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Care Criminalisation:
Issues and Current
Research

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It should be noted that reading about and engaging with material that explores the issue of self harm and suicidality may lead to experiences of distress. This should be acknowledged and support sought if required.

The Centre for Excellence in Therapeutic Care is a partnership between the Australian Childhood Foundation and Southern Cross University. The Centre integrates up to date research evidence with cultural knowledge, practice wisdom and the voices of young people in care to produce reports, practice resources and training to support the provision of high quality, evidence informed therapeutic care.

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Introduction

Young people who are in, or have been in out-of-home care, particularly those with experience of living in residential care, are vulnerable to a number of negative outcomes, including having contact with criminal justice systems. Fundamental to this trajectory is the lived experience and impact of complex trauma. Other factors associated with involvement with justice systems include receiving insufficient support during their time in, and prior to leaving care; a failure to address the unique cultural needs of Indigenous young people and inadequate agency policy and resources to respond to their complex and challenging needs. A number of measures available to care agencies can reduce the chances of young people becoming involved in criminal activities and the justice system. Chief amongst these are ensuring that staff have a comprehensive understanding of the effect of trauma on behaviour; that they are supported to respond to challenging behaviour constructively; and that they are able to develop consistent, trusting and supportive relationships with young people that will enable them to thrive.

THIS BRIEF ADDRESSES THE FOLLOWING ISSUES:

- **What is care criminalisation?**

- **Residential care as a predictor of contact with justice systems**

- **Types of offences and experiences of young people in out-of-home care**

- **What are the main antecedents of offending?**

- **Conceptualising care criminalisation through a trauma-informed lens**

- **Implications for practice: trauma-informed responses**

What is care criminalisation?

The concept of 'care criminalisation' refers to young people in out of home care being unnecessarily exposed to the criminal justice system. This includes stigmatising young people, labelling their behaviours as criminal, and adopting a criminal response to actions that would not be treated as criminal in a family home (Queensland Family and Child Commission, 2019). The AIHW (2020, p.2) national report on child protection states that:

> *More than half of young people who had been in youth justice supervision had also received child protection services in the last 5 years. Of the 7,904 young people who had been under youth justice supervision during 2018–19, 4,243 (54%) had also received a child protection service in the 5 years from 1 July 2014 to 30 June 2019. 2,213 (28%) received child protection services in 2018–19. Over half (54%) of those in community-based supervision and around 3 in 5 (61%) of those in detention during 2018–19 had received a child protection service in the last 5-year period.*

Similarly, Malvaso, Delfabbro and Day (2017) found that the likelihood of having a conviction was 22.4 times higher for those in out-of-home care than for the general population.

Although only about 5% of young people aged 10–17 in Australia are Indigenous, half (49%) of those under youth justice supervision in 2017–18 were Indigenous. More than one in three young people (36%) under supervision in 2017–18 were from the lowest socioeconomic areas, and 40.8% of children in youth detention had also been involved in the child protection system. Males under supervision substantially outnumbered females in all the states and territories, with the proportion of young males under supervision ranging from 74% of the population under supervision in the Australian Capital Territory to 86% in Victoria and Western Australia (Australian Institute of Health and Welfare, 2019). An earlier national study found that around 20% of female care leavers and around 50% of male care leavers (aged 15 to 21) had had some contact with the broader justice system (inclusive of receiving a charge or caution) (McDowall, 2009).

A recent Australian study found that of 800 young people who were on community orders in NSW, 24% had lived in out-of-home care (Kenny, Nelson, Schreiner, Lennings & Butler, 2008). From another perspective, Victorian Legal Aid (2016) found that around a third of young people they assist with respect to child protection issues later sought assistance from them regarding criminal charges. Young people they have assisted who have been in out-of-home care, are twice as likely to have criminal charges compared to those who continue to live with their families.

From an international perspective, findings from across the UK, US, Canada and New Zealand regarding the amount of contact those in care or who have left care have had with the justice system, as well as the proportions of those in custody who have been in care, are comparable to those for Australia (McFarlane, 2018). Around half of the young people in custody in England and Wales have also been in care for some period of time (Prison Reform Trust, 2016). A study in New Zealand of data from the 1989 birth cohort found that of the 558 (1.2%) of those who had been imprisoned, 83% had a record with Child, Youth and Family Services. Of this number, 50% had been both subject to a care and protection order and had involvement with youth justice services (Stanley, 2017).

The risk of 'care criminalisation' is especially high for Aboriginal and Torres Strait Islander young people who have been in care. National data has revealed that Aboriginal young people aged 10 to 17 are 17 times more likely than non-Indigenous young people to have had involvement with both child protection services and youth justice supervision (AIHW, 2018). The broader vulnerability to come into contact with the justice system for Aboriginal young people who have experienced abuse is illustrated by the findings of Stewart, Dennison and Waterson (2002). They reported that

maltreated Indigenous children were four times more likely to offend than non-Indigenous (42% compared to 14%). As a comparison, in the US, those who have had contact with both protection and justice systems are disproportionately inclined to be African American (Williams-Butler, 2018). In the UK, young people who are black or from a diverse cultural background are significantly over-represented in the care system.

Residential care as predictor of contact with justice systems

One Australian study found that young people in residential care were more likely to offend than those placed in other forms of out-of-home care (Malvaso & Delfabbro 2015) whilst another recent study in which 615 Victorian young people in out-of-home care aged 10 or over were surveyed, found that those in residential care were ten times more likely than those in home-based care to have had criminal involvement (Wise & Eggers 2008, cited in Cashmore, 2011). Ryan et al. (2008) found that in comparison with those accommodated in foster homes, young people in residential care were 2.5 times more likely to have been arrested. Others, such as Kolivoski et al. (2017), have found that the risk of offending is greater for young people who come into residential care later in their lives or who have had chronic involvement with the juvenile justice system.

Children and young people who have been known to both child protection and youth justice have a greater likelihood of experiencing poorer life outcomes, such as poor mental and physical health, and increased difficulties in accessing education, employment and housing (Indig et al., 2011; Mendes, 2009). Young people who have been subject to a youth justice order are also more likely to experience negative health and socio-economic life outcomes (Mendes et al., 2014; Goodkind et al., 2013). Contact with justice systems does not, however, always imply greater involvement in criminal activity. Baskin and Sommers (2011), for example, found that group home placement was associated with overall arrests, including arrests for violent crimes, but not violent crime itself.

Types of offences and experiences of young people in out-of-home care

There is little research that compares the offending trajectories of young people who have had both contact with the justice system and spent time in out-of-home care with those who have only had contact with the justice system. Extant research, however, includes that by Malvaso, Delfabbro, Day and Nobes (2019), who examined data for 2,000 young people who spent time in secure custody or detention in South Australia during the years of 1995 and 2012. They found that young people who had been in out-of-home care, along with those with those who had child protection substantiations, typically committed offences at a younger age than others under youth supervision orders. Those who commit offences at a younger age, the authors highlight, are more likely to go on to commit more violent offences as well as enter the adult justice system.

Research in New South Wales and Victoria has found that one of the most frequent charges against young people in residential care is for property damage (Legal Aid, 2016; McFarlane, 2015, cited in Tillack, Ranieri, Cahill & McDowall, 2018). As discussed below, in some cases this may reflect a disproportionate reaction to an event which might not, in other contexts, attract police involvement.

McFarlane (2018) found that, more broadly, amongst those with experience of out-of-home care, other frequent charges included assaults of staff, co-residents or kinship carers.

In 2012, the Queensland Peak Care G-Force working group identified the need to address the criminalisation of children living in residential care services. Children and young people with lived experience in OOHC care had expressed that workers in residential care services often called the police to manage situations that may not have come to police attention in a foster or kinship care or family home environment.

THE GROUP RELAYED THAT THE YOUNG PEOPLE REPORTED:

- it was not uncommon for police to attend residential care services,

- children in residential care did not know enough about their rights, or the law and felt illequipped in dealing with the police,

- 'residential workers [did not] act with the same degree of compassion and often resorted to calling in support from the police instead of handling … behaviour as a family would,' and

- 'life in residential care is very different to life in foster care [in respect to exposure to the police]' (Peak Care, 2012, p. 12–34).

It is difficult to estimate the proportion of crimes in relation to which this might apply, but at least some of those offences committed by care leavers, in particular, may fall under the category of 'survivor offending' (Cashmore, 2011); that is, offending that may include or allow the acquisition of material goods. Given that those leaving residential care have been found to be particularly illprepared for independence, they may be more likely than others to commit such offences.

There is some research to indicate that those with experience of care are more likely to be repeat offenders. Research by Huang, Ryan, Sappleton & Chiu (2015), for example, found that moving young people from a 'family-like' environment to group care resulted in significantly higher rates of recidivism. Young people who have been in out-of-home care are treated differently, not only in terms of the frequency with which they are charged with property damage, but also the frequency with which they are held on remand. As discussed further below, there is evidence to suggest that young people in care are often refused bail on the basis that they lack secure accommodation to which they might be discharged (Cashmore, 2011; McFarlane, 2010; Legal Aid, 2016; see also Wong, Bailey & Kenny, 2010).
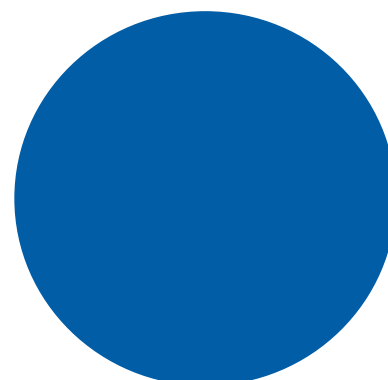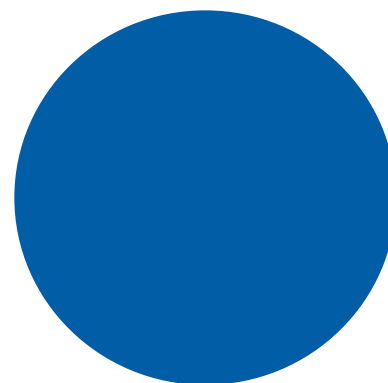
What are the main antecedents of offending?

There are several factors that have been found to contribute to the greater vulnerability of young people who have been in care, particularly residential care, to committing offences and having contact with the juvenile justice system. Stanley (2017) reported that the main antecedents of offending – many of which can be seen as interconnected – are: early experiences of abuse; placement in criminogenic environments; experiencing multiple placements; 'criminalisation' of young people's behaviour in care; lack of appropriate supports during and when leaving care; and adverse treatment by the courts. Stanley's research revealed that an additional problem experienced by some was an 'internalisation of imprisonability'. This refers not only to individuals having become institutionalised – i.e., unable to feel comfortable living outside a highly structured environment – but also their own sense that they would end up in an environment characterised by high levels of surveillance.

Prior to a discussion of the potential causes for increased involvement in criminal activity amongst those with experience of out-of-home care, it needs to be underscored that contact with the justice system does not merely reflect a greater tendency towards criminality. It is also bound up with an over-reliance on the part of residential care staff upon police in the management of challenging behaviour (Shaw, 2014; Shaw, 2016). Australian research has found that those in residential care are often charged with minor offences – such as smashing a cup or spreading food around a kitchen – that would be unlikely to attract police involvement 'had it occurred in a traditional family house' (Legal Aid, 2016, p. 3). McFarlane (2018) found, in her examination of NSW court files, that in many cases where young people may have more appropriately received a caution for an offence, police had proceeded with a charge.

The unnecessary involvement of police in minor incidents has also been found to occur in New Zealand and the UK (Stanley, 2017; Taylor, 2006). A recent study investigating the relationship between the child protection and criminal justice systems in New South Wales found that children living in OOHC are more likely than those not in care to be charged following their first contact with police, and be charged for relatively minor offences. In most of these cases, it was determined that a police caution would have been a more appropriate response (McFarlane, 2018).

In a study by Gerard et al. (2019), police themselves often reported that they were involved in matters in residential care units without reasonable justification. Young people in residential care are generally subjected to a greater level of scrutiny than are those who reside with their families. As a result, they are also at greater risk of being found to have breached their bail conditions and thus be remanded (Richards & Renshaw, 2013). Another concern is that young people who have been in care are often detained, where their peers would have been likely to receive probation, on the magistrate's understanding they will be safer in custody (Stanley, 2017; McFarlane, 2010). Magistrates are more likely to make this decision in the case of girls and ethnic minorities who have offended (Stanley, 2017; Ryan et al., 2007). A separate but related issue is that those in residential care are also at particular risk of ending up in remand on the basis of breaching the condition that they remain at the address at which they claimed to reside.

Exposure to additional traumatic experiences whilst in care can also contribute to the commitment of crimes by the broader out-of-home care population (Mendes, Snow & Baidawi, 2014). Such experiences can exacerbate the emotional and psychological challenges associated with earlier experiences of trauma, as discussed above. Those who have endured placement instability have been found to be more likely to commit crimes (Baskin & Sommers, 2011; Goodkind et al., 2013; Ryan & Testa, 2005; Crawford, Pharris & Dorsett-Burrell, 2018). DeGue and Widom (2009) found,

in a prospective study of over 700 young people who had experienced mistreatment, that unstable placement continued to affect their chances of being arrested well into adulthood. What follows are some of the other factors that contribute to young people in care committing crimes or experiencing contact with the justice system.

Peer contagion

As discussed above, young people in residential care may be more inclined to use drugs as a result of being introduced to them by other residents. They may become involved in associated or other criminal activity as a result of co-tenanting arrangements (Mendes, Snow & Baidawi, 2014). In a US context, Robst et al. (2011) found that young people were more likely to have encounters with the justice system where their co-residents and peers in residential homes had histories of delinquency. Reasons for young people emulating the criminal behaviour of their peers include a desire to feel accepted and, in this way, experience increased self-esteem, and the transmission among youth of particular values and attitudes (Stanley, 2017; Ryan et al., 2008; Melkman, 2015). The tendency towards deviant behaviour, some have hypothesised, can be an effect of the highly structured nature of group living which hinders young people's engagement in individual pursuits such as hobbies and study (Ryan et al., 2008). This means negative interactions amongst peers in residential care may also be a trigger for criminal activity. Tillack et al. (2018) found that many had committed offences when responding to 'antagonistic behaviour' on the part of a co-resident (p. 62). Such behaviour could include physical assaults, insults or theft of belongings. (See also Fitzpatrick & Williams, 2017.)
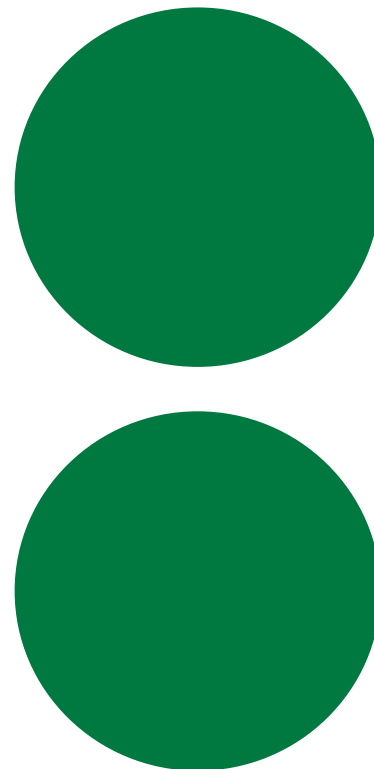
Ryan and colleagues (2008) conclude from a review of the literature that 'peer contagion' effects in residential care are more or less likely depending on a young person's development status or age, gender, temperament and the nature of the relationships they have with others. Others have posited that the 'criminogenic' aspects of residential care facilities are more fundamental, or, in other words, related to their design or operation. More specifically, they may adversely affect young people as a consequence of isolating them from community and/or their cultures and quality educational opportunities, possession of inadequate physical facilities, and the adoption of poor programs, policies or approaches, including approaches to misbehaviour (McFarlane, 2018; Hayden, 2010).

Limited training for staff

Dregan and Guiliford (2012) claim that some negative outcomes for young people in residential care in the UK can be explained by the often low level of qualifications held by staff and thus their reduced capacity to provide appropriate emotional support and behavioural management of residents. Qualifications that residential care staff are required to possess vary from country to country (Petrie et al., 2011), but in both the UK and Australia, training can lack the rigour required to properly support residents. Findings from a US study that examined the contribution of peer contagion to instances of conduct disorder amongst 1,438 young people with emotional and behavioural problems in residential care programs found that 'bad behaviour' was not related to increased exposure to 'conduct disordered' peers. Rather, it related not only to the amount of time young people had spent in the program but also the levels of experience of the staff who provided care (Huefner & Ringle, 2012).

Limited in care and post-care support

Difficulty, during and after care, with accessing services relevant to addressing the psychological and emotional consequences of their experiences and/or supporting independence may also cause individuals to offend (Mendes, Snow & Baidawi, 2014). There are certain transition points for which individuals require increased support, during which they are more likely to offend. These include moving from family to care and from care to independent living (Schofield et al., 2012). Cashmore (2011) states that the lack of formal support and supportive relationships renders this population vulnerable to 'homelessness, unemployment, mental health issues, and drug and alcohol problems' that increase their likelihood of committing offences. White (2003) has explored the broader issue of how offending by young people in Australia may be partly understood as a reflection of poor access to specialist services, such as housing and mental health services.

Lack of culturally safe and appropriate care

Aboriginal and Torres Strait Islander young people who have left care have a greater chance of being involved with the criminal system than non-Indigenous young people. Mendes, Saunders and Baidawi (2016) attribute this to the phenomenon of intergenerational trauma, the fact that many young Aboriginal and Torres Strait Islander people are not connected to their culture, and the failure of services to provide appropriate cultural support during young people's time in care or transition from care. The greater amount of contact that Indigenous young people who are still in care have with the criminal justice system – and their especially negative experiences with this system – may additionally owe, so Gerard et al. (2019) claim, to a range of other factors. These include: a greater tendency towards mobility and, thus, likelihood of ending up in trouble for absconding; that working effectively with Aboriginal people can require having time to build good relationships, which the high turnover of staff in residential accommodation can mitigate against; and that young Aboriginal people often find it difficult to provide instructions to their lawyers that will improve their chances of obtaining bail.

The family dysfunction that many young Aboriginal and Torres Strait Islander people have experienced as a result of systemic racism and dispossession of land and culture – culminating in high levels of domestic violence, alcohol and drug abuse, and low school attendance – in part explains their susceptibility, more broadly, to contact with the justice system (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011).

Conceptualising Care Criminalisation through a Trauma-Informed Lens

The literature indicates a relationship between the experience of complex trauma and criminal behaviour and that individuals who are incarcerated experience post-traumatic disorder at a higher rate than those in the broader population (Widom, 1989; Foy, Furrow & McManus, 2011; Finkelhor, 2008; Ardino, 2012; Wilson, Stover & Berkowitz, 2009; Topitzes, Mersky & Reynonds, 2011). A systematic review by Malvaso, Delfabbro and Day (2018) revealed that childhood maltreatment is found to be a determinant of offending, irrespective of the research method adopted. It is reported that 80% of incarcerated young people across Australia have experienced multiple traumatic stressors.

Child abuse and neglect, poverty, sexual abuse and witnessing violence are, among others, the most common risk factors for post-traumatic reactions, aggression, and antisocial behaviour (Dziuba- Leatherman & Finkelhor, 1994; Dong et al., 2004; Finkelhor, 2008; Hussey, Chang, & Kotch, 2006).

The overall concesus is that young people in care systems have higher rates of mental health problems, substance use issues, health risk behaviours, disconnection from school and social disadvantage than similar aged individuals in the general community due to their trauma histories.

In 1996, Maxfield and Widom conducted a pioneering study on 900 individuals with experience of abuse prior to the age of 11 years. She demonstrated a clear association between trauma and antisocial behaviour, showing that such children were at greater risk of being arrested in adolescence. Hypotheses for the association between interpersonal trauma and the commitment of criminal acts include that trauma negatively affects aspects of cognitive processing such as social cognition, emotional regulation, impulse control and attachment (Bollinger, Scott-Smith & Mendes, 2017; Twardosz & Lutzker, 2010; Schofield, Biggart, Ward & Larsson, 2015). Offending may also arise as a result of the tendency of some individuals who have experienced trauma to engage in risk-taking as part of a 'compulsive re-exposure to the trauma' (Ardino, 2012; see also Van der Kolk, 2007). Kerig, Modrowski and Crosby (2018) found in a sample of 579 boys and 203 girls who were in youth detention that polyvictimisation can lead to the commitment of criminal acts through learnt dissociation and the resultant manifestation of borderline personality disorder.

The effect of interpersonal trauma on criminal activity has been considered within different paradigmatic frameworks which variously emphasise early life experiences, brain development and social challenges associated with transitions common to the life course (Mersky, Topitzes & Reynolds, 2012). Life course perspectives on adolescent criminality identify the increase, during adolescence, of autonomy and social contacts as providing opportunity for maladaptive strategies (such as drug taking) for dealing with trauma (Eftekhari, Turner, & Larimer, 2004, cited in Mersky, Topitzes & Reynolds, 2012). Trauma is a stronger predictor of criminal activity where a young person has been subject to a range of traumatic interpersonal experiences, and/or the abuse has been experienced across both childhood and adolescence (Hurren, Stewart, & Dennison, 2017; Malvaso, Delfabbro & Day, 2017; Thornberry, Henry, Ireland & Smith, 2010). Where abuse was experienced in only one phase of an individual's life, some researchers have found that its occurrence in adolescence has a stronger association with criminal behaviour (e.g., Stewart, Livingston & Dennison, 2008). Other researchers, however, such as Mersky, Topitzes and Reynolds (2012), have found that experiencing abuse in younger childhood predicted later offending regardless of whether individuals were exposed to maltreatment in adolescence.

Some researchers have found that certain kinds of abuse are stronger predictors of offending per se than others. In Australian research, Stewart, Dennison and Waterson (2002) found that physical abuse and neglect predict criminal behaviour, where sexual and emotional abuse do not. Ryan et al. (2008) found that amongst those in residential care, having endured physical abuse before coming into care was also associated with a greater risk of criminal behaviour, where neglect, sexual abuse and emotional abuse predicted abuse at about the same or slightly lower rate. Baskin and Sommers (2011), in a study using data for young people in Los Angeles who had had contact with both family services and justice systems, found that young people who have experienced sexual abuse are less likely to be arrested than those who have endured other abuse. Others, such as Smith, Ireland and Thornberry in a US study (2005), have found that experiencing any kind of abuse increases the chance of being arrested or committing offences, including violent offences. Several researchers, however, have found that the type of abuse experienced does not necessarily predict the kind of offence that is committed, and that disentangling the effects of different kinds of abuse is difficult (Malvaso, Delfabbro & Day, 2016).

Researchers such as Malvaso, Delfabbro and Day (2016), however, caution that the broader contextual factors that make the experience of interpersonal trauma more likely to translate into criminal behaviour should be considered. Their systematic review of prospective and longitudinal studies found that 'offending behavior is a consequence of the effects of a number of co-existing risk factors other than maltreatment, as well as interactions between the two' (p. 10). Factors that interact with abuse experiences in different ways include gender, ethnicity, parental education, changes in caregivers, neighbourhood poverty, educational experiences and behavioural experiences.

Some research has also indicated that the link between interpersonal trauma and criminal activity may vary for different genders. Topitzes, Mersky and Reynolds (2011), in their examination of longitudinal data pertaining to young people from minority low-income backgrounds in Chicago, found that whilst childhood exposure to maltreatment predicted adult criminal activity for both genders, it only predicted delinquency for males. The researchers found that criminal activity was mediated by slightly different things in the case of females versus males. For example, for males, factors related to the 'childhood-era' that were especially salient were externalizing behaviour and school commitment, whereas for females, parental factors were particularly important.

Other influences that young people may have been subject to prior entering into care that likely impact their chances of being involved in the justice system is criminality amongst family members, lack of positive connections to community and disrupted education (Schofield et al., 2012).

There is a known correlation between experiences of trauma and subsequent use of substances, which may lead to financially motivated crimes. Research indicates that there is a higher use of substances, including illegal substances, amongst those in group care in comparison with the general population. A Dutch study involving 241 adolescents in a range of types of residential care found that they were 13 times more likely to use hard drugs in comparison with youth not in care, even after controlling for their risk profile (Monshouwer et al., 2015). These findings suggest that not only having been exposed to higher levels of trauma, but also the effect of peer pressure, or being co-housed with others who are already using, can influence their take up by many young people.

Implications for Practice: Trauma-Informed Responses

Contact with police and the justice system

A primary concern is reducing the number of young people who have been in care to exposure to the justice system. Based on an understanding that the overwhelming majority of young people placed in residential care have experienced complex developmental trauma, offending behaviour can be seen as one of a number of challenging behaviours with which the young person may present.

The damage of property, particularly where it is communal property, might be more appropriately dealt with within the facility, i.e., without police involvement. Avoiding the involvement of police in residential care matters is a central emphasis of the landmark Framework to Reduce the Criminalisation of Young People in Residential Care (2019), a commitment signed by the Departments of Health and
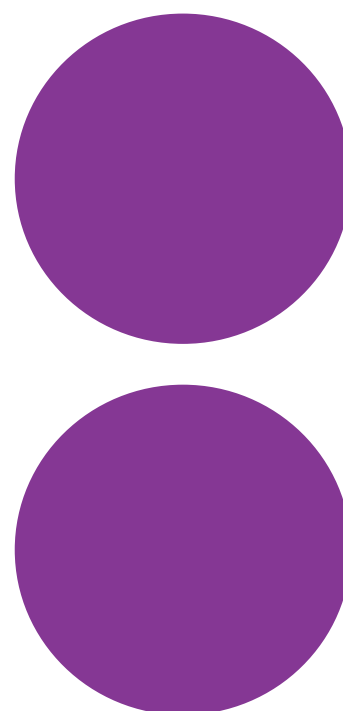
Human Services and of Justice and Community Safety; Victoria Police and residential care service providers. The Framework offers a decision-making flowchart that directs residential care staff to consider, in the first instance, whether there are any immediate safety risks or there are any obligations to report to the Victoria Police associated with any incidents arising. The Framework also highlights the importance of residential care staff receiving appropriate training on both the impact of trauma on behaviour and managing behaviour. As stated in the NSW Joint Protocol to Reduce the Contact of Young People in Residential OOHC within the Criminal Justice System (NSW Ombudsman, 2016), it is also important that police have a better understanding of how they can use their powers with regard to young people in care. Young people in residential care may be at risk of becoming 'criminalised' simply because of existing practices that involve the police in minor property offences that, were they to take place within a family home, might attract a different response. A trauma informed response would be one that ensures that the young people in care experience safety and feel safe. This would reasonably include not having an over-emphasis on a law and order response to complex behaviors.

Amongst other main points on which the NSW protocol and the Victorian framework are in agreement is that residential care providers should devise tailored behavioural support plans for when young people exhibit challenging behaviour. The Victorian Framework states that it is crucial, in the case of Aboriginal young people, that such plans are consistent with their cultural plans and Aboriginal decision-making principles. Residential care providers should also consider how the unit's operations or environment might be altered to reduce the chance of issues escalating. Particularly important, given the frequency with which there is conflict between co-tenants in residential care, is establishing an atmosphere of calm and predictability. Principle 1 of the Victorian Framework (See Box 1 for all principles), acknowledging the effect of context on young people's behaviour, stresses that all young people in residential care should be able to feel safe, secure and connected to others. There is evidence that adherence to main principles of this and similar protocols in Australia would aid in reducing the criminal behaviour or criminalisation of young people in residential care. For example, Victorian Legal Aid (2016) cites a program in the UK designed to allow management of low level disruptive behaviour without the involvement of police that led to a 66% reduction in the number of offences recorded against young people during the relevant period.

In terms of other amendments that need to be made within the justice system, a number of researchers argue that requiring redress is the culture of detaining young people 'for their own good', or because they lack a safe place to be discharged to (McFarlane, Colvin, McGrath and Gerard, 2019). The Victorian Framework is emphatic that young people in residential care have the same rights and liberties as others and that care should be taken by all to ensure that their human rights are upheld. One means of ensuring this occurs is by maintaining a good communication amongst the police, care providers and the young people in care. Under Principle 5, the Framework asserts the importance of young people's voices being heard and service providers coming to understand their lived experience. Magistrates may also require training regarding the potential longer-term damage of detaining young people who have a history of out-of-home placements, or establishing more support for young people in securing accommodation. The justice system also needs to be reformed in a way that takes account of the high number of young people who have experienced abuse or interpersonal trauma. Tillack et al. (2018) argue that a trauma-informed justice system would focus on the provision of psychological and emotional support above punishment, and would help young people acquire skills such as emotional regulation and the development of positive relationships. A trauma-informed approach, they state, would also involve better communication with young people around legal processes, the use of respectful language and a minimisation of power differences in interactions. Residential care providers have a place in advocating for such change.

Developing healthy relationships

Interviews undertaken by McFarlane, Colvin, McGrath and Gerard (2019) about the NSW Joint Protocol yielded the common response that preventing contact with justice systems relies on more than focusing on interactions with the police or residents' challenging behaviours. It also requires that staff foster supportive empathic relationships with residents and recognise the impact of trauma on residents' responses and behaviours. Principle 2 of the Victorian Framework highlights that 'understanding the underlying causes of a young person's behaviour is critical to promote healing from trauma, and effect positive behaviour change' (p.6). As Gerard et al. (2019) point out, research points to positive interactions between staff and young people supporting stable placements. This, in turn, reduces the chance of the young person having contact with the criminal justice system. (See also Hayden, 2010.) The development of rich relationships between staff and residents has otherwise found to be emotionally and socially protective (Stevens and Furnivall, 2008). Such relationships, Shaw (2014) emphasises, are dependent upon staff being able to take into account residents' individual histories, perspectives and life experiences. This, in turn, is reliant on staff being provided with appropriate training and professional development opportunities. Just as crucial is that those in residential care can be supported to develop positive or mutually beneficial relationships with their peers. Whilst most research indicates that negative behaviour amongst co-residents in residential care is more 'contagious' than positive behaviour (Huefner, Smith & Stevens, 2018), residents can also encourage adaptive behaviours in each other. In a review of relevant literature, McLean (2011) found that there is modest evidence that conscious efforts towards establishing a positive peer culture, characterised by a 'norm of care and responsibility for self and others' and a sense of community belonging, benefits residents (p. 11). From an extensive literature review and interviews with young people who have either been in the care system or involved in the justice system or had contact with both, Schofield et al. (2012) identified a range of factors that can help prevent offending. Amongst these were the development of a range of individual characteristics including emotional intelligence, capacity for emotional regulation, senses of self-worth and self efficacy, an attitude of hopefulness, and various cognitive abilities such as good problem-solving. Evaluation of a number of trauma-informed therapeutic residential care approaches indicate the healing power of caregiver/young person relationships where young people could begin to experience a sense of safety and stability (McPherson, Gatwiri, Cameron & Parmenter, 2019). These approaches are documented elsewhere and typically promote young people's capacity to form healthy social connections by developing and maintaining a secure, therapeutic milieu which is nurturing and homelike. This is bound up with avoiding what the Victorian Framework refers to as a problem-centric approach to understanding challenging behaviour.
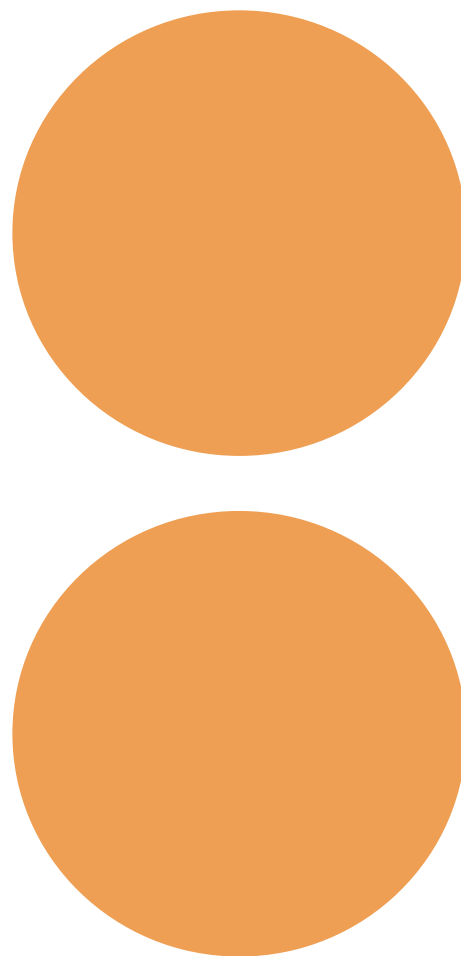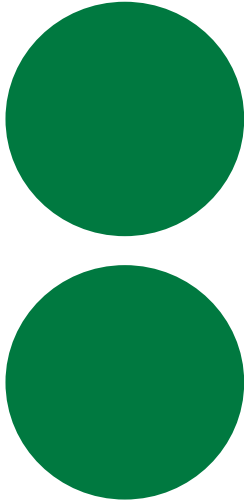
A recent review of approaches internationally found that 13 of these could be described as 'promising' in terms of research and evaluation outcomes, evidence of transparent implementation, and cultural sensitivity (McPherson, Gatwiri, Cameron & Parmenter, 2019). In light of the alarming rates of Indigenous young people's involvement with the justice system, cultural considerations are a priority for therapeutic care in Australia. Given that Schofield et al. (2012) also found that a strong bond with school and connection to community and pro-social peers to be protective, the onus is also on residential care providers to facilitate educational and social connections, particularly for those whose behaviour is challenging. Where residential care staff attend to these needs, they also encourage placement which has also been found to reduce young people's chances of involvement in criminal activity (Ryan, Hernandez & Herz, 2007.)

Aboriginal and Torres Strait Islander children

It is beyond the scope of this Research Brief to comprehensively report on the complexity of 'cultural genocide' in Australia, a term which refers to the 'deliberate attempt to eradicate the culture and traditions' of Aboriginal and Torres Strait Islander Peoples (Krakour, Wise & Connolly, 2018). At the same time, the dramatic and alarming rates of over-representation of Indigenous young people in the care and criminal justice systems in Australia need to be seen in the context of colonisation and the enduring legacy of intergenerational trauma. The Victorian Framework has as its fourth guiding principle that residential care providers should build partnerships with agencies whose focus is the care of Aboriginal youths. Although trauma research in relation to Aboriginal children, their families and communities is in its infancy (Atkinson, 2013), promising practice is being delivered and frameworks developed that focus on healing and recovery. These are outlined elsewhere(McPherson, Gatwiri, Cameron & Parmenter, 2019).

A recently completed systematic scoping review of the international literature identified a clear gap in documented approaches designed to respond therapeutically to Indigenous children in residential care (McPherson, Gatwiri, Cameron & Parmenter, 2019). Two exceptions were The Spiral Model, developed in Far North Queensland as a model of care that was responsive to the cultural needs of Indigenous children from that area (Downey, Jago & Poppi, 2015); and Bunjil Burri, described as an Aboriginal and Torres Strait Islander Australian Model of Therapeutic Care. The components of the second approach are documented, and integrate knowledge that the essence of healing for Aboriginal and Torres Strait Islander children is founded on cultural safety and comprehensive, culturally informed assessments and planning. In terms of implementation design incorporating consideration of indigenous culture, this review noted considered models of planning and consultation with the local Aboriginal and Torres Strait Islander community, with a view to developing a culturally specific model of therapeutic care. All staff are described as being committed to and trained in culturally safe, trauma-informed practice (Bamblett et al., 2014).

Key messages from the research

Both in Australia and internationally, young people who are or have been in residential care have had significantly more contact with youth and adult justice systems than others who have had contact with child welfare or protective services and the broader population. Aboriginal and Torres Strait Islander young people are far more likely than their peers to have had involvement with both with protective services and legal systems. The risk of being charged with an offence is greater for young people who come into residential care later in their lives or have already had contact with police.

- **Young people who have both been in care and charged with offences are more likely to have committed a broader range of crimes than their peers and at younger ages.**

- **One of the most frequent charges against young people in residential care is property damage. Such charges are often laid for even minor damage that would not attract police involvement if caused in a private home. Thus, the greater number of charges against those in care is not a simple reflection of more frequent commitment of criminal acts.**

- **Reasons for the greater involvement in criminal activity of young people who have spent time in residential care include: early experiences of interpersonal trauma; substance use; having had multiple placements; the influence of peers; lack of appropriate training for staff; lack of provision of appropriate supports in care and post-care; and a lack of culturally appropriate care.**

- **Reducing the involvement of young people in residential care in justice systems requires: addressing the impact of early life abuse, neglect and trauma; recognising and responding appropriately to the lasting impact of colonisation, implementing more appropriate responses to complex needs and challenging behaviour within residential care units; development of sustained, secure therapeutic relationships between staff and residents; support for the establishment of mutually supportive relationships among peers; provision of services that are better tailored to the young people in care; and support for young people's development of positive personal qualities.**

BOX 1: VICTORIAN FRAMEWORK TO REDUCE THE CRIMINALISATION OF YOUNG PEOPLE IN RESIDENTIAL CARE (GOVERNMENT OF VICTORIA, 2019).

Guiding Principle 1:
The safety and wellbeing of all children and young people and staff must be prioritised

Guiding Principle 2:
Understanding the underlying causes of a young person's behaviour is critical to promote healing from trauma, and effect positive behaviour change.

Guiding Principle 3:
Workforce training, support and resources must recognize the impact of trauma on a young person's behaviour and provide a proactive approach to managing risk and responding to incidents.

Guiding Principle 4:
For Aboriginal children and young people, strengthening connection to culture and community is a key consideration in the provision of services, in addition to providing a healing and sensitive trauma informed approach to care.

Guiding Principle 5:
A joint-agency commitment is necessary to divert young people in residential care from unnecessary contact with the criminal justice system.

Guiding Principle 6:
Young people in residential care must be empowered to be heard and raise their concerns, including reporting an incident or abuse.

Guiding Principle 7:
A young person in residential care has the same rights and liberties as young people in the community. Human rights must be upheld, and resources must be provided to seek support or legal advice.

Guiding Principle 8:
Criminal charges will not be pursued if there's a viable alternative. Discretion will be exercised when police intervention is required.

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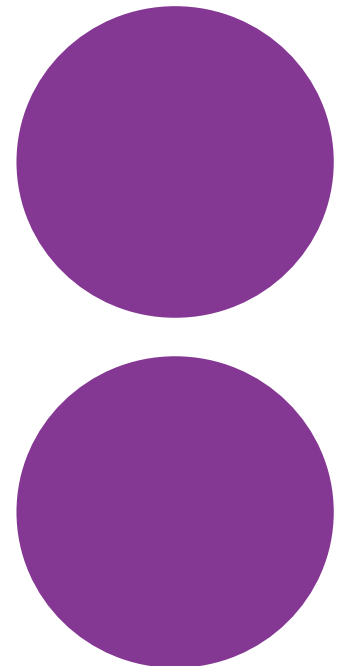
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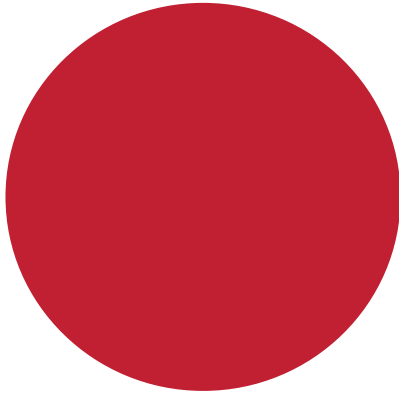
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