

# FROM CHILD PROTECTION TO YOUTH JUSTICE: LEGAL RESPONSES TO THE PLIGHT OF ‘CROSSOVER KIDS’

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*The statistical association between child protection and youth justice involvement is well-documented around the world, yet the effectiveness of current legal responses remains under-explored. To examine this, five focus groups with lawyers and youth workers who work with vulnerable young people were conducted in Brisbane, Queensland. Participants were asked about the pathways between the child protection and youth justice systems, and whether current legal responses were effective in preventing ‘cross-over’ between them. Participants said that children’s contact with police and formal justice processes should be minimised and that restorative techniques should instead be used to deal with challenging behaviour. They also said children were often safer at home than in out of home care, and they emphasised the criminogenic effects of residential care environments.*

**Keywords:** *Child protection, youth justice, residential care, criminalisation, child welfare law*

## I INTRODUCTION

The majority of children and young people involved with the child protection system do not commit criminal offences,<sup>1</sup> however a disproportionate number of young people who do offend have a child protection history. This has been referred to as the ‘cross-over’ or ‘overlap’ problem,<sup>2</sup> and outcomes for the ‘dually involved’ child are known to be particularly poor. They tend to have high and complex emotional, behavioural and learning needs.<sup>3</sup>

The Australian Institute of Health and Welfare (AIHW) recently reported that close to 50 percent of Australian children aged 10 to 16 years under youth justice

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<sup>1</sup> As Widom says, the pathway is ‘far from inevitable’: Cathy Spatz Widom, ‘The role of placement experiences in mediating the criminal consequences of early childhood victimisation’ (1991) 61(2) *American Journal of Orthopsychiatry* 256 at 266.

<sup>2</sup> Margaret White and Mick Gooda, *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, Commonwealth of Australia, 2017, Vol. 3B, Part 35, 6; Timothy Ross, Dylan Conger and Molly Armstrong, ‘Bridging child welfare and juvenile justice: Detention of foster children’ (2002) 81(3) *Child Welfare* 471, 473.

<sup>3</sup> Jo Staines, *Risk, Adverse Influence and Criminalisation: Understanding the Over-representation of Looked After Children in the Youth Justice System*, Prison Reform Trust, 2016, 7; Katherine McFarlane, ‘From care to custody: Young women in out-of-home care in the criminal justice system’ (2010) 22(2) *Current Issues in Crime and Criminal Justice* 345, 346.

supervision across Australia had also received child protection services.<sup>4</sup> In some states, the rate of overlap may be even higher. The Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory reported that children in the Northern Territory who are subject to child protection orders are five times more likely to commit an offence,<sup>5</sup> and the Queensland Child Protection Commission of Inquiry reported that 76% of children in the youth justice system are known to Child Safety Services in Queensland.<sup>6</sup> In 2010, McFarlane reported that children in care in New South Wales were 68 times more likely to come before the Children's Court.<sup>7</sup>

Meanwhile, the number of Australian children subject to child protection intervention continues to increase each year. Between 2012/13 and 2017/18, the number of children in out of home care increased from 8.2 to 12.2 per 1000.<sup>8</sup>

If a child acquires a criminal record whilst in the care of the state, questions should be asked about the quality of care and support being delivered.<sup>9</sup> If appropriate legal responses are to be developed, it is important to determine whether there is a causal connection between child protection intervention and youth justice supervision, and whether 'the care environment is itself criminogenic.'<sup>10</sup> This article reports on an empirical research project aimed at examining the association between child protection and youth justice involvement from a legal perspective, and makes recommendations for law reform that might help address the problem.

## II PATHWAYS BETWEEN CHILD PROTECTION AND YOUTH JUSTICE INTERACTION IN AUSTRALIA

<sup>4</sup> Australian Institute of Health and Welfare, *Young People in Child Protection and Under Youth Justice Supervision 2015/16*, 2017 at 8. 'Youth justice supervision' was defined as being in detention or subject to a community-based supervision order. Being 'involved in the child protection system' was defined as being subject to an investigated notification, being subject to a care and protection order, or being in out of home care (at 5-6). See also Katherine McFarlane 'Care-criminalisation: The involvement of children in out-of-home-care in the New South Wales criminal justice system' (2018) 51(3) *Australian and New Zealand Journal of Criminology* 412.

<sup>5</sup> White and Gooda, above n 2, 6-7.

<sup>6</sup> The Hon Tim Carmody, *Taking Responsibility: A Roadmap for Queensland Child Protection: Report of the Queensland Child Protection Commission of Inquiry*, 2013, 36. See also Kathryn McMillan and Megan Davis, *Independent Review of Youth Detention Report*, 2017, 214.

<sup>7</sup> McFarlane, above n 3, 346.

<sup>8</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2016/17*, 2018, 45.

<sup>9</sup> Julie Shaw, 'Policy, practice and perceptions: Exploring the criminalisation of children's home residents in England' (2016) 16(2) *Youth Justice* 147, 148.

<sup>10</sup> Staines, above n 3, 5. Rachel Blades, Di Hart, Joanna Lea and Natasha Willmott, *Care: A Stepping Stone to Custody? The Views of Children in Care on the Links Between Care, Offending and Custody*, London: Prison Reform Trust, 2011, 37-38.

The statistical association between child protection and youth justice involvement has been established time and again in studies all over the world.<sup>11</sup> Research examining birth cohorts, experimental samples and official frequency data has shed some light on which children are at greatest risk of ‘cross-over’ between the child protection and youth justice systems.<sup>12</sup> For example, research in the United States has shown that the association between child protection and youth justice involvement is particularly strong for racial minority groups.<sup>13</sup> Consistent with this, the recent Northern Territory Royal Commission reported that 75 per cent of Aboriginal children with a proven offence have a child protection history, compared with 60 per cent of non-Aboriginal children.<sup>14</sup> Of course, it must be remembered that Indigenous children are more likely to interact with both systems; indeed, the AIHW has reported that nearly one in five Indigenous children had contact with either the child protection or the youth justice system in 2015/16, compared with one in 30 non-Indigenous children.<sup>15</sup>

<sup>11</sup> See particularly McFarlane, above n 4; Alison Gerard, Andrew McGrath, Emma Colvin and Katherine McFarlane “‘I’m not getting out of bed!’ The criminalisation of young people in residential care’ (2018) 52 *Australian and New Zealand Journal of Criminology* 76; Julie Shaw ‘Residential care and criminalisation: the impact of system abuse’ (2017) 16(3) *Safer Communities* 112; Claire Fitzpatrick and Patrick Williams ‘The neglected needs of care leavers in the criminal justice system: Practitioners’ perspectives and the persistence of problem (corporate) parenting’ (2017) 17(2) *Criminology and Criminal Justice* 175; Elizabeth Stanley ‘From care to custody: Trajectories of children in post-war New Zealand’ (2017) 17(1) *Youth Justice* 57.

<sup>12</sup> In the US, Ross, Conger and Armstrong report that foster children comprise less than 2% of the New York City youth population but 15% of those admitted to juvenile detention facilities: above n 2, 473. In their analysis of two birth cohorts, Ryan and Testa found that children with substantiated incidents of maltreatment were significantly more likely to engage in ‘delinquency’: Joseph P Ryan and Mark F Testa, ‘Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability’ (2005) 27 *Children and Youth Services Review* 227, 240-1. Widom found that ‘abused and neglected’ children were 1.72 times more likely to have a criminal record as an adult than the control group, when controlling for age, race and gender, and they experienced a significantly higher number of arrests: Widom, above n 1, 263. In the UK, Shaw reports that in 2013, 6.2% of looked after children in England were convicted or given a final warning or reprimand by police compared with 1.5% of children in the general population, meaning that the offending rates of looked after children were four times higher than other children: above n 9, 147. Staines reports that in 2015, 5% of looked after children in England and Wales had been convicted or subject to a final warning or reprimand compared with 1% of children generally: above n 3, 8. See also Melissa Jonson-Reid and Richard P Barth, ‘From placement to prison: The path to adolescent incarceration from child welfare supervised foster or group care’ (2000) 22(7) *Children and Youth Services Review* 493; Carolyn Smith and Terence P Thornberry, ‘The relationship between childhood maltreatment and adolescent involvement in delinquency’ (1995) 4 *Criminology* 451.

<sup>13</sup> See Ryan et al, who found that the risk of arrest was 64% higher for African American children in out of home care placements: Joseph P Ryan, Denise Herz, Pedro M Hernandez and Jane Marie Marshall, ‘Maltreatment and delinquency: Investigating child welfare bias in juvenile justice proceedings’ (2007) 29(8) *Children and Youth Services Review* 1035, 1094, 1097.

<sup>14</sup> White and Gooda, above n2, 10. The association is highest for Aboriginal girls: 90% of Aboriginal girls with proven offences have a child protection history, compared with 70% of Aboriginal boys: at 12.

<sup>15</sup> AIHW 2018, above n 8, 8.

In addition to the trends related to race, the 'overlap' between child protection and youth justice involvement appears to be particularly strong in respect of girls.<sup>16</sup> British and Australian research suggests that whilst boys are more likely to offend overall, girls who offend are more likely to have experienced child protection interventions than their male counterparts.<sup>17</sup> The age at which a child comes into 'the system' is also relevant. Children whose first experience with child protection intervention occurs during their teenage years are more likely to come into contact with youth justice agencies than children who are removed as infants.<sup>18</sup>

These statistical trends, however, do not explain how or why children in the child protection system become criminalised.<sup>19</sup> Many scholars have pointed out that the young people who interact with child protection and youth justice systems share certain characteristics including mental ill health, developmental and behavioural problems, trauma, experiences of abuse, low socioeconomic status, low educational attainment or special educational needs, and family instability.<sup>20</sup> These are risk factors for both child protection and youth justice involvement, so one possible explanation for the high rate of 'overlap' between child protection and youth justice could be that the same young people are likely to be involved with both systems separately, due to their personal characteristics and life experiences.

However, research in the United Kingdom and the United States has indicated that children who are removed from their families and placed in out of home care

<sup>16</sup> McFarlane, above n 3, 345. White and Gooda, Vol 3B (at 9, 12) say that the rate of offending amongst girls known to the child protection system may be twice as high as for boys. See also Jonson-Reid and Barth, above n 12, 512.

<sup>17</sup> Devon Indig, Claudia Vecchiato, Leigh Haysom, Rodney Beilby, Julie Carter, Una Champion, Claire Gaskin, Eric Heller, Shalin Kumar, Natalie Mamone, Peter Muir, Paul van den Dolder and Gilbert Whitton, *2009 NSW Young People in Custody Health Survey: Full Report*, 2011, 158; Staines, above n3, 8; Judy Cashmore, 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents' (2011) 89 *Family Matters* 31, 32. Notably, placement stability has been reported to have less of a protective effect against offending for girls than for boys: Ryan and Testa, above n 12, 245.

<sup>18</sup> Jonson-Reid and Barth, above n 12, 510; Ryan and Testa, above n 12, 242; Widom, above n1, 267. Anna Stewart, Michael Livingston and Susan Dennison, 'Transitions and turning points: Examining the links between child maltreatment and juvenile offending' (2008) 32 *Child Abuse and Neglect* 51, 54. Note, however, that 'chronically victimised' children were most likely to offend as adolescents (at 61).

<sup>19</sup> This fact is lamented by the NT Royal Commission: White and Gooda, above n2, Vol 3B at 8; Denise Herz, Philip Lee, Lorrie Lutz, Macon Stewart, John Tuell and Janet Wiig, *Addressing the Needs of Multi-System Youth: Strengthening the Connection Between Child Welfare and Juvenile Justice*, Centre for Juvenile Justice Reform, Georgetown, 2011, 17; Staines, above n 3, 6.

<sup>20</sup> Catia G Malvaso, Paul H Delfabbro, Andrew Day and Gavin Nobes 'Young people under youth justice supervision with varying child protection histories: An analysis of group differences' (2018) 63(2) *International Journal of Offender Therapy and Comparative Criminology* 159; Stanley, above n 11; Staines, above n3, 3, 7; Cashmore, above n17, 32; Gillian Schofield, Emma Ward, Laura Biggart, Vicky Scaife, Jane Dodsworth, Birgit Larsson, Alice Haynes and Nigel Stone, *Looked After Children and Offending: Reducing Risk and Promoting Resilience: Full Report*, 2012, 10, 14; White and Gooda, above n2, Vol 3B, 17-19; Lord Laming, *In Care, Out of Trouble: An Independent Review*, 2016, London: Prison Reform Trust, 15. And see generally Kimberly Bender, 'Why do some maltreated youth become juvenile offenders? A call for further investigation and adaptation of youth services' (2010) 32 *Children and Youth Services* 466.

are more likely to interact with youth justice agencies than those who are known to child protection services but remain at home.<sup>21</sup> This tends to suggest that there is an out of home ‘care-effect’.<sup>22</sup>

Further to this, many studies have shown that the association between child protection intervention and youth justice system involvement is strongest for those young people who have entered residential care (or ‘group homes’), as opposed to kinship or foster care.<sup>23</sup> Residential care is an out of home placement option that accommodates children in share houses in community based settings, staffed by a team of rostered youth workers. Children are often placed in residential care as a ‘last resort’, having experienced a number of placement breakdowns.<sup>24</sup> Australia-wide, only around six per cent of children in out of home care are placed in residential care,<sup>25</sup> although the rate is likely to be higher in some states and territories than others.

### III METHODOLOGY

In order to examine the nature and effectiveness of legal responses to the association between child protection and youth justice involvement, focus groups were conducted with community service providers and community legal centers that provide support to vulnerable children and young people in Brisbane, Queensland. Focus group methodology was appropriate for this study because the aim was to ‘bring an improved depth of understanding’ of the associations uncovered in previous research.<sup>26</sup> Whilst focus group research is useful in exploratory studies such as this one, it is acknowledged that this methodology has some limitations. When reporting on focus group research, researchers can only report on the perceptions of the participants involved, and this may not represent

<sup>21</sup> Shaw, above n 11; Ryan and Testa, above n12, 244; Widom, above n1, 256.

<sup>22</sup> Claire Taylor, *Young People in Care and Criminal Behaviour*, 2005, 130.

<sup>23</sup> In the US, Ryan et al found that children placed in group homes as opposed to other forms of out of home care were two and a half times more likely to exhibit ‘delinquent’ behaviour: Joseph P Ryan, Jane Marie Marshall, Denise Herz and Pedro Hernandez, ‘Juvenile delinquency in child welfare: Investigating group home effects’ (2008) 30 *Children and Youth Services Review* 1088, 1088, 1094. See also Cashmore, above n17, 33; Shaw, above n 9, 148; Taylor, above n22, 175; White and Gooda, above n2, 8; NACRO, *Reducing Offending by Looked After Children*, 2012, 3-4; Ryan et al, above n13, 1036, 1047. Note also that Smith and Thornberry found a significant difference between the offending rates of children residing with both biological parents and children with other family structures: above n12, 466.

<sup>24</sup> Create Foundation, *Reducing the Criminalisation of Young People in Residential Care Facilities Report*. Sydney: CREATE Foundation, 2012, 3. In the US, see Ryan et al, above n13, 1088-1089 (they report that group home placements represent around 11% of all out of home placements). In the UK, see Shaw, above n9, 148.

<sup>25</sup> AIHW, above n 8, 49.

<sup>26</sup> Sharon Vaughn and Jana Sinagub *Focus Group Interviews in Education and Psychology*. Thousand Oaks, California: SAGE Publications, 1996, 25; see also Sue Wilkinson ‘Focus group methodology: A review’ (1998) 1(3) *International Journal of Social Research Methodology* 181.

the whole picture. Further research is therefore required to confirm the observations made by the participants in this small study.

The focus groups were semi-structured in nature. Participants were invited to discuss the nature of the association between child protection and youth justice involvement; the effects of child protection and youth justice involvement on children and young people both in the short- and long-term; current legal responses to 'cross-over' children; and recommendations for reform. Ethical clearance was obtained from the relevant university ethics committee.<sup>27</sup>

A total of 24 people participated in five different focus groups. Most were female (n=16); eight were lawyers and the others were youth workers, counsellors and social workers who work in youth legal and advocacy services. The focus groups were audio-recorded and transcribed, and thematic analysis was undertaken using manual pattern coding in accordance with Miles and Huberman's methods.<sup>28</sup>

#### IV RESULTS

##### A *What offences are children in the child protection system charged with?*

Participants in all groups agreed that it was 'very common' to see children 'cross-over' between the child protection and youth justice systems, in fact, the association between child protection and youth justice involvement was expressed to be 'an accepted fact'. One participant said: '[t]here'd be very few Child Safety kids we work with that don't have some sort of criminal involvement.'

Participants said that, most often, children became involved with the youth justice system after they had become subject to child protection interventions, and many said that 'the actual child protection is, in itself, playing a key role in criminalisation.'

When asked what kinds of offences 'cross-over' children tended to be charged with, participants most often discussed offences that arise out of 'necessity' and offences related to 'anti-social' behaviours. Offences that their clients had committed out of necessity – or for survival – included shoplifting and public transport fare evasion. Participants said:

Young people in care can't get [Youth Allowance] until they turn 16... so of course they're going to commit crime to survive.

<sup>27</sup> University of Queensland Human Research Ethics Committee: approval #2017000690.

<sup>28</sup> See further Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis*, 1994, 55-58, 252-253.

Fare evasion shouldn't even be an offence. Honestly, we're trying to stop kids getting into the criminal justice system and we've driven them to a court for a fare evasion?

Charges that resulted from 'anti-social' or 'challenging' behaviours included wilful damage and assault. Participants in all groups said that wilful damage incidents were often associated with mental health problems, anger or trauma:

You have a young person that is traumatised and they act out, and they might punch a wall. The walls are plasterboard and they put a hole in the wall and they get charged with wilful damage.

Specific wilful damage incidents described by focus group participants had often occurred in residential care settings. Examples included: spilling barbeque sauce on the tiles; 'I had a kid who broke a door, but then fixed it – he still got charged'; 'We've had young people kick in toilet doors in resi care because the toilets are locked'; and even 'We had another young person charged with wilful damage for ripping gladwrap'. One participant described a recent case involving self-harm:

The placement had nonetheless decided to ring the police and charge this young woman because she had smashed a window and was cutting herself. So, she was taken to hospital under an emergency examination order, and then they charged her with wilful damage of the window.

Participants in four of the focus groups said that they had young clients who had been charged with assault as a result of altercations with a youth worker or housemates in residential units. Behaviour ranged from incidents such as 'whacking each other with towels', to '[throwing] a basketball at a carer's head'. One young person 'had a bit of blu tac, took the blu tac, put it on the youth worker's head' and was charged with assault.

Other participants related stories of children who had been charged in circumstances where they believed no criminal conduct had been engaged in at all. One participant described a recent matter where a child was charged with 'stealing the keys which were lent to her to access her own placement.' In this case, the placement wanted her charged because 'they told her she couldn't keep those keys because she lost her keys'. Other incidents included: 'They took the food out of the fridge for a picnic down at the park, and they got charged with theft'; and 'One of them moved a microwave into their room and got charged with theft'. In one of the focus groups, participants discussed a client who had been charged with break and enter and trespass at 'their own resi house' because 'they didn't have the key so they broke in through a back door.'

Participants also said charges could arise out of situations where police were called to deal with incidents that had occurred in the house. In one focus group, a participant discussed a matter where:

[A] cop came to her house and the cop swore at her and she told the cop to get fucked and he charged her with public nuisance in her own house.

Participants in that group agreed that these kinds of incidents generally occurred because the child was traumatised or distressed:

I think you'll find most crime committed by young people is either survival crime, like poverty crime, or it's crime committed in anger and frustration because of the trauma they've gone through.

B *Which children are most at risk of criminalisation?*

Participants in all groups said that children placed in residential care were most at risk of becoming involved in the youth justice system, when compared with children in other types of placements. One participant said:

I think the pathways are child protection system first, and then criminalisation after the child protection orders are taken. That's for a number of reasons but one of the biggest reasons, I think, is the group houses that young people get put in. I mean, that sounds a bit simplistic, but I think that's a big reason to it [sic].

Many said that younger children were criminalised as a result of being negatively influenced by older housemates. For example, one participant said:

I had a 12 year old in a group house earlier this year, first time he ever saw pot was when a 15 year old kid said "here, hold this pot" because he was going to be searched for it.

Participants said that another reason why children in residential care were charged with offences was because youth workers in residential units used police as their 'fall-back' for 'behaviour management': 'police [are] kind of the parent coming in to be the bad guy'. One participant said:

It is the [easy] option. We call the police, we get rid of the young person, at least for the night and then, therefore, we don't have to deal with it. Then they just come back. We just pick them up the next day and it's all done.

Whilst participants acknowledged that individual workers and placements varied in their practices, most felt that police call-outs to residential units were usually unnecessary. They noted that:



Participant 1: That doesn't happen in an ordinary family home. You don't call the police because there's a hole in the wall.

Participant 2: You go to a hardware shop and you buy plaster and you patch it up.

In all groups, participants said that workers needed more and better training in therapeutic behaviour management approaches, and de-escalation. They said that youth workers in residential units were often young graduates who 'can't handle it' and had a tendency to take the behaviour of the children personally, blaming the child for 'not engaging' with them. Participants also commented on the high turnover of staff in residential units and said this compounded the problem: 'They don't get debriefed and there's no role modelling by a skilled worker, so they come fairly unskilled and they leave unskilled.' One participant concluded: 'You've got the most damaged young people and then we put really under-skilled workers to manage that space in a lot of instances. That's a problem.'

Some of the participants said that the policies of residential care providers contributed to the problem. For example, the 'no touch' policy was discussed in three of the focus groups. According to this policy, youth workers are not permitted to touch a young person in their care, so: 'if they have a no-touch policy, then they're essentially calling in the police to touch people'. Participants said that this kind of policy discourages workers from forming an 'emotional connection' with the young people in their care. One participant said:

The environment that they create is so— it dehumanises these kids and it sets them up to be criminalised. The policies set them up to be criminalised.

Participants in two groups remarked that when police are called to a residential unit, this should prompt the same response from the Department of Child Safety as a notification of abuse. One participant said:

[I]f the police are called to a placement, then Child Safety needs to review that placement immediately, because it says to me that in fact those workers aren't able to meet the needs of that young person... this would encourage Child Safety to be working more proactively with the residential to avoid that fallout.

Participants in all groups agreed that there needed to be greater involvement and oversight by supervisors and senior staff when a decision to call police to a residential unit was made, and that there needed to be a 'shared understanding of what a reasonable call-out would involve.'

Participants said that a restorative approach should be taken by workers to situations of conflict or distress, instead of calling police. They emphasised the importance of communication, suggesting that when problems arise, 'you sit down and have a family discussion about it.' This, they said, not only benefits the children by avoiding criminalisation, but:

it could be a learning curve also for the youth worker at the same time, because then the youth worker would be able to take in the information and come to the conclusion that in the future it's probably not the best idea to have a call-out for something so horrifically stupid.

### C *What are the consequences of criminalisation?*

Participants said that when children in care receive a criminal charge, their placement may breakdown, either because the relationships are compromised, or because the carer refuses to allow the child to return. This may mean that the child is held in custody because arrangements for an alternative placement cannot be made quickly enough, whereas 'if they were in a family situation, their parents would come along to court and they'd be able to go home.' Participants in one group noted that even if the carer agrees to take the child back, the magistrate may be reluctant to allow this, and may decide not to grant bail as a result.

The criminal charge, and the legal proceedings that result, can cause a significant amount of distress to the young person, and their bail conditions can set them up to fail. For these reasons, even if they have a legal defence available to them, a child may choose to plead guilty in order to have the matter over and done with. One participant said, in the context of residential care:

They get put on conditional bail... where they're criminalised even further for not abiding by curfew. Because if you're one minute past seven o'clock, yes, your resi worker will call the cops and let them know about it. They're not doing anything to protect these kids from further criminalisation.

Of course, the long-term consequence of incurring criminal charges is that: 'they end up racking up a history because half of this stuff gets finalised.' Often children accumulate multiple charges, so the penalties they receive become harsher over time. In one group, participants said:

Participant 1: if there is to be future offending... that sentence is going to be harsher than it would have been if they weren't criminalised as a child in care.

Participant 2: ...they've lost their opportunity for diversion because the police will already have said, "well, you've already been to court" or "you've already been cautioned multiple times."

Ultimately, many of these children are sentenced to a period of detention and, as a result, detention becomes ‘normalised’ for them: ‘detention isn’t really hanging over their head anymore because they’ve been there, they’ve survived, and most of them don’t like it but... it’s not that unknown scary thing at the end.’ Indeed, participants in three of the groups said that their young clients have told them they would prefer to be in a detention centre rather than in a residential unit. One participant said:

Then you have kids in the detention centre who refuse to get bail because the resi placements are so bad they don’t want to leave [detention]. I’ve sat with a young person and pleaded with them to go for bail and they refused. [He/she] was like, “no, if I’m going back to resi placement, I’ll stay in here. It’s better in here.”

D *What reforms of the child protection system are needed to avoid criminalisation?*

Participants in all groups believed that too many children were being placed in out of home care, and they emphasised the trauma that results from removal. One participant said: ‘I think there’s this tendency to think of kids’ trauma as somehow coming from their families, but it’s– I mean we all know that’s actually not true.’ Participants felt that placing children in out of home care did not always improve their safety, and that often they would have been better off at home:

[T]hey remove kids all the time from allegedly unsafe situations – they’re situations where people just really need support, you know, the vast majority of the time. But then they put kids into these situations... they are completely blind to the lack of safety in those situations... we put kids in places where they’re even less safe or just as unsafe.

I don’t know a placement in residential, whatever, is ever going to be better than their family. We need to try and support families and strengthen families to enable them to keep their children.

Most participants did not support the use of residential care as a placement option, even in situations where children needed to be removed. For those who assumed its continued existence, there was an acknowledgement that they ‘are really difficult environments to work in’, but they said residential care should be less ‘custodial’ and more nurturing. One participant said:

It sounds a bit corny but I reckon it all comes back to love. Because the offending and stuff is just a symptom... these kids just have to deal with so many people who don’t love them, whether that’s their parents initially and then Child Safety. I think just the more people you can get involved and around them to – excuse the phrase – give a fuck about them, that’s what’ll make the difference.

Concerns were raised in four of the focus groups that children often disengaged from education when they entered the child protection system. For example, one participant said: 'every young person we've ever worked with in care is not attending school.' Participants said that this contributed to the risk of criminalisation because 'they're running amuck in the community' during the day. They suggested that pro-social links to the community should be enhanced through education and extra-curricular activities. In three of the groups, there was a discussion about whether boarding school might be an appropriate alternative to residential care, however there was no consensus on this either within or between groups.

Participants in four of the groups noted that once children in care have been charged, and are appearing in court, the Department did not always ensure the young person received the legal assistance and emotional support that they required throughout that process and often there was no representative from Child Safety appearing in court alongside the young person. One participant said: 'They never show up... they don't even know what the kid looks like.' Another said:

We had to give him money for a train ticket so that he could [get to court] because he jumped the train going to court... Child Safety wouldn't even respond to our communication saying that this young person who is in their care has court, he needs to be at court.

E *How can we reduce children's contact with the criminal justice system?*

Participants tended to agree that police should not be charging children who are in out of home care with offences at all; rather, 'they should be cautioning them and they should be refusing to charge.' Participants said that police and workers should employ restorative techniques when dealing with vulnerable young people, rather than proceeding to charge or a formal youth justice conference:

I would argue though that for those small issues, that really shouldn't even be going to a full process. It's a pretty demeaning process for a young person to have to go to a conference and say I'm sorry for taking food to a park.

Whilst most agreed that youth justice conferences were often effective in dealing with more serious matters, creating 'ah-ha moments', they emphasised the importance of building relationships, and practicing empathy and respect. They noted that, as youth workers and youth lawyers themselves, they dealt with the very same children, and yet:

I've got to say that all the young people we've worked with, we've never – there's never been a second where we've had to consider calling police, because of the relationship that we have with those young people. It

doesn't mean they don't get angry... but we would never consider reacting like that.

Participants in two of the groups argued that the most effective way of ensuring that children were not criminalised for minor offences would be to raise the age of criminal responsibility. One participant said this would:

... force lazy youth workers and lazy organisations to think of other ways to deal with a 13-year-old punching a hole in the wall, or a 10 year old breaking a lock to go to the toilet or stealing food, or whatever.

There was consensus across all of the groups that criminalising young people, particularly young people in care, was harmful in the short- and long-term, and that instead, the focus of both systems should be the 'child's best interests.' One participant summarised by saying:

The criminalisation begins when you've got 11, 12-year olds with six pages or seven pages of criminal history for pissy little shit that should never have entered the courtroom. They've already had all the community-based orders by the time they're 13, and they do start getting remanded in custody. Then that becomes the norm. That becomes a comfortable place.

## V LEGAL RESPONSES TO THE 'CROSS OVER' PROBLEM

Participants in this study said that poor decision-making on the part of carers and police officers contributed to the criminalisation of young people in care. In the broader literature, blame is shifted in every possible direction by all systems involved.<sup>29</sup> Police are of the view that workers in residential units should refrain from calling them in to deal with behaviours that would normally be 'handled' within a family environment.<sup>30</sup> Residential care workers and their employers insist that they are required to phone police to comply with their insurance policies, and that the problem lies with police who then exercise their discretion to charge.<sup>31</sup> Workers claim that they lack many of the disciplinary strategies that a parent could use, and feel powerless to manage young persons' challenging behaviours.<sup>32</sup> Children are viewed as perpetrators rather than victims.

Some of the options for law reform that participants in this study suggested are complex and would require system-wide changes to both law and culture. Others

<sup>29</sup> McFarlane notes: 'The response of successive governments to the issue of "drift" of wards to the criminal justice system has trod a well-worn and familiar path, swinging between professed ignorance of the issues raised, underplaying the extent of the problem, reiteration of expressions of personal commitment or concern (generally followed by undertakings that there will be further inquiry into the matter) and obvious disbelief of the charges of ministerial neglect of incompetence.': above n3, 348-9.

<sup>30</sup> Gerard et al, above n 11; McFarlane, above n 4; Shaw, above n 11.

<sup>31</sup> Herz et al, above n 19, iv.

<sup>32</sup> Gerard et al, above n 11; Shaw, above n 9, 155.

would not be so difficult to achieve. In this section of the paper, I examine some legal responses that could address the concerns raised by participants, and minimise the impacts of 'cross over' on vulnerable children.

#### A *Child Protection Law*

Participants in this study identified a number of examples of 'systems neglect'<sup>33</sup> within the child protection system and much of the discussion focused on residential care. Participants in this study expressed concern at the apparent increase in the use of residential care as a placement option in Queensland. This could suggest that the number of children in residential care is higher in Queensland than in other Australian states, although this cannot be confirmed because relevant statistics are not publicly available. They said that family preservation, with appropriate supports, should be the preferred response to child protection concerns, but they noted that residential care environments could be improved significantly by minimising staff turnover and increasing opportunities for carers and young people to build longer-term relationships with one another. There is no doubt that secure attachments can act as a protective factor and that close, consistent relationships are achievable, even for children in residential care.<sup>34</sup> Clearly, youth workers in residential settings require more and better training, specifically in relation to trauma-informed practice and de-escalation.<sup>35</sup>

Obviously, these things are difficult to legislate for, but certain behavioural changes could be achieved through law reform. For example, it is important that intervention only occur as a last resort, where this is necessary to maintain a child's safety, especially for older children. Some child protection Acts in Australia mandate this approach, for example in Western Australia, intervention action can only be taken 'in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing.'<sup>36</sup> In Victoria, a child is only to be removed from the care of a parent if there is an 'unacceptable risk of harm to the child'<sup>37</sup> and in NSW, the 'least intrusive intervention' in the life of the child and their family must be taken.<sup>38</sup> In Queensland, however, the legislation does not go so far. A 'general principle' of the Child Protection Act 1991 (Qld) is that the 'preferred way of ensuring a child's safety and wellbeing is through supporting the

<sup>33</sup> Cashmore, above n 17, 35.

<sup>34</sup> Taylor, above n22, 176; Schofield et al, above n20, 5; Staines, above n3, 18; Bender, above n20, 471.

<sup>35</sup> Taylor, above n22, 181. One of the Create Foundation's young respondents said: 'They have a first aid certificate on the wall but they don't know what to do if someone is self-harming': Create Foundation, above n24, 16. see also Gerard et al, above n 11.

<sup>36</sup> *Children and Community Services Act 2004* (WA) s 9(f).

<sup>37</sup> *Children, Youth and Families Act 2005* (Vic) s 10(3)(g), read with s 8(2).

<sup>38</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 9(2)(c).

child's family',<sup>39</sup> yet there is no requirement to consider the alternatives before intervention is initiated.<sup>40</sup>

Participants noted that children placed in residential care were particularly vulnerable to criminalisation, especially because police were often called in to deal with 'challenging behaviours.' In the UK, legal provisions have contributed to reductions in the number of police callouts to residential homes. Quality standards relating to children's homes in the UK explicitly state that '[c]hildren should not be charged with offences resulting from behaviour within a children's home that would not similarly lead to police involvement if it occurred in a family home'.<sup>41</sup> At present, there is no equivalent in Australian law or policy.

Participants also raised the fact that children on child protection orders often appeared in criminal matters without a representative of the department appearing alongside them, in their capacity as 'statutory parent'. In response to this, child protection legislation, or the Children's Court rules, could be amended to require a representative from the Department to attend court with a child in their care who is charged with a criminal offence – preferably, an officer who is known to the child. This could improve a child's chances of accessing bail or diversionary programs.

Another concern mentioned by participants in this research was the high level of educational disengagement they observed amongst children in care. The literature confirms that formal education, and extra-curricular activities consistent with the child's interests and talents, can play a significant role in reducing the risk of criminalisation.<sup>42</sup> In response, child protection legislation could be amended to include a right to education, indeed the (unenforceable) Charter of Rights scheduled to the Child Protection Act 1999 (Qld) states that children in care have a right to 'have access to education appropriate to the child's age and development'. The new Human Rights Act 2019 (Qld) includes a right to education, and this has the potential to impact upon the practices of child safety officers. In circumstances where a child has not been provided with education that is 'appropriate to the child's needs', a complaint could be made to the Queensland Human Rights Commission under this legislation once it comes into effect in January 2020.<sup>43</sup>

<sup>39</sup> *Child Protection Act 1999* (Qld) s 5B(c).

<sup>40</sup> Having said this, if a child protection order is contested, the court must be satisfied that the protection sought to be achieved by the order is unlikely to be achieved by an order on less intrusive terms: *Child Protection Act 1999* (Qld) s 59(1)(e)

<sup>41</sup> United Kingdom Department for Education, *Guide to the Children's Homes Regulations Including the Quality Standards*, 2015, para 9.40.

<sup>42</sup> Taylor, above n22, 177-8. See also Cashmore, above n17, 38; Schofield et al, above n20, 63. Also, Northern Territory Royal Commission notes the high levels of educational disengagement, often as a result of exclusion from school: above n2, 18.

<sup>43</sup> *Human Rights Act 2019* (Qld) s 36(1) (right to education); s 58(1) (conduct of public entities).

## B Criminal Law

Participants in this research were of the view that vulnerable young people should not be penalised for certain low-level offences, particularly fare evasion. Consistent with this, in 2016 the Victorian Ombudsman recommended that all young people under 16 years of age be permitted to travel without charge if they present a student card, and that fare evasion charges should be dropped in circumstances where the young person could have travelled under a concession entitlement.<sup>44</sup>

Andrew Ashworth has argued that minor property offences such as shop lifting should not be the subject of imprisonment, and indeed that courts should not have this sentencing option available to them in such matters, regardless of how many previous convictions the person has.<sup>45</sup> The basis for his argument is that prison is a disproportionate response to such low level criminal offending, and does not have any proven deterrent effect.<sup>46</sup> In the context of vulnerable youth, this argument is even stronger.

Some participants in this research suggested that the age of criminal responsibility be increased to ensure that younger children cannot be criminalised for 'bad behaviour' at all. There is support for this in the literature, as well as at international law. The United Nations Committee on the Rights of the Child has suggested that member states should not set their age of criminal responsibility below 12 years, given what we now know about the development of children's brains and their physical capacity for ethical decision-making.<sup>47</sup> Children who interact with the criminal justice system before the age of 14 are significantly more likely to become 'chronic adult offenders', so mandating a welfare approach to the offending behaviour of younger children could allow for greater consideration of the 'contextual variables' that influence children's offending.<sup>48</sup> Younger children

<sup>44</sup> Victorian Ombudsman, *Investigation into Public Transport Fare Evasion*, 2016, 59, 62. Justice Connect agrees with this, and further recommended that a Special Needs Access Travel Pass be created for people who have a disability that prevents their effective use of the travel card system: Justice Connect, *Fair's Fare: Improving Access to Public Transport for Victorians Experiencing Homelessness*, 2016, 5.

<sup>45</sup> Andrew Ashworth, 'What if imprisonment were abolished for property offences' *Howard League for Penal Reform Pamphlet*, 2013, 3.

<sup>46</sup> *Ibid.*, 4, 6.

<sup>47</sup> Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, CRC/C/GC/10 25 April 2007, 10-12; Parliamentary Office of Science and Technology (UK), 'Age of criminal responsibility' (2018) 577 *PostNote* 1, 2.

<sup>48</sup> Kevin W Alltucker, Michael Bullis, Daniel Close and Paul Yovanoff, 'Different pathways to juvenile delinquency: Characteristics of early and late starters in a sample of previously incarcerated youth' (2006) 15(4) *Journal of Child and Family Studies* 479, 480; Parliamentary Office of Science and Technology, above n 47, 1; Shaw, above n9, 152. See also McMillan and Davis, above n6, 171.



are also likely to be committing only minor offences, which are suitable for diversion.<sup>49</sup>

### C Youth Justice Law

There was general agreement amongst participants in this research that many of the charges imposed on their young clients were unnecessary, and that instead the children could have been cautioned or received other less formal sanctions aimed at addressing the underlying causes of their offending, or challenging, behaviour. There is mounting evidence that interacting with the criminal justice system is itself a predictor of recidivism in young people. In their analysis of international longitudinal studies, McAra and McVie concluded that ‘the key to tackling serious and persistent offending lies in minimal intervention and maximum diversion’.<sup>50</sup> As Chaaya observes, the justice system assumes guilt or innocence, whereas the reality for the young person may be more complicated and nuanced.<sup>51</sup> This is particularly the case for children in residential care settings, who may be criminalised for behaviours that would be tolerated within a home environment, and which they do not perceive to be ‘criminal’ in nature; indeed, as was raised by participants in this research, they may find themselves in custody simply because they are ineligible for bail on account of their child protection status.

The *Youth Justice Act 1992 (Qld)* requires police officers to consider alternatives before initiating proceedings against a child, including cautioning or taking no action,<sup>52</sup> however this research would suggest this provision is not always applied. There are no consequences for a police officer if they start proceedings anyway, and participants in this research suggested that magistrates should (and sometimes do) dismiss charges in circumstances where an alternative course of action would have been more appropriate.

Joint protocols between police and residential units, outlining when police should and should not be called, are in their infancy in Australia, however they have been successful in reducing police call-outs to residential units in the United Kingdom in some areas.<sup>53</sup> Some scholars remain sceptical. Schofield et al have said

<sup>49</sup> Alltucker et al, above n48, 480; Staines, above n 3, 21; Parliamentary Office of Science and Technology (UK), above n 47, 4.

<sup>50</sup> Lesley McAra and Susan McVie ‘Youth justice: The impact of system contact on patterns of desistance from offending’ (2007) 4(3) *European Journal of Criminology* 315, 319, 336.

<sup>51</sup> Michael Chaaya, ‘Rethinking juvenile justice reform in New South Wales: A systems theory approach to youth justice conferencing’ (1998) 21(1) *University of New South Wales Law Journal* 77, 93; Kelly Richards and Lauren Renshaw *Bail and Remand for Young People in Australia: A National Research Project*. Research and public policy series No. 125. 2013, Canberra: Australian Institute of Criminology.

<sup>52</sup> *Youth Justice Act 1992 (Qld)* s 11(1).

<sup>53</sup> Shaw, above n9, 149; Taylor, above n22, 182; Staines, above n3, 29-30; Natasha Willmott, *A Review of the Use of Restorative Justice in Children’s Residential Care*, National Children’s Bureau, London, 2007, 16. The creation of a protocol was recommended by the NT Royal Commission: White and

that such protocols are most successful when there are positive relationships with local police,<sup>54</sup> but Shaw notes that encouraging police to have a 'friendly presence' at residential units may be counter-productive because it normalises interactions with police and seems to reinforce the assumption that the children are 'potential criminals'.<sup>55</sup> In an Australian context, Blagg notes the significant distrust that exists between Indigenous young people and police; he argues that external bodies or police aides are better placed to manage 'problem' behaviour than police officers.<sup>56</sup>

The use and availability of youth justice conferencing as an alternative to charge, or as a sentencing option was also raised by participants in this research. In Queensland, a police officer may refer an offence for 'restorative justice process' where the child admits committing the offence, the child is willing to comply, and having regard to the nature of the offence, the interests of the community would be served by proceeding in this way.<sup>57</sup> However, youth justice conferencing has remained under-utilised and under-researched in most Australian states and territories, including Queensland.<sup>58</sup> As was the case amongst participants in this research, there is not universal support for the use of youth justice conferencing in the literature. It will often be most appropriate to take no action at all. Taylor suggests that as a 'so-called "solution"' restorative justice processes should be 'viewed cautiously'; the distinction between 'offender' and 'victim' may be too

Gooda, above n2, Vol 3B, 24. Note that, in NSW, a joint protocol exists: see NSW Government, *Joint Protocol to Reduce the Contact of Young People in Residential Out of Home Care with the Criminal Justice System*, 2016. In Queensland, a protocol is currently being developed.

<sup>54</sup> Schofield et al, above n20, 11. See also Ross, Conger and Armstrong, above n2, 472. The Northern Territory Royal Commission recommended a 'Cross-over Unit' be established to foster these professional relationships: above n2, Vol 3B, 35-36.

<sup>55</sup> Shaw, above n 9, 156-157.

<sup>56</sup> Harry Blagg, 'A just measure of shame? Aboriginal Youth and conferencing in Australia' (1997) 37(4) *British Journal of Criminology* 481, 492, 496 (noting the fact that police have played a far from neutral role in the social control of Aboriginal Australians since colonisation). Kelly and Oxley similarly refer to the 'social trauma' caused by dispossession, child removal and criminalisation, and point out that this is 'within the living memory of Indigenous people': Loretta Kelly and Elvina Oxley, 'A dingo in sheep's clothing: The rhetoric of Youth justice conferencing' (1999) 4(18) *Indigenous Law Bulletin* 4, 5. See also Jenny Bargaen, 'Kids, cops, courts and conferencing: A note on perspectives' (1996) 2(2) *Australian Journal of Human Rights* 209, 215.

<sup>57</sup> *Youth Justice Act 1992* (Qld) s 22.

<sup>58</sup> As to Australian academic research on youth conferencing, see Heather Strang, *Restorative Justice Programs in Australia: Report to the Criminology Council*, Australian Institute of Criminology, 2001; Hennessey Hayes and Kathleen Daly, 'Youth justice conferencing and reoffending' (2003) 20(4) *Justice Quarterly* 725; Jacqueline Jourdo Larsen, *Restorative Justice in the Australian Criminal Justice System*, Australian Institute of Criminology Report No. 127, 2014; Nadine Smith and Don Weatherburn, 'Youth justice conferences versus Children's Court: A comparison of reoffending' (2012) 160 *Contemporary Issues in Crime and Justice* 1. For the relevant provisions, see *Crimes (Restorative Justice) Act 2004* (ACT) ss14-16; *Young Offenders Act 1997* (NSW) Part 5; *Youth Justice Act* (NT) ss39(2)(c), 39(7), 64, 84; *Youth Justice Act 1992* (Qld) Part 2 Div 3, Part 3; *Young Offenders Act 1993* (SA) Part 2 Div 3, and ss7(1)(b), 7(4)(b), 8(7); *Youth Justice Act 1997* (Tas) Part 2 Div 3, Part 4 Div 4; *Children, Youth and Families Act 2005* (Vic) s415, and ss362(3), 362(4), 409F(2)(g), 414(1)(c). There is no reference to youth justice conferencing in the *Young Offenders Act 1994* (WA), however family 'meetings' can be held by the Juvenile Justice Teams (Part 5 Div 2 and 3).

rigid and thus inappropriate in this context, particularly in the case of victimless or trivial offences.<sup>59</sup> It has also been observed that formal restorative justice processes are less appropriate for young people with developmental delays.<sup>60</sup>

Youth law services often express the concern that children may not receive legal advice before they make admissions in youth justice conferences, particularly if the referral is made at the policing stage.<sup>61</sup> Best practice programs seek to minimise the involvement of police officers in restorative justice processes whereas in Australia, conferences are run by police or youth justice officers, who may also be responsible for the initial charge.<sup>62</sup> This compromises children's right to procedural fairness, as well as their rights to the presumption of innocence, privacy, a fair hearing, and impartial review of decisions.<sup>63</sup>

In respect of Indigenous children, Kelly and Oxley note that youth justice conferences typically involve an Aboriginal young 'offender', a non-Aboriginal 'victim' and a convenor who demographically matches the victim.<sup>64</sup> As a result, restorative justice techniques could merely extend the scope of police powers over Indigenous young people, intruding on what would otherwise be considered the 'domain of welfare'.<sup>65</sup> In short, participants in this research recommended a restorative approach, but were not necessarily supportive of the extended use of formal, police-driven youth justice conferences.

#### D Social Security Law

Participants in this research noted that many young people commit crimes as a result of necessity, that is, for survival. They were collectively of the view that such crimes should not be punished by the criminal law, as a matter of logic as well as morality. In one of the focus groups, there was some discussion about the unavailability of social security benefits for young people under 16 years of age. In

<sup>59</sup> Claire Fitzpatrick, *Achieving Justice for Children in Care and Care-Leavers*. Lancaster: Howard League for Penal Reform, 2014, 7.

<sup>60</sup> Schofield et al, above n20, 52; Brian Littlechild and Helen Sender, *The Introduction of Restorative Justice Approaches in Young People's Residential Units: A Critical Evaluation*, University of Hertfordshire, 2010, 12, 13, 14; Brian Littlechild, 'Conflict resolution, restorative justice approaches and bullying in young people's residential units' (2011) 25 *Children and Society* 47, 54-55.

<sup>61</sup> Chaaya, above n 51, 89; Bargaen, above n 56, 210.

<sup>62</sup> As to best practice, see Ross, Conger and Armstrong, above n2, 483, 485; Taylor, above n22, 184-5; McAra and McVie, above n50, 320. Bartowiak-Theron cautions against blurring the line between 'restorative non-criminal conferencing' and 'young offender conferencing' and notes that 'double dipping confusion' may occur if young people are required to participate in multiple conferences of different types: Isabelle Bartowiak-Theron, *Introducing Restorative Conferencing: A Whole of Community, Early Intervention Approach to Youth Anti-Social Behaviour: Second Interim Evaluation Report*, 2012, 32.

<sup>63</sup> White and Gooda, above n2, 42; Chaaya, above n51, 89; Bargaen, above n56, 220, 222; Littlechild and Sender, above n60, at 28.

<sup>64</sup> Kelly and Oxley, above n56, 5.

<sup>65</sup> Blagg, above n 56, 483.

this group, the participants implied that some of the offences committed by their clients could have been avoided if the young person had had access to an income – they may not have caught public transport without paying the fare, for example, or they may not have shoplifted, or taken food from the fridge at their residential unit.

The only social security benefit available to children aged under 16 years is Special Benefit, and in order to qualify, the young person must demonstrate that they are unable to live at home, and are not able to receive support from another source.<sup>66</sup> This will be difficult for a young person to prove, as the expectation is that they are supported by their legal guardian; and if they do not have one, the State should assume that responsibility. Yet, as the National Youth Commission has reported, many teenagers are not adequately supported by child protection authorities.<sup>67</sup> Participants in this study confirmed that these children may be placed in the 'too hard basket' by child protection officers, and it is not uncommon for them to present at homelessness services without any income source at all.<sup>68</sup> Of course, even those young people who are able to access Youth Allowance will have insufficient funds to pay for necessities. The maximum amount of income support that a young person can receive is \$295.50; this equates to only 56% of the poverty line.<sup>69</sup>

## VI CONCLUSION

Participants in this research identified a number of examples of systems failure within both the child protection and youth justice systems, and they made a number of recommendations for reform that would ensure there is a more appropriate legal response to the offending behaviour of young people who are in the child protection system.

Importantly, much of the discussion concerned residential units, and research around the world has consistently painted a 'bleak and depressing' picture of residential care.<sup>70</sup> Participants in this study emphasised the importance of stable caring relationships for young people involved in the child protection and youth justice systems noting that there is no substitute for the genuine love and care of a parent. Yet it is possible to achieve stable, nurturing relationships between workers and children, even in residential units. Participants supported the use of restorative approaches both within residential units to de-escalate volatile and conflictual

<sup>66</sup> Australian Government, *Social Security Guide*, 3.7.1.30 (Assessment of SpB Claims).

<sup>67</sup> National Youth Commission, *Australia's Homeless Youth*, National Youth Commission, Melbourne, 2008, 310.

<sup>68</sup> *Ibid*, 309

<sup>69</sup> Melbourne Institute of Applied Economics and Social Research, *Poverty Lines Australia: December 2018 Quarter*.

<sup>70</sup> Taylor, above n22, 175.

situations, and also as an alternative to charge or sentence in some circumstances. Most often, however, they felt that children exhibiting ‘challenging’ behaviours should be dealt with outside of the criminal justice system.

With this in mind, future research should seek to confirm the concerns raised with regard to residential care in Queensland, and to obtain the perspectives of other players, particularly police, judicial officers, and people with lived experience. Further information is needed to identify barriers to the implementation of the recommendations that have been made over many years of inquiries and research, and which are affirmed again in this study. In particular, the role that judicial officers play in maintaining the status quo by convicting and penalising young people for trivial offences should be explored.