

Out-of-Home Care

Executive Summary

Research shows a significant correlation between juvenile involvement in criminal activity, a history of abuse or neglect, and a history of being placed in care.¹ Care experience and juvenile detention have been described as ‘key drivers of adult incarceration’.² Aboriginal and Torres Strait Islander children are placed in care at a rate 11 times that of non-Indigenous children.³

The psychological and emotional impacts of experiences of out-of-home care may include:

- low self-esteem;
- depression;
- fear;
- distrust;
- anger;
- shame and guilt; and
- difficulties forming and maintaining trust in relationships.⁴

These impacts, including post-traumatic stress, may manifest in behaviours such as risk-taking; poor impulse control; resistance to boundaries (such as being absent from care without permission); stress intolerance; alcohol and other substance abuse; self-harming behaviours; social isolation; limited capacity to form relationships with peers and/or adults; sexually inappropriate, anti-social behaviour; and/or potentially criminal behaviour.⁵

Experiences of out-of-home care have also been linked to poorer educational performance and greater risk of being suspended or expelled because of behavioural problems or truancy.⁶

Care leavers often face limited employment opportunities which may result in a lifetime of financial hardship.⁷ Time spent in care has also been found to significantly increase a child’s chances of becoming homeless.⁸

The potential relevance of evidence of experiences of out-of-home care in sentencing proceedings includes an assessment of *moral culpability*; moderating the weight to be given to *general deterrence*; and determining the weight to be given to *specific deterrence* and *protection of the community*. There may also be issues relating to the likelihood of *hardship in custody*, a finding of *special circumstances* and the shaping of conditions to enhance prospects of *rehabilitation*.

¹ Australian Law Reform Commission, [*Family Violence – A National Legal Response*](#) (Report No 114, 2010) 973. See also New South Wales, [*Special Commission of Inquiry into Child Protection Services in NSW*](#) (Report, November 2008) vol 2, 556 [15.1]; Australian Institute of Health and Welfare, [*Young People in Child Protection and Under Youth Justice Supervision 2014–15*](#) (Data Linkage Series No 23, 2016) 11; Katherine McFarlane, ‘[*Care-Criminalisation: The Involvement of Children in Out of Home Care in the NSW Criminal Justice System*](#)’ (PhD Thesis, University of New South Wales, 2015) 75–86; Senate Community Affairs References Committee, Parliament of Australia, [*Forgotten Australians: A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children*](#) (Report, August 2004) 164 (‘*Forgotten Australians*’); Australian Law Reform Commission, [*Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*](#) (Report No 133, 2018) 485 [15.1] (‘*Pathways to Justice*’).

² Australian Law Reform Commission, [*Pathways to Justice*](#) 485 [15.1].

³ Australian Institute of Health and Welfare, [*Child Protection Australia 2019–20*](#) (Child Welfare Series No 77, May 2021) 54.

⁴ Senate Community Affairs References Committee, Parliament of Australia, [*Forgotten Australians*](#) 145–6.

⁵ NSW Ombudsman, ‘[*Joint Protocol to Reduce the Contact of Young People in Residential Out-of-Home-Care with the Criminal Justice System*](#)’ (2016) 5 [2.1].

⁶ New South Wales, [*Special Commission of Inquiry into Child Protection Services in NSW*](#) (n 1) 620 [16.135].

⁷ Senate Community Affairs References Committee, Parliament of Australia, [*Forgotten Australians*](#) 160 [6.37]–[6.39], 163 [6.46].

⁸ Human Rights and Equal Opportunity Commission, [*Our Homeless Children: Report of the National Inquiry into Homeless Children*](#) (10 February 1989) 109 [10.4].