 53% or 238 of 448 non-Aboriginal and Torres Strait Islander boys, 54% or 37 of 68 Aboriginal and Torres Strait Islander girls and 53% or 145 of 274 non-Aboriginal and Torres Strait Islander girls.

5.62 The new family reunification order was also changed considerably compared with the previous custody to Secretary orders. For example, the former maximum period of 12 months was amended to require the court to take into account the period the child had already been in out-of-home care. The 2014 amending Act 'introduced timelines within which reunification of children placed in out-of-home care must be achieved ... [which] is a substantive departure from the framework for [Custody to Secretary Orders] under the former version of the CYF Act'.²⁷⁷ The 2014 amending Act also restricted the court's ability to extend a family reunification order.²⁷⁸ An extension cannot be granted:

- unless there is 'compelling evidence' that it is likely that the child's parent will permanently resume care of the child during the extension period; and
- if the extension will result in the child being placed in out-of-home care for a cumulative period that exceeds 24 months.²⁷⁹

5.63 If the child remains unable to safely return to their parents care after 24 months, the Department may commence finding a permanent placement for the child by applying for a care by Secretary order. At that point the child is unlikely to be returned to their parents, unless the Secretary is satisfied that it is in the child's best interests.²⁸⁰

275. See further Department of Health and Human Services (2017), above n 5.

276. *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic). See further Department of Health and Human Services, 'Legislative Changes Overview', *Child Protection Manual* (Department of Health and Human Services, 2016) <<http://www.cpmmanual.vic.gov.au/advice-and-protocols/information-sheets/permanency-children/legislative-changes-overview>> at 13 May 2019.

277. Judicial College of Victoria, '13.6.9 – Comparison with Former Custody to Secretary Order', *Children's Court Bench Book* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#59836.htm>> at 18 February 2019.

278. *Children, Youth and Families Act 2005* (Vic) s 294A; *ibid*.

279. *Children, Youth and Families Act 2005* (Vic) s 294A; *ibid*.

280. *Children, Youth and Families Act 2005* (Vic) s 289(1). See further Department of Health and Human Services (2017), above n 5.

- 5.64 Of the 892 children in the child protection order group, 11% were the subject of a family reunification order and 44% were the subject of a custody to Secretary order at some stage in their lifetime. Overall, 54% (482 of the 892 children in the child protection order group) were the subject of at least one family reunification order and/or custody to Secretary order in their lifetime (10% of the study group).
- 5.65 Aboriginal and Torres Strait Islander boys were more likely than other children to have been the subject of a family reunification or custody to Secretary order (Panel 13).

Care by Secretary orders (and guardianship to Secretary orders)

- 5.66 Care by Secretary orders are made when:
- the Court has decided that family reunification will not be achieved in a timely way for the child, or the child has been in out of home care for 24 months and still cannot safely return to their parents' care.²⁸¹
- 5.67 Under this order, the Secretary to the Department of Health and Human Services has parental responsibility for the child for two years. This means the Department is responsible for the child's care and wellbeing and for all decisions concerning them. Usually, the objective is to find a permanent or long-term carer for the child as soon as possible, preferably with extended family or, if not, with another family. In exceptional circumstances, the objective may still be family reunification.²⁸² The court cannot attach conditions to a care by Secretary order. They operate for a fixed two-year period.
- 5.68 Care by Secretary orders replaced:
- guardianship to Secretary orders; and
 - custody to Secretary order where ongoing out-of-home care was required or the child had been in out-of-home care for two years or more.²⁸³
- 5.69 Of the 892 children with child protection orders, 17% were the subject of a care by Secretary order and 10% were the subject of a guardianship to Secretary order at some stage in their lifetime. Overall, 26% were the subject of at least one care by Secretary order and/or guardianship to Secretary order in their lifetime (231 children or 5% of the study group).

Long-term care orders (formerly long-term guardianship to Secretary orders)

- 5.70 A long-term care order gives the Secretary to the Department of Health and Human Services parental responsibility, to the exclusion of all other persons, for a child until they turn 18 or marry (whichever happens first).²⁸⁴ Such orders are made where the court decides that 'the child is in need of long-term care and there is a suitable carer available to raise the child'.²⁸⁵
- 5.71 The court cannot impose conditions on a long-term care order. They operate until the child is 18 years (or marries).

281. See further *ibid.*

282. See further *ibid.*

283. Department of Health and Human Services (2016), above n 276.

284. *Children, Youth and Families Act 2005* (Vic) s 290.

285. Department of Health and Human Services (2017), above n 5.

- 5.72 In the Second Reading Speech to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014, the Minister explained that:

[a] long-term care order is targeted to circumstances where a child remains under the long-term parental responsibility of the secretary with an identified carer able to care for the child until they reach 18 years. This order will generally be made when the carer requires the department's continued support and a permanent care order is therefore not an option.²⁸⁶

- 5.73 Long-term guardianship to Secretary orders were renamed long-term care orders (with some changes) under the 2014 amendments.
- 5.74 Of the 892 children in the child protection order group, less than 1% were the subject of a long-term care order and 1% were the subject of a long-term guardianship to Secretary order at some stage in their lifetime. Overall, 2% were the subject of at least one long-term care order and/or long-term guardianship to secretary order in their lifetime (17 children). A further 4% (33 children) were the subject of a permanent care order. In total, 5.6% of the 892 children with child protection orders were the subject of at least one long-term care order, long-term guardianship to Secretary order or permanent care order in their lifetime.

Discussion

- 5.75 Of the 892 children who were the subject of a child protection order:
- 94% (840 children) were the subject of at least one *interim accommodation order* – a temporary order made after a protection application has been issued and the court determines that an interim order is needed to keep the child safe until it determines the child protection application.²⁸⁷ Of these children, 726 children were the subject of at least one interim accommodation order involving out-of-home care, meaning that the Children's Court found them to be at an unacceptable risk of harm;
 - 93% (833 children) were the subject of at least one *protection order* – a final order made by the Children's Court once it is satisfied that the child is in need of protection based on one or more grounds in section 162 of the CYF Act; and
 - 97% were the subject of an interim accommodation order involving out-of-home care and/or a protection order (866 children).
- 5.76 Therefore, 17% of sentenced and diverted children in the study group (866 children) were found by the Children's Court to be at an *unacceptable risk of harm* (resulting in an interim accommodation order involving out-of-home care) and/or to be *in need of protection* (resulting in a protection order). Many of these children are likely to have been immediately removed from their families by police or child protection practitioners at least once in 'the most serious of circumstances where [the] child has suffered significant harm, or is at imminent risk of significant harm'.²⁸⁸ Aside from indications of neglect or abuse, the risk of harm may also relate to circumstances such as the death or incapacitation of a child's parent.

286. Victoria, 'Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014', *Parliamentary Debates*, Legislative Assembly, 7 August 2014, 2659 (Mary Wooldridge, Minister for Community Services).

287. *Children, Youth and Families Act 2005* (Vic) ss 10, 262. See for example, *Department of Human Services v DR* [2013] VSC 579 (25 October 2013); *DOHS v Ms K and Mr L* [2009] VChC 3 (18 May 2009); *Purcell v RM & Ors* [2004] VSC 14 (9 January 2004); Judicial College of Victoria (2017), above n 259. Section 262(1) of the *Children, Youth and Families Act 2005* (Vic) sets out the circumstances in which the court may make an interim accommodation order; for example, where the child has been placed in emergency care by a protective intervener (police or child protection practitioners). A *protection application* is an application made to the Family Division of the Children's Court for a finding that a child is 'in need of protection': *Children, Youth and Families Act 2005* (Vic) s 3(1) (definition of 'protection application'). See also [2.10].

288. Department of Health and Human Services (2016), above n 17. See [5.47].

- 5.77 Figures 13 and 14 suggest that the 892 sentenced and diverted children who were the subject of a child protection order had a number of other key characteristics:
- 94% were the subject of multiple child protection orders, suggesting a lack of stability in many of their circumstances; and
 - around one-quarter were placed on a care by Secretary order (or a guardianship to Secretary order) with the object of finding a permanent, long-term carer for the child; however, few were ultimately placed on permanent orders – only 5.6% were the subject of a long-term care order, long-term guardianship to Secretary order or permanent care order.
- 5.78 Roundtable participants noted that, despite a recent legislative change intended to improve rates of permanent placements,²⁸⁹ a gap remained between the number of care by Secretary orders (made with the object of finding a permanent, long-term carer for the child) and the number of permanent orders. One participant commented that it was 'very concerning that such a small proportion of [children placed on care by Secretary orders] end up with a named carer'.²⁹⁰ A number of participants characterised this finding as indicating significant 'churn through the system'. One participant commented, 'what I've seen is constant extension and renewal of care by Secretary orders ... my sense is that they get renewed until the child leaves care'.²⁹¹
- 5.79 Participants commented that, although a permanent placement might be seen as desirable, there was a gap between the number of children requiring a permanent placement and the number of suitable carers available. This was often exacerbated by financial and support considerations, as permanent placements saw carers less able to access financial support as well as practical support such as respite care, services and assistance facilitating communication with a child's family of origin. Given the high rate of kinship care among permanent placements and the social circumstances of many kinship carers, this difference in support was a significant factor creating a disincentive for carers agreeing to a permanent placement.²⁹²
- 5.80 The second report for this project will examine this group of children in more detail. This will include the number of children from the child protection order group who were still in out-of-home care (aside from permanent care placements) when they turned 18, and the associations between the characteristics of this group and offending patterns.

(e) How many children experienced out-of-home care?

What is out-of-home care?

- 5.81 Out-of-home care is 'a temporary, medium or long-term living arrangement for children and young people who cannot live with their parents and who are on [child protection orders]'.²⁹³ Children may also be placed in out-of-home care by means of voluntary child care agreements (without the court's involvement). Voluntary out-of-home care placements are not included in the count of out-of-home care in this chapter.

289. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

290. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

291. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

292. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

293. *Children, Youth and Families Act 2005* (Vic) s 18; Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services (2018), above n 1, 5. See further [2.12]–[2.19].

Panel 14: Aboriginal and Torres Strait Islander children: rate of out-of-home care

Aboriginal and Torres Strait Islander children who were the subject of a child protection report were more likely than non-Aboriginal and Torres Strait Islander children to experience out-of-home care (56% or 142 Aboriginal and Torres Strait Islander compared with 38% or 619 non-Aboriginal and Torres Strait Islander children).

The rate of out-of-home care for children who were the subject of a child protection report was higher for girls than for boys. Out-of-home care was experienced by:

- 63% of Aboriginal and Torres Strait Islander girls (57 girls) and 49% of non-Aboriginal and Torres Strait Islander girls (236 girls)
- 52% of Aboriginal and Torres Strait Islander boys (85 boys) and 33% of non-Aboriginal and Torres Strait Islander boys (383 boys).

Number of children who experienced out-of-home care

Court orders

- 5.82 Of the 892 children in the study group who were the subject of at least one child protection order, 87% had at least one order for out-of-home care (778 children).²⁹⁴

Actual placements

- 5.83 In total, 767 children (15% of the study group) had at least one recorded out-of-home care placement in their lifetime (whether before, at the time or after their offence and sentence) (Figure 9) This group of children is referred to as 'the care group'.²⁹⁵
- 5.84 The 15% of children who had experienced out-of-home care equates to a rate of 150 children per 1,000 children sentenced in 2016 or 2017. Consistent with the findings of other research, this rate is notably higher than the rate of children in out-of-home care in the general Victorian child population (7.5 children per 1,000 children aged 0–17), although allowance should be made for the different counting rules.²⁹⁶
- 5.85 Of the 1,938 children who were the subject of at least one child protection report, 40% were placed in out-of-home care at least once in their lifetime (767 children).
- 5.86 The out-of-home care placement rate was higher for Aboriginal and Torres Strait Islander children than for non-Aboriginal and Torres Strait Islander children and higher for girls than for boys (Panel 14).²⁹⁷

294. The category of *out-of-home care orders* in this analysis included care by Secretary orders, custody to Secretary orders, custody to third-party orders, family reunification orders, guardianship to Secretary orders, interim accommodation order: community service, interim accommodation order: declared hospital placement, interim accommodation order: out-of-home service, interim accommodation order: secure welfare, interim accommodation order: undertaking suitable person, interim protection order, long-term care orders, long-term guardianship to Secretary orders, permanent care orders, supervised custody orders and therapeutic treatment placement orders. Orders not classified as out-of-home care included family preservation orders, interim accommodation order: undertaking child, interim accommodation order: undertaking parent, supervision orders and undertakings.

295. Sixty children in the care group did not have a child protection order for out-of-home care recorded in the data and are therefore included in the count of out-of-home care placements but not in the count of child protection orders for out-of-home care. A further 71 children had a recorded child protection order for out-of-home care but did not have a recorded out-of-home care placement. This is likely to reflect a change in circumstances or incomplete data entry. In total, 707 children had both a child protection order for out-of-home care and details of an out-of-home care placement or placements recorded in the data.

296. Australian Institute of Health and Welfare (2018), above n 52, 63–65. See also Victoria Legal Aid (2016), above n 7, 5, citing Cummins et al. (2012), above n 72, 233. For a description of out-of-home care, see [2.12]–[2.19]. The rate of sentenced children who had experienced out-of-home care is cumulative and measures whether a child had ever experienced out-of-home care *across their lifetime*. The Australian Institute of Health and Welfare rate measures the rate of children in out-of-home care in Victoria on a particular day: 30 June 2017.

297. A total of 52 children (2.7% of the 1,938 child protection report group) were removed from the analysis in Panel 14 due to unknown Aboriginal and Torres Strait Islander status.

Number of out-of-home care placements

5.87 Most children who experienced out-of-home care (the care group) had more than one out-of-home care placement in their lifetime:

- around four in five children in the care group had more than one placement; and
- around one in two children in the care group had five or more placements.²⁹⁸

5.88 The number of placements was calculated by counting separate 'Placement IDs' in the child protection dataset. Each Placement ID represents a new placement for the dates specified on the placement record. For example, in the case of a child who was first placed with their maternal grandmother then placed with an aunt and then moved back to their maternal grandmother, each placement would have its own unique Placement ID, even though two of the placements were with the same person, namely the maternal grandmother. This is because the two placements with the maternal grandmother occur on different dates. So for this child, the data would show three out-of-home care placements. Therefore, while each new placement represents a disruption in the child's life, it does not necessarily represent a *new carer*. The number of placements:

- includes respite care placements (temporary short-term placements) that occur between other longer-term placements; and
- does not include respite care placements that occur within, or parallel to, longer term placements (for example, where a child's primary out-of-home care placement is supported by them being periodically looked after by a second set of carers). Respite care placements that occurred within the course of a longer-term placement were excluded from the data.

5.89 This finding suggests a degree of disruption and a lack of stability in the lives of sentenced and diverted children who experienced out-of-home care.

5.90 Participants at Roundtable 2 were concerned about the impact of the instability caused by placement changes and the use of residential care. One participant stated that changes in placement could happen with little warning, for reasons that would appear arbitrary for the child concerned. The child might 'come home from school one day and find [their] bags packed ... Once you're in residential care, the hope of stability disappears'. Another pointed out that staff turnover, as well as the disruption caused by moving, affected children's ability to form lasting bonds within their home environment, 'which is huge for young people with significant trauma and attachment issues'.²⁹⁹ Another participant commented that:

[Y]oung people will identify the most important aspect of permanency as continuity of relationships with people who have their backs, who care for them ... but it's also continuity of relationships with their school, with their local sporting club, with their friends.³⁰⁰

5.91 The 1984 Carney review observed that:

[I]n taking over the role of parents ... the state acquires a new and onerous responsibility. In discharging this responsibility the state must ... provide a level of care which is equivalent to that provided by good parents.³⁰¹

298. This is a broad estimate of the number of placements based on placement IDs in the child protection data. During consultation on the findings, stakeholders queried what influence respite care placements had on the overall number of placements for each child. As the data in relation to the number of placements is complex, further analysis is required to provide more detailed findings on the number of placements. The Council will investigate the number of placements further in Report 2. See further Appendix 2 (Methodology).

299. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

300. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

301. Child Welfare Practice and Legislation Review Committee (Victoria) (1984), above n 75, 287.

- 5.92 A number of roundtable participants expressed concern about the number of children in court for criminal matters who did not have their child protection practitioner with them. One participant commented that there is:

almost a kind of resignation that that's the state of play. There are lots of magistrates who just assume that the department will not be there notwithstanding their role as the state parent in a particular child's case; the expectations are low ... when you talk about what can the court do, potentially there's something about compelling or requiring the Department to actively assume that role.³⁰²

- 5.93 Another participant commented that staff turnover is also an issue:

It goes back to the continuity of caregiver if you don't have the same worker building up a relationship [with the child], to get that young person to the assessment ... to all those services. If that's being left to residential unit staff, who are constantly rotating, of course these kids don't build up those relationships; they're in that resi[dential] unit very quickly or they get a new worker. We were all teenagers, [and] we know how quickly even teenagers from good backgrounds can build up resentment. Well, you add all this into that [and] it makes it a very difficult scenario when the state parent is on the paper but not in the court room, not in the driver's seat of the car.³⁰³

- 5.94 Other participants commented that, at the sentencing stage, children reliant on state services to support them through the trial and sentencing processes, and to complete the requirements of their sentencing orders, experienced significant disadvantage compared with children supported by their parents:

How often do you hear a magistrate say 'it's so good to see you're supported by your parents here today', and then there's a very noticeable absence when there's no one for a kid in [out-of-home] care? ... I've also had magistrates give lighter sentences on the basis that there's a supportive family at court who will ensure that the young person doesn't commit more offences, and it's an actual sentencing consideration and they do give lighter sentences based on that. Likewise diversion decisions, bail. So they're actually getting different outcomes I think and it's hard to quantify that.³⁰⁴

The courts have no faith that if you're in state care, you'll be rehabilitated and the risk will be managed. But if you're in a family and have a happy home, the prospects are much higher.³⁰⁵

Even though there is already a provision in the Act for them not to be treated more harshly because of their involvement in child protection, the reality is that the sentencing factors and considerations are skewed against them.³⁰⁶

- 5.95 The Council's second report for this project will examine the number of placements more closely, including whether there are associations between the number of placements and children's youth justice characteristics.

302. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

303. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

304. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019). See also discussion at [3.21]–[3.26].

305. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019). See also discussion at [3.21]–[3.26].

306. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019), referring to *Children, Youth and Families Act 2005* (Vic) s 362(2). See also discussion at [3.21]–[3.26].

Number and combination of out-of-home care placement types

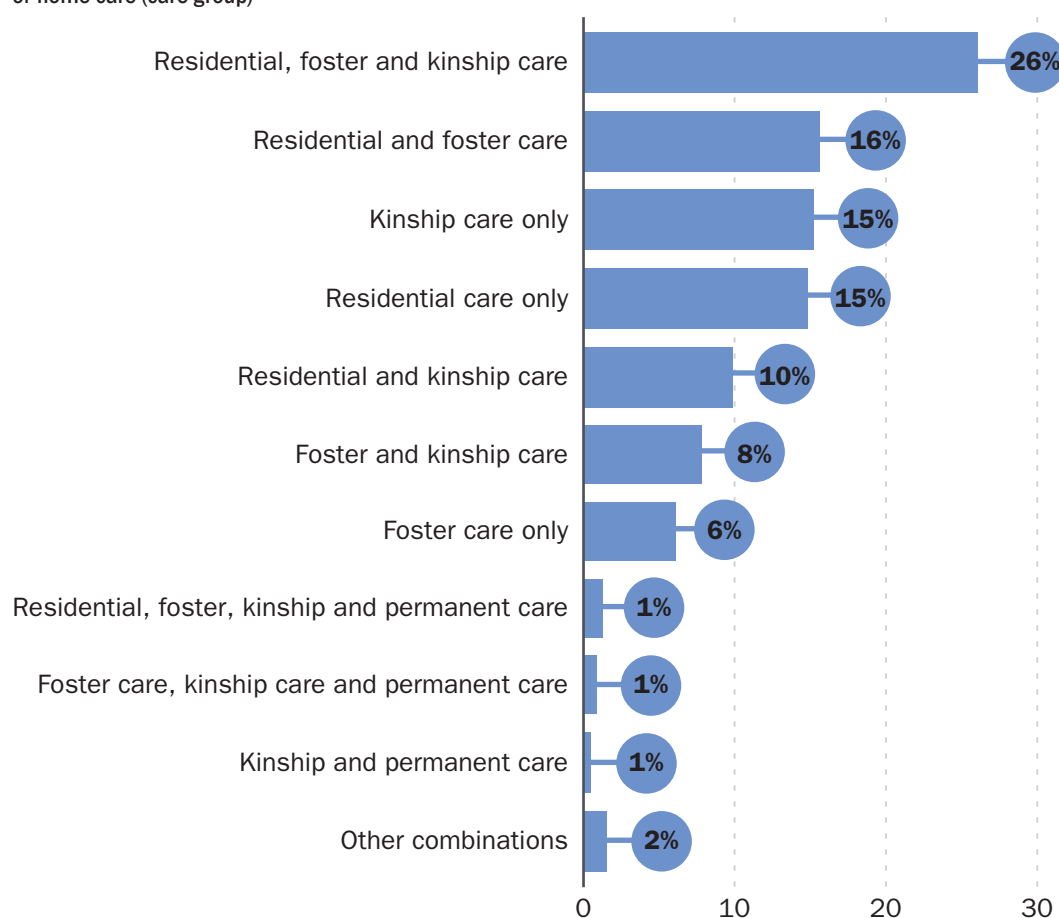
Number of placement types

5.96 In addition to having multiple placements, children in the care group were also likely to experience more than one *type* of placement. Of the 767 children in the care group, approximately two-thirds (64%) had experienced more than one *type* of out-of-home care placement in their lifetime (for example, foster care and residential care). Thirty per cent of the care group had experienced three or more placement types.

Placement type combinations

5.97 The most common placement type experience was a combination of at least one placement each of residential care, foster care and kinship care, with more than a quarter of the care group experiencing this combination (200 children) (Figure 17). The second most common experience for children in the care group was a combination of foster care and residential care (120 children or 16%), followed by kinship care only (117 children or 15%) and residential care only (114 children or 15%). The use of residential care was commonplace among children in the care group.

Figure 17: Placement type combinations in the lifetime of the 767 children in the study group who had experienced out-of-home care (care group)³⁰⁷



307. These categories do not overlap: each child is counted once in this graph. Placement types in the 'other/unknown' category were ignored for this exercise. For example, if a child had experienced a residential care placement, a kinship care placement and an 'other/unknown' placement, the child was categorised in the group 'residential care and kinship care'. Thirty children had other/unknown placements as well as at least one specified placement type. A further two children only had an 'other/unknown' placement. These two children are included on the graph in the 'other combinations' category.

Out-of-home care placement type: across a child's lifetime

Overall

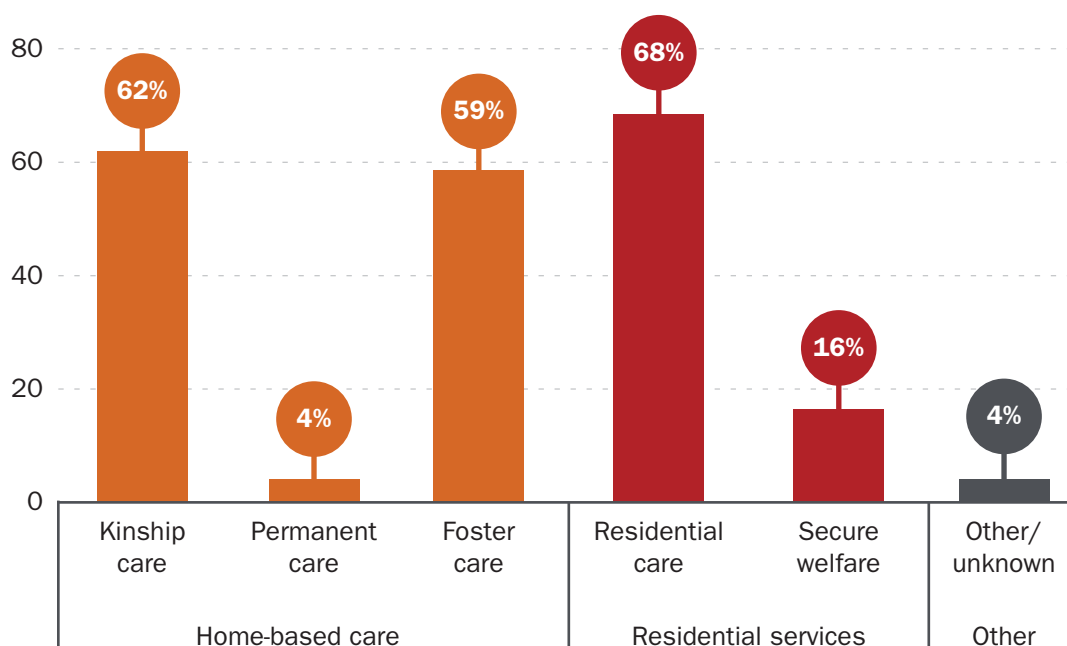
5.98 The majority of the 767 children who had experienced out-of-home care (the care group) had at least one residential care placement (525 children or 68%). This was the most prevalent placement type (Figure 18). This finding was particularly striking given the relatively low use of residential care placements in the general care population (Figure 4).

5.99 Kinship care and foster care were the next most common placement types: 62% of the care group experienced at least one kinship care placement and 59% experienced at least one foster care placement (Figure 18).³⁰⁸

5.100 One in six children in the care group (16% or 126 children) had a secure welfare placement at some stage in their lifetime. Participants at Roundtable 2 commented that this seemed to be a relatively high rate, considering that only 10 beds were available for secure welfare placement for boys and 10 for girls.³⁰⁹ Most roundtable participants agreed that this finding suggested that children who experienced secure welfare were over-represented in the youth justice system, with one participant describing the finding as a 'massive over-representation'.³¹⁰ Participants also commented that children in the youth justice system who have experienced secure welfare are a particularly vulnerable cohort:

Often the young people in secure welfare are the young people who have experienced incredibly high trauma over and above the experience of [the child protection] cohort, whose behaviours are incredibly complex; it might be a combination of absconding, offending and significant self-harm, and self-harm is probably the most prevalent.³¹¹

Figure 18: The 767 children in out-of-home care, by the proportion who had experienced each type of care in their lifetime³¹²



308. See [2.19] for discussion of common relationships between children and their kinship carer.

309. Participant at Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

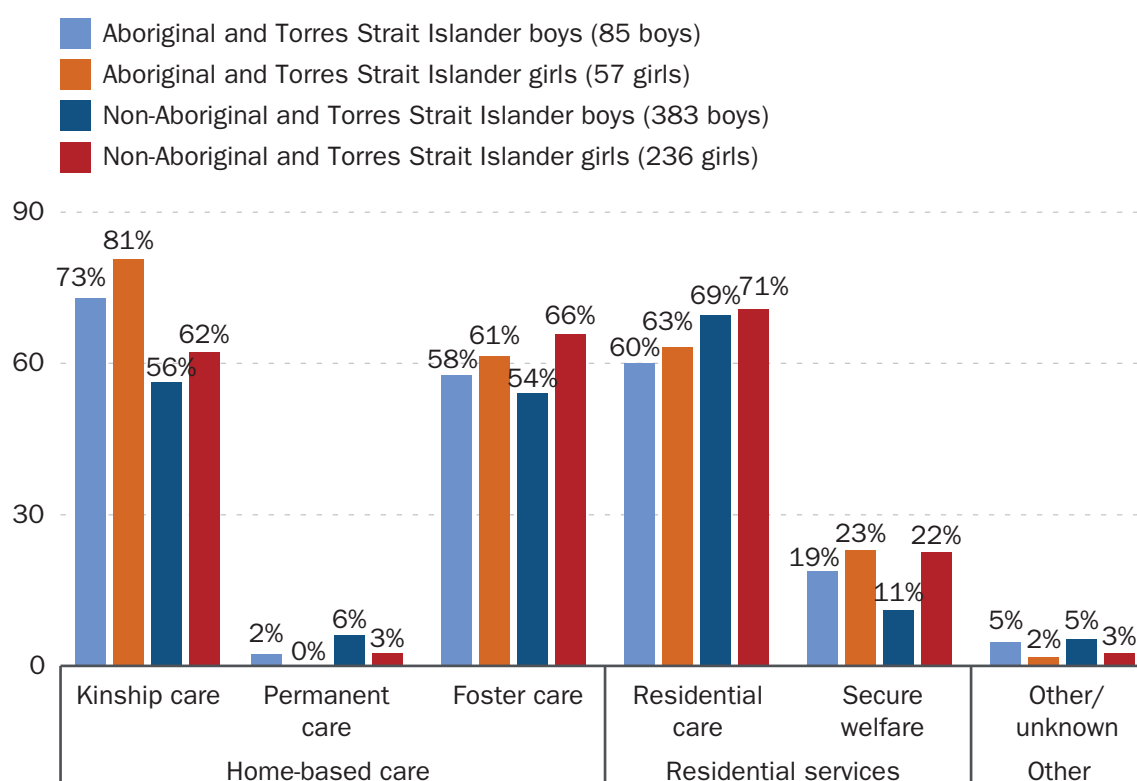
310. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

311. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

Aboriginal and Torres Strait Islander children and gender

5.101 Aboriginal and Torres Strait Islander children were more likely than non-Aboriginal and Torres Strait Islander children to have spent time in kinship care and less likely to have spent time in residential care (Figure 19). Girls were more likely than boys to have spent time in secure welfare. Non-Aboriginal and Torres Strait Islander boys were least likely to have spent time in secure welfare (11% of the 383 non-Aboriginal and Torres Strait Islander boys in the care group had experienced secure welfare). Three boys and three girls were excluded from Figure 19 due to their unknown Aboriginal and Torres Strait Islander status.

Figure 19: Children in out-of-home care, by gender and Aboriginal and Torres Strait Islander status, by proportion of children who had experienced each type of care in their lifetime



312. The 'secure welfare' category in Figure 18 excludes two people who received a secure welfare order from the court, but who were not recorded as receiving an out-of-home care placement. The secure welfare percentage remains at 16% regardless of whether these two children are excluded or included. 'Foster care' refers to a category called 'home-based care' in the Department of Health and Human Services data. This category includes foster care, therapeutic foster care (for children who need an extra level of intervention, for example, due to mental health issues), adolescent community placements (a transition placement for children aged 16–17 in group houses) and independent living. As the overwhelming majority of children in home-based care placements are in foster care, the Council has labelled this category 'foster care'. For example, on 31 December 2018, 1,583 Victorian children were in home-based care. Of those children, 44 were in independent living, 18 were in an adolescent community placement, 79 were in therapeutic foster care and the remainder were in foster care: Department of Health and Human Services, unpublished data.

Out-of-home care placement type on 30 June 2017

- 5.102 A number of reasons have been suggested as to why children in out-of-home care are over-represented in the youth justice system.³¹³ Victoria Legal Aid notes that 'the problem appears to be particularly acute for children placed in residential care'.³¹⁴ The prevalence of residential care among placements experienced by the care group (Figure 18) supports previous research suggesting that children who have experienced residential care are over-represented among children in the youth justice system.
- 5.103 To further test this finding, the Council analysed the study group on a single day: the same day as the Australian Institute of Health and Welfare's study in Figure 4.
- 5.104 While Figure 4 includes children aged under 10,³¹⁵ the study group in the current report, being a youth justice cohort, includes only children aged 10 or older. For a more accurate comparison, therefore, the Council sought data directly from the Department of Health and Human Services on out-of-home care placements on 30 June 2017 for children aged 10–17. On 30 June 2017, 4,230 Victorian children aged 10–17 were in out-of-home care. Of these children, 10% were in residential care on 30 June 2017 (Figure 20).³¹⁶
- 5.105 In contrast, of the 213 children from the Council's study group who were in out-of-home care on 30 June 2017, 58% were in residential care (Figure 21) (a further seven children were excluded from the analysis due to two placement types being recorded). Consistent with previous research (see further [4.21]–[4.34]), this finding suggests that children who have experienced residential care are over-represented in the youth justice system.
- 5.106 Participants at the Council's roundtables commented that the criminalisation of behaviour that would not be criminalised in a child's own home was a key factor contributing to the over-representation of children in residential care in the youth justice system. A participant at Roundtable 1 commented on the practice of charging children with criminal damage for damaging property in residential care, partly due to the need for a police report for insurance purposes:
- with kids in residential care there is very often a policy of property damage equals criminal charge, because we need that to get that on insurance. That's a very negative way for a young person – they don't learn how to control emotion, how to repair damage, how to build relationships doing that; all they learn is lack of self-worth.³¹⁷
- 5.107 Other contributing factors mentioned by stakeholders included the involvement of police in situations other than criminal callouts, such as missing person reports. Stakeholders commented that the knowledge and understanding of children's responses to trauma was inconsistent among frontline police and that their responses to increased contact with a given child sometimes led to decreased tolerance upon further involvement with that child.

313. See further the discussion from [4.25].

314. Victoria Legal Aid, 'Appropriate Interventions for Children and Young People' (legalaids.vic.gov.au, 2018) <<https://www.legalaids.vic.gov.au/about-us/strategic-advocacy-and-law-reform/appropriate-interventions-for-children-and-young-people>> at 11 February 2019.

315. Figure 4 (page 14) shows the care type for all Victorian children in out-of-home care on 30 June 2017 based on data in Australian Institute of Health and Welfare (2018), above n 65, Table S36 <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data>> at 1 March 2019.

316. Department of Health and Human Services, unpublished data.

317. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

Finally, participants noted that children in residential care often had higher levels of all underlying risk factors, which had a compounding effect when combined with increased surveillance and decreased tolerance. As one participant commented, the effect was not solely attributable to 'care per se, it's the disadvantage that all of these things are indicating, that can attach to [care]'.³¹⁸

Figure 20: All Victorian children aged 10–17 who were in out-of-home care on 30 June 2017 (4,230 children), by placement type on 30 June 2017³¹⁹

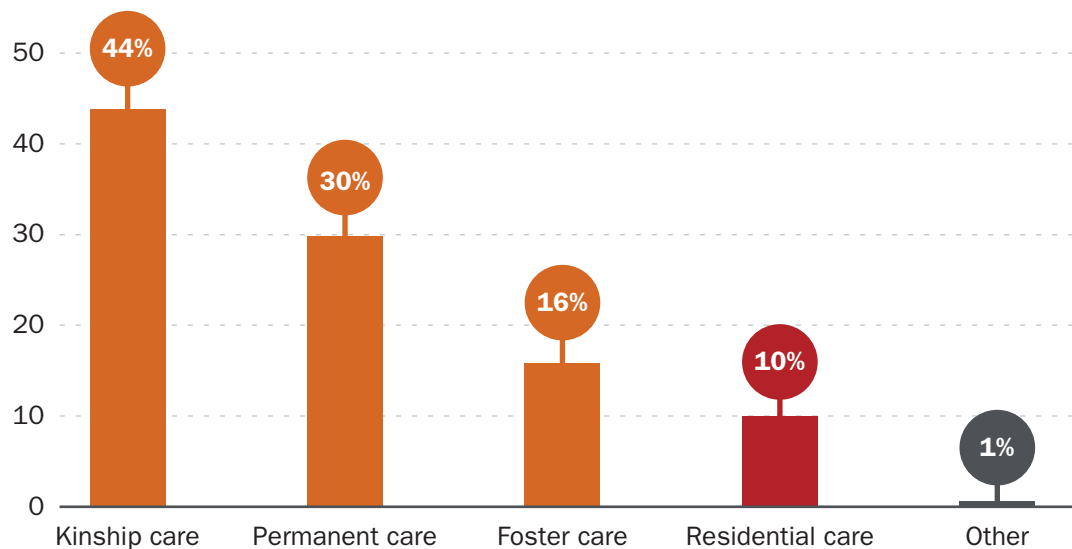
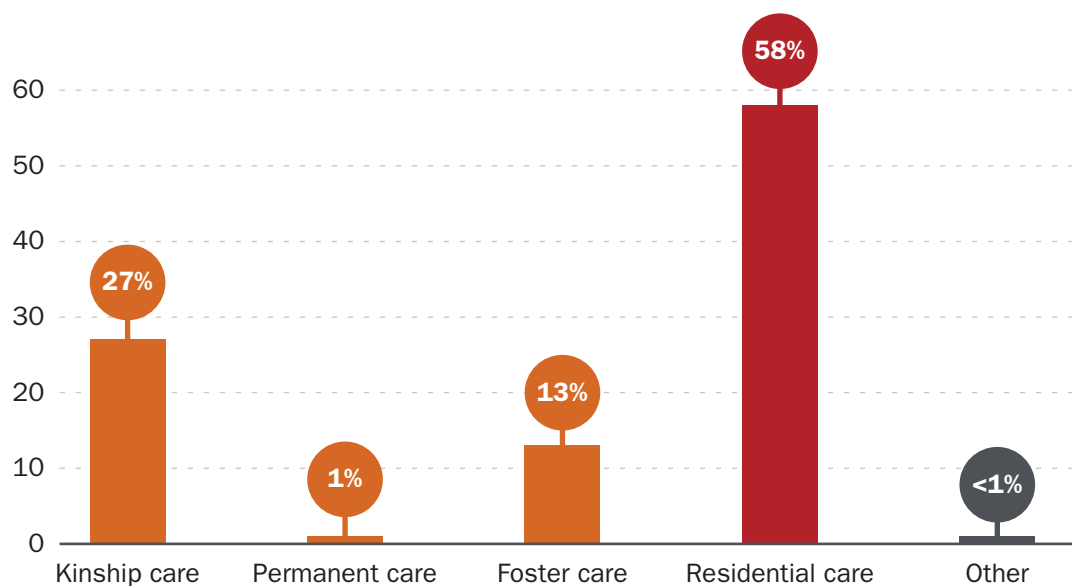


Figure 21: Children in the study group aged 10–17 who were in out-of-home care on 30 June 2017 (213 children), by placement type on 30 June 2017



318. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

319. Department of Health and Human Services, unpublished data.

Aboriginal and Torres Strait Islander girls

- 5.108 This chapter has found that, compared with sentenced and diverted Aboriginal and Torres Strait Islander boys and to other sentenced and diverted children, sentenced or diverted Aboriginal and Torres Strait Islander girls who were the subject of a child protection report had the highest rates of investigation, substantiation, child protection orders and out-of-home care and were the subject of a higher median number of child protection reports. Aboriginal and Torres Strait Islander children who were the subject of a child protection order were more likely than non-Aboriginal and Torres Strait Islander children to be the subject of an interim accommodation order.

Follow-up questions in the second report

- 5.109 The Council's second report for this project will look in more detail at the child protection profiles of the crossover kids identified in the current report, for example, examining the type of harm or risk reported to the child protection service and whether there are any associations between the type of harm and children's offence types. The report will look more closely at the children who had experienced out-of-home care, including the types of offences for which they were sentenced or diverted.

6. Sentence type and child protection

- 6.1 This chapter addresses Research Question 3, which assesses whether children who are known to the child protection service appear to be over-represented in relation to particular sentencing orders.

Research Question 3: Sentence type and child protection involvement

What proportion of children sentenced to specific sentence types were known to the child protection service?

Caution regarding sentence type and child protection background

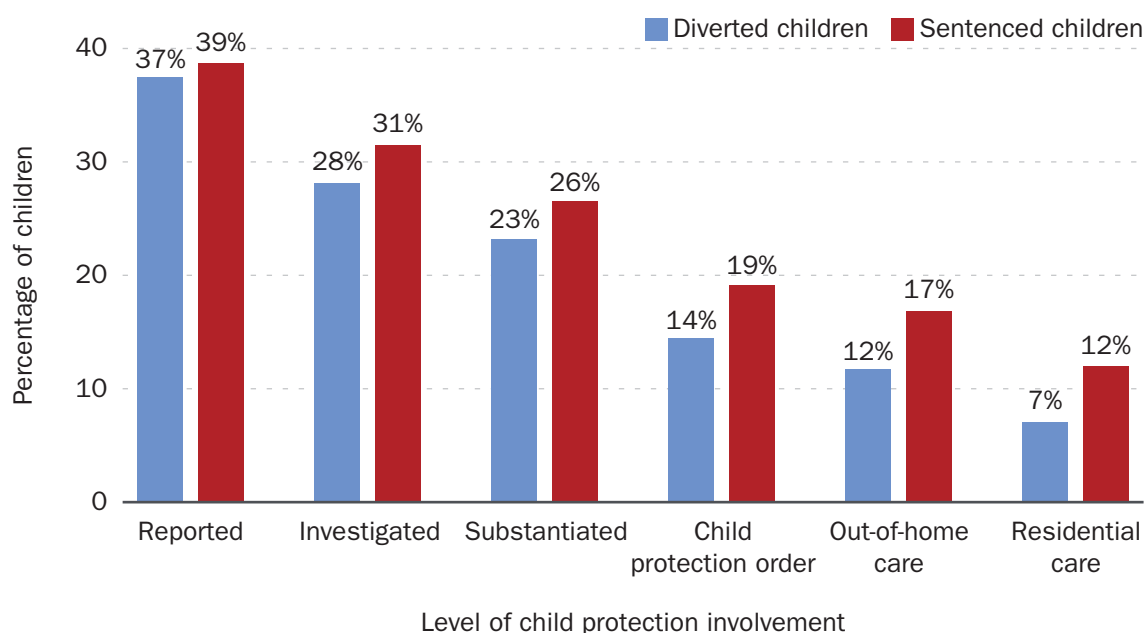
- 6.2 In this chapter, children with more severe sentence types were found to be more likely to have a child protection history. However, care must be taken in interpreting this finding.
- 6.3 The *Children, Youth and Families Act 2005* (Vic) ('CYF Act') provides that a child's appearance in the Family Division of the Children's Court, including as a child in need of protection, should not be an *aggravating* factor in sentencing that child: the Criminal Division must not impose a more severe sentence than it would have imposed had the child not had a matter in the Family Division.³²⁰ A child's experience of child protection would not, therefore, be expected to *directly* lead to a more severe sentence than those imposed on children with no child protection history. On the contrary, it is likely to be a mitigating factor that a child has experienced trauma, harm, abuse or removal from family into out-of-home care. More severe sentences are likely to reflect a combination of relatively serious offending and/or other aggravating factors, such as a lengthy prior criminal history or a history of breaching more lenient sentencing orders.
- 6.4 However, child protection involvement may *indirectly* contribute towards the over-representation in more severe sentencing options of children with child protection backgrounds. First, children from backgrounds of severe neglect, harm and dysfunction may be more likely to have issues with emotional regulation, enhanced flight or fight responses and other issues that affect compulsiveness and control. They may be more likely to respond to situations emotionally and possibly violently, particularly when living in out-of-home care. If such children are charged with offences such as offences against the person arising from this conduct, they are likely to face more severe sentences than children charged with lesser offences. Secondly, as previous research suggests, children in out-of-home care may be criminalised for behaviour that might not attract a criminal response if committed in the family home. Such children may be more likely to have criminal histories than children who remain with their families. This practice may indirectly contribute towards children in out-of-home care moving more quickly up the sentencing hierarchy than children who remain with their families.

320. *Children, Youth and Families Act 2005* (Vic) s 362(2).

Diversion versus sentenced children

- 6.5 The study group was divided according to the most severe order made by the court at their index sentence, starting with whether the child was diverted (1,659 children) or sentenced (3,404 children).³²¹
- 6.6 There was little difference in the proportion of sentenced and diverted children who had been the subject of a report to the child protection service (Figure 22). This may be surprising given diversion's role to divert less serious offenders away from the youth justice system. However, previous research, and the Council's findings in Chapter 7, suggest that children who enter the youth justice system at a younger age are more likely than older children to be known to the child protection service (see further [7.2]). Therefore, the relatively high proportion of diverted children who were known to child protection may reflect the higher proportion of younger children (aged 10–13) accessing the diversion program, compared with sentenced children.³²² This finding may also reflect efforts to divert children in the child protection system away from the youth justice system.
- 6.7 The gap between diverted and sentenced children widened as the level of child protection involvement increased. For example, similar proportions of diverted and sentenced children had been the subject of a child protection report, but the proportion of diverted children who had been the subject of a child protection order (14%) was around three-quarters of the proportion of sentenced children (19%). Similarly, the proportion of diverted children who had experienced residential care (7%) was around half the proportion of sentenced children who had experienced residential care (12%) (Figure 22).

Figure 22: Level of child protection involvement as a proportion of sentenced children and diverted children



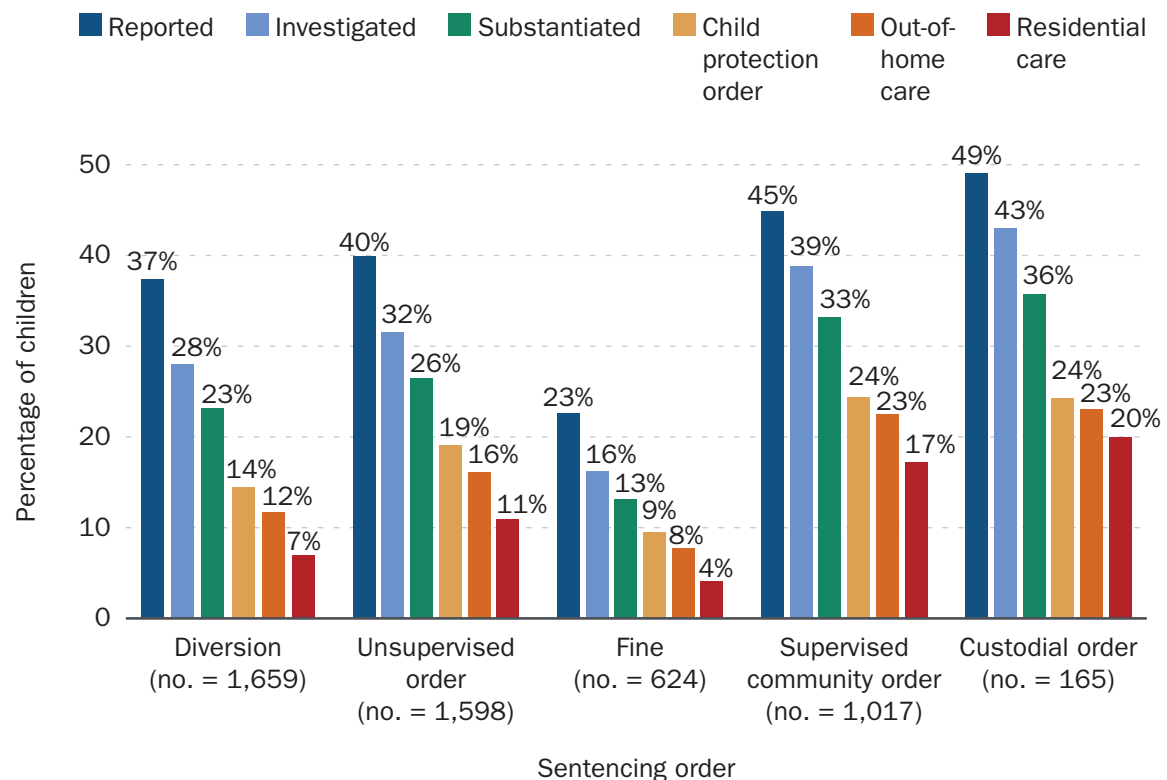
321. See further [1.9].

322. The proportion of *diverted* children aged 10–13 (6%) is double the proportion of *sentenced* children aged 10–13 (3%): 96 of the 1,659 children who received diversion were aged 10–13 (6%), and 100 of the 3,404 sentenced children were aged 10–13 at the time of sentence (3%).

Children sentenced to more severe sentences were more likely to have a child protection history

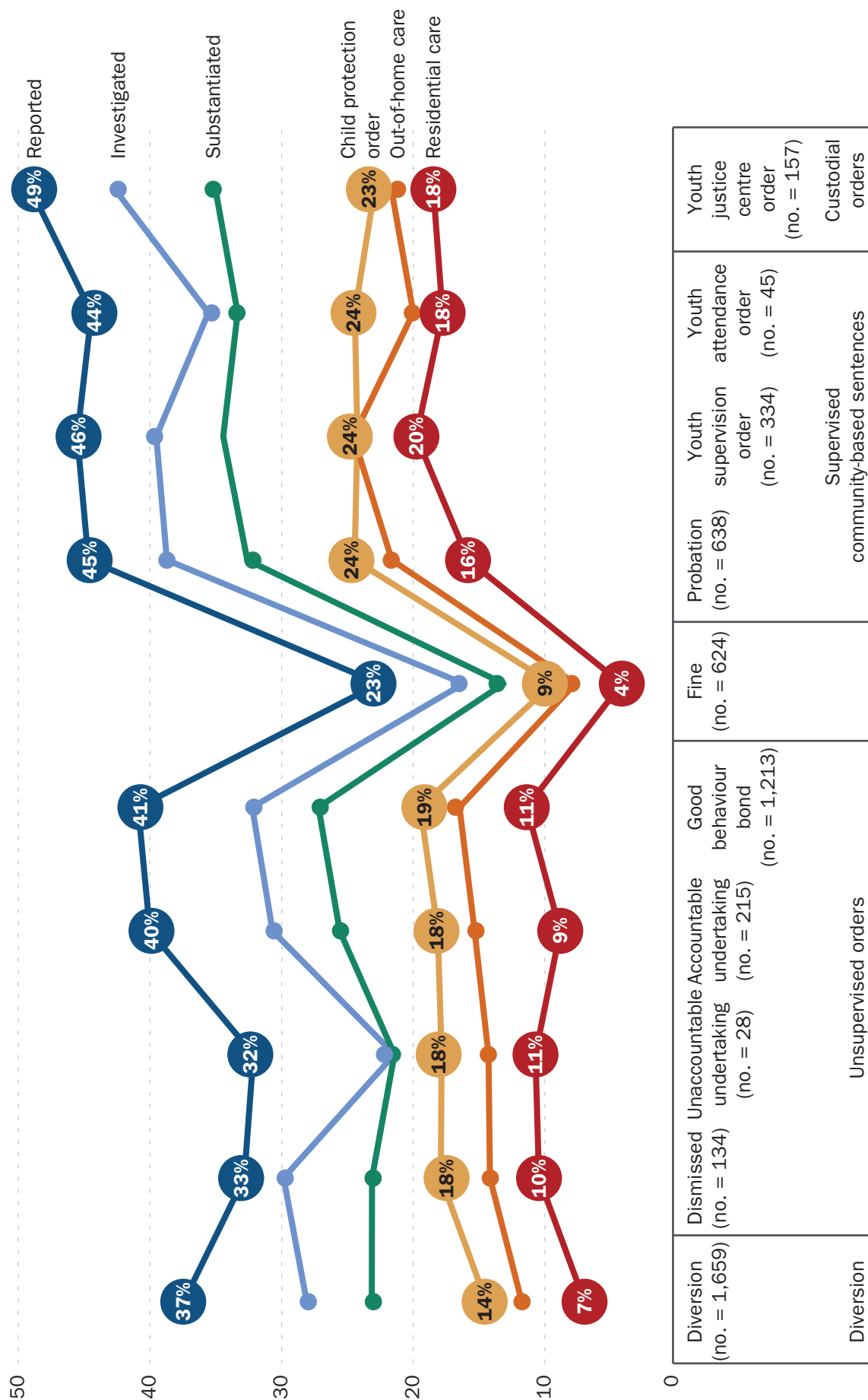
- 6.8 Looking at child protection history by sentence severity at the index sentence, Figures 23 and 24 show that children with more severe sentence types were more likely to have a child protection history. Both figures show the proportion of children with a child protection background who were sentenced to each sentence type. Figure 23 groups sentences into type and shows the proportion of children sentenced to that sentence type who had a child protection background, for example, the proportion of children sentenced to a *custodial order* who had been the subject of a report to child protection. Figure 24 shows each sentence separately, for example, the proportion of children sentenced to a *youth justice centre order* who had been the subject of a child protection report.
- 6.9 Eight children were sentenced to a youth residential centre order.³²³ These eight children were excluded from Figure 24 due to the distorting effect of small numbers. These children were included among the 165 children in the 'custodial orders' sentencing category shown in Figure 23. Of the eight children sentenced to a youth residential centre order, four had been reported at least once to the child protection service (50%). Each of those four children had at least one report investigated and substantiated, had at least one child protection order and had experienced out-of-home care, including residential care.

Figure 23: Level of child protection involvement, as a proportion of children sentenced to types of sentencing orders³²⁴



323. A youth residential centre order is detention in a youth residential centre for offenders aged under 15. The order is for a maximum of one year for a single offence or two years for more than one offence. While detained, offenders participate in education and programs that address their offending behaviour: *Children, Youth and Families Act 2005* (Vic) ss 410–411.

324. Eight children were excluded from Figure 24 due to their sentence type being recorded in the data as 'convicted and discharged', which is an order in the adult jurisdiction but not in the Children's Court. These eight children are included in Figure 23 in the category of 'unsupervised order'.

Figure 24: Level of child protection involvement, as a proportion of children sentenced to particular sentencing orders³²⁵

325. Eight children were excluded from Figure 24 due to their sentence type being recorded in the data as 'convicted and discharged', which is an order in the adult jurisdiction but not in the Children's Court.

Unsupervised orders

- 6.10 The proportion of children who had been the subject of a child protection report among children sentenced to unsupervised low-end orders (40% or 638 children) was similar to that of diverted children (37% or 621 children). Compared to the proportion of diverted children who were the subject of a child protection report (37% or 621 children), the proportion of children with a child protection report was:
- lower for children who had their charges proven and dismissed (33% or 44 children) or were sentenced to unaccountable undertakings (32% or 9 children); and
 - slightly higher for children who were sentenced to accountable undertakings (40% or 86 children) and good behaviour bonds (41% or 496 children).
- 6.11 Compared to diverted children, a slightly higher proportion of children sentenced to unsupervised low-end orders were the subject of a child protection order (19% compared with 14%). A slightly higher proportion of children sentenced to unsupervised low-end orders experienced out-of-home care (16% compared with 12% of diverted children).

Fines

- 6.12 The proportion of fined children who were known to child protection was noticeably lower than that for diverted children and that for children who received all other sentence types. Of fined children:
- 23% were the subject of at least one child protection report (141 children);
 - 16% were the subject of at least one investigated report (101 children);
 - 9% were the subject of a child protection order (59 children); and
 - 8% had experienced out-of-home care (48 children).³²⁶
- 6.13 This lower rate could reflect different offence types common to children who are, and are not, known to child protection. For example, transit offences (offences relating to public transport such as failing to have a valid ticket) had the lowest rate of children known to child protection.³²⁷ The most likely sentence for a transit offence is a fine.³²⁸ In the 2016 youth reoffending report, the Council observed that:
- the lower reoffending rate for fines (45%) is likely to reflect factors relating to the offender and the offence that influence the prospect of reoffending. For example, fines were a common disposition for transit offences (83% of all charges of a transit offence sentenced at the index sentence received a fine), and transit offences were associated with lower reoffending rates.
- Fines were also more common for older offenders than for younger offenders, and older offenders had lower reoffending rates. Therefore, the lower reoffending rate associated with fines is likely to reflect factors relating to the offence and the offender, rather than the effectiveness of fines as a sentencing disposition.³²⁹

326. In this report, the data relating to fines does not include data from the Children and Young Persons Infringement Notice System (CAYPINS) under *Children, Youth and Families Act 2005* (Vic) sch 3. Only fines imposed as a sentence in the Children's Court are included in the data.

327. Preliminary analysis indicates that 17% of children sentenced for transit offences had been the subject of at least one investigated child protection report. The association between offence type and the likelihood of a child protection history will be explored in the second report for this project.

328. The Council's 2016 youth reoffending report found that 83% of all charges of a transit offence sentenced at the index sentence in that study received a fine: Sentencing Advisory Council (2016), above n 19, 38.

329. Ibid 38 (citations omitted). See also Sentencing Advisory Council, *Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (2014) 310 [10.2.14]–[10.2.15]. For a discussion of sentencing effectiveness and unpaid fines, see ibid 319 [10.5.1]–[10.5.2].

- 6.14 The lower proportion of children known to child protection in the fined group may also reflect the likelihood that a fine may be very difficult to pay for a child experiencing issues relating to child protection, such as living in out-of-home care. A fine imposed in such circumstances may also be virtually impossible to enforce, rendering it meaningless as a sentence. The *Children, Youth and Families Act 2005* (Vic) ('CYF Act') provides that if the sentencing court decides to fine a child, the court must consider a child's financial circumstances *when determining the fine amount* (as opposed to when considering *whether* to fine the child at all). However, unlike the adult system, there is no provision for the Children's Court to still impose a fine if it is unable to take financial circumstances into account.³³⁰ In practice, it is unlikely that the court would impose a fine if a child clearly lacked the capacity to pay. Consultation with representatives of the Children's Court confirmed that children are not usually fined, other than in connection with transit offences.³³¹

Supervised community orders

- 6.15 Of the children in the study group sentenced to supervised community orders (probation orders, youth supervision orders and youth attendance orders):³³²
- 45% were the subject of at least one child protection report (457 children);
 - 39% were the subject of at least one investigated report (395 children);
 - almost one-quarter (24%) were the subject of at least one child protection order (248 children);
 - almost one-quarter (23%) experienced out-of-home care (229 children); and
 - 17% (175 children) experienced residential care (16% of children sentenced to probation, 20% of children sentenced to a youth supervision order and 18% of children sentenced to a youth attendance order experienced residential care).

Custodial orders

- 6.16 Previous research suggests that children who have experienced child protection and out-of-home care are over-represented among children sentenced to custodial orders.³³³
- 6.17 Consistent with such research, the Council found that the group of 165 children sentenced to custodial orders³³⁴ had the highest rates of child protection involvement: almost half were the subject of at least one child protection report (49% or 81 children) and 43% were the subject of at least one *investigated* report (71 children).
- 6.18 Children sentenced to custodial orders had the same rates of child protection orders (24%) and out-of-home care (23%) as children sentenced to supervised community orders.
- 6.19 Four of the eight children sentenced to youth residential centre orders experienced out-of-home care (with all four experiencing residential care). Of the 157 children sentenced to youth justice centre orders, 22% experienced out-of-home care (34 children) and 18% experienced residential care (29 children).

330. *Sentencing Act 1991* (Vic) s 52.

331. Meeting with representatives of the Children's Court of Victoria (3 April 2019).

332. These orders are made under the *Children, Youth and Families Act 2005* (Vic) ss 360(1)(f)–(h). Youth control orders (under section 360(1)(ha)) would also be included in this category, but these orders commenced after the study period for this report.

333. In the final report for the inquiry into youth justice centres in Victoria, it was noted that 45% of sentenced or remanded children and young people had been subject to a previous child protection order: Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Youth Justice Centres in Victoria: Final Report* (2018) 19–26. See also Australian Institute of Health and Welfare (2018), above n 95, 6, 12; Youth Parole Board (2018), above n 97, 15–16.

334. Custodial orders are youth residential centre orders or youth justice centre orders: *Children, Youth and Families Act 2005* (Vic) ss 360(1)(i)–(j). At their index sentence, eight children were sentenced to a youth residential centre order and 157 children were sentenced to a youth justice centre order.

- 6.20 Participants at both the Council's roundtables commented on the high rate of children known to child protection among children sentenced to custodial orders. They emphasised that early intervention, and the linking of supportive services to early contacts with the criminal justice system, are crucial.
- 6.21 A number of participants expressed surprise at the high proportion of children sentenced to a custodial order who had *no* prior contact with the child protection system. Participants agreed that the fact that a child had no child protection history did not necessarily imply a lack of comparable trauma history. As two participants commented, it was likely that a significant proportion of the group with no child protection history may also have experienced trauma, but that those children were 'not on anyone's radar'. Participants commented that some children from culturally and linguistically diverse (CALD) backgrounds experienced significant trauma prior to arriving in Australia, but because their parents were trying to manage their child's trauma-related behaviour, child protection concerns were not raised. Therefore, some of these children had little or no intervention before appearing in court charged with criminal offences. Roundtable participants agreed that these children sometimes 'go from zero to hitting the court hard', but 'what we don't know is how many contacts they have had with police, or their pathways' in to the youth justice system.³³⁵ These comments are consistent with the findings of a recent Victorian youth justice review that children and young people from CALD backgrounds comprised 39% of the custodial population.³³⁶
- 6.22 Another participant suggested that some of the children with no child protection background who were sentenced to custodial orders might belong to a distinct group of offenders. This group might begin offending later in adolescence and then stop, rather than engaging in criminal behaviour from a young age and continuing to offend.³³⁷

Aboriginal and Torres Strait Islander children

- 6.23 Previous research suggests that Aboriginal and Torres Strait Islander children are over-represented in both the child protection system and the youth justice system (see [4.41]–[4.46]). Consistent with this research, Aboriginal and Torres Strait Islander children in the study group were over-represented in every sentence type and child protection category, particularly among children sentenced to immediate custody (Figure 25). Aboriginal and Torres Strait Islander children comprised 1.6% of the 808,556 Victorian people aged 10–20 on 30 June 2016.³³⁸ In contrast, of the 165 children sentenced to a custodial order (a youth residential centre order or a youth justice centre order), Aboriginal and Torres Strait Islander children comprised:
- 21% of children sentenced to a custodial order who had also been the subject of a report to the child protection service (17 children);
 - 35% of children sentenced to a custodial order who had also been the subject of a child protection order (14 children); and
 - 33% of children sentenced to a custodial order who had also experienced residential care (11 children) (Figure 25).
- 6.24 Therefore, the greatest over-representation of Aboriginal and Torres Strait Islander children occurred at the intersection between the most severe sentence type (custodial orders) and the most serious end of the child protection system (child protection orders, out-of-home care and residential care) (Figure 25).

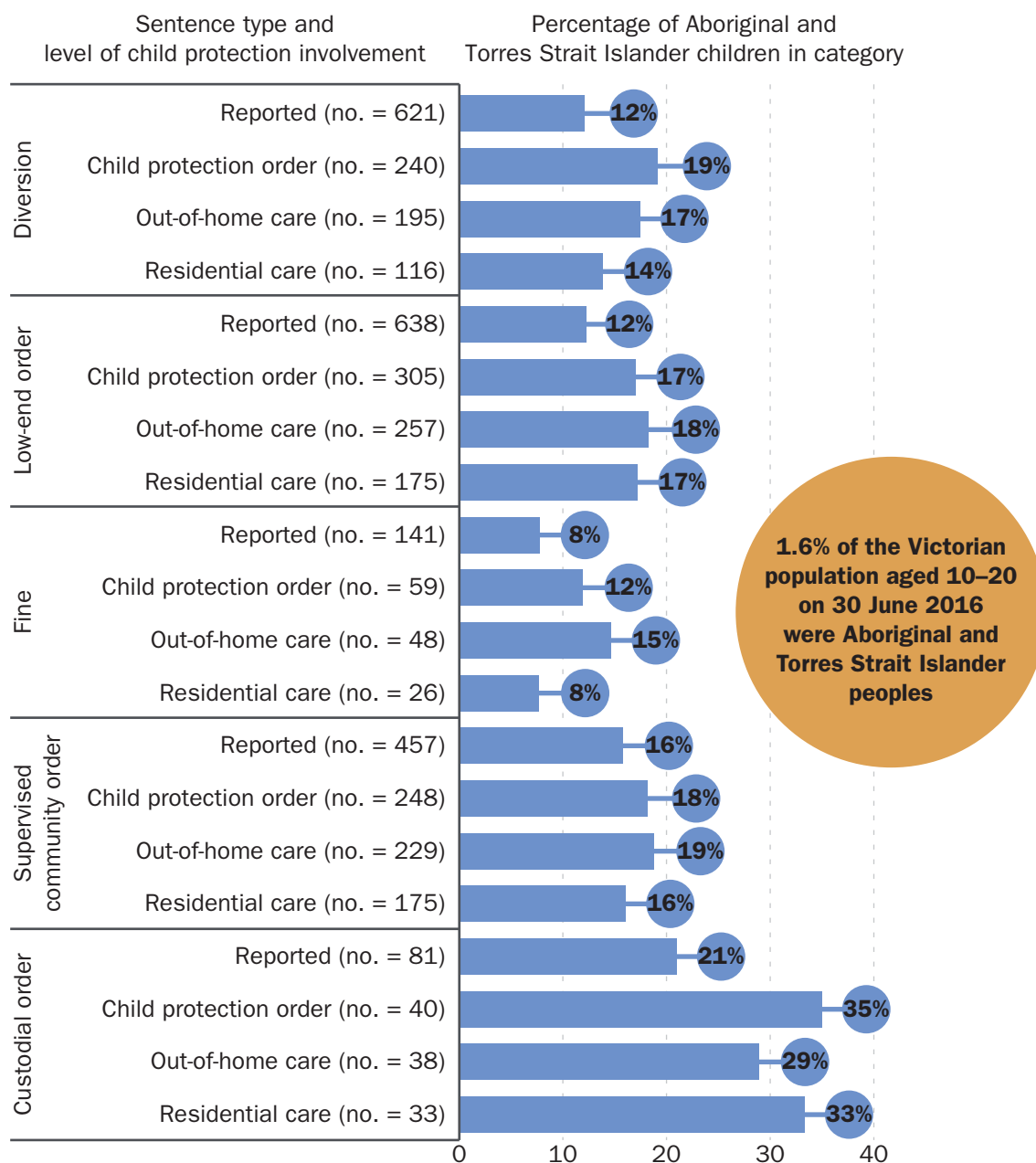
335. Participant at Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

336. Victorian Auditor-General (2018), above n 132, 19; see also discussion at [4.48].

337. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019).

338. Australian Bureau of Statistics (2018) above n 18.

Figure 25: Proportion of Aboriginal and Torres Strait Islander children among children sentenced to particular sentence types and known to the child protection service³³⁹



Follow-up questions in the second report

6.25 The Council's second report for this project will include a more detailed analysis of the association between age, gender, criminal justice factors such as offence type, prior offences and sentence type, and child protection factors such as age at first report and whether a child was placed in out-of-home care. For example, the Council will examine whether children known to the child protection service at their index sentence were more likely to have prior offences than children who were not known to the child protection service.

339. Each bar on the graph looks at the proportion of Aboriginal and Torres Strait Islander children among the children sentenced to that order with that level of child protection intervention. A child's most severe sentence at their index sentence was used for this analysis. Therefore, the groups of children sentenced to particular sentence types shown in Figure 26 do not overlap. However, the child protection categories do overlap. For example, 165 children were sentenced to a custodial order, and these children do not overlap with the 1,017 children sentenced to a supervised community order. Of the 165 children sentenced to a custodial order, 81 children had been the subject of a report to the child protection service. These children overlap with the 40 children sentenced to a custodial order who had been the subject of a child protection order. For each of these categories, the proportion who were Aboriginal and Torres Strait Islander children are shown.

7. Are children first sentenced at a young age more likely to be known to child protection?

- 7.1 The Council's 2016 youth reoffending study found that the younger children were at their first sentence, the more likely they were to reoffend generally, to reoffend violently, to progress to the adult criminal justice system and to be sentenced to a term of adult imprisonment before their 22nd birthday.³⁴⁰
- 7.2 Previous research suggests that children who are younger at their first youth justice contact are more likely to be known to child protection. Children known to child protection 'have a younger age of first contact with the criminal justice system compared to the overall youth justice population'.³⁴¹ This chapter examines whether there was an association between a child's age at first sentence or diversion and the likelihood that they were known to child protection.

Research Question 4: Age at first sentence and child protection involvement

Are children first sentenced at a young age more likely than older children to be known to the child protection service?

Age at first sentence

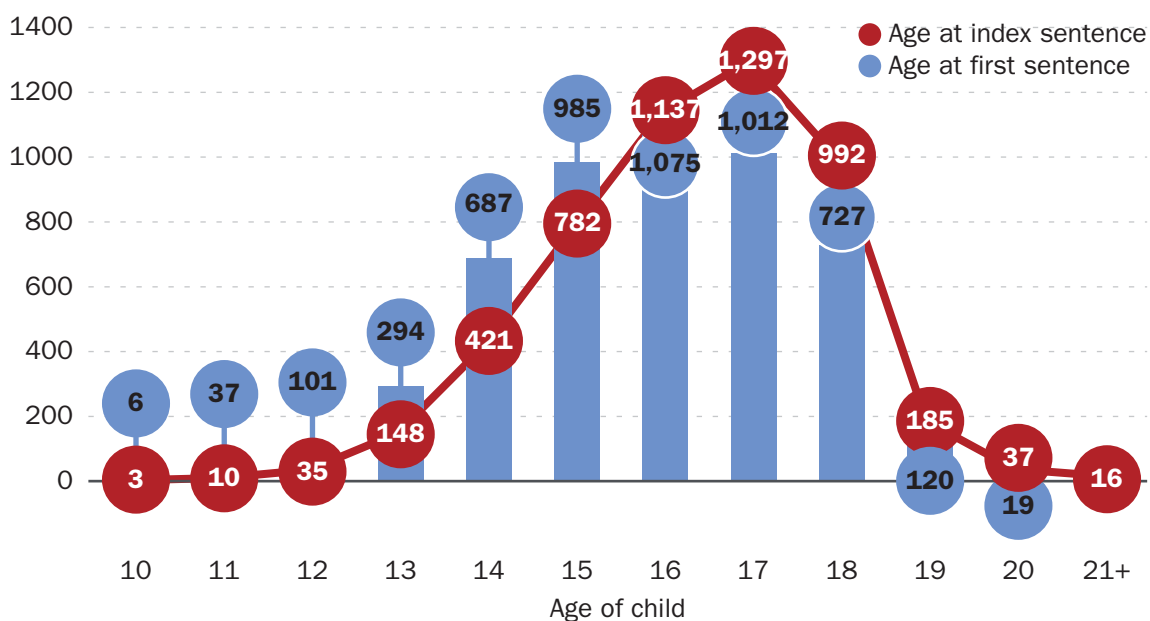
- 7.3 There were two key age measures for children in the study group:
1. a child's age at their **index sentence** (the sentence or diversion case in 2016 or 2017 that brought the child into the Council's study group); and
 2. a child's age at their **first sentence** (the first sentence or diversion the child received in their lifetime).
- 7.4 For the analysis in this chapter, children were classified according to their age at **first sentence**. For example, if a child was aged 16 at their index sentence in 2016 or 2017 but was aged 10 the first time they were sentenced or diverted in the Children's Court, the child was classified as being aged 10 at first sentence. Age at first sentence or diversion was chosen as a significant milestone in a child's youth justice trajectory. It is a more meaningful measure than the index sentence, which is likely to be a more random point in a child's involvement with youth justice.

340. Sentencing Advisory Council (2016), above n 19, 52. See also Shuling Chen et al., *The Transition from Juvenile to Adult Criminal Careers*, New South Wales Crime and Justice Bulletin no. 86 (2005).

341. Baidawi and Sheehan (forthcoming, 2019), above n 205, 17; see also Australian Institute of Health and Welfare (2017), above n 38; McFarlane (2018), above n 25.

7.5 Figure 26 shows the number of children in the study group according to their age at their index sentence and their age at first sentence. For example, three children in the study group were aged 10 at their index sentence, while six children in the study group were aged 10 at their first sentence. When first sentence is used as an age measure, the study group has a higher proportion of younger children, as would be expected.

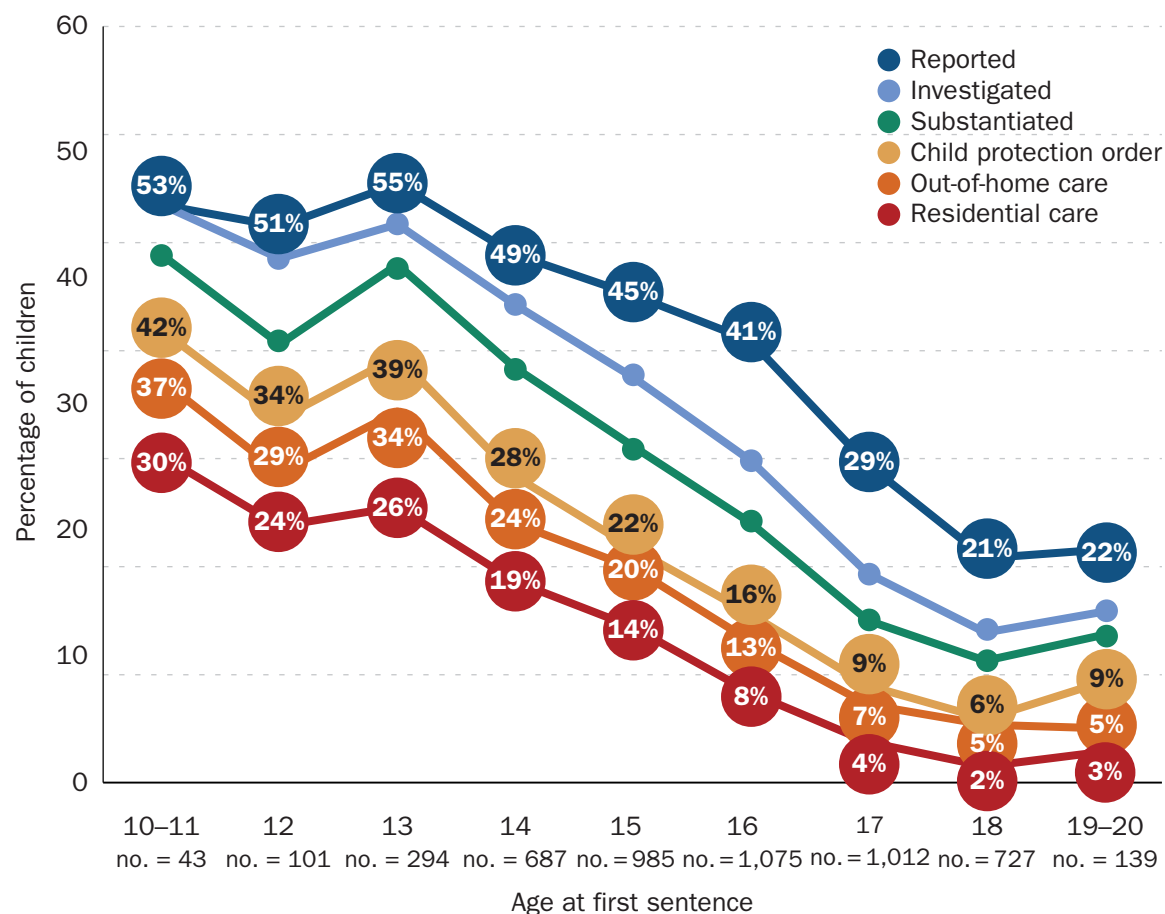
Figure 26: Number of children in the study group, by age at index sentence and age at first sentence



Overview: the younger children were at first sentence, the more likely they were to be known to child protection

7.6 There was a clear relationship between a child's age at their first sentence and the likelihood of (and level of) child protection involvement. The younger children were at first sentence, the more likely they were to have:

- been the subject of a report to the child protection service at least once in their life (younger children were also more likely to have been the subject of a report that was investigated or substantiated);
- been the subject of a child protection order made in the Children's Court (this means the Children's Court found the child in need of protection or, if a protection application was issued but not determined, the court decided that an interim order was needed to keep the child safe until it determined the protection application);
- experienced out-of-home care at least once in their life; and
- experienced residential care (Figure 27).

Figure 27: Age at first sentence and the prevalence of a child protection history³⁴²

Younger children were more likely to have been the subject of a child protection report

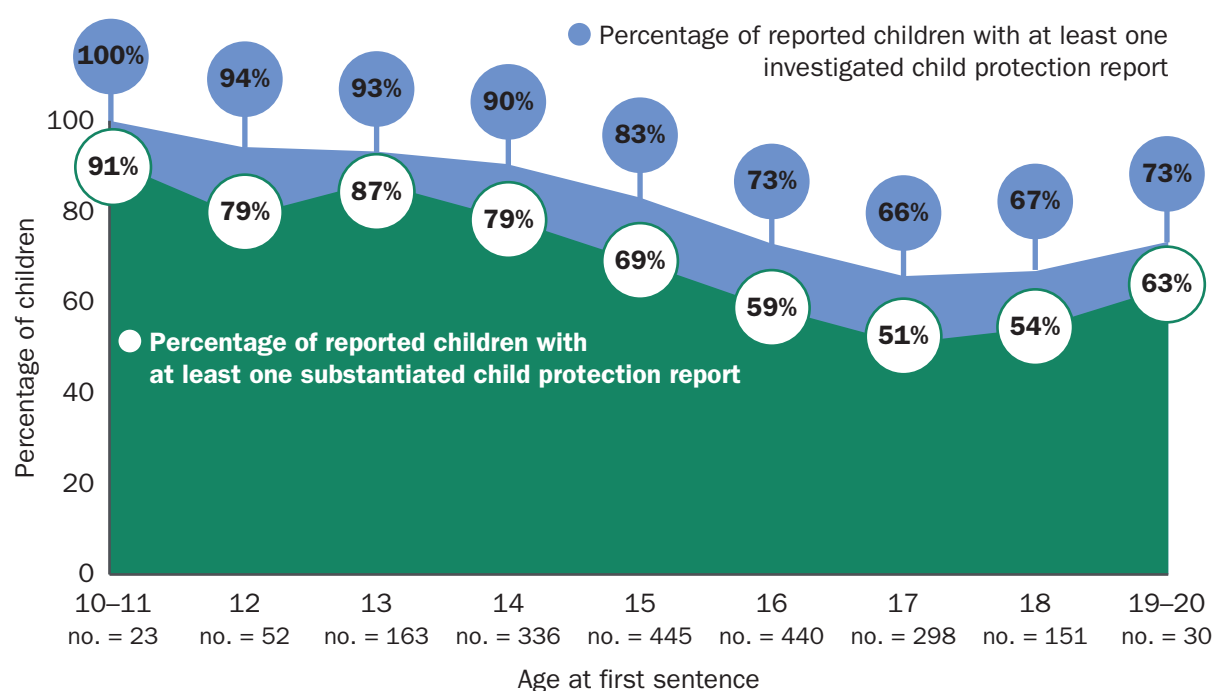
- 7.7 Over half of the children who were first sentenced aged 10–13 were the subject of at least one child protection report (54% or 238 children), compared with less than one-quarter of people aged 18–20 (21% or 181 people). The proportion of sentenced children with at least one child protection report decreased with each year of age at first sentence (Figure 27).

342. Six children in the study group were first sentenced aged 10, and 37 children were first sentenced aged 11. Due to privacy concerns and the volatility of small numbers, these children were combined into one subgroup of 'aged 10–11' for the analysis in this chapter. The age shown in the graphs in this chapter is the child's age at first sentence, not, for example, their age at the time they experienced residential care, which could have been before, at the time of or after their first sentence date.

Younger children were more likely to have investigated and substantiated reports

7.8 Looking at the 1,938 children who were the subject of at least one child protection report (the child protection report group), the younger those children were at first sentence, the more likely they were to have had at least one of their child protection reports investigated. For example, all the children aged 10–11 at first sentence who had been the subject of a child protection report had at least one report investigated (Figures 27 and 28).

Figure 28: Children who were the subject of at least one report to the child protection service (1,938 children), by age at first sentence and the proportion of children who had at least one report investigated or substantiated



7.9 As discussed at [5.18]–[5.21], when a report is made to the child protection service, intake staff gather information and assess the seriousness of the concerns raised and the perceived risk to the child before deciding whether further action is necessary (such as an investigation). One hypothesis for the finding in Figure 28 is that a higher proportion of younger children who had been the subject of a child protection report were the subject of serious concerns reported to the child protection service.

7.10 Stakeholders agreed that the higher investigation rate of children who were younger at first sentence suggested that those children were more likely than older children to have been the subject of more serious child protection reports. One participant at Roundtable 2 suggested that, 'we would expect that children who come into the justice system early face the most significant adversity, so the fact that such a significant proportion of children who are younger at first sentence were known to child protection services could be interpreted as saying that we have a functioning child protection system, that it's actually noticing these children'.³⁴³

343. Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

- 7.11 The Council's second report for this project will examine whether age at first report to the child protection service is associated with age at first sentence. The Australian Institute of Health and Welfare notes that:

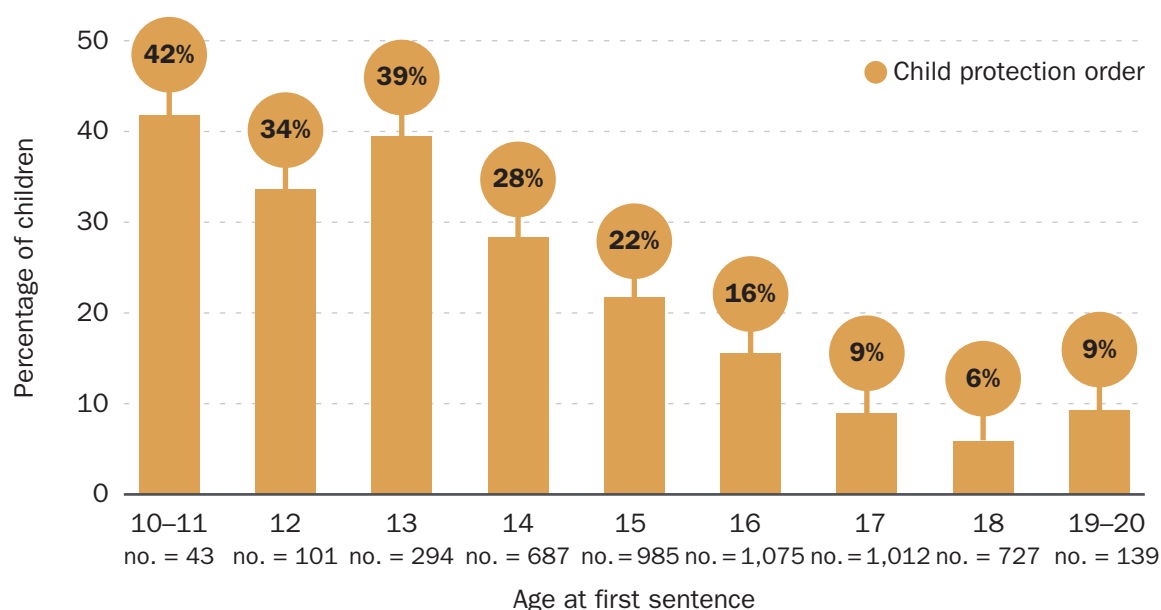
Age is one of the factors that child protection workers consider when determining the time taken to respond to a [report], the type of response, and whether a [report] will be substantiated.

Across Australia in 2016–17, children in younger age groups were more likely to be the subjects of substantiations than those in older age groups.³⁴⁴

Younger children were more likely to have been the subject of a child protection order

- 7.12 Of children aged 10–13 at first sentence, 38% were the subject of a child protection order at least once in their lifetime (168 children). Each year of age was associated with a decrease in the proportion of sentenced children who were the subject of a child protection order (Figure 29).

Figure 29: Age at first sentence and the prevalence of a child protection order³⁴⁵



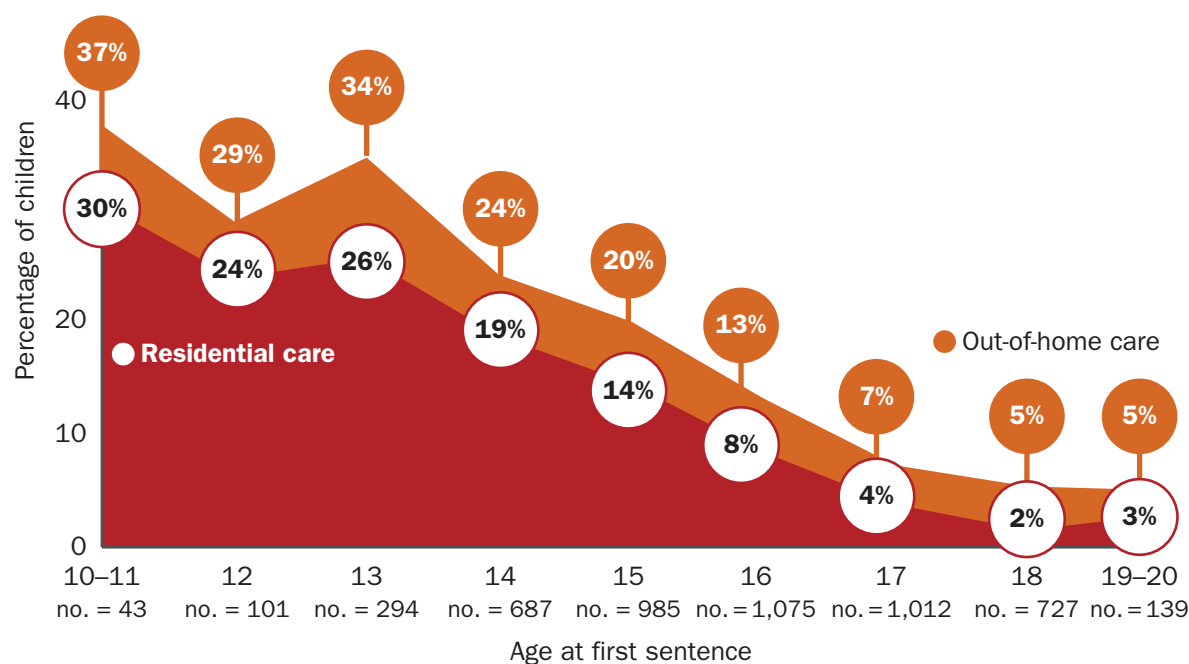
344. Australian Institute of Health and Welfare (2018), above n 52, 23.

345. Six children in the study group were first sentenced aged 10, and 37 children were first sentenced aged 11. Due to privacy concerns and the volatility of small numbers, these children were combined into one subgroup of 'aged 10–11' for the analysis in this chapter. The age shown in the graphs in this chapter is the child's age at first sentence, not, for example, their age at the time they experienced residential care, which could have been before, at the time of or after their first sentence date.

Younger children were more likely to experience out-of-home care

- 7.13 The younger children were at first sentence, the more likely they were to experience out-of-home care (Figures 27 and 30).³⁴⁶ Of children in the study group who were first sentenced aged 10–13, around one-third had experienced out-of-home care in their lifetime (33% or 146 children).
- 7.14 Children first sentenced aged 10–13 were also far more likely than older children to have experienced residential care: 26% of children first sentenced aged 10–13 experienced residential care (112 children), but 9% of children first sentenced aged 14 or older experienced residential care (413 children) (Figure 30).

Figure 30: Age at first sentence and the prevalence of out-of-home care and residential care³⁴⁷



346. To be included in the count of out-of-home care, a child had to have experienced out-of-home care at least once in their lifetime, whether before, during or after their sentence date.

347. Six children in the study group were first sentenced aged 10, and 37 children were first sentenced aged 11. Due to privacy concerns and the volatility of small numbers, these children were combined into one subgroup of 'aged 10–11' for the analysis in this chapter.

Age at first sentence was also associated with care type

- 7.15 Age at first sentence was not only associated with the likelihood that a child experienced out-of-home care (Figure 30), but it was also associated with the *type* of out-of-home care experienced (Table 2). In this analysis children aged 12 were grouped together with children aged 10–11 due to relatively small numbers in out-of-home care. Of the 144 children in the study group who were aged 10–12 at first sentence, 45 children had experienced out-of-home care. Looking at children who had experienced out-of-home care, Table 2 shows the proportion of each age group who had experienced each care type.
- 7.16 The clearest association between age at first sentence and care type was seen for residential care. Around four in five of the 45 children in the care group who were first sentenced aged 10–12 experienced residential care, whether before, during or after their first sentence (82% or 37 children). Around three in four children in the care group who were first sentenced aged 13–15 experienced residential care (75% or 345 children), with the proportion decreasing with each year of age thereafter.
- 7.17 Secure welfare is a measure of last resort for the most at-risk and troubled children (see [2.16]). Children who were aged 13 and 14 at first sentence were more likely than both their younger and older counterparts to experience secure welfare. Of the children who had experienced out-of-home care:
- one in four children aged 13 at first sentence experienced secure welfare (25%);
 - one in five children aged 14 at first sentence experienced secure welfare (22%); and
 - around one in six children first sentenced aged 10–12 (17%) or aged 15 (16%) experienced secure welfare (Table 2).
- 7.18 The findings shown in Table 2 suggest that children first sentenced aged 10–15 who have experienced out-of-home care are likely to be a particularly troubled and traumatised group of children. Participants at both roundtables agreed.³⁴⁸
- 7.19 Participants at both roundtables also suggested that this was likely a cause and a consequence of these children's care history. Underlying risk factors often precipitated interventions, but some of those interventions, such as criminal justice responses to children in care, often contributed to offending. Therefore, a child's experience of out-of-home care was seen as highly relevant to sentencing.³⁴⁹
- 7.20 Participants emphasised the need to determine whether care interventions were effective, and to intervene earlier in order to address underlying risk factors and health issues, such as neuro-developmental disability. As one participant at Roundtable 2 pointed out:
- [a] lot of those children have been excluded from education in primary school ... there's much earlier points at which support could be offered. A lot of those children would only have a disability diagnosed after they come into contact with the criminal justice system, another point of intervention. A lot of those children are excluded from mental health services because their issue is considered trauma-related, not mental health-related, another point where there's a failure of intervention.³⁵⁰

348. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019); Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

349. Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (2 April 2019); Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

350. Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum (4 April 2019).

7.21 Above all, participants warned against interpreting the data as showing that children in care were doomed to offend seriously, which would further entrench disadvantage.

Table 2: Age at first sentence and type of out-of-home care³⁵¹

Type of out-of-home care	Age						
	10–12	13	14	15	16	17	18–20
Foster care	64%	61%	59%	56%	56%	59%	63%
Permanent care	0%	2%	3%	3%	6%	5%	13%
Kinship care	62%	68%	58%	64%	61%	56%	65%
Residential care	82%	74%	78%	72%	64%	52%	33%
Secure welfare	17%	25%	22%	16%	10%	13%	2%
Other	4%	10%	2%	4%	6%	0%	2%
Total out-of-home care (number)	45	101	165	196	141	73	46
Total out-of-home care (%)	100%	100%	100%	100%	100%	100%	100%
Total (study group)	144	294	687	985	1,075	1,012	866

351. Care should be taken with the group aged 10–12, which had 45 children who had experienced out-of-home care, and the group aged 18–20, which had 46 people who had experienced out-of-home care. The relatively low number of people in those age groups can distort the overall percentages. As children who had experienced out-of-home care are likely to have experienced more than one care type, the categories in Table 2 overlap, and therefore the percentages do not add to 100%.

8. Concluding observations

Childhood trauma and out-of-home care

- 8.1 On any given day, the Criminal Division of the Children's Court is likely to sentence children who are known to the Victorian child protection service due to those children's experience of abuse, harm, neglect, trauma, parental death or incapacitation, or the risk of harm.
- 8.2 This report has found that children known to the child protection service are substantially over-represented among sentenced and diverted children. Children who have experienced out-of-home care, especially residential care, and Aboriginal and Torres Strait Islander children, especially girls, were particularly over-represented.
- 8.3 The highest rate of children with child protection involvement was found among children sentenced to custodial sentences and among children who were aged 10–13 at first sentence. The highest rate of over-representation of Aboriginal and Torres Strait Islander children was found at the intersection of the most severe sentence type (custodial orders) and the most serious end of the child protection system (child protection orders, out-of-home care and residential care).
- 8.4 Children in out-of-home care, particularly residential care, are some of the most vulnerable, traumatised and disadvantaged children in our community. As Victoria Legal Aid have observed:

[a]cross Australia in recent years there has been a policy emphasis on keeping children with their families wherever possible. Out-of-home care is generally considered to be the placement of 'last resort', and is only used where the Children's Court deems that children are at significant risk of harm, abuse or neglect from their own families and cannot remain in the home.

Children in out-of-home care are thus some of the most vulnerable in the State. This is particularly true of children in residential care, many of whom have complex needs that mean that they have been unable to be placed within a kinship or foster-care option, or such options have broken down.³⁵²
- 8.5 The Victorian Government has committed to reducing the use of residential care and 'transform[ing] it from a long-term placement option into a short-term "intensive trauma-informed behaviour support service"'.³⁵³ The government's *Roadmap for Reform* acknowledges that '[o]utcomes are poor for children who live in residential care' and when they leave care,³⁵⁴ and that '[v]ulnerable children deserve safe, comfortable and home-like environments where they can heal, recover and thrive'.³⁵⁵ The *Roadmap for Reform* identifies 'improving the quality of residential care and all forms of care services' as a priority.³⁵⁶
- 8.6 Arguably, one measure of success of residential care reform measures will be if the proportion of sentenced children who have experienced residential care, as found in this report, decreases over time. However, while children in out-of-home care, particularly residential care, continue to be over-represented in the youth justice system, it is essential that sentencing law and practice responds to this vulnerable group of children.

352. Victoria Legal Aid (2016), above n 7, 5.

353. Ibid 15.

354. Victorian Government (2016), above n 197, 8.

355. Victorian Government (2018), above n 197, 11.

356. Ibid.

Children first sentenced aged 10–13 are particularly vulnerable

- 8.7 The younger that children were at first sentence, the more likely they were to have a child protection background. Of children first sentenced aged 10–13, 54% were the subject of at least one child protection report (238 children), 38% were the subject of a child protection order (168 children) and 33% experienced out-of-home care (146 children). These findings are particularly troubling when considered alongside the findings in the Council's 2016 youth reoffending study that the younger children are at their first sentence, the more likely they are to reoffend generally, to reoffend violently and to receive a sentence of adult imprisonment before their 22nd birthday.³⁵⁷

Relevance of childhood trauma to sentencing a child

- 8.8 A child's experience of abuse and trauma can disrupt healthy brain development; it can 'damage the brain's crisis response system', resulting in a child 'remaining constantly in crisis mode, even when there is no threat'.³⁵⁸ Such a child 'remains hyper-vigilant and overreacts to minor events', and 'feeling constantly threatened [they] can engage in frequent fight or flight behaviors'.³⁵⁹ Maltreated adolescents who start 'acting out' may be 'less likely to receive sympathetic attention than younger children, and are more likely to run away, become homeless and engage in illegal and survival activities that bring them to the attention of police'.³⁶⁰
- 8.9 For children removed from their families into out-of-home care, this may also mean removal from their community, friends and school, and their experience of care can compound the trauma that they have already experienced. Previous research also suggests that children in care may be more likely to be prosecuted for behaviour that would usually be dealt with in the family home, contributing to their over-representation among sentenced and diverted children.
- 8.10 Childhood trauma is, therefore, clearly relevant to sentencing a child, particularly when there is a nexus between the trauma and a child's offending. The focus on rehabilitation in the Children's Court requires an understanding of the context of a child's offending and the role played by circumstances such as abuse, separation from family and the experience of out-of-home care. Less clear is the legal framework that sits behind the consideration of a child's background at sentencing.
- 8.11 The Court of Appeal has specified that the matters to be taken into account in sentencing a child under section 362 of the *Children, Youth and Families Act 2005* (Vic) ('CYF Act') require the sentencing court to consider 'the effect of the proposed sentence on the child ... and to impose a sentence which fits the young offender as much as – or perhaps even more than – it fits the crime'.³⁶¹ Section 362 includes the need to strengthen the relationship between the child and the child's family and the desirability of allowing the child to live at home.³⁶²

357. Sentencing Advisory Council (2016), above n 19, 52.

358. Griffin and Sallen (2013), above n 164, 9–10.

359. Ibid 10.

360. Cashmore (2011), above n 38, 34.

361. *CNK v The Queen* [2011] 32 VR 641, [4]–[16].

362. *Children, Youth and Families Act 2005* (Vic) ss 362(1)(a)–(b).

However, the section is silent in relation to a child who currently is not safe with their family and who cannot live at home. There is no requirement in section 362 for the court to take into account:

- the child's experience of abuse, trauma, neglect, loss, removal from family or out-of-home care and how these circumstances relate to the child's offending;
- the need to ensure that the child has a safe, stable and secure place to live; or
- the need to protect the child from harm or the risk of harm.³⁶³

- 8.12 The court may have regard to 'any report, submission or evidence ... on behalf of the child who is to be sentenced',³⁶⁴ which would allow the court to consider submissions about the context of the offending as well as aggravating and mitigating factors.
- 8.13 Unlike the *Sentencing Act 1991* (Vic), which lists the sentencing factors applicable to adults, the CYF Act does not expressly list the sentencing factors that the court must have regard to when sentencing a child. For the most part, these factors are derived from the common law. However, common law principles about the relevance to sentencing of childhood abuse, neglect or trauma mainly relate to adult offenders³⁶⁵ or to older children whose offending is serious enough to bring them into the adult jurisdiction.³⁶⁶ Childhood disadvantage is clearly very relevant to sentencing in the Children's Court. However, little in the way of case law or academic discussion sets out principles about the relevance of childhood trauma to sentencing in cases where the offender is still a child and the trauma is proximate and related to their offending. Similarly, there is little guidance in the legislation, case law or academic discussion as to how common law principles relating to the relevance of childhood abuse and trauma interact with the sentencing matters in the CYF Act.
- 8.14 In the context of decisions about *doli incapax* (whether a child aged 10–13 has criminal capacity), the common law has established that a child's experience of abuse or neglect is relevant to the consideration of whether they have criminal capacity (see further [3.30]). If a child aged under 14 at the time of an offence has been raised in an environment that includes violence, dishonesty, sexual abuse or other forms of criminal behaviour, this environment is directly relevant to whether the child was aware that their conduct is morally wrong. This in turn is relevant to whether the child is criminally responsible for the offence.³⁶⁷ In terms of a child's criminal capacity, the question of *doli incapax* is a binary consideration – the child either had capacity and is culpable or did not have capacity and is not culpable. In contrast, at the sentencing stage, questions of moral culpability are a matter of degree. A background of abuse that has relevance to the child's offending – for example, abuse affecting the child's understanding of what is morally wrong – is arguably relevant to the assessment of the child's culpability for a related offence.

363. The list of reports and other matters to be taken into account by a court in sentencing a child is set out in Part 5.2, Division 5 of the *Children, Youth and Families Act 2005* (Vic).

364. *Children, Youth and Families Act 2005* (Vic) s 358(c).

365. See for example, *Bugmy v The Queen* (2013) 249 CLR 571; *R v AWF* [2000] 2 VR 1; *DPP v Walsh (A Pseudonym)* [2018] VSCA 172 (17 July 2018) [26]–[34]; *R v McKee & Brooks* (2003) 138 A Crim R 88, 92, 94; *R v Maschoe* [2000] VSCA 193 (11 October 2000) [4]; *DPP v Wilson* [2002] VSC 299 (24 July 2002) [23]–[24]; *R v Fuller-Cust* [2002] 6 VR 496, 515, 531–533; *DPP v Tewksbury (A Pseudonym)* [2018] VSCA 38 (27 February 2018); *R v Reynolds* (Unreported, 7 December 1998, SW Court of Criminal Appeal) 2; Freiberg (2014), above n 111, 310 [4.105].

366. *AH v The State of Western Australia* [2014] WASCA 228 (10 December 2014) [125]; *R v 'DP' (A Child)* [2003] WASCA 92 (6 May 2003) [56], [61]; *DBW (A Child) v The State of Western Australia* [2011] WASCA 206 (30 September 2011) [57], [60]–[61]; *DPP v Anderson* [2013] VSCA 45 (7 March 2013) [3], [59], citing *Hogarth v The Queen* [2012] 37 VR 658, 666 [30]–[31].

367. *RP v The Queen* (2016) 259 CLR 641 [8], [9].

- 8.15 The lack of a legislative or common law framework for considering child protection issues in sentencing children may undermine the principle of transparency in sentencing and may risk inconsistency in the consideration of these matters, despite their centrality to the offending of many children.
- 8.16 The equivalent to the Victorian CYF Act in England and Wales, the *Children and Young Persons Act 1933* (UK), requires the sentencing court to have regard to child welfare considerations. These include securing proper provision for education and training, removing the child or young person from undesirable surroundings,³⁶⁸ and recognising the 'need to choose the best option for the child or young person taking account of the circumstances of the offence'.³⁶⁹ Critically, this provision is augmented by a definitive guideline on sentencing children and young people, which provides that, '[i]n having regard to the welfare of the child or young person, a court should ensure that it is alert to [among other factors] ... the effect on children and young people of experiences of loss and neglect and/or abuse'.³⁷⁰ Further, the list of mitigating factors provided in the definitive guideline includes:
- Unstable upbringing including but not limited to:
 - time spent looked after [in out-of-home care]
 - lack of familial presence or support
 - disrupted experiences in accommodation or education
 - exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse
 - victim of neglect or abuse, or exposure to neglect or abuse of others
 - experiences of trauma or loss.³⁷¹
- 8.17 In their recent youth justice review, Penny Armytage and Professor James Ogloff AM observed that the 'approach to sentencing and orders contained in the [CYF Act] ... is not a genuinely distinct response to the needs of adolescents'.³⁷² The reviewers recommended the creation of a new Youth Justice Act, separate from the CYF Act, and that the Act 'provide[s] a clear statement of the purpose, role and principles for Youth Justice'.³⁷³ In light of the prevalence of children with child protection backgrounds among children in the youth justice system, the creation of a new Act may provide an opportunity to review the principles and purposes of sentencing children. It may also provide an opportunity to consider whether the sentencing framework would be strengthened by the inclusion of a non-exhaustive list of sentencing factors applicable to sentencing children.
- 8.18 The Council's second report for this project will further examine the characteristics of children at the nexus of the child protection and youth justice systems and the principles that are relevant to sentencing children with child protection backgrounds.

368. *Children and Young Persons Act 1933* (UK) s 44.

369. Sentencing Council for England and Wales (2017), above n 163, 5 [1.11].

370. *Ibid* 5–6 [1.12].

371. *Ibid* (2017) 16.

372. Armytage and Ogloff (2017), above n 132, 3.

373. *Ibid* vol. 2, 5 (Recommendation 6.1). The government has announced that it accepts, or accepts in principle, all of the recommendations in the report: Premier of Victoria, 'Building a Modern Youth Justice System', Media Release (5 August 2017) <<https://www.premier.vic.gov.au/building-a-modern-youth-justice-system/>> at 4 March 2019.

Appendix 1: Consultation

Meeting	Date
Meeting with representatives of the Crime Statistics Agency	27 February 2018
Meeting with representatives of the Department of Health and Human Services	13 March 2018
Meeting with Dr Susan Baidawi and Professor Rosemary Sheehan, Monash University	29 March 2018
Meeting with representatives of the Children's Court of Victoria	15 May 2018
Meeting with representatives of the Department of Health and Human Services	29 May 2018
Meeting with Superintendent Richard Watkins, Victoria Police, Eastern Region, Division 1, and Dr Renee O'Donnell, Monash University	7 August 2019
Meeting with representatives of Jesuit Social Services	21 September 2018
Meeting with representatives of Victoria Legal Aid	24 September 2019
Observer at Community around the Child Forum (Victoria Police, Residential Care Staff, Department of Health and Human Services and Department of Justice and Community Safety)	8 November 2018
Meeting with Dr Kath McFarlane, Kath McFarlane Consulting	4 December 2018
Meeting with representatives of the Department of Health and Human Services	1 April 2019
Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum	2 April 2019
Meeting with representatives of the Children's Court of Victoria	3 April 2019
Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum	4 April 2019

Appendix 2: Methodology

Data

The 5,063 children in the study group were drawn from the Children's Court Courtlink database.³⁷⁴

Data linkage

The research project required linkage between Children's Court data held on Courtlink and child protection data held by the Department of Health and Human Services. To facilitate the data linkage process, the Council, the Children's Court, and the Department of Health and Human Services signed a deed of confidentiality that would govern how data would be shared and used in order to answer the research questions for this project.

The project drew on 22 years of child protection data going back to 18 June 1996 (the date of the earliest report about a child in the study group) and extending to the date of the data extraction (3 September 2018, although the most recent record was dated 1 September 2018). This data was matched with sentencing data from the Children's Court Courtlink database and the Council's own reoffending database, both of which have data from July 2004 to June 2018.

For the purposes of the research project, the Council prepared a dataset ('the Council's dataset') using data extracts from the Courtlink case management system. The extracts are provided to the Council on a quarterly basis as part of a separate agreement between the Council and the Children's Court.

The Council's dataset contained records for approximately 5,000 people sentenced or diverted in the Children's Court in 2016 and 2017, including the name, gender and date of birth of each person sentenced, as well as a case identifier, list of offences and charges and sentence outcomes for each charge and overall case.

A new dataset ('the Linkage dataset') was created from the Council's dataset. The Linkage dataset contained only the names, gender and dates of birth of people sentenced in the Children's Court in 2016 and 2017. The Linkage dataset did not contain offences, charges, sentence outcomes or case identifiers. Each record in the Linkage dataset was assigned a serial number in place of the Courtlink number. This was to allow the child protection data to be linked back into the Council's dataset.

The Council provided the Linkage dataset to the Department of Health and Human Services (DHHS). The DHHS conducted the data linkage process, which involved identifying records in the child protection dataset (the Client Relationship Information System (CRIS)) that related to records of people in the Linkage dataset and extracting the data. The DHHS created a new dataset ('the DHHS linked dataset') that contained the relevant child protection information for each matched person in the Linkage dataset. On completion of the data linkage process, the Department of Health and Human Services provided the DHHS linked dataset to the Council.

The Council integrated records of children in the DHHS linked dataset into the Council's dataset. This became the dataset used for the project. The Council also performed data-cleaning and quality assurance checks to ensure the linkage operation was successful, and to address other issues such as inconsistencies and missing data (for example, checking to make sure that each unique person only had one date of birth recorded).

374. Four times a year, Court Services Victoria sends the Council extracts from the Courtlink case management system containing sentencing data from the Criminal Division of the Children's Court. The Council has sentencing data from July 2004 onwards.

Matching child protection and sentencing data allowed the Council to determine the prevalence (and level) of child protection involvement for sentenced and diverted children. It also allowed the Council to analyse the backgrounds of children at the nexus of the two systems, examine their offending patterns and sentences and compare the offending profiles of children who were, or were not, known to child protection.

The child protection data also included information about the Aboriginal and Torres Strait Islander status of children who had been the subject of a report to the child protection service. The Council did not have data on Aboriginal and Torres Strait Islander status for children who were not known to child protection.

Exclusions

The Council did not have data on remand,³⁷⁵ education factors, mental health or impairment, disability, culturally and linguistically diverse (CALD) backgrounds, or the rate at which charges were withdrawn or struck out due to submissions relating to *doli incapax* (see further [3.30]). The data on gender was restricted to the two categories of 'male' and 'female'. Data on non-binary gender categories is not currently available.

Number of out-of-home-care placements

The Council calculated the number of unique out-of-home care placements for each child in the care group. The number of placements was calculated by counting separate 'Placement IDs' in the child protection dataset. Each Placement ID represents a new placement for the dates specified on the placement record. For example, in the case of a child who was first placed with their maternal grandmother then placed with an aunt and then moved back to their maternal grandmother, each placement would have its own unique Placement ID, even though two of the placements were with the same person, namely the maternal grandmother. This is because the two placements with the maternal grandmother occur on different dates. So for this child, the data would show three out-of-home care placements. Therefore, while each new placement represents the child changing placements, it does not necessarily represent a *new carer*. The separate placement IDs in the data:

- include respite care placements (temporary short-term placements) that occur between other longer-term placements; and
- do not include respite care placements that occur within, or parallel to, longer term placements (for example, where a child's primary out-of-home care placement is supported by them being periodically looked after by a second set of carers). Respite care placements that occurred within the course of a longer-term placement were excluded from the data.

Care should be taken when using data about the number of out-of-home care placements experienced by a child where those placements occurred before 2008–09. Prior to the operation from 2008–09 of CRIS as an integrated and standardised child protection and out-of-home care client and case management system, data about out-of-home care placements was recorded in a decentralised system named FACTS that was separate from the child protection system. Recording of out-of-home care placements in FACTS had few business and data entry rules applied. Consequently, data entry practice was variable from one care provider to another. In some instances, this resulted in an overstatement of the number of placements experienced by a child when compared to placements in CRIS which since 2008–09 have been subject to rigorous and uniform business and data entry rules.

³⁷⁵ The Council will be examining the use of remand for children in a separate report.

In this report, the Council limited the analysis to two questions: (1) what proportion of children in the care group had more than one out-of-home care placement? And (2) what proportion of children in the care group had five or more out-of-home care placements? The findings on the proportion of out-of-home care placements described at [5.87] remained consistent even when the number of placements pre-2008–09 were re-coded to 0 (for children with no placements) or 1 (for children with one or more pre-2008–09 placements). During consultation on the findings, stakeholders also queried what influence respite care placements had on the overall number of placements for each child. As the data in relation to the number of placements is complex, further analysis is required to provide more detailed findings on the number of placements. The Council will investigate the number of placements further in Report 2, including the number of unique carers and the proportion of placements that were respite care placements.

Consultation

The Council met separately with a number of youth justice stakeholders to discuss the project, including representatives of the Department of Health and Human Services, the Victorian Children's Court, Victoria Legal Aid and Jesuit Social Services (Appendix I).

The Council again met with representatives of the Department of Health and Human Services and the Victorian Children's Court to discuss findings from the data and conducted two roundtable consultation meetings to discuss findings with key youth justice and child protection stakeholders. Roundtable participants included representatives of Charles Sturt University (Centre for Law and Justice), the Commission for Children and Young People; CREATE Foundation, the Department of Health and Human Services, the Human Rights Law Centre, Jesuit Social Services, the Law Institute of Victoria, Monash University (Social Work Department), the Children's Court Bar Association, the Justice-involved Young People Network (University of Melbourne), Victoria Police, Victoria Legal Aid, Whitelion, Youth Justice (Department of Justice and Community Safety), Youth Law and Youth Support and Advocacy Service (YSAS).

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