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Queensland
Family & Child
Commission

Imprisonment and recidivism inquiry
Queensland Productivity Commission
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George Street
BRISBANE QLD 4003

To whom it may concern

The Queensland Family and Child Commission (QFCC) is pleased to provide feedback to the Queensland Productivity Commission's (QPC) inquiry into imprisonment and recidivism.

The QFCC supports a review of the benefits and costs of imprisonment with options to reduce imprisonment and recidivism. One of the functions of the QFCC is to promote and advocate the safety and wellbeing of children and young people, particularly in the youth justice system.

Two recent QFCC initiatives will help the QPC undertake its inquiry. These initiatives relate to the inquiry's discussion questions around the factors driving imprisonment rates in Queensland, the effectiveness of the youth justice system steering young offenders away from becoming adult offenders, and the system's transparency and accountability to government.

Factors driving imprisonment rates and the effectiveness of the youth justice system

The QFCC's *Age of Criminal Responsibility in Queensland* information paper identifies evidence about the causal factors underlying trends in the rate of imprisonment for children and young people, and the impact of youth detention on children's reoffending. It also reports on the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the youth justice system.

Causal factors include poverty, homelessness, abuse and neglect, mental illness, intellectual impairment and having one or more parents with a criminal record. There is overwhelming evidence showing correlation between criminality and entrenched social and economic disadvantage. There is also emerging evidence showing a proportion of young offenders may be affected by Fetal Alcohol Spectrum Disorder, which has been supported in research by the Telethon Kids Institute.

It is important to have services available for children and young people to address the causes of offending. During consultation, it was emphasised that children often lack role models, and this exacerbates offending behaviours if appropriate programs and services are not available.

In September 2018, the QFCC released the *Joint agency protocol to reduce preventable police call-outs to residential care services* (Joint agency protocol), alongside an information paper, *Criminalisation of children living in out-of-home care in Queensland*.

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This work was undertaken in response to evidence showing children living in out-of-home care, particularly in residential care, are more likely to have contact with police or have a criminal record than other children. The Joint agency protocol calls for children to be cared for within a trauma-responsive system that does not criminalise behaviours resulting from previous experience of neglect or abuse.

The Director-General, Department of Justice and Attorney-General, also recognises the achievement of this initiative to reduce the rate of youth recidivism against the Keep Communities Safe objective of the *Our Future State: Advancing Queensland's Priorities*.

In addition, the QFCC supports provisions in the *Corrective Services Act 2006* to allow young children to live with their mothers in prison or youth detention, where this will support children's safety, wellbeing and best interests. This is in keeping with the Anti-Discrimination Commission Queensland's 2006 *Women in Prison Report*, which suggests all attempts be made to maintain the attachment bond between a mother and a child, particularly a child under five years.

Effectiveness of program to reduce the number of people in prison and returning to prison

The *Age of Criminal Responsibility in Queensland* information paper identifies restorative justice conferences as a particularly effective response in the youth justice system. These conferences allow the offender to accept responsibility for their actions and start to repair the harm caused, while allowing the victim to share their experience and contribute their views on the offender's sentence. The information paper suggests further analysis of outcomes achieved through restorative justice conferencing in Queensland should be undertaken.

I have enclosed copies of the Joint agency protocol, *Age of Criminal Responsibility in Queensland* and *Criminalisation of children living in out-of-home care in Queensland* information papers.

We invite you to meet with us to discuss our findings relating to children and young people. To arrange a meeting, please contact Tracy Fogarty, Director, Office of the Commissioners on 07 3900 6069.

Yours sincerely



Cheryl Vardon
Principal Commissioner
Queensland Family and Child Commission

Enc (3):

Age of Criminal Responsibility in Queensland information paper

Joint agency protocol to reduce police call-outs to residential care services

Criminalisation of children living in out-of-home care in Queensland information paper



The age of criminal responsibility in Queensland



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- Aboriginal and Torres Strait Islander Elders
- the Youth Advocacy Centre
- Ted Noffs Foundation, Street University Queensland
- Kambu Aboriginal and Torres Strait Islander Corporation for Health
- Kurbingui Youth Development
- Youth Empowered Towards Independence, and
- Professor Kerry Carrington, Queensland (University of Technology)

We also wish to thank QFCC staff who provided their advice and support to develop this paper.

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January 2017

Foreword

The Queensland Family and Child Commission (QFCC) is committed to influencing change so Queensland is a safe place where children, young people and their families thrive in supportive communities. As Principal Commissioner of the QFCC, one of my roles is listening to the voices of children and young people and promoting and advocating for their safety and wellbeing. Their voices, the voices of their families as well as the vast body of academic literature shows us that contact with the youth justice system can have a lasting impact on a child's wellbeing and future prospects.

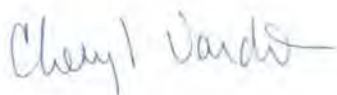
The reality of life in youth detention has been brought home to the broader community with recent confronting media stories and images. It has prompted many people to question whether there is a different way to work with children and young people who come into contact with the youth justice system. We need to consider what else might be happening in children's lives and the impact of past experiences on their current actions. It is with these questions in mind that the QFCC decided to explore the impact Queensland's minimum age of criminal responsibility has on our young offenders.

The minimum age of criminal responsibility is the minimum age at which children can be arrested for, charged with, or convicted of a crime. In Queensland, the minimum age of criminal responsibility is 10 years. This paper considers whether the available research and data support a higher minimum age. We found 10 to 12-year-olds are not developmentally mature enough to be held criminally responsible for their actions. When we looked at the characteristics of very young offenders, we found many struggled with issues such as poverty and homelessness, abuse and neglect and mental illness. The low minimum age of criminal responsibility further victimises children who are already victims of circumstance.

We also know Aboriginal and Torres Strait Islander children are overrepresented in the youth justice system and comprise the majority of children in youth detention. The release of the ninth Closing the Gap report by the Prime Minister on 15 February 2017 has again highlighted the high rates of Aboriginal and Torres Strait Islander incarceration. The Closing the Gap report stressed the importance of working collaboratively with Aboriginal and Torres Strait Islander communities to create real opportunities for our First Nations People.

In light of this evidence, the QFCC provides three options for improving the way the youth justice system responds to 10 to 12-year-old offenders. First, increase the minimum age of criminal responsibility in Queensland to at least 12 years. Second, eliminate youth detention as a sentencing option for 10 to 12-year-old offenders. Third, make participation in youth justice conferences compulsory for 10 to 12-year-old offenders.

I hope this paper will provoke discussion about the treatment of young people in the youth justice system. I encourage you to join the QFCC in campaigning for a fairer youth justice system in Queensland.



Cheryl Vardon
Principal Commissioner
Queensland Family & Child Commission



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Introduction

The 'MACR' is the minimum age at which children can be arrested for, charged with, or convicted of, a crime. The MACR in Queensland is currently 10 years.

Revelations of brutality against detainees in the Northern Territory's Don Dale Detention Centre, televised on the Australian Broadcasting Corporation's *Four Corners* program¹ in July 2016, have renewed the debate on youth justice in Australia. The primary subject of the program, Dylan Voller, was 11 years old when he was first incarcerated. Mr Voller's incarceration and subsequent allegations of mistreatment at Don Dale Detention Centre raise the question of whether he, or any 11 year old, should be held criminally responsible for his or her actions.

The process of determining an appropriate minimum age of criminal responsibility (MACR) is incredibly complex and requires consideration of a number of interlinking factors. The Australian Institute of Criminology has remarked,

*'one of the most difficult areas of criminal justice policy lies in providing appropriate legal mechanisms to reflect the transition from the age of childhood innocence through to maturity and full responsibility under the criminal law.'*²

Goldson also questions whether it is even possible to define an arbitrary MACR that ensures all young offenders have the capacity to understand both:

1. what the law requires them to do or not to do, *and*
2. the consequences for committing illegal acts.³

The MACR for the Commonwealth of Australia, and in all Australian states and territories, is currently 10 years (see Table 1 in the Appendix). This is complimented by a presumption against criminal responsibility until 14 years. This is in direct contradiction to the position of many stakeholders, including the United Nations (UN), which has recommended the MACR be set at 12 years or higher.⁴

1 'Australia's Shame,' *Four Corners*, Australian Broadcasting Corporation (ABC), 25 July 2016.

2 Graycar, A., in Urbas, G., 2000. 'The Age of Criminal Responsibility,' *Australian Institute of Criminology: Trends and Issues*, No.181, pp. 1–6, p.1.

3 Goldson, B., 2013. 'Unsafe, Unjust and Harmful to Wider Society: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales,' *Youth Justice*, Vol. 13, No. 2, pp. 111–130, p. 115.

4 United Nations (UN) Committee on the Rights of the Child, *General Comment No.10: Children's Rights in Juvenile Justice*, CRC/C/GC/10, (25 April 2007), p.11.

For the purpose of this information paper, '10 to 12 year olds' means children who are 10, 11 or 12 years old.

This information paper examines research and data with a specific focus on the 10 to 12 year old cohort and will consider whether the research establishes a strong evidence base for setting the MACR at a minimum of 12 years.

The paper also considers alternative options to increasing the MACR, including removing 10 to 12 year olds from youth detention, and the possibility of mandating the use of youth justice conferences for sentencing of all non-violent offences committed by 10 to 12 year olds.

The available evidence is considered in the following ways:

- comparative analysis of international MACR data
- MACR in the Australian context
- analysis of available Queensland-specific data
- characteristics of young offenders, and
- research on children's brain development and the implications for determining the MACR.

What is the minimum age of criminal responsibility?

For the purpose of this information paper, 'child' means a person under 18 years.

2.1 The Australian context

In order to determine whether there is a case to increase Queensland's MACR, the legal context in Australia and expectations in relation to international conventions must be considered.

The *Criminal Code Act 1899* (Criminal Code) sets out the MACR in Queensland. Section 29 (1) provides that a person under 10 years is not criminally responsible for any act or omission.

Section 29 (1) reflects the common law presumption that children under 10 years are *doli incapax*, or incapable of doing wrong, as they lack *mens rea*, criminal intent.⁵



5 Johnston M., 2006. 'The Criminal Responsibility of Children,' *Children's Law News*, February, p.1.

The Criminal Code further provides a presumption against criminal responsibility for children under 14 years, unless it can be proven that at the time of doing the act the young person had capacity to know that he or she should not to do the act or make the omission.⁶

To prove capacity, the Crown must prove beyond reasonable doubt that the accused had the capacity to know that he or she ought not to do the act.⁷

2.2 The United Nations' recommendation

2.2.1 Convention on the Rights of the Child

On 20 November 1989, the UN General Assembly adopted the *Convention on the Rights of the Child* (CRC). The CRC establishes an international standard for the recognition and support of the rights of the child and proclaims that childhood is entitled to special care and assistance.⁸

While the CRC does not specifically discuss the MACR, it provides 54 fundamental rights of children, including:

- the best interests of the child shall be a primary consideration in all decision making – article 3 (1), and
- the arrest, detention or imprisonment of a child shall only be used as a measure of last resort and for the shortest appropriate period of time – article 37 (b).⁹

Australia is a signatory to the CRC and through this has committed to ensuring children enjoy the rights in the CRC. Australia must also provide the UN Committee on the Rights of the Child (the Committee) with periodic reports on its progress against the objectives of the CRC.

⁶ *Criminal Code Act 1899*, s 29(2).

⁷ *R v F; ex parte Attorney-General* [1998] QCA 097; [1999] 2 Qd.R. 157 (98/0020) Davies JA, McPherson JA, Shepherdson J, 19 May 1998.

⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁹ *Ibid.*

The Committee urged Member States to 'increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher level.'

In its concluding observations on periodic reports submitted by Australia in 2005, the Committee expressed concern that Australia's MACR was too low. The Committee recommended Australia consider raising its MACR to an internationally acceptable level.¹¹ The Committee provided its interpretation of 'an internationally acceptable' MACR in a General Comment on *Children's Rights in Juvenile Justice* in 2007.¹²

In its concluding observations on Australia's 2012 periodic report on the CRC, the Committee noted that no action had been taken to increase the MACR. The Committee again recommended that Australia consider raising its MACR.¹³

2.2.2 The Beijing Rules

The UN's *Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules) guide and supplement the provisions of the CRC which relate to youth justice.

The Beijing Rules were adopted by the UN General Assembly on 29 November 1985 following a recommendation from the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders that a set of rules on juvenile justice be developed.¹⁴

While the Beijing Rules do not specify a minimum age, rule 4.1 states that Member States' MACRs should 'not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.'¹⁵ The Beijing Rules also state there should be a relationship between MACRs and other rights and responsibilities, such as the age of majority.¹⁶

10 UN Committee on the Rights of the Child, 2007, p.11.

11 UN Committee on the Rights of the Child, 'Consideration of Reports Submitted by Parties under Article 44 of the Convention,' 40th sess, CRC/C/15/Add.268 (20 October 2005), p.15.

12 UN Committee on the Rights of the Child, *General Comment No.10: Children's rights in juvenile justice*, CRC/C/GC/10, (25 April 2007), p.11.

13 UN Committee on the Rights of the Child, 'Consideration of Reports Submitted by Parties under Article 44 of the Convention,' 60th sess, CRC/C/AUS/CO/4 (28 August 2012), pp.20–21.

14 United States Department of Public Information, 1986, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice,' New York, p.1.

15 General Assembly resolution 40/33, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, A/RES/40/33 (29 November 1985).

16 Ibid.

2.2.3 Legal status of the CRC in Australia

Although Queensland's MACR is inconsistent with the UN's position, in the case of the *Minister for Immigration and Ethnic Affairs v Teoh* in 1995, the High Court of Australia held that international conventions are not legally binding in Australia unless they are incorporated into domestic law through statute.¹⁷

This means that as Australia has not implemented the provisions of the CRC which relate to the MACR into domestic law, those provisions of the CRC are influential but not legally binding.

Legal commentators have critically observed that Australia's

*'internationally-oriented face enjoys the international status it receives from being a party to the treaties; while the nationally-turned face refuses to acknowledge the domestic implications of its international obligations.'*¹⁸

While the UN has chastised Australia for its MACR, it has also identified a number of other Australian policies and laws which breach the CRC.¹⁹ For example, the UN has repeatedly called for Australia to end the offshore detention of young asylum seekers, however, governments have not actioned the UN's recommendation.²⁰ The Chair, Children's Rights International, has remarked,

*'successive Australian governments have consistently breached the CRC and show every intention of continuing to do so.'*²¹

17 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 386–8, 315.

18 Charlesworth, H., 2000, 'The UN and Mandatory Sentencing,' *Australian Children's Rights News*, No.25, Defence for Children International, Australia.

19 UN Committee on the Rights of the Child, 2012, p.20.

20 *Ibid.*

21 Australian Child Rights Taskforce, 2016. *CRC25: Australian Child Rights Progress Report*, p.5, accessed 26 August 2016, <http://www.unicef.org/au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>

2.3 MACRs around the world

While there is variation internationally, Australia's MACRs are still low compared with many countries. MACRs around the world range from seven to 18 years (see Table 2 in the Appendix which sets out MACRs in selected countries).²² The average MACR in Europe is 14 years.²³

A study of 90 countries found that the median MACR worldwide was 14 years and that 68% of countries had a MACR of 12 years or more.²⁴ There is no established relationship between MACRs over 12 years and higher crime rates.²⁵



22 Child Rights International Network, 'Minimum Ages of Criminal Responsibility around the World,' accessed 5 September 2016, <https://www.crin.org/en/home/ages>.

23 Goldson B., 2013, p.119.

24 Human Rights Law Centre, 2016, 'Australian Government out of Step in Protecting Children's Rights,' accessed 5 September 2016, <http://hrlc.org.au/australian-government-out-of-step-in-protecting-childrens-rights/>.

25 Dunkel, F. in Goldson, B., 2013, p.121.

2.3.1 Case studies

Ireland

The MACR in Ireland is 12 years. There are exceptions for young offenders aged 10 years and above who have been charged with murder, manslaughter, rape, or aggravated sexual assault.²⁶ These young offenders may be prosecuted with the approval of the Director of Public Prosecutions.²⁷

New Zealand

The New Zealand legal system provides for a gradual transition to criminal responsibility. The MACR is 10 years, however, children aged 10 or 11 years can only be held responsible for murder or manslaughter. Children aged 12 or 13 may be held responsible for offences where the maximum penalty is 14 years imprisonment or greater.²⁸

France

The MACR in France is 13 years.²⁹ Welfare and educative measures are applied to children who commit criminal offences prior to reaching the MACR.³⁰ These measures are proven to reduce the likelihood of children reoffending.³¹

26 *Criminal Justice Act 2006* (Ireland), accessed 21 September, <http://www.irishstatutebook.ie/eli/2006/act/26/enacted/en/pdf>.

27 *Ibid.*

28 Community Law, 'Ages of Criminal Responsibility,' accessed 1 December 2016, <http://communitylaw.org.nz/community-law-manual/chapter-10-youth-justice/ages-of-criminal-responsibility-chapter-10/>.

29 Urbas G., 2000, p.2.

30 Noetic Solutions Pty Ltd, 2010, 'Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice,' p. 3.

31 *Ibid.*, p.12.

Offences committed by children

'Proven offence' means the offender has been found guilty of committing the offence at court.

To holistically view the implications of the MACR on young offenders, the broader youth justice sector and the community, it is important to understand the type of offences being committed by very young offenders.

The Department of Justice and Attorney-General, the Queensland Police Service and Queensland Courts have provided the QFCC with key data to support the development of this information paper. Currently, the data presented is arranged in the cohort ages of: 10–12 years, 13–14 years, and older. While there are limitations in relation to how the data is able to be interpreted in the context of the MACR, the data does provide a strong overall picture of youth offences in Queensland.



One third of young offenders were responsible for 75% of all offences committed in 2015–16.

3.1 Number of offences committed

The number of proven charges for offenders aged 10 to 17 years remained relatively stable between 2011–12 and 2015–16. Children aged 10 to 12 years formed only a small proportion of the distinct children with a proven offence recorded between 2011–12 and 2015–16. In 2015–16, 1,366 proven offences were recorded for children aged 10 to 12 years, representing 5.8% of the total among children.³²

Children aged 13 to 14 years recorded a higher number of offences than those aged 10 to 12 years. In 2015–16, 6,603 proven offences, or 27.8%, were recorded against 13- and 14-year-old offenders.³³

3.2 Number of young offenders

In 2015–16, a total of 214 children aged 10 to 12 years had a proven offence recorded against them (see figure 1). During this period, these children comprised 6.1% of all children with a proven offence.³⁴

In 2015–16, 921 children aged 13 to 14 years had a proven charge on record. This represents 26.4% of children with a proven offence. Across all age groups, 1,106 young offenders, or 32%, accounted for 75% of all proven offences.³⁵ In other words, a relatively small number of offenders are responsible for the majority of offences committed by children.

The majority of children with a proven offence were male (73%).³⁶

32 Department of Justice and Attorney-General, 'Youth Justice Annual Summary Statistics 2011–12 to 2015–16: Courts Data.'

33 Department of Justice and Attorney-General, 'Youth Justice Annual Summary Statistics 2011–12 to 2015–16: Courts Data.'

34 Ibid.

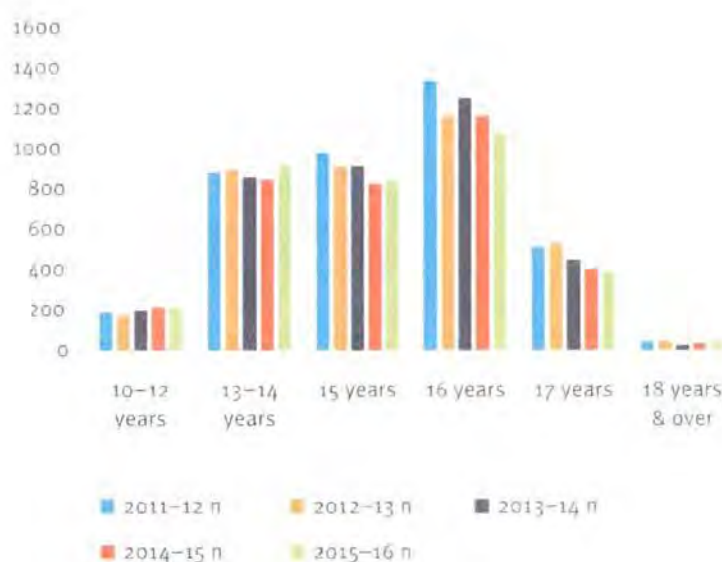
35 Ibid.

36 Ibid.

37 Ibid.

A 'supervised youth justice order' is a court order which requires that a child found guilty of an offence report to youth justice unit personnel, undertake supervised community work if directed, and to satisfy any other conditions.

Fig 1. Distinct young people with a proven offence



Department of Justice and Attorney-General, Youth Justice Annual Summary Statistics 2011-12 to 2015-16: Courts Data.

3.3 Types of offences committed

The highest total number of charges against children during 2015-16 were for 'other' offences (27,295). The most common charges varied according to age. The rate of arrests for offences against the person (violent offences) involving young offenders was relatively low.³⁸

In 2015-16, children aged 10 to 18 were charged with a total of 4,236 violent crimes. Of these, 10 to 12 year olds accounted for 464 charges, or 11%.³⁹

38 Sentencing Advisory Council (Victoria), 'Youth Supervision Order,' accessed 1 December 2016, <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people/youth-supervision-order>.

39 Queensland Police Service, 'Number of Offenders Ages 10 to 18 Years by Offences and Sex, Queensland, 01/07/2010 to 30/06/2016.'

40 Ibid.

The number of charges for offences against the person increased until children reached 15 years. Across all age groups, the most common offences were assault and robbery.⁴¹

3.4 Outcomes of offending

The outcomes of offences vary according to age groups. There is a clear decrease in the percentage of cautions as age increases, but an increase in arrests, notices to appear, and 'other'. The number of cautions was significantly higher than other actions in the 10 to 12 year old cohort.⁴²

Fig. 2: Young people in detention on an average day



Department of Justice and Attorney-General, Youth Justice Annual Summary Statistics 2011-12 to 2015-16.

⁴¹ Ibid.

⁴² Ibid.

3.5 Demographics of youth detention

3.5.1 Children aged 10 to 12 years

On an average day in 2015–16, there were four children aged 10 to 12 years in youth detention in Queensland.⁴³ This represents 2.2% of all children in detention on an average day. In 2015–16, 10 to 12 year-olds comprised 6.7% of the total admissions to youth detention.⁴⁴

Fig. 3: Total number of young people in detention



Department of Justice and Attorney-General, Youth Justice Annual Summary Statistics 2011-12 to 2015-16.

⁴³ AIHW, 'Juvenile Justice National Minimum Dataset 2000-01 to 2014-15.'

⁴⁴ Department of Justice and Attorney-General, 'Youth Justice Annual Summary Statistics: 2011-12 to 2015-16: Detention Data.'

60% of the 10–12 year olds in detention are Aboriginal or Torres Strait Islander.⁴⁵

3.5.2 Children aged 13 to 14 years

The number of children aged 13 to 14 years in youth detention is much higher than those aged 10 to 12 years. Forty-four children aged 13 to 14 years were detained on an average day in 2015–16. This represents 23.7% of children in detention on an average day. Children aged 13 to 14 years comprised 35.4% of the total number of admissions to youth detention.⁴⁶

3.5.3 Overrepresentation of Aboriginal and Torres Strait Islander offenders

In 2015–16, 59% of all children with a youth justice order were Aboriginal or Torres Strait Islander. Aboriginal and Torres Strait Islander children across all age groups were more likely to have a supervised youth justice order than an unsupervised order.⁴⁷

On an average day in 2014–15, three of the five children aged 10 to 12 years in youth detention, and 35 of the 40 children aged 13 to 14 years, were Aboriginal or Torres Strait Islander. This reflects the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system. Out of the total 172 children in detention on an average day, 111 were Aboriginal or Torres Strait Islander.⁴⁸

3.5.4 Implications for the MACR

The data shows that 10 to 12 year olds accounted for 5.8% of offences committed by children in 2015–16. The majority of offences were classified as 'other' offences. Based on this data we could not anticipate that any changes to the MACR, despite having a profound impact on very young offenders, would result in a reduction in the total number of young children in detention.⁴⁹

45 Sentencing Advisory Council (Victoria), 'Youth Supervision Order,' accessed 1 December 2016, <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people/youth-supervision-order>.

46 Ibid.

47 Department of Justice and Attorney-General, 'Youth Justice Annual Summary Statistics: 2011–12 to 2015–16: Youth Justice Orders.'

48 Australian Institute of Health and Welfare Juvenile Justice National Minimum Data Set 2000–01 to 2014–15.

49 Department of Justice and Attorney-General, 'Youth Justice Annual Summary Statistics: 2011–12 to 2015–16: Courts Data.'

Characteristics of young offenders

Stakeholders who support increasing the MACR argue that children aged 10 to 12 years should be protected from the youth justice system because:

- their backgrounds and age make them particularly vulnerable⁵⁰
- their ability to remove themselves from negative influences and environments is much more limited than adult offenders,⁵¹ and
- the youth justice system criminalises social need and victimises children who are already victims.⁵²

There is overwhelming evidence proving a direct correlation between criminality and entrenched social and economic disadvantage.⁵³ The major risk factors for youth criminality include poverty, homelessness, abuse and neglect, mental illness, intellectual impairment and having one or more parents with a criminal record. The research also shows that young offenders are more likely Aboriginal or Torres Strait Islander. These risk factors will be addressed in turn.

4.1 Poverty and homelessness

There is a proven link between socioeconomic disadvantage and youth criminality.⁵⁴ Goldson argues that

*'the corollaries between child poverty, social and economic inequality, youth crime and processes of criminalisation are undeniable.'*⁵⁵

50. Jesuit Social Services, 2015. 'Too Much Too Young: Raise the Age of Criminal Responsibility to 12,' p.3.

51. Ash, P., 2012. 'The Adolescent Brain is Different: Criminal Responsibility and Adolescents,' *Child and Adolescent Psychiatry*, Vol. 17, No. 6, pp. 29–33, p.28.

52. Ferguson, D., Swain-Campbell, N., and Horwood, J., 2004. 'How Does Childhood Economic Disadvantage Lead to Crime?' *Journal of Child Psychology and Psychiatry*, Vol. 45, No. 5, pp. 956–966, p.956.

53. Jesuit Social Services, 2015, p.3.

54. Ferguson D., Swain-Campbell, N., and Horwood, J., 2004, p.956.

55. Goldson, B., 2009. 'Counterblast: 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Responsibility,' *The Howard Journal*, Vol. 48 No. 5, pp.514–521, p.123.

The Australian Institute of Health and Welfare found that 10 to 17 year olds with the lowest socioeconomic status were six times more likely to be under youth justice supervision than those with the highest socioeconomic status.⁵⁶

Another study found that children from low socioeconomic families were three times more likely to have contact with the youth justice system than children from high socioeconomic families.⁵⁷



⁵⁶ Australian Institute of Health and Welfare, 2016. 'Youth justice in Australia 2014–15,' Bulletin 133, p.9.

⁵⁷ Ferguson D., Swain-Campbell, N., and Horwood, J., 2004, p.963.

'Out-of-home care' refers to the care of children who are unable to live with their families (often due to child abuse and neglect). It involves placement of a child with alternative care givers on a short or long-term basis.

Further, the Youth Advocacy Centre reported that, in 2013–14, 44% of its clients in the youth justice system, or at risk of becoming involved in youth justice system, were homeless or at risk of homelessness.⁵⁹

These statistics highlight both the direct and indirect relationship between low income status and children's offending; that it can be both a product of necessity and of environment. During consultations, children and social workers said that detention was not a deterrent for some offenders as they appreciated having secure and stable accommodation.

4.2 Abuse and neglect

Children who have experienced poor parental supervision, harsh or punitive discipline, rejecting parental attitudes or physical abuse are much more likely to engage in criminal behaviour than other children.⁶⁰



58 Australian Institute of Family Studies, 'Children in Care,' accessed 1 December 2016, <https://aifs.gov.au/cfca/publications/children-care>.

59 Youth Advocacy Centre, *Annual Report 2013–14*, p.15.

60 Aebi, M. et al, 2014, 'Problem Coping Skills, Psychosocial Adversities and Mental Health Problems in Children and Adolescents as Predictors of Criminal Outcomes in Young Adulthood,' *European Child and Adolescent Psychiatry*, Vol. 23, pp.283–293, p. 284.

'Their (young people's) friends and siblings are their role models. If bad behaviour is commonplace then it spreads very quickly if there are not programs and services in place that can support more positive experiences for everyone' – social worker, South East Queensland.

In New South Wales, 81% of females and 57% of males in youth detention had been abused or neglected.⁶¹

4.2.1 Relationship with out-of-home care

Abuse and neglect are precipitating factors for children entering out-of-home care. They are also independent risk factors for youth criminality.⁶²

In Victoria, 78% of 10 to 12 year olds subject to youth justice orders were known to child protection. Eighty-eight per cent of all children sentenced to detention had been the subject of an average of 4.6 child protection notifications and nearly one third had been subject to six or more notifications. Further, 86% had been in out-of-home care and over half had five or more placements.⁶³

Children who had lived in out-of-home care were four times more likely to have contact with youth justice system than those who had not lived in out-of-home care.⁶⁴ They were also 15 times more likely to have been in youth detention than children who had not been in out-of-home care.⁶⁵

61 Indig et al in Cashmore, J., 2011. 'The Link between Child Maltreatment and Adolescent Offending: Systems Neglect of Adolescents' *Australian Institute of Family Studies – Family Matters*, No. 89, p.32.

62 Alltucker, K., Bullis, M., Close, D., and Yovanoff, P., 2006. 'Different Pathways to Juvenile Delinquency: Characteristics of Early and Late Starters in a Sample of Previously Incarcerated Youth,' *Journal of Child and Family Studies*, Vol. 15, No. 4, pp.479–492, p.488.

63 Australian Law Reform Commission, 2010. 'Family Violence: A National Legal Response,' Sydney, p.973.

64 Alltucker, K., Bullis, M., Close, D., and Yovanoff, P., 2006, p.479.

65 The NSW Community Services Commission in Cashmore, J., 2011, p.32.

Children who have been in out-of-home care were 15 times more likely to have been in youth detention.

4.3 Mental illness

There are significant links between individual factors, such as diagnosed mental illness and criminal offending.⁶⁷ Mental illnesses commonly found in young offenders include depressive, psychotic, anxiety and disruptive disorders.⁶⁸ These disorders are broadly defined as including:

- depression and bipolar disorder (depressive disorders)
- conditions such as schizophrenia (psychotic disorders), and
- conditions such as post-traumatic stress disorder (anxiety disorders).

Mental health is relevant to children's offending behaviours, particularly when the impacts of these conditions have the potential to increase the possibility children will engage in physically aggressive behaviour. For example, children with disruptive behaviour disorders may be more physically aggressive than other children and children who suffer from PTSD may respond to perceived threats aggressively.⁶⁹

A Jesuit Social Services report found that 87% of children in detention in Victoria had at least one diagnosed mental illness and that 75% had two or more disorders.⁷⁰ A NSW study found this figure was even higher, with 92% of females and 86% of males in detention having a mental illness.⁷¹

Research has also indicated a link between substance use disorders and children in detention. A study in the United States found the rate of substance use disorders for children in detention was triple that of children who had not been detained.⁷² Substance use disorders are linked with continued offending.⁷³

66 NSW Community Services Commission in Cashmore, J., 2011, p.32.

67 Kilinteberg, B., Almquist, Y., Beijer, U., and Rydelius, P., 2011. 'Family Psychosocial Characteristics Influencing Criminal Behaviour and Mortality – Possible Mediating Factors: A Longitudinal Study of Male and Female Subjects in the Stockholm Birth Cohort,' *BioMed Central Public Health*, Vol.11, No.756, pp.1–14, p.11.

68 Underwood, L., Washington, A., 2016. 'Mental Illness and Juvenile Offenders,' *International Journal of Environmental Research and Public Health*, Vol. 13, No. 228, pp.1–14, p.3.

69 Ibid.

70 Jesuit Social Services, 2015, p.4.

71 Indig et al in Cashmore, J., 2011, p.32.

72 Chassin, L., 2008. 'The Future of Children,' *Juvenile Justice*, Vol. 18, No. 2, pp. 164–183, p.166.

73 Ibid.

Aboriginal and Torres Strait Islander children were 24 times more likely to have been in youth detention than non-Indigenous children.

4.3.1 Intellectual impairment

Three per cent of Australians have an intellectual disability, defined as having an intelligence quotient (IQ) of below 70.⁷⁴ (The average IQ range is between 85 and 115.⁷⁶) In contrast, 17% of young detainees in Australia are classed as having an intellectual disability.⁷⁷ Further, international studies have shown that between 30 and 50% of young offenders have a physical or intellectual disability, compared with 13% of the general public.⁷⁸ Intellectual disabilities and impairments are more prevalent among Aboriginal and Torres Strait Islander offenders.⁷⁹ Children with an intellectual impairment are also more likely to reoffend.⁸⁰

4.4 Family criminality

There are established links between parental criminality and children's offending. One international study found that children who had been arrested were 4.7 times more likely to have a father with a criminal record and 3.7 times more likely to have a mother with a criminal record.⁸¹

The Youth Advocacy Centre's *2013–14 Annual Report*, which includes statistics on their client's characteristics, notes that 23% of its clients had one or more parents involved in the criminal justice system.⁸²

Criminal offending can become normalised when family members are involved in the criminal justice system. During consultations undertaken by the QFCC's Advocacy and Engagement team, social workers emphasised that there was often a lack of role models for children, which exacerbates offending behaviours if appropriate programs and services are not available.

74 Amnesty International, 2016, *Heads Held High: Keeping Queensland Kids out of Detention, Strong in Culture and Community*, p.17.

75 Frize, Kenny and Lennings in Richards, K., 2011. 'What Makes Juvenile Offenders Different from Adult Offenders?' *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No.409, pp.1–8, p.4.

76 Ibid.

77 Ibid.

78 Alltucker, K. Bullis, M., Close, D., and Yovanoff, P., 2006, p.481.

79 Frize, Kenny and Lennings in Richards, K., 2011, p.4.

80 Ibid.

81 Farrington, Barnes and Lambert S. in Silva, T. et al, 2012, 'The Association between Maltreatment in Childhood and Criminal Convictions to Age 24: A Prospective Study of a Community Sample of Males from Disadvantaged Neighbourhoods,' *European Child and Adolescent Psychiatry*, Vol. 21, pp. 403–413, p.404.

82 Youth Advocacy Centre, 'Annual Report 2013–14,' p.15.

4.5 Aboriginal and Torres Strait Islander children

Research shows that Aboriginal and Torres Strait Islander children are disproportionately affected by the low MACR as they are detained at a higher rates than non-Indigenous children.

While Aboriginal and Torres Strait Islander 10 to 17 year olds comprised less than 7.5% of all 10 to 17 year-olds in Queensland in 2013–14, they accounted for 65% of the 10 to 17 year olds held in detention. They were 24 times more likely to be detained than non-Indigenous 10 to 17 year olds. Aboriginal and Torres Strait Islander 10 to 11 year olds comprised 62% of all 10 to 11 year olds held in detention in Australia.⁸³



83. Amnesty International, 2016. *Heads Held High: Keeping Queensland Kids out of Detention, Strong in Culture and Community*, p.17.

There may be a correlation between this data and research conducted by the Australian Institute of Health and Welfare (AIHW). The AIHW found that 10 to 17 year olds living in remote areas were seven times more likely than those living in major cities to be under supervision. 10 to 17 year olds living in very remote areas were nine times as likely to be under supervision.⁸⁴

4.6 Reasons for offending

Many children who participated in consultations with the QFCC cited boredom as a reason for offending. Others were influenced by older friends and committed crimes to belong. For some children, their friends are like their family as their parents were disengaged. Social workers have indicated that children's offending was often the product of trauma or a distorted understanding of right and wrong. They said that many children were exposed to domestic violence and parental substance use disorders.

84 Australian Institute of Health and Welfare, 2016, p.9

Cognitive development

'They (children) feel pressure to break the law from friends. They feel like it is the only way they are going to fit in' – family member, Far North Queensland.

Neuroscientists and behaviour scientists consider that the MACR does not reflect children's developmental immaturity.

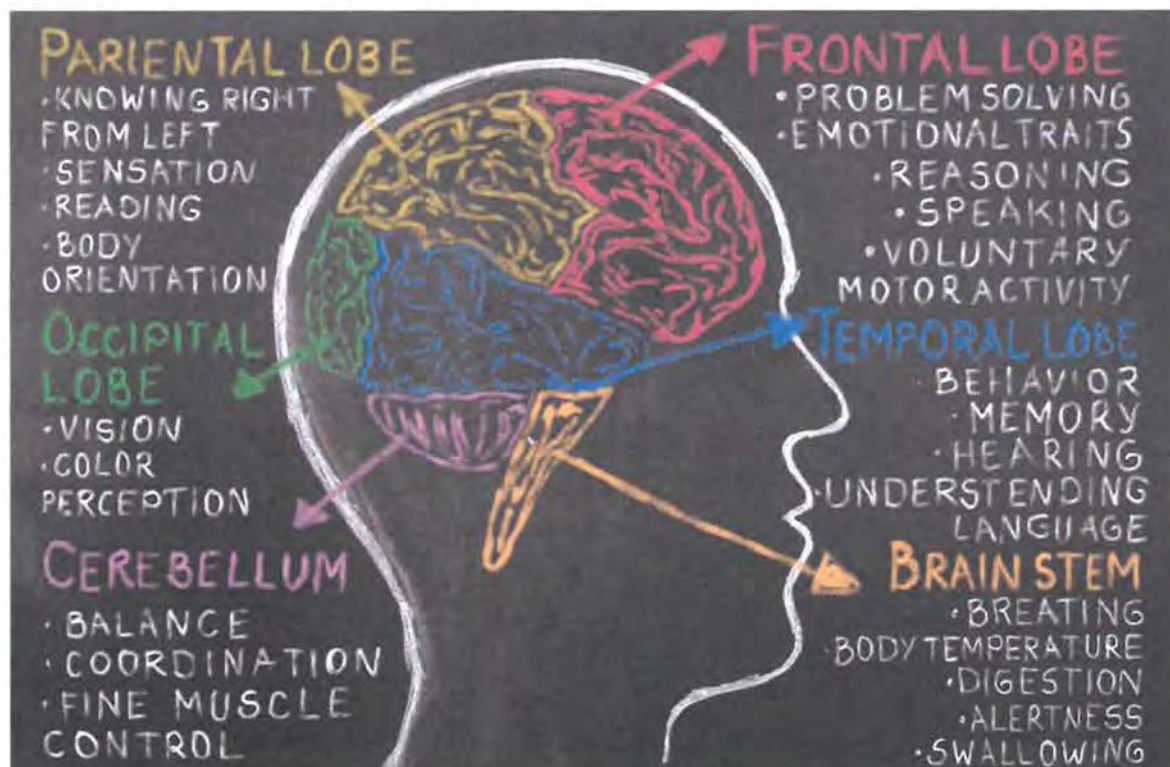
5.1 Children's brain development

This section considers models of development and how these might impact on children's offending behaviours.

During adolescence, children's brains are still developing.

'There is now incontrovertible evidence that adolescence is a period of significant changes in the brain structure and function.'⁸⁵

The prefrontal cortex, which is required for the performance of executive functions, including behavioural and emotional control and working memory, is not fully developed until young people reach about 25 years.



⁸⁵ Steinberg, L., 2012, 'Should the Science of Adolescent Brain Development Inform Public Policy,' *Issues in Science and Technology*, Vol. 28, No. 3, pp. 67–78, p. 67.

Young people's brains
aren't fully developed
until about 25.

On the other hand, the amygdala, which is responsible for reward seeking, is developed in early adolescence.⁸⁷ This is consistent with findings that children are more likely to weigh short-term gain more heavily than long-term consequences.⁸⁸

In fact, adolescence is the second and last significant period of 'heightened [brain] malleability' during a person's lifetime.⁸⁹ The first occurs between ages zero to three.⁹⁰ Steinberg considers that this represents both risk and opportunity. Children who are exposed to positive experiences during adolescence will thrive. Conversely, children who have adverse psychosocial experiences will 'suffer in powerful and enduring ways.'⁹¹

In this way 'premature and/or overzealous youth justice intervention can be counterproductive.'⁹² Goldson further argues that the overwhelming majority of children 'grow out of crime.'⁹³

During adolescence, maintaining peer relationships is very important.⁹⁴ Children are more susceptible to peer pressure and more likely to seek approval from their peers.⁹⁵ If children are excluded by their peers, their brains react similarly to threats to health or food supply.⁹⁶

86 Friedman, R., 2014. 'Why Teenagers Act Crazy.'

87 Friedman, R., 2014. 'Why Teenagers Act Crazy,' *The New York Times*, 28 June, accessed 1 December 2016, https://lweb.beds.ac.uk/guides/a-guide-to-referencing/Cite_a_Newspaper/how-to-cite-newspaper-articles-from-electronic-databases

88 Fried, C. and Reppucci, N., 2001. 'Criminal Decision Making: The Development of Adolescent Judgement, Criminal Responsibility, and Culpability,' *Law and Human Behaviour*, Vol. 25, No. 1, pp.45–61, p.46.

89 Steinberg, L. 2014. 'Taking Advantage of Adolescent Brain Plasticity,' accessed 22 September 2016, <http://www.ipositive-education.net/taking-advantage-of-adolescent-brain-plasticity/>.

90 Ibid.

91 Ibid.

92 Goldson, B., 2013, p.121

93 Ibid.

94 Dobbs, D., 2011. 'Beautiful Brains,' *National Geographic Magazine*, p.4, accessed 3 November 2016, http://oohctoolbox.org.au/sites/default/files/downloads/National%20Geographic%20artice%20Adolescent%20Brain%20Development_o.pdf.

95 Fried, C. and Reppucci, N., 2001, pp.45–61.

96 Dobbs, D., 2011, p.4.

Neurobiological maturity occurs between 15 and 22.⁹⁷

5.2 Young offender's brain development

There are marked differences in the brain development of young offenders compared with other children. Children who have experienced abuse or neglect have a diminished ability to develop social, emotional and cognitive skills.⁹⁸ The brain's neural pathways are shaped by experiences. Brain development is disrupted and delayed in children who have adverse psychosocial experiences.⁹⁹

5.2.1 Foetal Alcohol Spectrum Disorders

Foetal alcohol spectrum disorders (FASD) also affect cognitive and behavioural functioning. FASD describe a spectrum of conditions caused by foetal alcohol exposure. There is no standardised testing for FASD in Australia and symptoms are not always visible so FASD often go undiagnosed.¹⁰⁰ While the number of young offenders who are affected by a FASD is unknown, Aboriginal and Torres Strait Islander people with cognitive impairments are over-represented in the criminal justice system. It follows that a proportion of young offenders would be affected.

5.3 Implications for the MACR

While there is no definitive recommendation from neuroscience or behavioural science regarding the MACR, there is agreement that 10 years is too low.

*'At the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one's own behaviour.'*¹⁰¹

⁹⁷ Steinberg, L., 2012, p.76

⁹⁸ Jesuit Social Services, 2015, p.3

⁹⁹ Australian Institute of Family Studies, 2014, 'Effects of Child Abuse and Neglect for Children and Adolescents,' *Child Family Community Australia Resource Sheet*, accessed 30 August 2016, <https://aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-children-and-adolescents>

¹⁰⁰ Gregory, K., 2015, 'Screening for Foetal Alcohol Spectrum Disorder Could Impact Level of Youth Crime, Experts Say,' *ABC News*, accessed 22 September 2016, <http://www.abc.net.au/news/2015-10-25/magistrate-calls-for-fasd-screening/6883482>

¹⁰¹ Fried, C. and Reppucci, N., 2001, p.46

'Getting older is the biggest factor that stopped her from getting into trouble' – family member, Far North Queensland.

However, it is difficult to determine at what age a young person is sufficiently developmentally mature to be held criminally responsible for his or her actions. There are conflicting views in neuroscience and behavioural science as to when a young person reaches neurobiological maturity. Fried and Reppucci consider 14 year olds of average and above average intelligence to be developmentally mature enough to make decisions.¹⁰² Steinberg argues that neurobiological maturity occurs between 15 and 22 years.¹⁰³



¹⁰² Ibid.

¹⁰³ Steinberg, L., 2012, p.76.

Options for reform

'Doli incapax' is a Latin term meaning incapable of wrong. It describes the inability of young people under the minimum age of criminal responsibility to form criminal intent.

In consideration of the evidence presented in this information paper, Queensland should consider raising its MACR to 12 years. Other options could also be considered, including: removing the 10 to 12 year old cohort from youth detention centres and mandating that 10 to 12 year old offenders participate in youth justice conferences. These options are discussed in more detail below.

6.1 Retain the current MACR

Advocates for retaining or even decreasing the MACR of 10 years have argued that children below the MACR would be used to commit crimes by others who know they cannot be held criminally responsible. A recurring theme in the QFCC's consultations on youth justice has been examples of young children being used by older children to commit crimes. Young children are being used because of the perception that they will not be punished or will receive a lesser penalty than older children.



104 Johnston M., 2006. 'Doli Incapax – the Criminal Responsibility of Children,' *Children's Court of New South Wales*, p.1.

'Seeing him (my son) in handcuffs at 11 years old was a horrible experience... he looked so small and lonely... as a mother you just feel horrible' – family member, Far North Queensland.

Another reason to retain the MACR is that increasing the MACR may not be palatable to the general public who may be concerned with 'high youth crime rates' and consider that a 'hard-line' approach would be more effective in addressing this problem.¹⁰⁵

Some research has identified a link between male offenders being diverted from the youth justice system and an increased likelihood of reoffending.¹⁰⁶

6.2 Raise the age of criminal responsibility

There is scientific and anecdotal evidence suggesting a MACR of 10 years is too low. Raising the age of criminal responsibility to 12 years and retaining *doli incapax* to 14 years would bring Queensland into line with the UN's recommendation. It would also better reflect young offender's neurological development and psychosocial adversities.

The UN considers having two ages associated with criminal responsibility to be confusing and has voiced concerns that the rebuttable presumption is discretionary and potentially discriminatory. However, Crofts argues that the two ages reflect children's gradual transition to criminal responsibility. He says that *doli incapax*

*makes police and prosecutors think about whether a young person should be held legally responsible or whether diversionary responses would be more appropriate. It allows developmentally mature young people to be held legally accountable and developmentally immature young people to be diverted from the youth justice system.*¹⁰⁷

Perhaps the most compelling reason to raise the MACR is that children who come into contact with the youth justice system prior to 15 years are less likely to complete their school education, undertake further education or training, or gain employment.¹⁰⁸

¹⁰⁵ Goldson, B. in Scraton, P. 1997. 'Childhood in "Crisis?"' UCL Press, London, p.144.

¹⁰⁶ Sutherland, P. and Millstead, M., 2016. 'Patterns of Recorded Offending Behaviour Amongst Young Victorian Offenders', *Australian Policy Online*, p.3, accessed 18 October 2016, <http://apo.org.au/resource/patterns-recorded-offending-behaviour-amongst-young-victorian-offenders>.

¹⁰⁷ Crofts, T., 2015. 'A Brighter Tomorrow! Raise the Age of Criminal Responsibility,' Vol. 27, No. 1, p.127.

¹⁰⁸ Bernberg J. and Krohn, M. in Goldson, B., 2013, p.121.

Children who come into contact with the youth justice system prior to 15 years are less likely to complete their school education, undertake further education or training or gain employment.

Children who are arrested before 14 years are three times more likely than children arrested after 14 years to become chronic adult offenders.¹⁰⁹

"The deeper that children and young people penetrate youth justice systems the more "damaged" they are likely to become and the less likely they are to "desist" from offending."¹¹⁰

"Serious violence is typically the end of a developmental progression of offences that begins with low-level offences (vandalism and shoplifting), progresses to non-confrontational offences (theft), and then to violent offences (aggravated assault and rape). Delinquents do not begin their antisocial activities by shooting someone."¹¹¹

6.3 Remove children aged 10 to 12 years from detention

Research and QFCC consultations show detention is not rehabilitative. Rather, it exposes children to more negative influences. One young person revealed, detention 'taught me to be a better criminal. I went in stealing cars and came out knowing how to cook meth and murder people.'

Detention is not a suitable environment for 10 to 12 year olds. The recent introduction of legislation transitioning 17 year olds to youth detention strengthens this argument.

Further, the cost of detaining young offenders is high. The estimates vary but the Western Australian Government has reported that it costs \$814 per child per day, or \$297,110 per annum.¹¹² A Victorian study found that more than 50% of these children reoffend within 2 years of being released from youth detention.¹¹³

109 Bernberg J. and Krohn, M. in Goldson, B., 2013, p.121.

110 Alltucker, K, Bullis, M., Close, D., and Yovanoff, P., 2006, p.480.

111 McAra and McVie in Goldson, B., 2013, p.122.

112 Ash, P., 2012, 'The Adolescent Brain is Different: Criminal Responsibility and Adolescents,' *Child and Adolescent Psychiatry*, Vol. 17, No. 6, pp. 25-33, p. 31.

113 Government of Western Australia, Department of Corrective Services Annual Report 2013-2014, p.13.

114 Barns, G., 2010, 'Time to Rethink Juvenile Detention,' *ABC News*, accessed 11 November 2016, <http://www.abc.net.au/news/2010-10-28/barnsdetention/46542>.

'When he [my son] came back from detention, he had changed. He wasn't the boy he used to be.' – parent, Far North Queensland.

*'Given that [being detained] doesn't seem to stop them reoffending when they get out, the question is whether that money could be put into more worthwhile intervention programs.'*¹¹⁵

Non-government organisations have consistently advocated for intervention programs, however, there is still a lack of programs available.

6.4 Youth justice conferencing

Youth justice conferences have proven to be a particularly effective Queensland youth justice system response. In 2015–16, there was a 99% satisfaction rate for the 714 conferences held.¹¹⁶



¹¹⁵ Bourke, E., 2009. 'Time to Rethink Juvenile Detention,' *PM*, accessed 11 November 2016, <http://www.abc.net.au/news/2010-10-28/barnsdetention/40542>.

¹¹⁶ Department of Justice and Attorney-General, 'Youth Justice Annual Summary Statistics: 2011–12 to 2015–16: Miscellaneous Data.'

'Young people need to be supported to set goals before they have to go to detention. Let them have a chance to redeem themselves before they are labelled a criminal'
– young person, Far North Queensland.

The benefits for the offender include:

- accepting responsibility for their actions
- gaining an understanding of how their actions have affected others, and
- starting to repair the harm they have caused.¹¹⁷

The potential benefits for the victim include:

- being able to share their experience, and
- contributing their views on the offender's sentence.¹¹⁸

Youth justice conferencing (known as family group conferences) underpins New Zealand's youth justice system. Eighty-three per cent of youth offending is now dealt with by the police through issuing cautions, initiating alternative action plans or holding family group conferences.¹¹⁹ Criminal proceedings are a last resort and youth justice conferences must be held before matters are referred to Youth Court.¹²⁰

A Victorian Government study found children who participated in youth justice conferencing were less likely to have reoffended within 12 to 24 months than children who were sentenced to probation or a supervised youth justice order.¹²¹

The QFCC suggests that further analysis of outcomes achieved through youth justice conferencing in Queensland be undertaken.

¹¹⁷ Queensland Government, 'Restorative Justice Conferences,' accessed 11 November 2016, <https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-community-programs-and-services/restorative-justice-conferences/benefits/>.

¹¹⁸ Ibid.

¹¹⁹ Youth Court of New Zealand, 'Youth Justice,' accessed 1 December 2016, <https://www.youthcourt.govt.nz/youth-justice/youth-justice-principles-and-processes/>.

¹²⁰ Becroft, A., 'Playing to Win – Youth Offenders out of Court (And Sometimes In): Restorative Practices in the New Zealand Youth Justice System,' p.9, accessed 11 November 2016, <https://www.youthcourt.govt.nz/assets/Documents/Publications/Youth-Court-playing-to-win-youth-offenders-out-of-court.pdf>.

¹²¹ Department of Human Services (Victoria), 2010, 'Review of the Youth Justice Group Conferencing Program,' p.39.

6.5 Support for raising the MACR

The Kennedy Commission of Review into Corrective Services in Queensland, 1988

While the Commission did not specifically comment on the MACR, it found there should be a 'special emphasis on diverting them [young people under 18 years] out of prison.' Further, the Commission recommended that other options, such as community work and attendance centres, be developed for young offenders.¹²²

New South Wales Commission for Children and Young People, 2011

In its submission to the review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, the New South Wales Commission for Children and Young People recommended that the MACR be raised to 12 years. The Commission's argument was based on the UN's recommendation and evidence on children's brain development.¹²³

The National Association for Youth Justice, United Kingdom, 2012

The National Association for Youth Justice, United Kingdom, supported by 50 individuals and organisations, argued that the MACR be raised to 16 years.¹²⁴

The United Nations Committee on the Rights of the Child, 2012

The 1985 Beijing Rules cautioned Member States that MACRs not be too low but did not specify an appropriate age. In 2007, the Committee labelled MACRs below 12 years as 'internationally unacceptable'.¹²⁵ The Committee has criticised Australia for setting its MACR at 10 years.¹²⁶

¹²² Kennedy, I., 1988. 'Commission of Review into Corrective Services in Queensland,' p. 128.

¹²³ NSW Commission for Children and Young People, 2011. 'Submission to the Review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*.'

¹²⁴ Bateman, T., 2012. 'Criminalising Children for No Good Purpose: The Age of Criminal Responsibility in England and Wales,' *National Association for Youth Justice*, p. 16.

¹²⁵ UN Committee on the Rights of the Child, 2007, p. 11.

¹²⁶ Ibid.

Amnesty International, 2015

In its submission on the Youth Justice and Other Legislation Amendment Bill 2015, Amnesty International argued that the Queensland Government should raise the MACR to 12. It noted that the UN had stated that 12 years was an internationally acceptable level.¹²⁷

Too Much Too Young: Raise the Age of Criminal Responsibility to 12, 2015

In 2015, Jesuit Social Services released its report, *Too Much Too Young: Raise the Age of Criminal Responsibility to 12*. The report made six recommendations:

1. raise the MACR in all Australian states and territories
2. develop mechanisms to address serious antisocial behaviour in children under 12 years
3. retain *doli incapax* until 14 years
4. include diversionary frameworks in all youth justice legislation
5. provide pre-plea diversion programs, and
6. invest in specialist children's, including Aboriginal and Torres Strait Islander children's, courts.

Over 30 individuals and organisations, including Amnesty International and the former Victorian Principal Commissioner for Children and Young People, supported the report.¹²⁸

Amnesty International, 2016

Amnesty International criticised Queensland's MACR in its report, *'Heads Held High: Keeping Queensland Kids out of Detention, Strong in Culture and Community'*. The report stated that the MACR was in contravention of the CRC and disproportionately affected Aboriginal and Torres Strait Islander children.¹²⁹

127 Amnesty International, 2015, 'Submission to the Legal Affairs and Community Safety Committee Inquiry into the Youth Justice and Other Legislation Amendment Bill 2015,' accessed 1 December 2016, <https://www.parliament.qld.gov.au/documents/committees/LACSC/2015/11-YouthJusticeAOLAB15/submissions/028.pdf>.

128 Sally Parnell, Acting Chief Executive Officer, Jesuit Social Services, to Attorneys-General, 25 October 2015, http://jss.org.au/wp-content/uploads/2015/01/Letter_to_AGs_Age_of_Criminal_responsibility.pdf.

129 Amnesty International, 2016, p.17.

Professor Kerry Carrington and Lisa Durnian, 2016

Professor Carrington, QUT, and Lisa Durnian, Griffith University, launched a petition on change.org calling on the Queensland Government to remove 10 to 14 year olds from youth detention. The petition was supported by the Youth Advocacy Centre, the Aboriginal and Torres Strait Islander Legal Service and PeakCare Queensland.¹³⁰



¹³⁰ Carrington, K. and Durnian, L., 2016. 'Queensland Government: Stop Locking up Our Children and Young People,' accessed 3 November 2016, <https://www.change.org/p/qld-attorney-general-hon-yvette-d-ath-qld-government-stop-locking-up-our-children-and-young-people>.

In the *Children's Rights Report 2016: National Children's Commissioner*, the National Children's Commissioner recommended that states and territories raise the MACR to 12 years on the basis that:

- the criminal justice system does not address young offenders' needs
- a higher MACR could reduce the overrepresentation of Aboriginal and Torres Strait Islander children in youth detention
- the current MACR does not take into account children's brain development
- children under 12 years are not able to fully engage with the youth justice system, and
- the younger children are when they enter the youth justice system, the more likely they are to reoffend.¹⁰

131 Australian Human Rights Commission, 2016, 'Children's Rights Report 2016: National Children's Commissioner', p.192, accessed 3 December 2016, https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf.

Conclusion

'Age is only one thing to consider when making a decision about being criminally responsible. You need to look at the individual factors that put them in a situation where they committed a crime' – social worker, Far North Queensland.

Youth justice is presently at the forefront of not only state and Commonwealth government agendas but also the minds of the general public. Stories of immense suffering and trauma experienced by children while in detention have been increasingly made public following the Australian Broadcasting Corporation's *Four Corners* report.

This information paper has shown the extent of young offenders' vulnerabilities. Young offenders are typically exposed to complex experiences including intergenerational disadvantage, poverty, homelessness, abuse and neglect, mental illness and parental criminality.

Children who come into contact with the youth justice system at an early age are more likely than other children to become chronic adult offenders. They are also less likely to complete their education or undertake further training or studies. To achieve positive outcomes for these children we need to apply appropriate interventions rather than sentencing them to youth detention.

Given the profound impact contact with the youth justice system has on a child's long-term prospects, it makes sense to keep children under 13 years out of the youth justice system. There is a need to shift the focus from responding to consequences of youth crime to addressing the underlying behaviours, experiences and trauma of young offenders.¹³²

Rather than sentencing young offenders, we should be directing focus and resources to diversionary programs, restorative justice principles, prevention and early intervention models.¹³³

With the Queensland Parliament recently confirming the transition of 17 year olds back to the youth justice system and the Independent Review into Youth Detention soon drawing to a close, now is the time to continue to advocate for youth justice reform.

¹³² Australian Capital Territory Government (ACT), 'Blueprint for youth justice in the ACT 2012–22: Improving Outcomes for Young People over the Next 10 Years,' p.11, accessed 11 November 2016, http://www.communityservices.act.gov.au/__data/assets/pdf_file/0009/337590/Blueprint_for_Youth_Justice_in_the_ACT_2012-22.pdf.

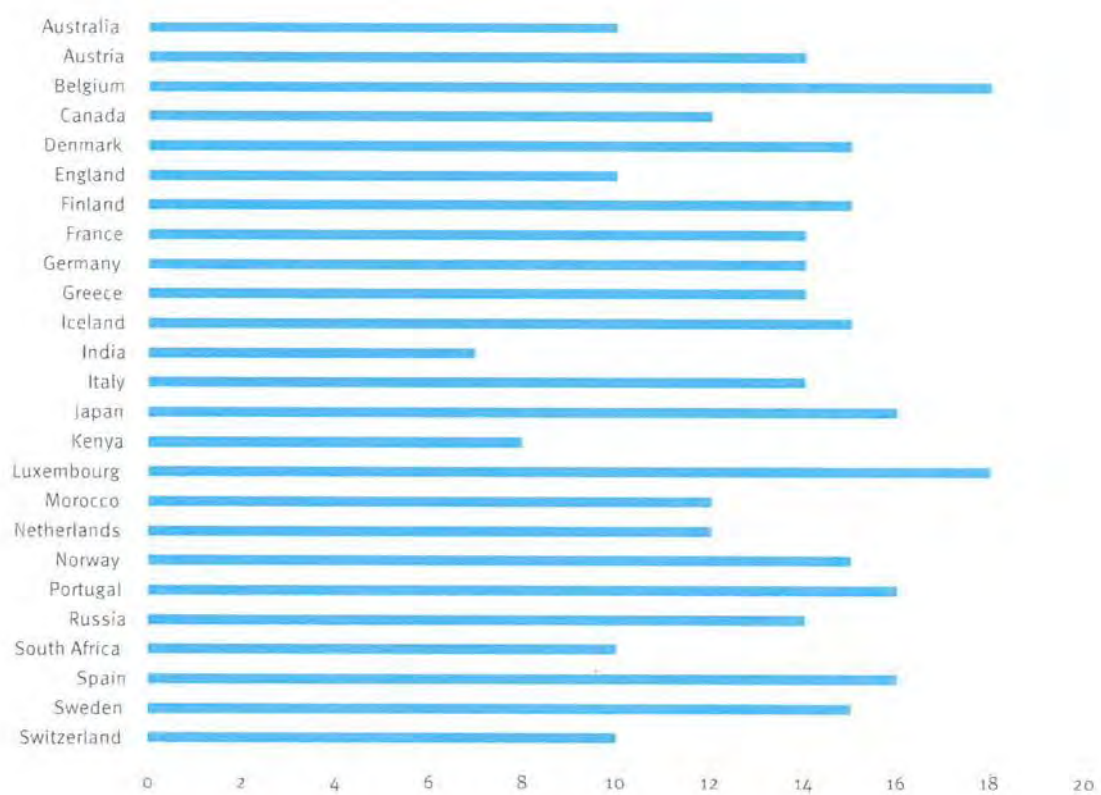
¹³³ Ibid.

Appendix

Table 1: Age of criminal responsibility in Australia

Jurisdiction	MACR	Presumption against criminal responsibility	Legislation
Commonwealth	Under 10 years	10 years to under 14 years	<i>Crimes Act 1914</i> <i>Criminal Code Act 1995</i>
New South Wales	Under 10 years	10 years to under 14 years	<i>Children (Criminal Proceedings) Act 1987</i>
Victoria	Under 10 years	10 years to under 14 years	<i>Children and Youth Families Act 2005</i>
Queensland	Under 10 years	10 years to under 14 years	<i>Criminal Code Act 1899</i>
Western Australia	Under 10 years	10 years to under 14 years	<i>Criminal Code Act</i> <i>Compilation Act 1913</i>
South Australia	Under 10 years	10 years to under 14 years	<i>Young Offenders Act 1993</i>
Tasmania	Under 10 years	10 years to under 14 years	<i>Criminal Code Act 1924</i>
Australian Capital Territory	Under 10 years	10 years to under 14 years	<i>Criminal Code 2002</i> <i>Children and Young People (Consequential Amendments)</i>
Northern Territory	Under 10 years	10 years to under 14 years	<i>Criminal Code Act</i>

Table 2. Minimum ages of criminal responsibility worldwide



Child Rights International Network, 'Minimum Ages of Criminal Responsibility around the World,' accessed 5 September 2016, <https://www.crin.org/en/home/ages>.

Glossary of terms

10 to 12 year olds

For the purpose of this information paper, '10 to 12 year olds' means young people who are 10, 11 or 12 years old.

Child

For the purpose of this information paper, 'child' means a person under 18 years.

Doli incapax

A Latin term meaning incapable of wrong. *Doli incapax* describes the inability of young people under the minimum age of criminal responsibility to form criminal intent.¹³⁴

Minimum age of criminal responsibility (MACR)

The minimum age at which young people can be arrested for, charged with, or convicted of, a crime. The MACR in Queensland is currently 10 years.

Out-of-home care

Refers to the care of children who are unable to live with their families (often due to child abuse and neglect). It involves placement of a child with alternative care givers on a short or long-term basis.¹³⁵

Proven offence

A proven offence means that the offender has been found guilty of an offence at court.

Supervised youth justice order

A court order which requires that a child found guilty of an offence report to youth justice unit personnel, undertake supervised community work if directed, and to satisfy any other conditions.¹³⁶

¹³⁴ Johnston M., 2006, 'Doli Incapax – the Criminal Responsibility of Children,' *Children's Court of New South Wales*, p. 1

¹³⁵ Australian Institute of Family Studies, 2016, 'Children in Care,' accessed 4 October 2016, <https://aifs.gov.au/cfca/publications/children-care>

¹³⁶ Victorian Sentencing Advisory Council, 2014, 'Youth Supervision Order,' accessed 4 October 2016, <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people/youth-supervision-order>



Joint agency protocol

to reduce preventable police call-outs
to residential care services

Queensland
Family & Child
Commission

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August 2018

Foreword

The Queensland Family and Child Commission (QFCC) is committed to influencing change so Queensland is a safe place where children, young people and their families thrive in supportive communities. One of my roles as Principal Commissioner of the QFCC is to listen to the voices of children and young people to advance the issues that are important to them.

Children and young people have reported they are being criminalised while living in out-of-home care, particularly while living in residential care. They spoke about their experiences of being stigmatised and labelled as 'misbehaved children' and how this created lasting impacts on the way they perceive themselves.

The reality for many of these children is that they are dealing with the impacts of trauma arising from previous experiences of abuse and neglect. Children living in residential care have a right to be cared for in a way that recognises the impacts of their trauma and responds in a way that helps them recover to live their fullest lives.

We know there is a strong link between children living in out-of-home care and those entering the formal justice system. It is our shared responsibility to prevent, where possible, children's exposure to police and further contact with the criminal justice system for actions that would be managed without police involvement in a family home.

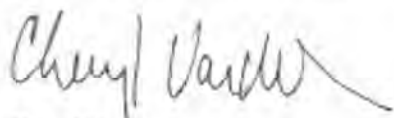
A multi-agency commitment is necessary to divert children in residential care from unnecessary contact with the criminal justice system and this is what we have achieved with the *Joint agency protocol to reduce preventable police call-outs to residential care services*. The Director-General, Department of Justice and Attorney-General, also recognises the achievement of this initiative against the Keep Communities Safe objective of the *Our Future State: Advancing Queensland's Priorities*.

The QFCC has worked closely with the Department of Child Safety, Youth and Women (DCSYW), Queensland Police Service (QPS), the Office of the Public Guardian, Queensland Health, and non-government representatives to develop a model that will work for Queensland. This collaboration and focus will undoubtedly improve young people's experiences of residential care.

I would especially like to express my thanks to the Director-General of the DCSYW, Commissioner of the QPS and the Public Guardian who provided their endorsement of, and ongoing commitment to, the *Joint agency protocol to reduce preventable police call-outs to residential care services*.

I would also like to acknowledge the members of the Joint Agency Protocol Reference Group and the Working Group of residential care services, who have been fundamental to the development and progression of this initiative. Most importantly, I thank the young people who shared their stories and advocated for change in this area.

This protocol will encourage ongoing consideration to the way we view young, vulnerable people in Queensland, and how we choose to support them.



Cheryl Vardon
Principal Commissioner
Queensland Child and Family Commission

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The foundation for change

Childrenⁱ living in out-of-home care have a higher likelihood of contact with police and are overrepresented in the criminal justice system. Evidence suggests children living in out-of-home care are being criminalised, particularly in residential care. These children are shown to be more likely to have contact with police or have a criminal record than those in other types of care^j and the general community.

Children can rightfully expect to be cared for within a trauma-responsive system that does not criminalise behaviours resulting from previous experiences of neglect or abuse. Children should receive responses that do not stigmatise them, label their behaviours as criminal, or adopt a criminal response to actions that would not be criminalised in a family home.

Inconsistent policy and procedures for when to call police have been linked to increased exposure to the criminal justice system for children living in care. This includes involving police for behavioural management reasons, reporting children as missing when they are absent from placement and reporting children to police for varying levels of property damage to the residential care service.

Children living in residential care deserve to receive appropriate and similar social, emotional and behaviour support responses to children who do not live in out-of-home care. Research shows that supportive and facilitative responses, rather than punitive responses, are more effective in responding to the behaviour support needs of children.

When police are called to respond to an incident, they attend whether or not their involvement is warranted. This police presence (generally uniformed officers in marked cars) means the actions of children living in residential care are highly visible to the wider community. This visibility contributes to their unnecessary exposure to the criminal justice system⁷ through negative community perceptions, negative police rapport, and further stigmatisation.

Government and non-government agencies have a responsibility to drive change to improve outcomes for children. Reducing the high rate of preventable police call-outs to residential care services requires all agencies and services to understand their role and take responsive action.

The research, data and lived experiences of children and young people clearly communicates a need for change. We must learn from their lived experiences, listen to their concerns about criminalisation and take action to reduce the likelihood of contact with the criminal justice system.

ⁱ Child/ren refers to a child under 18 years of age and is used in this Protocol (rather than young person) to reflect the age range of children living in residential care in Queensland.

What we know

In October and November 2017, the Queensland Family and Child Commission (QFCC) spoke with young adults about their experiences in **residential care** and **police involvement**.

'Part of the reason I was in **trouble with police** was all the missing children reports. They would see me **and pull me over**.'

'[Got charged with] **common assault** – got thrown in the watch house. [I threw a skateboard] and the same worker who I **threw the skateboard** at came to pick me up – doesn't make sense.'

'...charged me for **property damage** in regards to pushing a stool over – there was a **scratch** on the floor.'

The majority stated that when they lived in residential care **police were called unnecessarily** in certain situations.

'I've been charged with **wilful damage** and breaking and entering. I broke into the resi to get **my own stuff**. I told them what time I was going to be there. People should have been there at that time but they weren't.'

'Police **turned up** but it was a step they **needed to take**.'

Three quarters of residential care workers surveyed perceived police call-outs to residential care services as 'a bit of an issue' or 'a serious issue'.

The top three reasons for calling police: ³

1

concerns about the
safety and wellbeing
of the child

2

agreements between the
residential care services and Child
Safety Services about
instructions or
guidance related to
when to call police

3

the service's policy
and procedures
requires
workers
to call police
in response to
certain
circumstances

From a sample of police call-outs to residential care services: ⁴

more than **50%**
were considered
unnecessary

the majority related to
children with '**mental**
health issues'

in most cases,
children reported
'missing'
from their
placement were
not present
in the residential
care service when
they were supposed
to be (not actually
missing but absent
from placement)

Experiences of children exposed to the criminal justice system

"... some children in care remain at far greater risk of being drawn into the criminal justice system and getting a criminal record for minor offences that would never come to official attention if they were living at home with their parents."⁵

A 12-year-old living in a residential care service was **arrested and charged** with wilfully and unlawfully damaging a security screen at the service.

This was the child's **first criminal charge** brought before the courts and resulted in sentencing to a reprimand.

A 16-year-old was arrested and charged with **stealing a television** belonging to the residential care facility where he lived.

The charge related to him **moving a television** from one room to another in the service.

A 15-year-old was arrested and charged with **wilfully damaging property** to the value of \$200.

The child had emptied the contents of two bottles of BBQ sauce onto the floor of the hallway and kitchen in the **residential care service** where he lived.

He also sprayed the carer's car with a **fire extinguisher**.
He received a three month Good Behaviour Order.

What has worked locally

One young person told the QFCC about their positive experience of having a **specific police officer** attached to the residential care house which **strengthened the relationship** between everyone at the house.

A residential care service **worked with the local Officer** in Charge, Child Protection Investigation Unit (Queensland Police Service) to **establish a proactive presence** with the service.

A residential care service **worked with the child** and Child Safety Service Centre to develop an **agreed response to sharing resources** to locate a child when they were absent.

To make sure **staff feel confident and empowered** a residential care service provided opportunities for staff to participate in reflective **learning** with colleagues and others involved.

A residential care service **focused resources and planning** into formally structuring an intensive induction program for all residential care staff. This approach is also used for **ongoing training** to meet organisational needs.

A strategy for change

The Issue

Children and young people have told us they are being unnecessarily exposed to police while living in out-of-home care, particularly when living in residential care. Children, residential care services, government agencies and non-government organisations identified children are being criminalised by police being called to residential care services at times when other responses may be more appropriate. Criminalisation occurs through stigmatising children, labelling their behaviours as criminal, and adopting a criminal response to actions that would not be treated as criminal in a family home.

Our commitment

All children have a right to feel safe, protected and free from harm.

We are committed to recognising the rights of children and placing them at the heart of every decision and action we take.

We have heard the voices of children and young people with lived experience in residential care about their concerns of being criminalised while living in care. We are committed to working in partnership to prevent children from unnecessary exposure to the criminal justice system and to make sure children are cared for using appropriate trauma-responsive approaches.

Making a change

We will be courageous by leading and empowering others to make change happen. We agree to establish consistent and responsive policies, procedures and practice to address the issue of criminalisation of children living in residential care. We will do this through the *Joint agency protocol to reduce preventable police call-outs to residential care services* (the Joint agency protocol). This is a first step in a collective response to the broader issue of the criminalisation of children living in out-of-home care.

The Joint agency protocol promotes our collective responsibility to support each child's recovery from trauma and continuously strive to provide the highest quality of care. We recognise the commitment of those currently working to provide a trauma-responsive therapeutic approach to care.

What will be different

Children living in residential care will receive care that responds to trauma in ways that do not unnecessarily criminalise actions or behaviours resulting from past experiences of abuse or neglect.

Children will receive responses that do not stigmatise them, label their behaviours as criminal, or adopt a criminal response to actions that would not be considered criminal in a family home.

Residential care services and those involved in the care of children will be better connected and supported to strengthen responses and outcomes for children and provide consistency and familiar boundaries across the placement system.

Supporting frameworks and standards

Joint agency protocol objective

The Joint agency protocol aims to improve responses to children living in residential care by addressing the issues that result in the unnecessary involvement of police, and providing strategies to prevent police involvement where other responses are more appropriate.

All agencies and services involved in providing care to children living in residential care are responsible for implementing and monitoring the Joint agency protocol.

The principles, roles and responsibilities and strategies provide direction on how to respond to incidents in a more holistic way that promotes local resolution without the formal involvement of police. The Joint agency protocol complements other tools and resources available for providing care and protection for children living in residential care.

Supporting rights framework

The Joint agency protocol upholds the intent, purpose and commitment to the rights of the child as provided for in the *United Nations Convention on the Rights of the Child* (UNCRC), the *Child Protection Act 1999* and the principles in the *Youth Justice Act 1992*.

This includes ensuring:

- the safety, wellbeing and best interests of a child are paramount
- the general principles that recognise and support the rights of a child, including the Charter of Rights for a child in care, are upheld
- the cultural needs of children, particularly Aboriginal and Torres Strait Islander children are recognised, respected and met accordingly
- all children are provided with the opportunity to express their views in a way that is age and developmentally appropriate and that those views are taken into account in any decisions made in relation to the child.

The Joint agency protocol reinforces Article 39 of UNCRC, which states:

Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Supporting frameworks and standards

The Joint agency protocol is intended to complement current policy, practice frameworks and standards for the residential care services sector in Queensland.

Standards of care

Every residential care service is responsible for delivering care in line with the statement of standards in the *Child Protection Act 1999*. Standards are considered and operationalised variably across different licensed residential services and staff.

The Joint agency protocol aims to support residential care services to strengthen the way standards are met, particularly standards s122, 1(a), 1(c) and 1(g).⁶

Hope and Healing

The Joint agency protocol's principles, focus areas and strategies complement the *Hope and Healing Framework* for a trauma-informed therapeutic approach to residential care in Queensland.⁷

The Hope and Healing Framework sets out the foundation for providing care and support to children living in residential care using a therapeutic approach that recognises and responds to trauma.⁸ The Hope and Healing Framework also emphasises the importance of embedding cultural awareness and culturally informed responses at every level.⁹

Human Services Quality Framework

The *Human Services Quality Framework* (HSQF) establishes the core components of quality standards to promote human rights, social inclusion, participation and choice for children who are living in out-of-home care.¹⁰ The Human Services Quality Standards identify six standards against which all services are monitored for compliance:

1. Governance and management
2. Service access
3. Responding to individual need
4. Safety, wellbeing and rights
5. Feedback, complaints and appeals
6. Human resources.

Residential care services are required to achieve, comply with, and maintain, HSQF certification as a condition of their License to Provide a Care Service. The Joint agency protocol will be incorporated into the HSQF and Human Services Quality Standards.

Incident reporting guide for residential care services and the Incident management for residential care services

The Department of Child Safety, Youth and Women (Child Safety Services) publishes the *Incident reporting guide for residential care services* and the *Incident management for residential care services* resources, which establishes the overarching guidelines to manage and report incidents within residential care services. The Joint agency protocol complements these guidelines.

Joint agency protocol at a glance

Vision

All children living in residential care receive individualised and trauma-informed responses

The four **principles** provide direction on the foundational values needed to strengthen outcomes for children

Rights based | Culturally responsive | Trauma responsive | Shared responsibility

The two **focus areas** set the priority for where efforts should be focused to make a change

Local resolution | Consistency

The **roles and responsibilities** commit agencies and services to individually and collectively drive change

The **strategies** provide practical ways to strengthen practice through three main action areas

Strengthening
planning,
collaboration and
capability

Supporting
children during
and following
an incident

Supporting children
during and following
interactions with
police

Implementation and monitoring
promotes continuous improvement

Principles

The principles provide direction on the values and practice needed to strengthen positive outcomes for children living in residential care. The four principles are:

1. rights based
2. culturally responsive
3. trauma responsive
4. shared responsibility.

Rights based

Parties to this joint agency protocol consciously focus on the rights and best interests of children.

All children have the right to feel safe, protected and free from harm. Residential care workers also have the right to feel safe and be free from harm in their workplace.

The United Nations Convention on the Rights of the Child and the Charter of Rights for children living in out-of-home care inform the child protection system in Queensland. The safety and wellbeing of children living in residential care services is paramount and must be prioritised. It is the responsibility of everyone involved in the care and protection of children¹¹ to ensure a child is aware of their rights and those rights are acknowledged and upheld.

The involvement of police, and contact with the criminal justice system, can have a negative impact on many aspects of a child's life, both during childhood and into the future. Police and other emergency services should only be called to respond to incidents where there is an immediate safety risk or a criminal complaint. If police involvement is required, follow-up support must be provided to each child involved in or present for an incident. This includes assistance to access legal services. Children living at the service may also need emotional support or legal information or advice, particularly if they may be a witness in a proceeding.

Children living in residential care have the same rights as any other child to seek assistance from the police. Where a child may be a victim of a crime and would like to involve police, residential care workers must provide support and guidance.

Culturally responsive

Parties to this Joint agency protocol consciously focus on the rights and best interests of children.

Children from culturally diverse backgrounds have the right to feel safe, protected and connected to community, family and culture.

Connection to family, community and culture improves a child's wellbeing and positive self-identity. Children who are strong in their culture and who can see their culture is valued by others are more likely to develop a positive self-image.¹² Each child should have a plan in place that includes actions to build and maintain the child's personal and cultural identity, and promote connection and belonging.

Genuine partnerships with cultural groups, communities and organisations are critical to meet the needs of children.¹³ This will also support residential care workers to be culturally proficient and consider the impacts of intergenerational trauma including from past government policies relating to Aboriginal and Torres Strait Islander peoples. This includes fear and distrust towards police and other people in authority.

Trauma responsive

Parties to the Joint agency protocol recognise the impacts of trauma on children living in residential care and are committed to delivering trauma-responsive care and support.

Children living in residential care can have complex needs often resulting from abuse or neglect, including exposure to substance abuse or domestic and family violence. For many children, the impact of these experiences may manifest in an inability to regulate behaviours appropriately or difficulties with interpersonal skills and relationships. For Aboriginal and Torres Strait Islander children, an absence of connection to culture can lead to cultural trauma and have a number of developmental impacts.

Trauma-responsive care acknowledges the role trauma plays in patterns of behaviour. Residential services must employ staff with the ability to respond to trauma in ways that meet the therapeutic needs of the child. The Hope and Healing Framework together with the principles of the Joint agency protocol will assist with this.

A child's history must be considered when deciding how to manage behaviour, rather than decisions being based on the type of incident they may be involved in.¹⁴ This includes maintaining a view of each child as an individual with their own strengths, pressures and triggers as well as considering the dynamics of all children living together and the impacts of the residential care environment. Planning for and preventing incidents from occurring will help protect children from experiences that may be re-traumatising such as contact with police.

Shared responsibility

Parties to the joint agency protocol recognise the importance of shared responsibility and collaboration to care for and support children living in residential care.



Shared responsibility and collaboration strengthens our capacity to care for and protect children living in residential care.

The complex needs of children living in residential care means there is a need for a coordinated informed approach. Children should not be responsible for making sense of the funding and resource limitations of different agencies and services. They should also not have to re-learn placement parameters based on organisational differences. Agencies and services can work together to overcome these barriers by sharing resources, coordinating service delivery, identifying innovative solutions and leveraging professional expertise.

Shared responsibility is the most effective way to support children to recover from trauma and achieve the best life outcomes. This includes recognising a shared role in preventing the unnecessary exposure of children to intrusive systems, such as the criminal justice system.

Focus areas

The principles will be achieved through focusing efforts towards two main areas: strengthening local resolution and consistency in delivering support and care to children.

Focus area 1 – Local resolution

Local resolution aims to drive cross-sector relationships, strengthen planning and prioritise resolution without the unnecessary involvement of police.

Children living in residential care are entitled to live within the service as they would in a home-based environment. This includes the right to receive proportionate responses to their actions and behaviours through a trauma-responsive and therapeutic approach. Residential care workers must aim to manage incidents through local resolution.

Policies and procedures, including those established by Child Safety Services, should require local-level relationships across a range of service providers to support incident de-escalation and facilitate local responses. This includes building proactive and positive relationships with police through the nominated liaison points.

Local resolution is also an important part of operationalising the concept of shared responsibility to provide for care and protection to each child living in residential care.

Focus area 2 – Consistency

Consistency is a focus to drive cross-sector learning and reflection to identify and replicate good policy and practice.

Children may be cared for by multiple workers each day or live at different residential care services over time and should not be challenged with navigating and making sense of the expectations of individual services or workers. Providing a sense of stability for children by promoting consistent practice between workers and between services enriches relationships that can improve life outcomes and support healthy development.¹⁵ Children who have experienced trauma need consistent care that provides timely, proportionate and effective responses¹⁶ and promotes social integration.

Those involved in providing care to children should find opportunities to connect, share information and work together to create a shared understanding about what works best to meet the behavioural support needs of children.

Roles and responsibilities

The services and agencies involved in caring for children in residential care need to understand the roles and responsibilities of other services and agencies, and how they can work together to overcome barriers and prioritise the best interests of children.

Shared responsibilities

To promote the principle of shared responsibility under the Joint agency protocol, the services and agencies involved in providing care to children living in residential care in Queensland will:

- treat children with dignity and respect, including upholding and promoting the rights of a child as prescribed in the *Child Protection Act 1999*, the *Youth Justice Act 1992* and under the UNCRC, including involving children in decisions being made about their life
- listen to and value the lived experiences of children in residential care and drive system improvements (refer to the *Young people's perspectives of residential care, including police call-outs* information paper)
- seek to better understand trauma, its impact on children and their behaviours, and how to respond in ways that do not criminalise those behaviours
- plan for and respond to the strengths, pressures and triggers of children individually and as part of a dynamic assessment of all children living together
- promote collaborative partnerships with other services and agencies to support local resolution, while promoting consistency and shared responsibility
- involve communities to develop and maintain a child's personal and cultural identity, particularly for Aboriginal and Torres Strait Islander children
- commit to continuous improvement and high expectations through building a culture of learning, development and practice reflection
- implement policies, procedures and systems that reflect the intent of the Joint agency protocol and cease all preventable involvement of police.

Child Safety Services lead responsibilities

Child Safety Services has legislative responsibilities for licensing, funding and regulating care services in Queensland. This includes making sure services can meet the behavioural support needs of children in their care. In addition to the shared responsibilities, Child Safety Services has specific responsibilities to:

- align overarching policies, guidelines and practice direction with the Joint agency protocol, particularly in regards to direction to involve police
- work collaboratively to promote the Joint agency protocol across the sector
- monitor and audit residential care services' compliance with the Joint agency protocol through the HSQF standards
- encourage services to provide appropriate training and development for staff
- promote and adequately resource support tools for residential care services, for example after hours support such as the Foster and Kinship Carer Support Line
- work towards development of reporting and monitoring capability on critical incidents and police involvement to enable monitoring and reporting of relevant data
- make contract management staff aware of the Joint agency protocol and support its intent when providing advice about financial claims by services

- coordinate clear and consistent messages to staff and the residential care services sector about systemic themes
- promote the right of a child to participate in decision making and provide children with information about their rights
- require placements that are in the best interests of children and that consider group dynamics
- define expectations of trauma-responsive practice in resources and standards
- promote opportunities for consistent training and development for the residential care services sector.

Residential care services lead responsibilities

Residential care services deliver care, protection and support to children living in residential care. In addition to the shared responsibilities, residential care services have specific responsibilities to:

- build partnerships with agencies and services to support the principles and strategies of the Joint agency protocol, including with a nominated police liaison point
- include clear guidance in policies and procedures about involving police
- drive opportunities for joint learning and development
- promote consistent outcomes for children by establishing connections with other residential care services to share information
- collaborate with Child Safety Services to provide consistent and shared responses for children who are absent from placement, particularly if this is frequent
- develop expectations around behaviours and responses together with children, workers, and others involved in providing care for children
- explore options for insurance policies that do not require property damage to be reported to police
- participate in data collection and reporting activities.

Queensland Police Service lead responsibilities

The Queensland Police Service will respond to any complaint or call for service made by a member of the community, including children and staff of a residential care service. Police are an important part of the response to children who may have committed a crime. They are also responsible for responding to the wishes and rights of victims.

The Joint agency protocol aims to encourage the development of proactive local relationships between police, Child Safety Services and residential care services promoting safety and security for children living in residential care. The roles and responsibilities of police are outlined in Appendix 1.

Strategies

The table below includes practical strategies to translate the principles, focus areas and roles and responsibilities of the Joint agency protocol to practice. Services and agencies with lead responsibilities should coordinate the efforts of others involved in providing care to children. The strategies align with Child Safety Services' *Incident reporting guide for residential care services*.

Strategies to strengthen planning, collaboration and capability	
Main considerations: - Children should be supported to relate their actions to impacts and consequences and guided to learn from their experiences.¹⁷ - Children should receive timely and proportionate responses to provide behavioural guidance that does not criminalise the child's behaviours. - Residential care staff should have the tools, capability and capacity to prevent escalation of an incident or behaviours. Resource links: - Child Safety Services' <i>Incident reporting guide for residential care services</i> and the <i>Incident management for residential care services</i> resources <i>Reporting missing children: Guidelines for approved carers and care services</i> <i>Young people's perspectives of residential care including police call-outs</i> information paper <i>The criminalisation of children living in out-of-home care in Queensland</i> information paper	
Residential care services lead responsibility Involve children in planning and decisions about their lives, including decisions to involve police. Plan and consider the interpersonal dynamics of, and relationships between, the children living at the service, including taking into account the views of young people: - at the time of placement matching - at the time of placement - following an incident. If a child is frequently absent from the service, work with the child and agencies to develop a process to quickly establish the child's location. This may also include negotiating resourcing efforts with the local Child Safety Service Centre. Develop expectations around behaviours and responses together with children, workers, and relevant others. Discuss and educate staff and children about expectations in the residential care service and agree to ways to respond if these are not met. Review policies and practice following a serious critical incident or a series of critical incidents in the residential care service. Make sure cultural support plans are in place and foster connections to culture, community and family, particularly for Aboriginal and Torres Strait Islander children. Identify after hours contact points to seek support in deciding the best way to respond to a child's behavioural support needs (for example, the Foster and Kinship Carer Support Line operated by the Child Safety After Hours Service Centre).	Planning and information sharing Core principle considerations Am I supporting a learning based culture by providing or participating in opportunities to reflect without fear of reprisal? Am I working with networks and services to promote supportive relationships and coordinated responses? Am I accessing or providing access to professional development and joint learning opportunities?

Strategies to strengthen planning, collaboration and capability

Establish connections with other residential care services to share information and good practice.

Identify contact points in agencies and support services and make these available to staff (for example, a nominated police liaison point, mental health intervention services and legal support services).

Build local-level relationships across a range of service providers as a response to incidents and to assist with local resolution.

Require senior staff members to provide support to staff in deciding and delivering the response to a critical incident.

Explore options for insurance policies that do not require property damage to be reported to police.

Residential care services and Child Safety Services lead responsibility

Residential care service providers will apply the Joint agency protocol with the results reporting as part of the Department of Child Safety, Youth and Women performance management processes. This includes capturing of and reporting on data to identify local and systemic trends to support a continuous improvement approach.

Data should be maintained, accessible and reportable for systemic and local trend identification, analysis and monitoring. This includes data on:

- number, reason and origin of calls to emergency services
- contact/referrals to legal service providers
- attempts to locate children absent from placement
- post incident actions and advice to Child Safety Services
- group dynamics assessments.

Provide direction and education to residential care service workers on critical incidents and the *Reporting missing children: Guidelines for approved carers and care services*. This might be achieved through training, documentation or decision support tools.

Residential care services and Queensland Police Service lead responsibility

Residential care services establish a proactive relationship with local police and the nominated police liaison point. This will assist in promoting a positive relationship rather than a reactive, punitive one.

Strategies to strengthen planning, collaboration and capability

Shared responsibility

Make policies and procedures consistent with the Joint agency protocol and include clear guidance about involving police. Educate all staff.

Induct staff in the Joint agency protocol.

Implement approaches for reflection and shared learning:

- on a regular basis to monitor use of the Joint agency protocol
- following an incident or event.

Provide opportunities to attend joint training and professional development to services and agencies (government and non-government) who regularly work together. This includes the nominated liaison point in police and other agencies or services.

Residential care services lead responsibility

Make sure staff employed have the requisite skills and experience to work with and understand the unique issues affecting children living in residential care.

Train and support staff to manage incidents in a trauma-responsive way that does not criminalise behaviours, in alignment with the Hope and Healing Framework.

Provide professional development to staff about responding to behavioural support needs, including mental health first aid and de-escalation techniques. This can be accessed through mental health services to provide consistency in training such as through the Evolve Professional Development Coordinators.

Child Safety Services lead responsibility

Educate Child Safety Services staff to provide consistent advice to residential care services about responding to behavioural support needs and incidents in a way that does not criminalise behaviours.

Adopt commissioning and contract management approaches that support training and development of residential care staff.

**Induction
and staff
support**

Shared responsibility

Promote a learning and development culture through policies, procedures and practice.

Provide staff with multiple ways to seek support to discuss risks and professional limitations without fear of reprisal.

Participate in collective reflection about responses and approaches for individual children and consider whether they are culturally responsive.

Residential care services lead responsibility

Provide timely opportunities and encourage staff to reflect and learn from incidents to strengthen future responses. Individual and group reflection should be encouraged, including with young people.

**Learning
based
culture**

Strategies to support children during and following an incident

Main considerations:

- Children should be supported through local responses where an incident is not a 'critical incident'.
- Threat to property or injury towards others that does not constitute an immediate and significant risk of serious harm does not require involvement of the police.
- A victim of a physical injury has a right to involve police following any incident.

Resource links:

- Child Safety Services *Incident reporting guide for residential care services* and the *Incident management for residential care services* resources
- The *Reporting missing children: Guidelines for approved carers and care services*

Core principle considerations

Have I prioritised a co-ordinated local response?

Do my actions uphold the rights of the child and the worker?

Am I being culturally responsive?

Is the response and post-incident support trauma-responsive?

Have I worked with others to provide for the safety and wellbeing needs of children in the service?

Am I confident I am able to respond consistently to incidents?

Shared responsibility

Implement agreed responses to quickly establish the location of a child if a child is absent from placement.

Residential care services lead responsibility

Implement de-escalation action and, when appropriate, implement behaviour management responses that do not criminalise behaviours and are proportionate to the child's actions and situation at the time of the incident.

At the time of incident

Shared responsibility

A learning focused review of an incident or series of incidents should occur with agencies and networks involved.

Residential care services and Child Safety Services lead responsibility

Review or establish individual plans to support responses and actions for future instances. These plans should include practical strategies available to residential care workers to de-escalate a situation or actions by the child's networks and agencies.

Include agencies or networks involved with the child in reviewing a child's plan. This can include engagement with Police Liaison Officers from the Queensland Police Service and/or Aboriginal and Torres Strait Islander elders, communities or agencies to ensure plans are culturally responsive.

Support children to make contact with a legal service provider as soon as possible after the incident and make sure they are aware of their rights.

Residential care services lead responsibility

Debrief children and staff separately and in a timely manner following an incident, including considering a response for any future incidents.

Consider the group dynamics of the residential care service following the incident. This may involve an open discussion with all children living at the service. The assessment process should focus on offering stability and consistency to all children living in the home.

Consider themes arising from the incident/s and address these with staff in order to strengthen individual and organisational practice.

Following an incident

Strategies to support children during and following police involvement at a residential care service (or other emergency services)

Main considerations:

- Children should be supported to relate their actions to impacts and consequences and guided to learn from their experiences.¹⁸
- Children should receive timely access to legal support and responses that focus on their needs and reduce the risk of criminalising them.
- Children should live in a safe and supportive environment that uses a considered approach to managing group dynamics, particularly where a child is absent from placement.

Resource links:

- Child Safety Services' *Incident reporting guide for residential care services* and the *Incident management for residential care services* resources
- The *Reporting missing children: Guidelines for approved carers and care services*

Core principle considerations

Do my actions uphold the rights of the child and the worker?

Am I being culturally responsive?

Is my response and post-incident support trauma-responsive?

Have I worked with others to provide for the safety and wellbeing needs of children in the service?

Residential care services lead responsibility

Ensure the safety of all involved before the arrival of emergency services.

Shared responsibility

Provide children with information about their rights. This must include supporting a child to contact a legal service provider immediately or as soon as reasonable, unless the child expresses otherwise. It is the responsibility of the services and agencies to make sure this has occurred or will occur. For incidents outside of business hours, the Youth Legal Advice Hotline can be contacted – 1800 LAQ LAQ (1800 527 527), Monday to Friday 8am to 9pm, and Saturday 7am to 12 midday. Aboriginal and Torres Strait Islander children can also be directed to the Aboriginal and Torres Strait Islander Legal Services (ATSILS) - 1800 012 255, 24 hours, 7 days a week.

Support victims to participate in the process, including when making contact with police and legal services, and offer emotional support.

At the time of the incident

Is there benefit in a collective discussion of the incident to identify learning opportunities?

Strategies to support children during and following police involvement at a residential care service (or other emergency services)

Residential care services lead responsibility

Ensure an appropriate support person is available for a child alleged to have committed an offence. A support person cannot be a residential care worker involved in the incident.

Debrief children and staff separately and in a timely manner following an incident and support them to reflect on the incident (where appropriate). This could also include a discussion with Child Safety Services and first-responders.

Inform all workers of the agreed future responses to incidents for a particular child (or group of children) to ensure consistency.

Consider the group dynamics of the residential care service following the incident. This may involve an open discussion with all children living at the service. The assessment process should focus on offering stability and consistency to all children living in the home.

Consider themes arising from the incident/s and address these with staff in order to strengthen individual and organisational practice.

Facilitate a learning focused review of an incident or series of incidents with agencies and networks involved, including the nominated police liaison point.

Include agencies or networks involved with the child in reviewing a child's plan.

Residential care services and Child Safety Services lead responsibility

Individual plans should be reviewed following an incident and consideration be given to developing a safety plan for the child or connecting them with support services to address any social or wellbeing matters.

Following an incident

Appendix 1 – Police roles and responsibilities

1. When responding to incidents, a carer may require the involvement of emergency services such as Queensland Ambulance, Fire or Police. In an emergency, dial 000 immediately.
2. The purpose of the Queensland Police Service (QPS) is to provide timely, high quality and efficient policing services, in collaboration with communities, government and non-government partners, to make Queensland safer. Key objectives for the QPS include to stop crime, and make the community safer.
3. The QPS will collaborate with community in relation to a range of issues. If general advice is needed in relation to police involvement or management of specific issues, contact can be made in non-crisis situations with either local police or PoliceLink (131 444).
4. Prior to contacting police, consideration should be given as to whether police are the appropriate emergency service to provide a response to incidents at the residential care service.
5. Police are obliged to respond to a call for service. Police receive a significant number of calls for service from members of the community, and will prioritise all calls on the basis of urgency.
6. Police have no powers in relation to issues including:
 - behaviour management
 - returning a child to a placement, or otherwise transporting them
 - potential criminality (e.g. property damage) but where no criminal complaint will be made.
7. Officers responding to calls for service are more likely to be uniformed officers. These officers are unlikely to have had significant exposure to children who have experienced trauma. The considerations of these officers when attending a call for service will be to ensure the physical safety of all persons present, and to determine whether a criminal offence has occurred.
8. If a complaint about a criminal offence is made to police, police are obliged to respond, including by conducting an investigation. Specialist investigators may become involved in the investigation.
9. Police will consider the following factors to determine the appropriate response:
 - seriousness of the offence
 - degree of actual or threatened violence involved and any harm caused to alleged victims
 - age of the child/ren involved
 - views of the victim/s
 - any previous police contact with the child/ren
 - information provided by the residential care service about the child's personal circumstances, situation or other factors impacting on the child's behaviour (e.g. mental health, trauma, illnesses).
10. Police may determine that no further action is required in response to an incident, after discussing the incident with relevant residential care staff, the child/ren involved and any victim/s.
11. If police determine action must be taken, this can be by way of diversion (caution or referral to a restorative justice process) or commencement of criminal proceedings.
12. The residential care service is responsible for facilitating a child's access to legal advice and consulting with the child to identify and contact an appropriate support person.
13. If police determine diversion to be the most appropriate response, they will be required to formally interview the child. A child must admit to the offence/s and also consent to the caution or referral. If no admission or consent are provided, the police will commence criminal proceedings.
14. Criminal proceedings will only be pursued against a child if no alternative response is available.

Appendix 2 – Glossary

Criminalisation	Criminalisation refers to the normalisation of responses from child protection and criminal justice systems resulting in a child being exposed unnecessarily to the criminal justice system. This includes stigmatising children, labelling their behaviours as criminal, and adopting a criminal response to actions that would not be criminalised in a family home.
Criminal justice system	The criminal justice system includes the Queensland Police Service and the Department of Justice and Attorney-General, Queensland Courts Service, Youth Justices Services, Queensland Corrective Services, and Office of the Director of Public Prosecutions. ¹⁹
Out-of-home care	Out-of-home care provides a safe, supportive and therapeutic environment for a child, while working towards either family reunification or an alternative permanency option. Out-of-home care is used for a child when an assessment has been made that the separation of a child from their family is required to ensure the child's safety. Out-of-home care may be provided during the investigation and assessment or ongoing intervention phases of child protection intervention. Residential care is one type of out-of-home care (see definition below).
Residential care	Residential (non-family based) care is provided to young people in a residential premises (not a carer's or young person's own home) by paid or contracted workers and/or volunteers. Residential care provides an alternative to family based care options in environments that support a child in their adolescent development. Children living in residential care are primarily between the age of 12 and 18, however they can be of any age up to 18 years old. Residential care services are funded to provide specific levels of worker support, though are typically expected to provide care 24 hours a day, seven days a week, including providing care to young people when not attending school, and during school holiday periods and other times. There are four service types that deliver residential based services: • Residential care • Supported Independent Living • Safe Houses • Therapeutic Residential Care A full description of the requirements and considerations and performance measures associated with each residential care service type is described in the <i>Investment Specifications Child Protection (Placement Services)</i> and available from: communities.qld.gov.au/gateway/funding-grants/investment-specifications
Trauma	The experience of an event by a child that is emotionally painful or distressful, which often results in lasting mental and physical effects. The concept of trauma includes disrupted attachment, complicated grief and loss, and other negative developmental impacts.

Unnecessary or preventable police call-outs

An unnecessary or preventable police call-out refers to when police are called by a residential care service to respond to an incident or situation for which other, non-police responses would be more appropriate.

For example:

- calling police to respond to an absent child
- calling police to respond to minor incidents, including as a way to manage behaviour
- calling police to respond to a child who has caused property damage.

Agency	Role relevant to residential care
Child Safety Services	Child Safety Services has a statutory obligation to respond to children in need of protection, and maintains responsibilities for the child's care, protection, support and wellbeing in that time. Child Safety Services funds, contracts and regulates non-government organisations to provide care to a child in a residential premises by paid staff under the <i>Child Protection Act 1999</i> and the <i>Child Protection Regulation 2011</i>.²⁰
Office of the Public Guardian	The Office of the Public Guardian (OPG) is an independent statutory office which has refocused the former Child Guardian functions to provide individual advocacy for children and young people in care. The purpose of the OPG is to promote and protect the rights and interests of children and young people in visitable sites and homes, and those who are subject to a range of child protection interventions. These functions are undertaken by Community Visitors and Child Advocates.
Queensland Family and Child Commission	The Queensland Family and Child Commission (QFCC) works collaboratively to influence change so Queensland is a safe place where children, young people and their families thrive in supportive communities. The QFCC has a particular focus on promoting the safety, wellbeing and best interests of children and young people and improving the child protection system.
Queensland Police Service	The Queensland Police Service (QPS) provides timely, high quality and efficient policing services, in collaboration with communities, government and non-government partners. Key objectives for the QPS include to stop crime, and make the community safer. The QPS is obligated to respond to all complaints or calls for service.
Residential care services	Residential care is a type of non-family based out-of-home care for children who are subject to statutory intervention, including care agreements, assessment orders, or child protection orders granting custody or guardianship to the Chief Executive of Child Safety Services.¹⁹ Children in residential care are primarily between the age of 12 and 18, however they can be of any age up to 18 years old. These services are licensed and funded by the Department of Child Safety, Youth and Women and delivered through non-government service providers consistent with requirements in the Investment Specifications for Placement Services.

¹⁹ Child Safety Services is the department with responsibility for the delivery of tertiary child protection in Queensland (currently the Department of Child Safety, Youth and Women).

Endnotes

- ¹ Shaw, J, 2016, 'Policy, Practice and Perceptions: Exploring the Criminalisation of Children's Home Residents in England', *Youth Justice*, 16(2), 147-161; Narco, 2012, *Reducing offending by looked after children*, p. 21, London: Narco.
- ² Wise, S, and Egger, S 2007, *The Looking After Children Outcomes Data Project: Final Report*, p. 128, Australian Institute of Family Studies.
- ³ Results of a GForce survey, 2016.
- ⁴ Information provided by the Queensland Police Service, 31 July 2017.
- ⁵ Fitzpatrick, C and William, P 2017, *The Neglected Needs of Care Leavers in the Criminal Justice System: Practitioners' Perspectives and the Persistence of Problem (Corporate) Parenting*, *Criminology & Criminal Justice*, 17(2), p. 177.
- ⁶ Section 122 of the Child Protection Act:
 1(a) the child's dignity and rights will be respected at all times;
 1(c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;
 1(d) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour.
- ⁷ PeakCare Queensland, 2015, *Final Report (Stage One)*, p.39.
- ⁸ PeakCare Queensland, 2015, *Final Report (Stage One) Attachment One: Proposed Hope and Healing Framework for Residential Care*, p.1.
- ⁹ PeakCare Queensland 2015, *Final Report (Stage One)*, p.41.
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- ¹¹ This extends to all children living in out-of-home care.
- ¹² Bamblett, M, Long, M, Frederico, M, and Salamone, C, 2014, *Building and Aboriginal Cultural Model of Therapeutic Residential Care: The Experience of the Victorian*.
- ¹³ Queensland Government, 2017, *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-2037*, p. 14.
- ¹⁴ Scottish Government, 2008, *These Are Our Bairns a guide for community planning partnerships on being a good corporate parent*, p.62.
- ¹⁵ Bromfield et al., 2005; Knorth, Harder, Zandberg & Kendrick, 2008; Riggs, Augustinos & Delfabbro, 2009; Schofield, 2002; Schofield & Beek, 2005, in McLoughlin, P.J, and Gonzalez, R 2014, *Healing Complex Trauma through Therapeutic Residential Care: The Lighthouse Foundation Therapeutic Family Model of Care*, Children Australia, Volume 39, Number 3, p.170
- ¹⁶ Scottish Government, 2008, *These Are Our Bairns a guide for community planning partnerships on being a good corporate parent*, p37.
- ¹⁷ Scottish Government, 2008, *These Are Our Bairns a guide for community planning partnerships on being a good corporate parent*, p.62.
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- ¹⁹ Queensland Audit Office, 2016, *Criminal justice system—reliability and integration of data (Report 14: 2016–17)*, accessed 24 March 2018, <https://www.qao.qld.gov.au/reports-parliament/criminal-justice-system-reliability-and-integration-data>
- ²⁰ *Child Protection Act 1999*, Chapter 4, Part 2; *Child Protection Regulation 2011*, Part 3, Division 1.



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Introduction

Children and young people have reported they feel unnecessarily exposed to police while living in out-of-home care, particularly while living in residential care. The issue of criminalisation of children living in out-of-home care and their overrepresentation in the criminal justice system is a concern for the immediate and longer-term outcomes for many aspects of a child's life.

Criminalisation refers to the normalisation of responses from child protection and criminal justice systems, resulting in a child being exposed unnecessarily to the criminal justice system. This includes stigmatising children, labelling their behaviours as criminal, and adopting a criminal response to actions that would not be treated as criminal in a family home.

Children living in out-of-home and residential care often have complex needs resulting from abuse or neglect including exposure to substance abuse or domestic and family violence. The impact of these experiences may manifest in an inability to regulate behaviours or difficulties with interpersonal skills. These children, as with all children, can rightfully expect to be cared for within a trauma-responsive system that does not unnecessarily criminalise behaviours that result from trauma.

This paper explores the issue of criminalisation of children living in out-of-home care, the main factors reported to contribute to their criminalisation and jurisdictional responses to address the issue.

Criminalisation should not be interpreted as the action of a young person; rather, we are discussing child protection systems' reliance on responses that involve the police.

Section One: Criminalisation of children living in out-of-home care

There is a well-established nexus between children's involvement with child protection services, their overrepresentation in the youth justice system and their likelihood of contact with the criminal justice system as an adult.

While research perspectives and findings vary in relation to the rate of overrepresentation, the research is useful in providing a broad understanding of the issues related to the criminalisation of children living in out-of-home care.

National overview

The criminalisation of children living in out-of-home care, and their overrepresentation in the youth justice system have been identified as a concern across Australia.

In 2014–15, the Australian Institute of Health and Welfare (AIHW) found that across five Australian jurisdictions, children in the child protection system were 14 times more likely than the general population to be under youth justice supervision.¹

Two in every five (40.8%) children in detention had also been involved in the child protection system.² This means they were 19 times as likely to be in the child protection system compared to the general population.

Overall, males with a child protection history are more than twice as likely as females to have had contact with the criminal justice system.³



State samples

In Queensland, Department of Justice and Attorney-General (DJAG) data from February 2014 shows that 76% of children known to the Queensland youth justice system were also known to Child Safety Services.⁴ Similarly, in 2015-16, 32% of children in youth detention in Queensland had a child protection order history.⁵

In New South Wales, the 2008 Special Commission of Inquiry into Child Protection Services in New South Wales reported that 28% of males and 39% of females in youth detention had lived in out-of-home care. Further, 21% of males and 36% of females who were subject to a community order had a history of out-of-home care placements.⁶

In Victoria, a 2007 study found that 21% of children over the age of 10 living in out-of-home care had been cautioned or warned by the police, or charged with a criminal offence within the six months prior to the study.⁷

Similarly in 2014, Victoria Legal Aid (VLA) investigated how many children living in out-of-home care had sought assistance for a criminal charge. This analysis found children living in out-of-home care were almost twice as likely as children living with their family to become involved in the criminal justice system (30% vs 18%).⁸ Of concern was that 83% of children living in out-of-home care charged with a criminal offence had

¹ Child Safety Services is the generic representation of the department with responsibility for the delivery of tertiary child protection in Queensland.

been charged within the first 12 months of their placement. For these children the most common charge was criminal damage, whereas the most common charge for other children was theft.⁹

A South Australian study found a large proportion (71.1%) of young offenders had child protection histories.¹⁰ This study also found that children living in out-of-home care were more likely to have a conviction than those who did not have an out-of-home care placement history.¹¹

Still, the majority of children living in out-of-home care *will not* be known to or under the formal supervision of youth justice.

The criminalisation of children in out-of-home care is not unique to Australia. In England, children who have been in out-of-home care are 10 times more likely to be charged with a criminal offence.¹² Offending rates for children in out-of-home care in England were 10 times as high as those of children not in care.

¹² See, for example, [Hartley et al. \(2014\)](#).

Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children are known to be disproportionately represented within both the child protection and criminal justice systems in all states and territories. In Queensland in 2016, Aboriginal and Torres Strait Islander children were 8.5 times more likely to be placed in out-of-home care. In 2014-15, Aboriginal and Torres Strait Islander children in Queensland were 18.2 times more likely to be in youth detention than their non-Indigenous peers.¹²

Intergenerational trauma and the legacy of colonisation continues to underpin this overrepresentation. The complexity of these experiences, past and present, must be considered as part of a culturally appropriate approach to providing trauma-responsive care and support to Aboriginal and Torres Strait Islander children living in out-of-home-care.

Culture plays an important role in how children manage and express their traumatic life experiences, protect against the risk of continued trauma and identify supports and interventions that are effective.¹³ Aboriginal and Torres Strait Islander children must be supported to maintain connections with community, culture and family.

An important part of delivering trauma-responsive care and support to Aboriginal and Torres Strait Islander children includes developing culturally competent staff and adopting practices that acknowledge and are respectful of Aboriginal and Torres Strait Islander cultures.¹⁴ Providing residential care workers with information about behavioural, social or psychological responses to trauma from a cultural perspective strengthens support for Aboriginal and Torres Strait Islander children. It also promotes the importance of connecting with culturally responsive services.

Impacts on children in out-of-home care having contact with the criminal justice system

There are wide ranging negative effects for children who have contact with the criminal justice system.

A recent study, investigating the relationship between the child protection and criminal justice systems in New South Wales, found that children living in out-of-home care are more likely than those not in care to be charged following their first contact with police, and be charged for relatively minor offences. In most of these cases, it was determined that a police caution would have been a more appropriate response.¹⁵



... children who enter care having experienced abuse trauma ...
are then particularly vulnerable to being negatively influenced
by relationships and experiences within care.
This impact of this interaction is then exacerbated by involvement in the
youth justice system itself which can further criminalise looked after
children [children living in out-of-home care].

Source: L. 2072



Living in out-of-home care has been shown to lead to an increased risk of negative behavioural outcomes in children.¹⁶ This is particularly the case for those who have also been involved with the youth justice system.¹⁷ Early contact with the criminal justice system can result in increasingly punitive criminal justice responses in the future as well as increase the child's risk of becoming involved as an adult.¹⁸

Additionally, children who are living in out-of-home care often receive harsher treatment when they come in contact with the criminal justice system compared to children not living in out-of-home care, for example, they are more likely to be refused bail.¹⁹ While there may be a variety of reasons to refuse bail, refusal can be linked to a lack of appropriate accommodation within the community.

Contact with both the child protection and the criminal justice systems can have significant and long-term negative effects in other aspects of a child's life, throughout childhood and into the future.

Children who have been known to both child protection and youth justice have a greater likelihood of experiencing poorer life outcomes, such as poor mental and physical health, and increased difficulties in accessing education, employment and housing.²⁰ Children who have been subject to a youth justice order are also more likely to experience negative health and socio-economic life outcomes.²¹

The unnecessary involvement of police and the criminal justice system has broader impacts for the community more generally. For example, the reliance on involving police as a behaviour response in residential care services takes police resources away from responding to other incidents within the community.

Section Two: Criminalisation of children living in residential care

Children placed within residential care services often have complex needs resulting from trauma and/or abuse and neglect, which may include exposure to substance abuse or domestic and family violence. These experiences can often manifest in an inability to regulate behaviours, or difficulties with interpersonal skills. Accordingly, the care provided within a residential care service setting should be trauma-responsive and therapeutic in nature.

The complex history of children living in residential care means they are more likely to have contact with police or have a criminal record than those in other types of care.²² This does not mean that all children living in residential care are destined to act out criminally, but rather that the systems designed to protect them are more likely to expose the child to criminalisation.

For example, the high numbers of police call-outs by residential care services means children living in residential care are more likely to be cautioned or charged by police than other children. This discernibly contributes to their unnecessary exposure to the youth justice system.²³



some children in care remain at far greater risk of being drawn into the criminal justice system and getting a criminal record for minor offences that would never have occurred if they were living at home with their parents.



In Victoria in 2007, children aged 10 years and over living in residential care were nine times more likely to have been cautioned or warned by the police, or charged with a criminal offence than children in other types of care.²⁵ This can be seen as an example of children living in residential care receiving responses to challenging behaviour that results in an escalation to involve police, more so than children in other types of (home-based) care.

A recent study investigated the relationship between the New South Wales child protection and criminal justice systems by reviewing select files of children living in out-of-home care who had appeared before the New South Wales Children's Court. Of the court files reviewed, almost half (46%) of children were living in a residential placement at the time of the offence that brought them before the Court.²⁶ This is despite children living in residential care making up only a small proportion of all children living in out-of-home care in New South Wales. For the young people in this study, bail conditions were also more heavily policed than those living in foster or kinship care.²⁷

The preventable exposure of children living in residential care to the criminal justice system has been attributed to several factors including:

- the instability of residential care placements compared with other types of out-of-home care
- police being called to respond to minor incidents, including as a response to challenging behaviours
- residential care services' tendency to view police custody and youth detention as 'respite'
- police being called to locate 'absent' children.²⁸

A child's exposure to the criminal justice system can come through many pathways, however, contact with the police is usually the first point of exposure. Reducing preventable police call-outs to residential care services is a current focus in Queensland.

Young people's perspectives on police-call outs to residential care services in Queensland

In 2012, the CREATE Foundation (CREATE) GForce working group identified the need to address the criminalisation of children living in residential care services. Young people with lived experience in out-of-home care had expressed that workers in residential care services often called the police to manage situations that may not have come to police attention in a foster or kinship care, family home environment.

CREATE relayed that the young people reported:

- it was not uncommon for police to attend residential care services
- children in residential care did not know enough about their rights, or the law and felt ill-equipped in dealing with the police
- 'residential workers [did not] act with the same degree of compassion and often resorted to calling in support from the police instead of handling ... behaviour as a family would'
- 'life in residential care is very different to life in foster care [in respect to exposure to the police]'.²⁹

In October and November 2017, the Queensland Family and Child Commission (QFCC) spoke with young people about their experiences of residential care, including police contact (refer to the *Young people's perspectives of residential care, including police call-outs* information paper). The majority stated that when they lived in residential care police were called unnecessarily in certain situations. Their perspectives included:

- 'Part of the reason I was in trouble with police was all the missing children reports. [The police] would see me and pull me over.'
- '[I was charged with] common assault – got thrown in the watch house. [I threw a skateboard] and the same worker who I threw the skateboard at came to pick me up – doesn't make sense.'
- '[The police] charged me for property damage in regards to pushing a stool over – there was a scratch on the floor.'
- 'I've been charged with wilful damage and breaking and entering. I broke into the [residential service] to get my own stuff. I told them what time I was going to be there. People should have been there at that time but they weren't.'

A child's history must be considered when deciding how to manage behaviour, rather than decisions being based on the type of incident they may be involved in.³⁰ Some young people reported *any* police contact affected their feeling of security and stability in residential care, reminding them of bad experiences and triggering difficult emotions.³¹ Furthermore, young people have said that police involvement in an incident at a residential care service can stigmatise them and have an immediate negative effect on other children living in the placement.³²

While police intervention is warranted in some circumstances, involving police as a way of keeping order in a residential care service has a number of unintended consequences to children. This practice presumes children living in residential care are potential criminals and increases their contact with the criminal justice system where they otherwise would have had none.³³ This can lead to the perception children living in, or who have previously lived in, residential care are a 'risky' group.



(Feel them) out in residential care and they think I am a bad child.
(People think) residential care is for the insane or misbehaved.

—Young person, QFCC consultation (2017)



The absence of support for children during and after police involvement and throughout resulting court proceedings is also reported to be an issue. A 2017 study in New South Wales found a lack of agency involvement with vulnerable children when they were exposed to the criminal justice system. For example, in over a third of cases reviewed, there was no evidence of children living in out-of-home care being provided with appropriate support at the police station or at court.³⁴

CREATE reported on this issue from a young person's perspective stating that often 'nobody is talking to them about rights'.³⁵ It was also suggested that knowledge of rights and the law was part of a power imbalance between youth workers and young people. In addition to being in opposition to the *Charter of rights for children in care* and the principles of the *Youth Justice Act 1992*, this lack of support means children living in out-of-home care can be further disadvantaged by the systems designed to protect them.

Children living in residential care are not told of **their rights** and they have had enough of the rules in their lives changed because they live in care.

It isn't fair to set them up to fail.

Young person, CREATE survey, 2013

Children living in residential care have further reported they are not provided with adequate support throughout their contact with the criminal justice system. This includes being supported to access legal representation or to seek information on the law and their rights. Without the proper support and information, children will be disadvantaged during their contact with the criminal justice system.

“

They stood there but didn't participate in it because the young person is the one who got themselves into the situation, therefore they have to deal with it.

Young person, CREATE survey, 2013

”

There is an opportunity to better respond to the support needs of children living in residential care to avoid unnecessary criminalisation. This response includes developing a better understanding of the workforce, policies and practices that are driving the high rate of police call-outs in residential care services.

Section Three: Factors contributing to the preventable exposure of children living in residential care to the criminal justice system

The experiences and vulnerability of children living in residential care together with the characteristics of the residential care system contributes to a child's risk of exposure to the criminal justice system.

There are a number of factors that contribute to residential care services contacting the police including:

- characteristics of residential care services and the workforce
- placement matching, care environments and stability for children living in residential care services
- responses to children living in residential care who are absent from placement.

Policies and procedures

Child Safety Services funds, licenses and regulates the residential care system. Licensed non-government organisations are responsible for managing the operation of residential care services. Under this arrangement, the licensed organisations develop self-governing operational policies and procedures to manage the safety and wellbeing of children, in line with the licensing requirements stipulated by Child Safety Services.³⁶

There is inconsistency in the policies adopted by different licensed organisations, and this has resulted in inconsistent guidelines around calling the police to respond to incidents at individual residential care services. There is also inconsistency in procedures that guide de-escalation of behaviours and responses when children are absent from placements. A lack of guidance for managing and responding to incidents in residential care services has led to an over-reliance on criminal justice responses, such as police call-outs.³⁷

“... not all the residential services in Queensland are the same and therefore cannot all be assumed to be **delivering services** to young people in the same way. There are significant variations in funding levels, **service agreements**, program designs, resources, local support services ... and the young people being referred to them.”

QCRATE Survey, 2013

The Queensland Child Protection Commission of Inquiry (QCPCI) found that children living in residential care were being charged with criminal offences because residential care workers were making formal complaints about their behaviour. In their inquiry the QCPCI identified the decision to call police can be related to risk adverse policies of residential care services. The final decision to call police was left to the discretion of the individual residential care worker.³⁸

Below is an example of a minor incident in a residential care service in Queensland. In this instance, police should not have been relied upon to respond to the incident.

Minor incident resulting in police involvement

The police charged a 15 year old living in a residential care service with stealing the key to their bedroom. The child was from a refugee background and had been diagnosed with post-traumatic stress syndrome.

The residential care service provided the child with a key to their room in the residential care service. However, the child lost the key. They borrowed the residential care worker's key to their room. The child left the residential service for a period of hours keeping the key with them. Subsequently, the residential care worker made a complaint to the police.

The child's lawyer made a written submission to Police Prosecutions on the basis there was no intent on the part of the child to keep the key permanently. The police accepted the submission and discontinued the prosecution. The matter took over two months to finalise and during that time the child was subject to continuing bail conditions.³⁹

Policies and procedures that promote consistency and local resolution, and make sure police involvement is limited to situations where needed, will reduce the criminalisation of children living in out-of-home care.

Staff capability

The residential care environment has been described as a process of 'care criminalisation', in which staff are inadequately trained to resolve conflict and so rely on police to manage children's behaviours.⁴⁰

The level of experience and service support impacts on an individual worker's capacity to deal with challenging and complex behaviours.

Queensland residential care worker, G-Fairlie Survey

The perspectives of residential care workers, as captured by CREATE, indicate concerns about the frequency and impact of police involvement at residential care services:



My opinion after 5 years, watching 30-40 different youth workers' approaches, [is] that most workers who press charges do so out of a sense of helplessness. They are not confident in their own ability to manage the situation (due to lack of training, experience [or] individual resilience).

Most staff are confident to manage intense situation/crisis (and) are able to utilise the opportunity to build rapport and teach more suitable coping strategies resulting in subtle improvements in behaviour. The challenge is identifying where "the line" should be drawn with violent behaviour.

Queensland residential care worker, G-Fairlie Survey



It is important that staff have the capability to respond therapeutically in ways that do not unnecessarily criminalise a child's behaviour. One study into residential care services in England found that staff in residential services view calling the police as a 'much-needed way of keeping order'.⁴¹ This way of thinking can result in an increased tendency to use the criminal justice system to resolve problematic situations.⁴²

Indeed, this English study determined residential care workers often called police to assist with challenging behaviours and considered police involvement a 'wake-up call' for children living in residential care.⁴³ This has also been found in Australian research, where the criminal justice system is seen as a recourse for a child considered out of control or failing to respond to other sanctions given by staff.⁴⁴

A further recent report by the Commission for Children and Young People in Victoria notes, 'reliance on police may indicate that some staff are not adequately equipped or supported to respond to trauma related behaviours of vulnerable children.'⁴⁵ The views of children and young people also support this.

Children living in residential care recognise the importance of a capable and supported workforce that has the capacity to meet the needs of the children under their care. They have identified that in order to feel safe in a residential care service, the residential staff need to be well trained and have the capacity to act to prevent problems and skilfully respond when issues arise.⁴⁶

Young people's perspectives on residential care workers

CREATE interviewed children who are living in, and young people who have previously lived in residential care about what they thought were the strengths and weaknesses of residential care workers. One young person reported communication and trust provide the opportunity to explore a young person's behavioural triggers and eliminate the need to call police. Improving communication in residential care services can create trust and respect between children and staff.

The below diagram illustrates children's perspectives on qualities that make a good and a not-so-good residential care worker.



Figure 1: Children's perspectives on qualities that make a good and a not-so-good residential care worker

Children living in out-of-home care may have a history of trauma, such as mental illness, domestic and family violence exposure, physical abuse or neglect, or family members with substance abuse problems.⁴⁷ These experiences can influence cognitive and social development, including a child's ability to regulate physical, emotional and behavioural responses.⁴⁸ This highlights the need for staff to be able to address the behaviour support needs of children in ways that do not unnecessarily treat behaviours as criminal.

An opportunity exists to challenge the reliance on criminal justice responses. Strengthening the capability of workers in residential care services to apply a trauma-responsive approach to meet the individual needs of children will contribute to the reduction of criminalisation of children living in residential care. Since the release of the QCPCI report, Child Safety Services commissioned PeakCare to develop the *Hope and Healing Framework for Residential Care* (Hope and Healing Framework). The Hope and Healing Framework will see the broad adoption and implementation of a trauma-informed therapeutic framework for all residential care services in Queensland.

Minimum qualifications for residential care workers

In May 2017, the former Minister for Child Safety announced that from July 2018, all residential and non-family based care workers must be working towards a minimum Certificate IV in a relevant child and welfare or child wellbeing course.

All workers must hold a Certificate IV or higher by the end of 2019. This aims to strengthen the capability and capacity of the workforce in delivering services to vulnerable children.

The care environment

Co-location of children in residential care potentially raises exposure to behaviour and attitudes (for example, substance use and educational disengagement) which can increase the likelihood of offending behaviour to occur.⁴⁹ Although recognised as not ideal, it is not uncommon for children with higher behaviour support needs to be living together in the same residential care service.⁵⁰

This means it is important to consider the dynamics of the household when planning for the individual needs of each child. This includes maintaining a view of each child's individual strengths, pressures and triggers as well as considering the impacts of the dynamics of all children living together and the residential care environment.⁵¹



My foster parents were more strict, but also more lenient.
Foster parents have more time to understand what is going on.
I don't think (as) most staff really give young people a chance to say what
is going on, this doesn't happen.

— Young person, QLD, 17 years old



Young people list having a sense of 'comfort and normality' as something they want and need from residential care.⁵² However, research shows children living in residential care are typically subject to higher levels of surveillance by their caregivers than children living at home or in other types of out-of-home care.⁵³ Furthermore, young people in Queensland who have experienced both family-based and residential care said they were not treated with the same degree of compassion in residential care, and that workers resorted to calling the police more often than foster or kinship carers.⁵⁴ This may make it difficult for children to achieve a sense of comfort and normality in the residential care home.

Young people also list 'feeling safe and supported' as something they want and need from residential care. While all research indicates the importance of maintaining a safe and non-violent environment for children to feel safe and learn new responses to stressful situations⁵⁵, some strategies to increase safety may have unintended consequences or be interpreted as a means of imposing compliance and control. Two young adults told the QFCC, 'at one house you were searched before you entered the house, every time you came home. This house was where lots of incidents had occurred', and 'there was bars on windows. It felt like a jail.'

Children who are absent from their placement

Child Safety Services currently provides support and guidance to foster and kinship carers and staff in residential care services to respond to situations where a child is assumed missing.

Reporting missing children

A **missing child** is any child whose location is unknown and there are fears for the safety or concern for the welfare of that child.

An **absent child** is a child who is absent for a short period without permission, and where the child's location is known or can be quickly established.⁵⁶

When a child is missing, immediate efforts are required to locate them. This includes reporting the child as missing to the police.

However, in circumstances where children aren't missing but rather are 'absent from placement' (the child is not where they are meant to be, but their whereabouts are known or can be easily confirmed) carers and residential staff are directed to act as a 'reasonable parent' would when determining how to respond.⁵⁷ In these circumstances in Queensland, the Queensland Police Service (QPS) does not expect to receive a missing persons report.⁵⁸

Evidence suggests children who are absent from their residential care service are often unnecessarily being reported as missing.⁵⁹ This concern was raised during the Queensland Child Protection Commission of Inquiry (QCPCI) where the QPS identified the high numbers of calls, primarily from residential care services, for children 'missing' from out-of-home care.

In 2016, the QFCC conducted a **review of the arrangements**
in place for responding to children missing or absent from out-of-home care.

This report found children living in out-of-home care may account for up to **30%**
of all children reported missing to the QPS.

The evidence provided to the QCPCI indicated missing person reports were often made with little or no prior investigation by staff into the absent child's location. In many of these instances, the absent child did not fit the definition of a missing person, as their general whereabouts was known to staff or could easily be determined. The QPS expressed that reporting a child as missing in these circumstances 'trivialised' the intended purpose of missing person reports.

Residential care services calling police in response to a child's absence has been seen as a 'symptom of a residential system under strain'.⁶⁰ The former Queensland Commission for Children and Young People and Child Guardian told the QCPCI that young people did not perceive residential care services to be safe or that 'staff are acting in a supporting or sensitive manner' to their behaviour support needs.⁶¹ As a result, the QCPCI raised concerns regarding the residential care system using a service model that does not reflect an understanding of the effect of past traumatic experiences, insecure attachment relationships and developmental needs on a child's psychological wellbeing.

The Hope and Healing Framework is one initiative being embedded to address these concerns by strengthening trauma-informed responses through establishing a therapeutic framework for all residential care services.

Placement matching and placement stability

The child protection sector also needs to consider ways to increase stability within residential care placements. There are concerns with policies and practices that result in children living in out-of-home care being exposed to multiple case workers, variations in expectations around behaviours, and disconnection from peers and support systems. These issues create an environment of instability and lack of consistency in supporting behaviour regulation and cultural norms. Placement instability has been linked to contact with the criminal justice system.⁶²

In 2012, children and young people reported experiencing a minimum of four placements prior to living in residential care. The average number of placements in residential care for children who spoke to CREATE was 7.9.⁶³

Impacts of placement instability

Children are often placed in a residential care service when other placements no longer meet their needs.⁶⁴ Children living in residential care report feeling most safe when there is stability and predictability in the environment and they have argued that more attention needs to be given when deciding which children are placed together in residential care services.⁶⁵



Participants believed that children (living in residential care services) were unsafe because of prior placement about who they were placed with, and wanted more say in how they were matched with their peers.



One young person told the QFCC, 'kids already knew my reputation, kids knew how to get to me. I was taken to this house and I said to the carers if you leave me here someone is going to get hurt and it's not going to be me. I warned them. And as soon as the worker left we had a punch on. I told the workers face-to-face "this has already happened today".'

Residential care services should create a positive peer culture where young people support each other. It is important the placement matching process considers the individual service, the dynamics of children already living within the placement and the needs of the individual child when determining if the residential care placement is appropriate.

Poor placement matching can contribute to the criminalisation of children living in residential care services.⁶⁶ Placing children with high-risk peers in residential care can have a negative effect on their behaviours, including shaping or encouraging deviant and offending behaviours.⁶⁷ One young person said 'some of the houses out there are real bad. It's not your intention to get involved with it [trouble] but you want to have a bond with the people you live with. [They are sometimes] two or three years older [than you are].'

Placement instability can also negatively affect education outcomes and employment opportunities for children. Children living in residential care services are less likely to be engaged in school or training and are more likely to be unemployed or in low paid employment⁶⁸ increasing their risk of exposure to the criminal justice system.

Section Four: Improving responses through a joint agency response

An opportunity exists to improve policies, processes, connections and support to reduce preventable involvement of police with residential care services in Queensland.

Part of this response should include developing meaningful collaboration across agencies and services.



There are risks to young people and youth workers alike with the existing model of developing and delivering residential care placements in Queensland, and yet there is so much potential for well-designed residential care facilities to provide a safe and supportive learning environment where young people can develop the skills they need for their future.

Continuous improvement informed by the participation of children and young people in care will help this potential to be realised.

CRE4FF Survey 2015



Research has identified a number of effective strategies to support children in residential care services at risk of exposure to the criminal justice system. These strategies include:

- establishing a positive relationship between police, staff and children living in residential care services
- making sure residential care workers have been trained in restorative approaches to responding to incidents of problematic behaviour in residential care services
- the expectation that residential care workers are willing and able to accept new strategies to respond to incidents of problematic behaviour.⁶⁹

These strategies have been operationally developed and implemented in other Australian jurisdictions. For example, the New South Wales government has recently introduced a protocol to 'reduce the frequency of police involvement in responding to behaviour by young people living in residential OOHC [out-of-home care] services that would be better managed within the service'.⁷⁰

This *Joint Protocol to Reduce the Contact of Young People in Residential Out-of-home Care with the Criminal Justice System* (the Protocol) aims to facilitate collaboration between police and residential services to provide a coordinated and trauma-informed approach. The Protocol provides guidance to residential care workers and the police about how to best respond to children in residential care's behaviour in a manner that is consistent with therapeutic care.

Joint protocols focusing on restorative justice programs in residential care services and interagency collaboration have also been implemented internationally, particularly in the United Kingdom.

For example, the Staffordshire County Council and Stoke-on-Trent City Council, England, introduced *A Joint Protocol to Reduce the Prosecution of Looked After Children* in 2017. This protocol highlights the importance of regular and effective liaison between residential care staff and managers, social workers, Staffordshire and Stoke-on-Trent Youth Offending Service staff, local police and youth specialist prosecutors.

Protocols have been developed in those jurisdictions to provide consistent standards and guidance for residential care services and others involved in providing care for children.

Support and communication

Research commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) highlighted that young people often seek avenues to discuss safety in residential care services, however, they are rarely given opportunities to contribute to the discussion about how best to respond to issues.⁷¹ Moore and colleagues found that 'residential care units were safer when they had clearly articulated expectations of staff and children and demonstrated their commitment to safety by doing what they said they would do'.⁷²



...units always have a chart that show how they respond to very troublesome behaviour from young people... developing a better understanding and more appropriate response to children's behaviour... residential care is a caring place.



Residential care services in Queensland have identified that displaying policies and practices visually (such as through posters) communicates expectations clearly to children and provides a tool to support discussions. Making sure expectations are presented in 'hopeful and positive ways' means children and young people will attempt to meet these expectations rather than rebel against them.⁷³

While this paper focuses on ways to prevent police call-outs to residential services, at times it will be necessary to call the police to a residential care service. In these circumstances communication helps to prevent the situation escalating once the police have arrived. When asked about what staff should do when police are called to a residential care service, young people told CREATE staff should inform and prepare *all* children in the residential care service to enable them to cope with the situation.⁷⁴ Clear, simple and consistent policies and procedures and other child-focused educative material can support these types of discussions with children.

It is also important that children exposed to the police and the criminal justice system are provided with information on what to expect and given appropriate legal support. For example, Queensland Office of the Public Guardian's Child Advocates – Legal Officers (child advocates) are lawyers who are able to protect the rights of children in the child protection system and ensure their voice is heard.⁷⁵ Child advocates are able to provide services to children who are subject to child protection orders which includes providing information and advice about legal issues, or providing support in court conferences.

Data limitations

Capturing and reporting on data is a critical part of building an understanding of the effect calling the police to residential care services has on the police, residential care services, and the staff and children living there. Data also supports internal management and reflection for a continuous improvement approach to service delivery.

Improved data capturing, from multiple agency perspectives, would support the development of strengthened policies and processes for residential care and improve the ability to report on the prevalence of police call-outs to residential care services in Queensland. Improving the way data is captured to better understand the frequency of police involvement may require financial and resource investment from relevant agencies.

Project EURECA—a working example

Following an increase in police call-outs to residential care services in 2014, a partnership of local level representatives from agencies and residential care services established an initiative to address the issues contributing to increased police call-outs.

'Project EURECA' (Encouraging a United Response to the Education and Care of Adolescents) identified the majority of police call-outs occurring within the region were related to the behaviours of young people rather than criminal activity. To respond to the identified issues, representatives from multiple service delivery agencies in the local area committed their on going participation in a multi-disciplinary, case-focused response. This included a commitment from the local Child Safety Service Centre and police station.

Child Protection Investigation Unit officers (part of the QPS) were assigned to liaise with each residential care service in the region. This aimed to establish partnerships between police and residential services to allow for a multi-disciplinary discussion regarding strategies to better support children and young people in situations that did not require a criminal justice response. Residential care staff were encouraged to discuss procedural issues and queries about incidents in residential care services directly with police, in an informative rather than punitive way.

This local initiative achieved a number of benefits for children and residential care services operating in the area:



Figure 2: Outcomes of Project EURECA

Representatives from each residential care service and relevant agencies continue to meet collaboratively to discuss the support needs of children living in residential care in their local area. The ongoing commitment to a cross-agency approach has been key to the success of this initiative.

Conclusion

The concerns raised by children living in out-of-home care about their experiences of being criminalised, and exposure to the criminal justice system have ignited cross-agency attention to the issues.

While research and findings vary in relation to the extent to which children living in out-of-home care are over represented in both cases, it provides a broad understanding of the related issues.

The QFCC acknowledges the complex needs of children living in out-of-home care, resulting often from traumatic abuse or neglect that may have instigated their placement in child protection in the first place. The impact of these experiences may manifest in their inability to regulate behaviours and difficulties with interpersonal skills. These children can rightfully expect to be cared for within a trauma-responsive system that does not unnecessarily criminalise behaviours that would not be treated as criminal in a family home.

The QFCC, with government and non-government sector partners is committed to improving outcomes for children in residential care by reducing the preventable involvement of police in supporting children. The *Joint agency protocol to reduce preventable police call-outs to residential care services* has been developed to identify shared principles, roles and responsibilities, and strategies for those involved in the provision of care to children living in residential services. It has been designed to complement existing strategies, such as the Hope and Healing Framework and the Human Services Quality Framework.

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