



***A PERFECT STORM?  
Dual status children and young people in  
South Australia's child protection and  
youth justice systems - Report 1***

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## **Note on terminology**

*South Australia's 'dual status' children and young people are those who are both in care and involved in the youth justice system. This involvement can range from receiving police cautions, to being detained in a youth justice training centre.*

*This report refers to residential and commercial care which is provided by Department for Child Protection and NGO providers. It does not explore different practices and policies that may apply in the residential or commercial care environments.*

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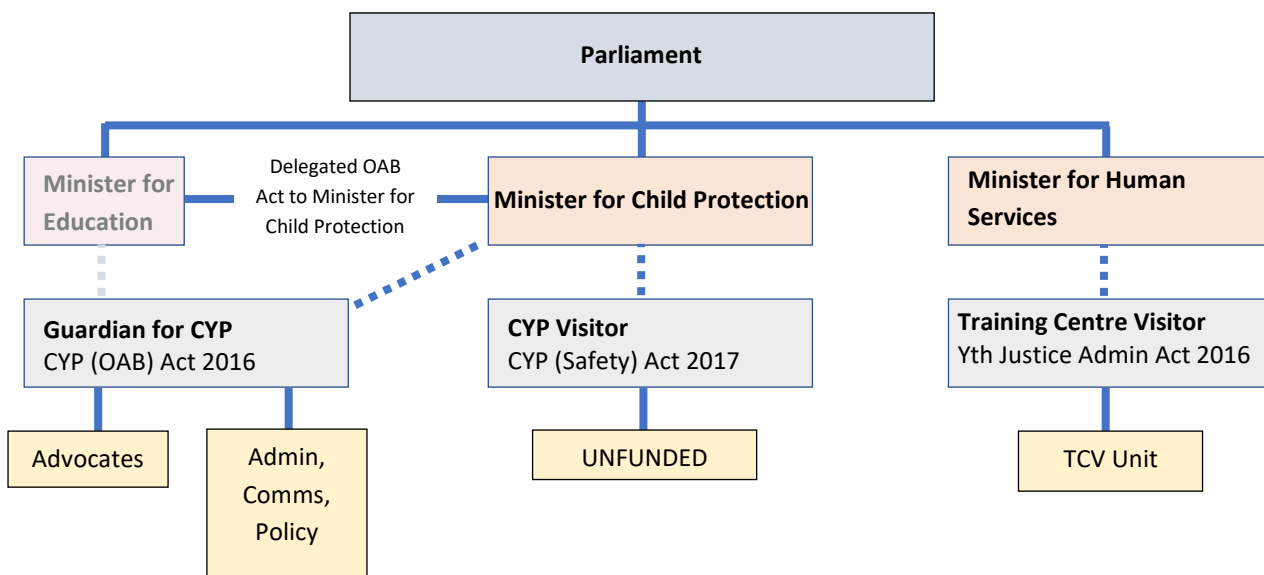
## **Acronyms**

- AYTC – Adelaide Youth Training Centre
- CYP – children and young people
- CYPV – Child and Young Person's Visitor
- DCP – Department for Child Protection
- DHS YJ – Department for Human Services Youth Justice
- GCYP – Guardian for Children and Young People
- OGCYP – Office of the Guardian for Children and Young People
- SAPOL – South Australian Police
- TCV – Training Centre Visitor

## Introduction

Penny Wright, the Guardian for Children and Young People (GCYP) and Training Centre Visitor (TCV), has statutory functions defined in section 26(1) of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and section 14(1) of the *Youth Justice Administration Act 2016*. These Acts mandate that the best interests of children and young people in care and in youth detention must be protected and promoted.

Both Guardian and TCV functions operate through the Office of the Guardian for Children and Young People (OGCYP), as does the currently unfunded Child and Young Person's Visitor which was established under Chapter 9 of the *Children and Young People (Safety) Act 2017* to provide oversight of the situation of children and young people in residential care.



This report is the first of a series of papers that draw attention to the particularly parlous situation of dual status children and young people, that is, those who are involved in both the youth justice and child protection systems. As such, they are children and young people for whom the State assumes a serious corporate parenting responsibility once they become subject to a relevant court order.

Awareness of the plight of dual status children and young people has been reinforced by the implementation over the past two years of the Training Centre Visitor Program. Almost one quarter of children and young people held in detention are also in care at the time of their admission to the Adelaide Youth Training Centre (AYTC).<sup>1</sup> Most of these children and young people arrive from, and return to, residential care, especially large congregate units that could accommodate up to 12 children and young people in the recent past.

<sup>1</sup> Training Centre Visitor Annual Report 2017-18, page 10, Average daily population AYTC 2017-18.

This series of papers indicates that in South Australia, as in other Australian jurisdictions, the overrepresentation of children and young people who are in care entering the youth justice system does not occur because those in care are inherently criminal, but because the system makes their criminalisation more likely.

Inadequate planning, policy, procedure, and communication across government and non-government systems steers those in care into the youth justice system. Multiple opportunities are missed to intervene and provide therapeutic support to those in the care of the State. The behaviours of children and young people who have experienced significant trauma, abuse and/or neglect are classified as 'crimes' rather than indications of dysfunction or distress and dealt with by the police and youth justice system. They are often then released back into the same environment from which the criminal charges arose.

This cycle highlights a child protection system that struggles to undertake its core function – keeping children and young people safe.

Beyond the financial costs and negative social impacts on children and young people and communities, youth justice involvement is associated with injurious life outcomes that include early mortality and likely progression to the adult criminal justice system.<sup>2</sup> Such realities reflect a failure to meet the obligation to ensure the best possible outcomes for children involved with child protection services, particularly those removed from family, and for whom the state is the legal guardian.<sup>3</sup>

Out of home care should ensure access to protective and stabilising environments yet research and experience across analogous jurisdictions demonstrate that, as in South Australia, the residential care model is more associated with engagement with the youth justice system than are other care alternatives.<sup>4</sup>

The set of OGCYP papers that will be released in the coming months will consider the circumstances of children and young people living in residential care in South Australia, how relevant environments and systems promote engagement with the youth justice system, and matters that need to be addressed to ensure that the State and broader community can meet their care and parenting responsibilities to affected children and young people.

Attention will be drawn within this discussion to the circumstances and needs of children and young people with particular characteristics that are notable within the affected population, including: Aboriginal and Torres Strait Islander children and young people; those with physical, psychological and/or psychosocial and other disabilities or special needs; girls and young women; and particular age groups (noting that children as young as 10 can be incarcerated as criminals in South Australia).

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<sup>2</sup> Baidawi, S. and Sheehan, R. (Forthcoming). 'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology. pp 16-17 referring to Lynch, M., Buckman, J., & Krenske, L. (2003). 'Youth Justice: Criminal Trajectories'. *Trends & Issues in Crime and Criminal Justice* (265), 1-6; Tarolla, S. M., Wagner, E. F., Rabinowitz, J., & Tubman, J. G. (2002). 'Understanding and treating juvenile offenders: A review of current knowledge and future directions. *Aggression and Violent Behavior*, 7, 125-143.

<sup>3</sup> Ibid.

<sup>4</sup> McFarlane, Katherine 'Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system' Thesis, School of Law UNSW 2015, p 41 referring to Foucault, M. (1977) 'Discipline and Punish: The Birth of the Prison'. *Allen Lane*. London UK.

One young person was spoken to directly about her experiences for the purpose of this series of papers. In order to protect her identity, she has requested we use the pseudonym 'Sara'. Her experiences in becoming a 'dual status' young person will be explored in forthcoming reports.

Sara is a thoughtful, insightful, intelligent and funny young woman. She was originally placed in a kinship placement, but it did not work out. She was then placed in a large congregate care unit, which was her first time in residential care. She quickly stopped attending school, became involved in the youth justice system, and "learnt really fast to fit in". When the OGCYP first met her in mid-2018, she was being held on remand at the AYTC and was facing significant charges. When we contacted her again to speak with her about this piece of work, she was back living in residential care. She was really enjoying attending her new school. She wanted to participate in this piece of work in the hope that in the future, other children and young people in care do not have to have the same experiences as her.

Sara brilliantly captured the nature of the perfect storm which led her into the youth justice system when she summarised it as follows:

"They kept putting us in the same situation but expecting a different outcome."

## What is residential care in South Australia?

In this report, residential care includes commercial care.

There are approximately 182 residential care homes across South Australia, each housing between one and six children and young people. The GCYP has long advocated for the closure of large congregate care units, which have capacity to house up to 12 children or young people. Despite initially signalling that these facilities would be closed,<sup>5</sup> the Department and Minister for Child Protection have now indicated that numbers are being 'capped' at six children and young people per unit. There are still four large congregate care units operating in South Australia. OGCYP understands that at the time of publishing, at least one of these units still has nine residents living in it, although in practice there are rarely that many children or young people at home as many are listed as missing persons.

OGCYP can report that high rates of children and young people who live in these large congregate units are frequently being detained at the AYTC, indicating that it is not the individual children or young people who are criminal, but the environment which criminalises them.

These large-scale congregate care units (those with more than four residents) continue to operate to the disadvantage of their residents. GCYP's advocacy and monitoring visits tell us that the newer large facilities, which were built in previous years against the advice of the Guardian and against lessons drawn from good practice, remain especially problematic for residents. Issues associated with facilities, including assaults and bullying, exposure to drugs and alcohol, predation by older people in the community, restrictive practices (locking doors, limiting the use of the kitchen) and exposure to the criminal justice system, have contributed to further or repeated trauma and residents 'voting with their feet' by leaving the placement for extended periods of time (generating MPRs, or Missing Person Reports).

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<sup>5</sup> The Hon Rachel Sanderson, Minister for Child Protection, *Media Release*, 'State Government to close 12-bed Queenstown Unit and develop new out of home care model' 14 December 2018  
<[https://www.rachelsanderson.com.au/state\\_government\\_to\\_close\\_12\\_bed\\_queenstown\\_unit\\_and\\_develop\\_new\\_out\\_of\\_home\\_care\\_model](https://www.rachelsanderson.com.au/state_government_to_close_12_bed_queenstown_unit_and_develop_new_out_of_home_care_model)>.

Commercial care (formerly called 'emergency care') is a sub-set of residential care where children are housed in temporary accommodation and cared for by rotating shifts of commercially-sourced workers who often have minimal training and supervision.

The number of commercial care properties is unknown by OGCYP, however we monitor weekly updates on the numbers of children and young people placed in commercial care.

## Overrepresentation

There is nationwide concern about children and young people who are involved in both the child protection and youth justice systems. Significant reports and inquiries include the SA Child Protection Systems Royal Commission,<sup>6</sup> the NSW Child Protection Inquiry,<sup>7</sup> the Review of Victorian Youth Justice Services,<sup>8</sup> and the Royal Commission into the Protection and Detention of Children in the Northern Territory.<sup>9</sup> Despite this concern, there is a dearth of basic information about the dual status group, and there appears to be little evidence about effective responses to their vulnerable circumstances.

Being 'in care' in South Australia means being subject to an order under the *Children and Young People (Safety) Act 2017*. On 30 June 2018 3,695 children and young people were in care, approximately one per cent of the State's population of children and young people.<sup>10</sup> Of those, about 1 in 7 lived in residential care settings (502 individuals), about 0.1 per cent of the State's children and young people.

Living in residential care almost guarantees that a child or young person will have contact with the youth justice system. Police are frequently called to manage behavior, and to respond to property damage and assaults on staff and other residents. This rarely occurs in a family-based care environment.

A young person in care recently summarised the care environment in large congregate care units to an OGCYP Advocate -

*...you have to understand the training centre is a holiday for kids in resi care... for kids in units... when I was in the unit the training centre would have been a holiday away from that shit that they do to us, man.*

Residential care often houses unrelated children and young people with high level needs together. Their connection to family and community is often weakened and management systems often rely on youth justice solutions to encourage adherence to a set of institutional routines.

While not all of those in residential care have reached 10 years of age, the minimum age of criminal responsibility in South Australia, this younger group may also confront the youth justice system. The OGCYP is aware of instances where police have been called for behavioural matters that result in the physical restraint of children under the age of 10.

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<sup>6</sup>The Hon Margaret Nyland AM (2016) *The Life they Deserve, Child Protection Systems Royal Commission report*.

<sup>7</sup> NSW General Purpose Standing Committee No 2. (2017). *Child Protection*. Sydney: NSW Parliament.

<sup>8</sup> Ogloff, J., & Armitage, P. (2017). *Meeting Needs and Reducing Reoffending - Youth Justice Review and Strategy*. Melbourne: Victorian Government.

<sup>9</sup> Commonwealth Government. (2017). *Royal Commission into the Protection and Detention of Children in the Northern Territory Final Report*. Barton, ACT: Commonwealth Government.

<sup>10</sup> Australian Bureau of Statistics, 3218.0 - Regional Population Growth, Australia, 2017-18.

Research has consistently demonstrated that the age of first contact with police is a key indicator of ongoing contact with the justice system, and the earlier the contact, the more contact over a child's lifetime is likely.<sup>11</sup> Australian research has also demonstrated the overrepresentation in this younger cohort of dual status children and young people.<sup>12</sup>

The United Nations Committee on the Rights of the Child recently commented that despite the 25 enquiries held across Australia since 2012, child protection systems are still poorly resourced, which causes harm to children and young people in care by –

- relying on badly trained and/or inadequately supported staff;
- inadequate placement matching of children and young people in care; and
- excessive reliance on police interference and the youth justice system when dealing with children and young people's behavioural problems, without ensuring appropriate therapeutic intervention.<sup>13</sup>

These issues were all apparent in research undertaken for this series of papers. All contribute to the overrepresentation of those in care in South Australia's youth justice system.

## **Key issues relating to government management of dual status children and young people**

Some key issues can be highlighted about problems associated with current understanding and management of dual status children and young people -

- Decision making is often not child-centred but has a 'systems' focus, with systemic interests at the forefront of decision-making.
- Appropriate, applied and properly resourced models of therapeutic care are largely lacking.
- Approaches to addressing the needs and circumstances of dual status children and young people are siloed, if they exist at all.
- Insufficient and inadequate data is collected, analysed and made available about dual status children and young people and the systems that influence their lives.
- Aboriginal children and young people, and those with physical, psychological or intellectual disabilities are grossly overrepresented within this group.

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<sup>11</sup> McFarlane, p 130 referring to Chen, S., Matruglio, T., Weatherburn, D., and Hua, J. (2005). The transition from juvenile to adult criminal careers' *Crime and Justice Bulletin NSW, Contemporary Issues in Crime and Justice* No. 86. NSW Bureau of Crime Statistics and Research (BOCSAR) Sydney Australia; Vignaendra, S., and Fitzgerald, J., (2006) 'Reoffending among young people cautioned by police or who participated in a youth justice conference' *Crime and Justice Bulletin* No. 103. NSW Bureau of Crime Statistics and Research (BOCSAR). Sydney Australia; and Baldry, E., Clarence, M., Dowse, L. & Trollor, J. (2013) 'Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system' *Journal of Policy and Practice in Intellectual Disability* 10(3):222-229.

<sup>12</sup> Victorian Sentencing Council 'Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court, June 2019 p 91.

<sup>13</sup> Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, Advance Unedited Version, 30 September 2019, CRC/C/AUS/CO/5-6, p 8.



Improved public awareness is needed about the parlous situation of dual status children and young people in South Australia.

These matters should be addressed immediately.

## **Our current state of knowledge**

### **Poor data and analysis in South Australia**

Our research suggests that some 20-25 per cent of those under youth justice orders in South Australia are also in care. TCV staff report that most of those who are in care and detained at the Adelaide Youth Training Centre have been living in residential care, especially from the large congregate care units.

Unfortunately, we cannot rely on adequate or accurate data, as neither the Department for Child Protection (DCP) and Department for Human Services Youth Justice (DHS YJ) collate and analyse relevant information.

Additionally, the exact number of dual status children and young people is inherently difficult to establish since not all contacts with the youth justice system result in police charges (for which data does exist).

### **Literature review**

Internationally, research and policy development in relation to dual status children and young people is more advanced. However, variations in the minimum age of criminal responsibility, responses to juvenile offending and models of care for those in child protection systems, means that much of the research is limited in its applicability to South Australia. Australian research addresses some of the specific implications for Aboriginal children and young people who are dual status.

The connection between childhood trauma, abuse and/or neglect and youth offending is well established but there has been little research that tracks the pathway of children and young people in care entering the youth justice system.<sup>14</sup> The available research suggests increased disadvantage and complexity amongst this cohort.

The research that has been conducted has demonstrated that –

- children with child protection backgrounds are younger when they first have contact with the criminal justice system, and are more likely to have an intellectual disability;<sup>15</sup>
- this younger involvement is associated with an increased risk of behaviours becoming entrenched which leads to progression into the adult justice system;<sup>16</sup> and

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<sup>14</sup> Baidawi and Sheehan, p 19.

<sup>15</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW; Baidawi and Sheehan p 220, referring to Baldry, E., Clarence, M., Dowse, L., & Trollor, J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system. *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229.

- residential care is a criminalising environment<sup>17</sup> and the likelihood of acquiring charges increases with cumulative time spent in residential care.<sup>18</sup>

Three recent reports have critically influenced our analysis. Each uses slightly different criteria to identify dual status children and young people and their definition of 'residential care' does not accommodate the broader concept that we use (i.e. incorporating commercial care placements). However, despite the varying non-family based care models operative across states there is a mutual applicability of this learning because of the essentially shared experiences of the children and young people living in them.

The papers by Baidawi and McFarlane described in Attachment 1 have similar findings in relation to the overrepresentation of children and young people in care in the youth justice system. McFarlane found that, despite these children and young people having experienced adverse childhood events that are associated with offending behaviours, it was the residential care home environment that generated the most contact with the youth justice system. Baidawi found that residential care homes are the care environment most associated with youth justice system contact.

Characteristics of dual status children and young people were identified –

- their experience of trauma often creates a special vulnerability.
- they have high disability rates
- Aboriginal children and young people are overrepresented
- they have younger first contact with the justice system, and
- girls are overrepresented compared to all justice-involved youth.

Issues specific to dual status children and young people include that–

- living in residential care environments is associated with a vastly increased likelihood of contact with the youth justice system
- poor placement matching compounds the harms of these environments
- instability in placement is prevalent
- dual status children and young people have high rates of going missing from care
- those from rural, regional, or remote areas have compounding disadvantages

These factors underpin the need for this series of papers: to examine the circumstances of dual status children and young people in South Australia and highlight the failure of relevant authorities to address this chronic issue appropriately.

An attachment to this report summarises three instructive recent papers by –

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<sup>16</sup> Chen, S., Matruglio, T., Weatherburn, D., & Hua, J. (2005). 'The transition from juvenile to adult criminal careers'. Crime and Justice Bulletin NSW, *Contemporary Issues in Crime and Justice* No. 86. Sydney: Bureau of Crime Statistics and Research. <<https://www.bocsar.nsw.gov.au/Documents/CJB/cjb86.pdf>>

<sup>17</sup> See eg McFarlane; Victorian Sentencing Council 'Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court, June 2019; See also Victoria Legal Aid. (2017). *Care not Custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne: Victoria Legal Aid; Hayden, C. (2010). Offending behaviour in care: is children's residential care a criminogenic environment? *Child & Family Social Work*, 15, 461-472.

<sup>18</sup> Baidawi and Sheehan, p 225.

- Baidawi, S. and Sheehan, R. (Forthcoming). ***'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems***. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology
- McFarlane, Katherine ***'Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system'*** Thesis, School of Law UNSW 2015
- Victorian Sentencing Council ***'Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court***, June 2019

## Limitations on our understanding

Australian Institute of Health and Welfare (AIHW) publishes some relevant data but this does not have the level of disaggregation required to sustain a detailed policy response based on an adequate understanding of the circumstances of dual status children and young people in South Australia.

The primary research conducted about the experiences of dual status children and young people relates to New South Wales and Victoria, which both have significantly lower proportions of children and young people living in residential care (3 and 5 per cent respectively compared to South Australia's 13.5 per cent).<sup>19</sup> Given the overrepresentation of children and young people in residential care entering the youth justice system, the problem in South Australia may be amplified. We are not yet able to state whether this is the case.

The poor provision and analysis of relevant data in South Australia has already been noted. This means we have only a partial appreciation of the extent to which South Australian children and young people involved in the youth justice system also have a child protection background or current experience.

Estimates of numbers in the United Kingdom suggest that 73 per cent of youth detainees and up to 41 per cent of young people on community orders have a care background.<sup>20</sup> Current Australian research is also unable to report on cross jurisdictional child protection and youth justice involvement.

We simply do not know how many interactions South Australian children or young people in care have with police. Many of these interactions are recorded in logs at residential care facilities, but this data is not currently collated. Interactions between police and children and young people in care that do not result in charges are unknown, and likely not recorded. Commercial care properties are not required by DCP to keep or record incident reports, unless they are considered 'significant', which includes death and serious injury. This lack of required record keeping is of considerable concern.

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<sup>19</sup> Australian Institute of Health and Welfare, Data Tables: Child Protection Australia 2017-18, 08 Mar 2019, Table S36: Children in out-of-home care, by type of placement, states and territories, 30 June 2018.

<sup>20</sup> McFarlane, p 79.

## **What next?**

As noted already, improved public awareness is needed about the parlous situation of dual status children and young people in South Australia. More focussed responses are required.

This is an introductory report that will be followed in coming months by more focussed discussion of aspects of the lives of children and young people in care and their experiences within the youth justice system and the environmental and systemic factors that contribute to their plight.

**Three recent papers**  
**An attachment to *A PERFECT STORM?***  
***Dual status children and young people in South Australia's child protection and youth justice systems - Report 1***

***Baidawi and Sheehan***

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

Baidawi's report presents findings from a two-year study (spanning from 2016-18) of Victorian children and young people who were dual status. The research involved auditing Children's Court case files, and holding consultations with stakeholders. Her report contains detailed analysis of these findings and presents recommendations arising from the study. This report defines those who are dual status, as including those who had previously been involved with child protection services, whereas this distinction could not be made for the OGCYP reports in the South Australian context.

Critically, Baidawi's study was able to produce data that demonstrated the greater use of custodial sentences for children and young people involved with child protection services. Data provided to OGCYP indicates those in care are being denied bail more frequently than those not in care. Pursuing this data in South Australia's Youth Court may uncover the reasons why this may be taking place, and could identify greater systemic issues for this cohort of children and young people in care.

Baidawi's primary recommendations focussed around strategies necessary for preventing, diverting and responding to dual status children and young people's youth justice system involvement.

1. Prevention: The need for improved family support.  
The study's key implication is the importance of strengthening early support and, where warranted, statutory intervention with children and families.
2. Diversion: Reconsider responses to early offending.  
As a result of their over-representation among those with early police involvement, responses to early offending disproportionately impact on dual status children, particularly Aboriginal children, who are further over-represented among younger dual status children and young people.
3. Responses: Develop differential youth justice responses for dual status children and young people.  
This study, like previous Victorian research, found a lack of differential justice system response to child protection-involved children. This is inconsistent with efforts to enhance justice system responsiveness to other over-represented groups of children and young people, including Aboriginal children, and those with intellectual disabilities.

Some of Baidawi's recommendations have informed the recommendations which will be made by the OGCYP.

## **McFarlane**

### **McFarlane, Katherine 'Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system' Thesis, School of Law UNSW 2015**

McFarlane's research set out to ascertain whether 'the child welfare home is a major contributor to the creation of criminals.'<sup>21</sup> The paper explores the intersection between child protection and youth justice systems to identify –

1. the rates of appearance of children in out of home care before the NSW Children's Court on criminal charges;
2. whether this appearance rate is disproportionate; and if so,
3. factors leading to that over-representation.

McFarlane reviewed academic papers and analysed over 200 years of Royal Commissions and government reports. She also conducted a file audit of children's criminal cases heard by the NSW Children's Court at Paramatta. As in Baidawi's report, McFarlane also identifies that children and young people in care are overrepresented, and have a different experience of the youth justice system when compared with their non-care peers.<sup>22</sup>

The primary differences found in McFarlane's research showed that –

1. Children and young people in care are overrepresented in the youth justice system;
2. They first came into contact with the youth justice system earlier and incurred their first charge at a younger age than children who had not been in care. Males in care were particularly affected; and
3. Children and young people in care in her study were also more likely to be remanded for bail breaches and spent longer in custody than their non-care peers.<sup>23</sup>

Much of McFarlane's findings informed the data requests made by OGCYP to DCP and DHS YJ.

McFarlane's work demonstrated that many children and young people in care who appeared before the court were adversely affected by the practices of the child protection agency. She found that systemic institutional factors such as limited high-quality placements, a lack of support from health, education and justice services negatively affected the outcomes of these dual status children and young people.<sup>24</sup>

## **Victorian Sentencing Council**

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

This is the first of two reports by the Victorian Sentencing Advisory Council, which looks at the child protection backgrounds of children who received a sentence or diversion in the Victorian Children's

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<sup>21</sup> McFarlane, p 7.

<sup>22</sup> Ibid p 217.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid p 7.

Court. The project has no specific definition for dual status children and young people, as it examines several different categories of child protection involvement for sentenced and diverted children.

The report explores the pathways that lead children and young people in care into the criminal justice system, and aims to better understand the vulnerable backgrounds of children sentenced in the Children's Court.

The report answers the following research questions –

1. The prevalence of 'crossover kids' in the Victorian youth justice system;
2. The over-representation of Aboriginal and Torres Strait Islander children;
3. The sentence type and correlation with child protection involvement; and
4. The age at first sentence and correlation with child protection involvement.<sup>25</sup>

The report found that of the study group (n: 5063 children and young people), 38 per cent were the subject of at least one child protection report, 15 per cent had experienced out of home care, and 10 per cent had experienced residential care. Of those who received a custodial sentence, 49 per cent were the subject of at least one child protection report, 23 per cent had a period of time spent in care, and 20 per cent had lived in residential care.<sup>26</sup> This indicates that only 3 per cent of those with time spent in care who had received a custodial sentence had not experienced residential care.

Sentenced and diverted children or young people who had experienced care were 11.5 times more likely than the general population to be Aboriginal.

The Sentencing Advisory Council also addressed the prevalence of different care placement types, noting that there was a high rate of children and young people coming before the court who had experienced more than one placement type, with 68 per cent having lived in residential care.<sup>27</sup> This number is particularly alarming, considering that during the study period, only 4.3 per cent of the care population lived in residential care, which includes children under the minimum age of criminal responsibility.<sup>28</sup>

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<sup>25</sup> Victorian Sentencing Council 'Crossover Kids': *Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court*, June 2019 p xvii.

<sup>26</sup> *Ibid* p xxiii.

<sup>27</sup> *Ibid* pp 71-72.

<sup>28</sup> *Ibid* p 14. Please note the study period was during 2016-17, so figures quoted from 2017-18 on page 9 are different. <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data>>