

# Cross-over kids: Effective responses to children and young people in the youth justice and statutory Child Protection systems

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## Contents

List of Figures .....	4
Acknowledgements .....	6
List of acronyms and abbreviations .....	7
Executive summary .....	8
1. Report structure and terminology .....	15
2. Background.....	16
3. Methodology .....	20
4. Case file audit findings.....	26
4.1 Court data and socio-demographic characteristics .....	26
4.2 Adverse and challenging childhood circumstances .....	32
4.3 Child protection involvement .....	47
4.4 Education experiences .....	62
4.5 Co-occurring challenges .....	67
4.6 Service, agency and program contact .....	80
4.7 Offending and Youth Justice involvement .....	91
4.8 The criminal justice-Child Protection nexus .....	118
4.9 Key regional differences .....	125
5. Key stakeholder consultation findings.....	128
5.1 Characteristics of cross-over children and families .....	128
5.2 The context and nature of offending among cross-over children .....	137
5.3 ‘There’s definitely a difference’ - Indigenous Australian cross-over children.....	152
5.4 Averting the pathway to Youth Justice .....	156
5.5 ‘Cross-over kids’ and the Children’s Court .....	175
5.6 Responding to offending behaviour .....	188
6. Integrated discussion .....	215
6.1 Proportion of cross-over children in the Criminal Division of the Children’s Court.....	215
6.2 Characteristics of cross-over children and their families.....	216
6.3 Factors relating to criminal justice system entry and entrenchment .....	220
6.4 Reflections on the methodological approach.....	231
6.5 Study implications .....	233
References.....	236
Appendix 1: Victorian Family Division Orders.....	239
Appendix 2: Logistic regression analyses of substance abuse and parental death.....	240
Appendix 3: Logistic regression analysis of residential care-based charges.....	241
Appendix 4: Factors associated with offending outcomes .....	242

## List of Figures

Figure 1. Court location - Criminal Division (CD) matters .....	26
Figure 2. Proportion of CD-involved children who are cross-over kids.....	27
Figure 3. Age of children at index CD matter .....	27
Figure 4. Indigeneity of children.....	28
Figure 5. Ethnicity of children.....	28
Figure 6. Residential location of children at time of index CD matter .....	29
Figure 7. Most recently available location of children's parents.....	30
Figure 8. Relationship between children's biological parents .....	30
Figure 9. Children's sibling group composition .....	31
Figure 10. Number of siblings (including step and half siblings) .....	31
Figure 11. Prevalence of adverse household experiences.....	32
Figure 12. Prevalence of neglect, physical, emotional and sexual abuse .....	37
Figure 13. Age of children at parental death.....	41
Figure 14. Cause of parental death .....	42
Figure 15. Prevalence of cumulative adversity.....	44
Figure 16. Prevalence of cumulative exposure to adverse household experiences .....	45
Figure 17. Prevalence of cumulative exposure to neglect, physical, emotional and sexual abuse .....	46
Figure 18. Grounds under which Family Division matters were proven.....	48
Figure 19. Children's Family Division Orders at the time of index CD matter(s) .....	49
Figure 20. Number of judicial officers in relation to most recent FD matter .....	50
Figure 21. Time in Court for most recent FD matter .....	50
Figure 22. Did statutory Child Protection involvement continue to the child's 18th birthday?.....	51
Figure 23. Children's care arrangements at the time of index CD matters .....	51
Figure 24. Time in out-of-home care since last placed with parent .....	52
Figure 25. Number of previous Victorian Child Protection notifications .....	53
Figure 26. Number of previous substantiated Victorian Child Protection notifications .....	53
Figure 27. Age of first Victorian Child Protection notification and substantiation.....	54
Figure 28. Patterns of initial Child Protection involvement.....	54
Figure 29. Time between first notification and first substantiated notification.....	55
Figure 30. Ground(s) of previous Victorian Child Protection notifications and substantiations .....	55
Figure 31. Cumulative number of ground(s) of previous Child Protection notifications and substantiations .....	56
Figure 32. Previous statutory FD Order type(s).....	56
Figure 33. Total previous FD Orders .....	57
Figure 34. Age of first out-of-home care placement.....	57
Figure 35. Time between first notification/substantiation and first out-of-home care placement.....	58
Figure 36. Previous time in out-of-home care and cumulative total time in out-of-home care .....	59
Figure 37. Children's out-of-home care trajectories.....	60

Figure 38. Educational engagement, and history of exclusion, classroom support and alternative education .....	62
Figure 39. Prevalence of intellectual disability, neurodevelopmental, and neurological conditions .....	69
Figure 40. Comorbidity in intellectual, neurodevelopmental and neurological conditions .....	70
Figure 41. Prevalence of mental health issues and substance misuse .....	71
Figure 42. Prevalence of psychiatric diagnoses .....	72
Figure 43. Prevalence of behavioural challenges .....	77
Figure 44. Cumulative co-occurring challenges .....	78
Figure 45. Cumulative maltreatment and children’s co-occurring challenges .....	79
Figure 46. Prevalence of service, agency or program contact .....	81
Figure 47. Prevalence of police SOCIT contact .....	82
Figure 48. Prevalence of Children's Court Clinic contact .....	83
Figure 49. Age at first police charge and first Criminal Division finalisation .....	92
Figure 50. Age at first sentence (cross-over sample vs all sentenced Victorian children) .....	92
Figure 51. Number of current and prior charges .....	93
Figure 52. Period between initial and final charge in current index CD matters .....	93
Figure 53. Current and prior alleged offence types .....	94
Figure 54. Minimum proportion of children with residential care-based charges .....	98
Figure 55. Initial and index CD Court outcomes .....	104
Figure 56. Sentencing outcomes for index and initial CD matters .....	105
Figure 57. Number of prior CD sentences .....	106
Figure 58. Prior sentence types imposed .....	107
Figure 59. Previous CD sentences among children with priors .....	107
Figure 60. Time between earliest charge and sentencing of index CD matter .....	109
Figure 61. Service sector of reports and information provided to the CD of the Court .....	109
Figure 62. Age of first entry into out-of-home care vs age of first police charge .....	113
Figure 63. Proportion of children with offences against the person (OAP) charge by age of first police charge .....	115
Figure 64. Regional variations in proportion of children diagnosed with intellectual impairments .....	125
Figure 65. Age of first police charge by Court location (regional vs metropolitan) .....	126
Figure 66. Regional vs metropolitan variations in service, agency or program contact .....	127

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## List of acronyms and abbreviations

ADD/ADHD	Attention deficit disorder/attention deficit hyperactivity disorder
AFV	Adolescent family violence
AIHW	Australian Institute of Health and Welfare
AOD	Alcohol and other drugs
CAYPINS	Children and Young Person's Infringement Notice System
CBSO	Care By Secretary (Family Division) Order
CCC	Victorian Children's Court Clinic
CD	Criminal Division of the Victorian Children's Court
CJS	Criminal justice system
CMIA Act	The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act</i> (1997) (Victoria)
CYFA	The <i>Children, Youth and Families Act</i> (2005)
DCS	Disability Client Services
FD	Family Division of the Victorian Children's Court
FPO	Family Preservation (Family Division) Order
FRO	Family Reunification (Family Division) Order
IAO	Interim Accommodation (Family Division) Order
LTCO	Long Term Care (Family Division) Order
OAP	Offences against the person
OHC	Out-of-home care
PCO	Permanent Care (Family Division) Order
SOCIT	Sexual Offences and Child Abuse Investigation Team (Victoria Police)
UTK	Undertaking (Family Division) Order
YHaRS	Youth Health and Rehabilitation Service
YJ	Youth Justice
YJCSS	Youth Justice Community Support Service

## Executive summary

This study is a collaboration between Monash University and the Children’s Court of Victoria. It was funded both by a Criminology Research Grant (CRG 03/15-16) from the Australian Institute of Criminology and by the Victorian Department of Justice and Regulation, and undertaken between July 2016 and August 2018. The study set out to examine the extent to which children and young people before the Criminal Division of the Victorian Children’s Court were also clients of the statutory Child Protection system, and to better understand the characteristics of this group. It aimed also to discover the factors which contribute to the entry and entrenchment of these children in the criminal justice system. A mixed methods research design was adopted, with data collection from Children’s Court file audits, and key stakeholder consultations, including focus groups and individual interviews.

Case file analysis was undertaken of 300 children brought before the Criminal Division of Victoria’s Children’s Courts, who also had current or historical Family Division matters, indicating statutory Child Protection involvement. The study Court locations included the central Victorian Children’s Court (Melbourne Children’s Court), another metropolitan Court (Moorabbin Children’s Court), and a regional Court in an area with high socio-economic disadvantage, and a significant Indigenous population (Latrobe Valley Children’s Court). Cases analysis commenced in 2016 and were completed in 2017 when 300 cases had been audited.

Twenty-five interviews and focus groups were undertaken with 82 key stakeholders including the Magistracy, Child Protection and Youth Justice professionals, lawyers, police officers and police prosecutors, child and family welfare professionals, specialist child and family welfare mental health clinicians, and alternative education specialists. The findings from the case

file analysis largely mirrored those gained from key stakeholder consultations, highlighting their depth of knowledge of the cohort of children and young people under study. Both case file data and stakeholder findings highlighted the dual nature of children and young people as both victims and offenders, a complexity not easily navigated by the many service systems which they encounter, and drew attention to diversity in the characteristics of and outcomes for cross-over children.

## Findings

The study findings revealed that cross-over children were overwhelmingly impacted by cumulative harm across their lives, faced considerable co-occurring challenges affecting their engagement with statutory and non-statutory social systems, and were more likely to be among children convicted with earlier onset, more violent and more voluminous offending.

### Proportion of children before the Children’s Court who are cross-over children

The study found that across the court locations examined, 22% of the children before the Criminal Division were current or historical statutory Child Protection clients, and 12% had concurrent involvement in both Criminal and Family Divisions. The Latrobe Valley Court in regional Victoria had a substantially higher proportion of children with current or prior statutory Child Protection involvement (36%), compared to the metropolitan Courts in Melbourne (20%) and Moorabbin (18%).

### Key characteristics

#### Poverty and cumulative adversity

Cross-over children typically come from a background of socio-economic disadvantage, with parents who were challenged in their capacity to protect and support their children. Family violence exposure, alongside household



substance abuse, and household mental illness are commonplace, each affecting between 50% and 74% of children, while household criminal justice system involvement was identified for 41% of children. Likewise neglect, physical and emotional abuse affected between 53% and 67% of children, and 21% of children had sexually abusive experiences.

A key finding was the high proportion of cross-over children with one or more deceased parents (20%). The traumatic nature of these deaths was noted in around half of the identified cases, including parental homicides, motor vehicle accidents, suicides and overdoses. Parental death for children over the age of 10 years was significantly predictive of a greater volume of offending among cross-over children. Parental death was also associated with double the odds of substance misuse, and nearly triple the odds of 'hard' drug use in this group.

### Gender differences

Sixty eight per cent of cross-over children were male, 31% were female, and 1% were transgender. Females were over-represented among cross-over children compared to all children before the Criminal Division of the Court (25%). No gender differences were identified in relation to children's exposure to neglect, physical abuse, or adverse family circumstances. However, compared to males, females were more likely to have had emotionally and sexually abusive experiences, and greater contact with Secure Welfare Services and police Sexual Offences and Child Abuse Investigation Teams (SOCIT). Females also had significantly higher prevalence of self-harm, suicidal ideation and attempts, absconding, and risk of sexual exploitation, while males evidenced greater prevalence of neurodevelopmental and intellectual disabilities, challenging behaviours, and school exclusion. Despite similar levels of substance abuse, females had less contact with alcohol and other drug services. In relation to offending, females

had fewer recorded charges, and were less likely to have been charged with offences against the person, motor vehicle thefts, and road safety offences compared to males.

### Indigeneity

While a substantial proportion of children were of unknown Indigenous status, at least 18% of the overall sample were Indigenous. This figure should be interpreted with caution due to the sampling approach which intentionally included a region with a high Indigenous population. Relative to non-Indigenous children, Indigenous children in this sample had a greater prevalence of family violence exposure, household substance abuse, and household criminal justice system involvement, and were younger at the first substantiation of child protection concerns. In relation to offending, Indigenous children were younger at their first police charge, and had a greater than average number of charges.

### Educational exclusion and disengagement

Only 17% of the cross-over children in the current study were engaged in education or training, and 36% had a history of educational exclusion, which for around 8% of children commenced in primary school. Early school transience was common, as was low attendance. For a substantial proportion of children (at least 50%) educational challenges were complex and long-standing, and were very much related to child protection, mental health, and disability concerns. School exclusion was more common among children with neuro-developmental disabilities and mental health challenges. Systemic challenges were identified in this area, including difficulties enrolling some cross-over children in school due to their schooling history and the complexity of their needs.

### Cumulative co-occurring challenges

A high proportion of cross-over children experienced mental health problems (61%), substance misuse (73%), challenging behaviours

(72%) and absconding behaviours (70%). Smaller numbers of children had sexualised behaviours (19%) or were identified as at risk of sexual exploitation (13%). Three quarters of children had three or more co-occurring challenges, and there was a positive correlation between multi-type maltreatment and self-harm or suicidal ideation, trauma and attachment-related disorders, challenging behaviours, and 'hard' drug use (including 'ice', heroin and chroming).

The proportion of cross-over children presenting with either intellectual disability or borderline intellectual functioning (24%) was notably high, approximating that of the Victorian Youth Justice custodial population (26%). Regional variations were also observed, with 26% of cross-over children before the regional Children's Court having an intellectual disability, compared to 14% before the metropolitan courts. While intellectual disability was largely diagnosed prior to Criminal Division involvement, for 30% of children diagnosis occurred after their first police charge, and was associated with a younger age of first police charge. The presence of neurodisability, (including learning and communication disorder, autism spectrum disorder, and attention deficit hyperactivity disorder) was also substantial, particularly among males.

### Factors relating to criminal justice system entry and entrenchment

#### Exposure to cumulative harm

While 43% of children had first been notified to Child Protection in their first two years, the study sample was fairly evenly divided between children who had substantiated child protection concerns before age 10 (52%), and those for whom the first substantiation of such concerns was at 10 years or older (48%). Cumulative harm was apparent from maltreatment recurrence (mean = 7.7 notifications) and multi-type maltreatment.

Multi-type maltreatment in this group of children was significantly associated with several adverse outcomes including self-harm, suicidal ideation / attempts, trauma and attachment-related disorders, challenging behaviour, and 'hard' drug use. Many of these maltreatment-related outcomes were in turn associated with criminal justice system involvement, including earlier, more voluminous, and more violent offending. Cross-over children with the poorest criminal justice outcomes were typically those notified to Child Protection earlier in life. At the same time, 29% of children were not notified to Child Protection services prior to age 10, indicating that sole reliance on early Child Protection responses to disrupt these trajectories will not be effective for all cross-over children.

### Insufficient late childhood and adolescent support

Early Child Protection intervention with cross-over children typically resulted in short-term kinship care or court-ordered supervision orders. Before age 10, 70% of cross-over children had never been placed in care. Out-of-home care (OHC) placements from late childhood onwards commonly occurred in the context of parental incapacity, ongoing maltreatment, relinquishment due to inability to manage the child's needs, and parent-child conflict. Placement in OHC was more common among cross-over children with an intellectual disability, other neurodevelopmental and neurological conditions, and mental health diagnoses related to mood disorders, trauma and attachment-related disorders, and behavioural disorders.

Limited child protection intervention with adolescents was a key concern. Child Protection services were seen as reluctant to intervene with children displaying risk-taking and challenging behaviours from late childhood onwards. Where intervention occurred, it often resulted in residential care placement,

commonly seen to inflate, rather than diminish, existing criminogenic risks. The withdrawal of supports to adolescents approaching age 18 due to statutory limitations further left young people unsupported.

Limitations in educational support were also identified. Positive educational gains were supported by a good match between the child's needs and the educational arrangement, provision of support to attend school, school investment in the child and/or care team, and placement stability.

### **Early onset of criminal justice involvement**

Early onset of police involvement and rapid escalation of offending among some cross-over children were identified. Overall, 41% of children were aged under 14 years at their first police charge, and 23% were sentenced prior to their 14<sup>th</sup> birthday. The peak age of initial police charges among cross-over children before the regional court was 10 to 12 years, substantially younger than that observed among children before the metropolitan courts (14 years); this reflected in part the higher proportion of Indigenous children, and children with an intellectual disability before the regional court, both groups having a younger age of first police charge.

A younger age of first police charge among cross-over children was associated with greater adversity, including neglect, exposure to household family violence, substance abuse and criminal justice system involvement, earlier Child Protection notifications and substantiations, and out-of-home care placement. Earlier first police charges were also associated with having cumulative co-occurring challenges, particularly intellectual disability, mental health, and behavioural challenges.

### **Neglect**

The study found neglect to be a significant predictor of younger age of first police charge

among cross-over children. A lack of supervision was observed among children who began offending while unsupervised outside the home, sometimes late into the night and with older youth and adults. Some children's early offending related to 'crimes of necessity' while running away from home to escape conflict, neglectful, or abusive circumstances. Neglect was also often related to family conflict, with 40% of cross-over children having been relinquished to out-of-home care or excluded by parents from the family home.

Adolescent neglect not meeting legislative thresholds of significant harm required for Child Protection intervention was often identified, particularly among older children seen as having capacity to 'self-protect'. Such responses arguably introduce a level of systems neglect, whereby adolescents facing family conflict, running away from home, having moderate to severe substance misuse, and challenging or early offending behaviour, may not receive an intensive response until their behaviour attracts serious Youth Justice sanctions.

### **More violent and voluminous offending**

Three key contexts of offending among cross-over children were identified: adolescent family violence; residential care-based offending; and, group-based offending with peers, older youth and adults. While property offences were common among cross-over children's current or prior charges (91%), most cross-over children had also been charged with an offence against the person (86%). A subset of cross-over children also had a large volume of current and historical police charges, observed by key stakeholders as a 'rapid escalation' of offending among some cross-over children. Cross-over children were 13 times more likely than other Victorian youth offenders to be among children displaying 'high' levels of offending. Cross-over children's deeper entrenchment in the criminal justice system likely reflects a greater propensity to be charged with more violent and voluminous

offending, resulting in a receipt of higher sentencing outcomes (that is, a lower likelihood of being discharged, dismissed, diverted or fined, and greater likelihood of receiving a custodial sentence).

### **Criminalisation of behavioural regulation challenges**

Cross-over children's early police charges were regularly acquired as a result of emotional and behavioural regulation challenges, for example perpetrating family violence in the home, and similar behaviours in residential care; challenges also contributing to children's school exclusion and poor peer relationships. There was a substantial overlap in the characteristics of cross-over children with challenging behaviours, adolescent family violence, and residential care-based charges. Professionals attributed these outcomes to the compounded effects of trauma, attachment, behavioural, and mental health challenges, and disability. Emotional and behavioural regulation challenges for these children had been typically present from early childhood, and the child simply grew up. Data arising in the study suggest that children with a 'life-course persistent' offending profile may be over-represented among cross-over children compared to the overall cohort of youth offenders.

In many instances neither parents nor residential care providers had the capacity to respond effectively to children's emotional and behavioural regulation challenges. This is supported by the observation that around 40% of children had been relinquished by a caregiver, often in relation to these concerns. Mental health services were unlikely to respond to these emotional and behavioural needs, but rather regarded them as related to disability and/or underlying trauma. In the absence of a more coordinated and supportive system for responding to behavioural regulation challenges,

caregivers are left with no options outside of relinquishment or criminal justice responses.

### **Substance misuse**

Substance misuse (seen among 73% of children) was associated with several Child Protection-related factors (for instance being on a current Family Division Order, placement in residential care), mental and behavioural health factors (having a mood, psychotic, personality, or behavioural disorder diagnosis), and absconding. A significant relationship was observed between children's exposure to cumulative adversity and increased likelihood of substance misuse, particularly 'hard' drug use.

Substance misuse among cross-over children often appeared to be a coping strategy for acutely challenging internal and external experiences. High levels of substance abuse, including use of 'ice', chroming, and severe alcohol use, were sometimes evident among the sample of cross-over children, and accessing alcohol and other drug detoxification and rehabilitation services for this group often presented a challenge, particularly due to waiting times and the difficulties this cohort experienced remaining in the service once admitted.

With the exception of property offences, substance misuse was associated with increased prevalence of all offence types, and was more common among children first charged before 14 years, and those with more voluminous offending. Four factors were evident in the association between substance misuse and offending in cross-over children: offending in the context of drug and alcohol-related disinhibition; being charged with drug-related offences; offending to repay drug debts, often to older youth and adults; and, involvement in sexually exploitative relationships to access substances, leading to exposure and involvement in crime via these relationships.

## Offending networks

Cross-over children encountered offending peers through school networks, in residential care, youth justice settings, while children were homeless, or running away from home and care, and sometimes through extended family and personal relationships. While an adolescent desire for peer-group belonging is age-normative, this was understood to be intensified among cross-over children, owing to a lack of secure adult attachments, and their experiences of physical and emotional disconnection from family, a sense of 'home', and schooling. Some cross-over children were seen to reclaim a sense of family through peer networks, where belonging is founded on shared histories, and cemented via collective experiences of offending and criminal justice involvement.

Cross-over children's youth, impressionability, desire for connection, belonging and adult approval were also seen to render them highly vulnerable to exploitation by older youth and adults. While the phenomenon of sexual exploitation (seen among this sample) is acknowledged among at-risk youth, cross-over children's criminal exploitation by adults as identified in the current study is less apparent from previous research. Criminal exploitation by adults was also noted in the current study as an initial pathway by which some children became involved in offending, and warrants further investigation in this cohort.

## Systemic disadvantage

Systemic disadvantage among cross-over children can be understood as their disproportionate exposure to criminogenic environments and the criminal justice system, compared to peers residing with family or a responsive guardian, coupled with a lack of Youth Justice system responsiveness to the unique needs of this group. Systemic disadvantage is identifiable across several stages of cross-over children's trajectories, including: exposure to

offending peers in residential care placements; inconsistent and at times unwarranted criminalisation of challenging behaviours; lack of guardian support in relation to criminal justice system contact (e.g. Court, contact with police and lawyers); spending greater periods in custody due to a lack of care and post-care placements; the greater surveillance of criminal justice orders among some children in out-of-home care; the inherent disadvantage in dealing with a complex system due to the impacts of disability and complex trauma; and the lack of differential response available within the criminal justice system to meet the needs of cross-over children.

## Implications

The study's findings suggest several strategies may be necessary for prevention, diversion and responding to cross-over children's criminal justice system involvement.

### **Prevention: The need for improved family support.**

The study findings make clear how essential is strengthening early child and family support and, where warranted, statutory intervention with children and families. Support and intervention is central to the prevention of child maltreatment (particularly neglect) and other harm, to responding to educational needs, trauma, other mental and behavioural health challenges, and disability. Strengthening service system responses prior to the age of 10 is necessary to avert the trajectory of the most at-risk cross-over children. Early support with children entails both early life support for those known to Child Protection in the first years of life (including protective intervention where necessary), and ongoing support throughout childhood, particularly for children at risk of marginalisation and parental relinquishment.

The concerns requiring attention often relate to the impact of neglect and cumulative harm, alongside entrenched parent-adolescent conflict. Adequate provision of child and

adolescent disability, behavioural health, and mental health programs and services is necessary, including culturally-appropriate programs and services for Indigenous and culturally and linguistically diverse families. Strategies to improve the social inclusion of at-risk children are also likely to be beneficial, including more coordinated educational support for children at-risk of school exclusion.

**Diversion: Reconsider responses to early offending.** As a result of their over-representation among those with early police involvement, responses to early offending disproportionately impact on cross-over children, particularly Indigenous children who are further over-represented among younger cross-over children. An issue highlighted is the minimum age of criminal responsibility which, at 10 years of age, across Australia, remains below that recommended under international guidelines.

Criminalisation of children arguably diverts responsibility and resources from social support responses, and is stigmatising of an already vulnerable group of children. Further, the criminal justice system by virtue of its rightfully graduated responses to children's offending, has limited capacity to intensively support children with early offending.

Re-examining responses to two offending contexts relevant to cross-over children is necessary: adolescent family violence, and residential care-based offending. In these contexts conduct regarded as challenging behaviour among younger children begins to attract criminal justice sanctions. Consistent, collaborative, and therapeutic responses which enhance children's emotional and relational skills and connectedness are encouraged. The implementation of a state-wide protocol for responding to residential care-based offending,

and targeted diversionary schemes to support children who come before the justice system through these pathways are recommended.

**Responses: Develop differential youth justice responses for cross-over children.** There remains a lack of differential justice system response to Child Protection-involved children, and a need for more holistic responses to children concurrently involved in both Divisions of the Court. Several differential responses are suggested including: a cross-over children's Court List for children concurrently involved in the Family and Criminal Divisions; increased involvement of Child Protection in the Criminal Division of the Children's Court; expanding Diversion options; delivering Youth Justice secondary consultation to residential care environments or care teams; and, having dedicated cross-over children's workers.

They study findings emphasise the urgent need for better-supporting cross-over children given they are more likely to be among the group of younger, more violent, and more persistently offending youth. The complexity of cross-over children's support needs reinforces the necessity of a whole-of-government response to averting the care to custody trajectory. Ultimately, for children who find themselves at the nexus of child protection and justice systems, it remains for the adults in their lives to generate responses to their needs and deeds which will most greatly benefit this group of children and the broader community, now and into the future.

## 1. Report structure and terminology

This report presents the findings from a two-year study (2016-18) of Victorian children and young people involved in both the youth justice and statutory Child Protection systems. Section 2 briefly outlines the concerns associated with this group of children and young people, as well as recent policy and research attention in this area. Section 3 then describes the study methodology: a mixed- methods approach auditing Children’s Court case files combined with key stakeholder consultations. Section 4 presents findings from the Children’s Court case file audits, and the analysis of the key stakeholder consultations follows in Section 5. Section 6 provides discussion of the study’s findings, and presents recommendations arising from the study.

Throughout the report the term ‘child’ or ‘children’ aged between 10 and 17 years, is applied to those children and young people presenting before the Criminal Division of the Children’s Court who have concurrent or historical statutory Child Protection involvement. The use of this term is pragmatic, as it reflects how the *Children, Youth and Families Act 2005* defines who is considered a child, and covers children in their early life as well as adolescence. Referring to ‘children’ also reminds us of cross-over children’s minority legal status, which can be overlooked given their exposure to adult matters and experiences, and to considerable adversity, as well as their often lack of an adult guardian, and for some, their very serious offending behaviour.

For the most part, the term ‘Indigenous’ is used throughout the report to refer to Aboriginal and Torres Strait Islander children, young people and families. Finally, ‘Child Protection’ (capitalised) refers to statutory Victorian Child Protection services, whilst ‘child protection’ refers to child protection services more generally, including in other jurisdictions. Likewise ‘Youth Justice’ (capitalised) references Victorian statutory Youth Justice services while ‘youth justice’ refers to broader youth justice services, including policing functions, Court based youth justice processes, and statutory Youth Justice services in other jurisdictions.

We recognise that there is in this report material relating to child maltreatment which may be distressing to some readers.

## 2. Background

### 2.1 Introduction

Child maltreatment and youth offending present critical societal challenges. Child protection services in each state and territory investigate reports of abuse, neglect and other harms to children, as well as other circumstances where children's care and protection is compromised due to parental death or incapacity. These services respond to substantiated cases of harm via voluntary service provision or statutory court orders for children and families<sup>1</sup>. In Australia, 168,352 children received child protection services in 2016-17, including 119,173 who were the subject of an investigation, 64,145 who were on statutory care and protection orders and 57,221 who were removed from their family and placed in out-of-home care settings with kinship, foster or residential caregivers<sup>2</sup>. Expenditure for child protection and related services in 2016-17 was \$4.3 billion nationally<sup>3</sup>.

Despite attempts to reduce harm and improve the circumstances of this group of children, many young people involved with child protection services, particularly those removed from parental care, experience poor life outcomes. Young people leaving the care of statutory child protection systems experience higher rates of health and mental health issues, homelessness and early parenthood, alongside poorer experiences with education and employment compared to their peers<sup>4</sup>.

Amongst the most troubling outcomes of child-protection-involved youth is their disproportionate involvement in the criminal justice system. From 1 July 2013 to 30 June 2017, children aged 10-14 years who received child protection services were nine times more likely to come under the supervision of youth justice services during that same four year period<sup>5</sup>. Often described as a 'care to custody pipeline', this over-representation peaks at the most restrictive end of the youth justice system, in youth detention centres, where between one-third and one-half of children are known to child protection services<sup>6</sup>. In comparison to other jurisdictions, national data suggest that Victorian children under statutory Youth Justice supervision were the most likely to have had received Child Protection services during the preceding four-year period compared to children from five other jurisdictions<sup>7</sup>.

This is a most concerning trajectory among young people exposed to considerable early life disadvantage, and whose circumstances have often been long-known to welfare services. Beyond the financial costs and negative socio-emotional impacts on young people and communities, youth justice involvement – particularly that due to serious and violent crime – is associated with significantly injurious life outcomes. These include early mortality and high likelihood of progression to the adult

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<sup>1</sup> Australian Institute of Health and Welfare (AIHW). (2018). *Child Protection Australia 2016-17*. Canberra: AIHW.

<sup>2</sup> Ibid.

<sup>3</sup> Steering Committee for the Review of Government Service Provision. (2017). *Report on government services 2017*. Canberra: Productivity Commission.

<sup>4</sup> Mendes, P., Johnson, G., & Moslehuddin, B. (2011). *Young people leaving state out-of-home care: Australian policy and practice*. Melbourne: Australian Scholarly Publishing Press.

<sup>5</sup> Australian Institute of Health and Welfare (AIHW) (2018). *Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017*. Canberra: AIHW.

<sup>6</sup> Ibid. Also see The Youth Parole Board of Victoria. (2017). *Youth Parole Board Annual Report 2016-17*. Melbourne: State Government of Victoria.

<https://www.justice.vic.gov.au/home/justice+system/youth+justice/youth+parole+board+annual+report>

<sup>7</sup> Australian Institute of Health and Welfare (AIHW) (2018). *Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017*. Canberra: AIHW



criminal justice system<sup>8</sup>. In addition to turning around the social and economic costs of young people becoming entrenched in the justice system, there is a social obligation to ensure the best possible outcomes for children involved with child protection services, particularly those removed from family, and for whom the state is the legal guardian.

## 2.2 Recent government and policy attention to cross-over children

Concern about such over-representation of young people from child protection backgrounds in the youth justice system is a national issue. They are children whose circumstances have repeatedly been brought to attention in Australian reports, publications, and government Inquiries. In 2017, the review of Victorian Youth Justice services<sup>9</sup>, the NSW Child Protection Inquiry<sup>10</sup>, and the Final Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory<sup>11</sup> all raised concerns about this group of young people. Persistent calls for action are evident also internationally, in research and policy canvassed in the US<sup>12</sup>, UK<sup>13</sup>, New Zealand<sup>14</sup>, and Canada<sup>15</sup>. Despite acknowledgement of such concerns, there remains a lack of knowledge about this 'cross-over' group of children, and little evidence about the most effective responses.

## 2.3 Previous cross-over children research

The limited research to date suggests greater disadvantage and complexity are present amongst the cross-over group compared to the overall youth justice population<sup>16</sup>. We know, for instance, that children from child protection backgrounds have a younger age of first contact with the criminal justice system compared to the overall youth justice population<sup>17</sup>, and that this younger onset is associated with an increased risk of progression to adult criminal justice system involvement<sup>18</sup>. The limited Australian data, arising from NSW, also evidences higher rates of violent physical and sexual victimisation, neglect, cognitive and mental health difficulties, educational and social isolation and exclusion among cross-over youth compared to the broader youth justice population<sup>19</sup>.

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<sup>8</sup> Lynch, M., Buckman, J., & Krenske, L. (2003). Youth Justice: Criminal Trajectories. *Trends & Issues in Crime and Criminal Justice* (265), 1-6. Tarolla, S. M., Wagner, E. F., Rabinowitz, J., & Tubman, J. G. (2002). Understanding and treating juvenile offenders: A review of current knowledge and future directions. *Aggression and Violent Behavior*, 7, 125-143.

<sup>9</sup> Ogloff, J., & Armytage, P. (2017). Meeting Needs and Reducing Reoffending - Youth Justice Review and Strategy. Melbourne: Victorian Government.

<sup>10</sup> NSW General Purpose Standing Committee No 2. (2017). Child Protection. Sydney: NSW Parliament.

<sup>11</sup> Commonwealth Government. (2017). Royal Commission into the Protection and Detention of Children in the Northern Territory Final Report. Barton, ACT: Commonwealth Government.

<sup>12</sup> Ryan, J. P. (2012). Substitute care in child welfare and the risk of arrest: Does the reason for placement matter? *Child Maltreatment*, 17(2), 164-171.

<sup>13</sup> Shaw, J. (2016). Policy, practice and perceptions: Exploring the criminalisation of children's home residents in England. *Youth Justice*, 16(2), 147-161.

<sup>14</sup> Stanley, E. (2017). From care to custody: Trajectories of children in post-war New Zealand. *Youth Justice*, 17(1), 57-72.

<sup>15</sup> Bala, N., Finlay, J., DeFilippis, R., & Hunter, K. (2015). Child Welfare Adolescents & the Youth Justice System: Failing to Respond Effectively to Cross-over Youth. *Canadian Criminal Law Review*, 19(1), 129-151.

<sup>16</sup> Kenny, D. T., & Nelson, P. K. (2008). Young offenders on community orders: Health, welfare and criminogenic needs. Sydney: Sydney University Press; see also McFarlane, K. (2018). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>17</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW.

<sup>18</sup> Chen, S., Matruggio, T., Weatherburn, D., & Hua, J. (2005). The transition from juvenile to adult criminal careers. *Crime and Justice Bulletin NSW, Contemporary Issues in Crime and Justice No. 86*. Sydney: Bureau of Crime Statistics and Research.

<sup>19</sup> Kenny, D. T., & Nelson, P. K. (2008). Young offenders on community orders: Health, welfare and criminogenic needs. Sydney: Sydney University Press.

Of those involved with youth justice services, Indigenous children, and young women, are the most likely subgroups to have experienced child protection or out-of-home care system involvement<sup>20</sup>. For instance, the 2016 Northern Territory Royal Commission into Youth Justice and Child Protection reported that of the 1999 Northern Territory birth cohort, 70% of Indigenous males and 89% of Indigenous females who were found guilty of an offence had a history of child protection involvement, compared to 60% of non-Indigenous young people<sup>21</sup>.

To date, much of the Australian and international research on cross-over children has analysed large administrative data sets. These have proven useful for identifying offending risk factors among child protection-involved youth, such as experiences of multi-type maltreatment, maltreatment recurrence and persistence, placement instability, and placement in out-of-home care (particularly residential care)<sup>22</sup>. However, these types of studies have rarely detailed the circumstances of specific subgroups of cross-over children - for example Indigenous young people, young females, young people with cognitive impairments, or those from non-metropolitan locations. Many of these subgroups are over-represented in the cross-over group. Further, studies drawing on aggregate data have typically utilised any offending/arrest as the study outcome, and have not explored differences relating to chronicity or seriousness of offending and criminal justice outcomes among cross-over children.

Other research in this area has involved qualitative approaches, and/or mixed-methods analyses of court files, or in-person consultations with young people and key professionals involved in the child welfare and youth justice fields<sup>23</sup>. These studies have contributed important detail to understanding the life experiences of cross-over youth, for instance in relation to their child protection backgrounds, educational experiences, offending and criminal justice system involvement. Further, these studies have highlighted the issues of systems abuse and 'care criminalisation', whereby policies and practices within the out-of-home care system are understood to contribute to criminal justice outcomes observed among child protection-involved youth<sup>24</sup>. Yet these study findings have been difficult to generalise owing to their typically smaller-scale nature. Additionally, qualitative research with young people in this field is both challenged by the high levels of trauma, disconnection, and transience experienced by these children, and by piecing together the stories of their lives. For example, a 2012-14 Victorian study conducted 15 in-depth interviews with young people who had experienced both out-of-home care and youth justice involvement to track their trajectory to youth justice involvement<sup>25</sup>. However, the young people were unable to recall many aspects of their lives or give voice to these in interview. Qualitative research with professionals involved with cross-over children outside the child protection system, including clinicians, lawyers and Magistrates, has rarely been undertaken, despite their specialist knowledge being able to give a more comprehensive overview of the lives of cross-over

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<sup>20</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW.

<sup>21</sup> Commonwealth Government. (2017). Royal Commission into the Protection and Detention of Children in the Northern Territory Final Report. Barton, ACT: Commonwealth Government.

<sup>22</sup> See e.g. Malvaso, C. G., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.

<sup>23</sup> See e.g. Mendes, P., Baidawi, S., & Snow, P. (2014). Transitioning from out-of-home care in Victoria: Strengthening support services for dual clients of child protection and youth justice. *Australian Social Work*, 67(1), 6-23.

<sup>24</sup> McFarlane, K. (2018). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>25</sup> Mendes, P., Snow, P., & Baidawi, S. (2013). *Young people transitioning from out of home care in Victoria: Strengthening support services for dual clients of Child Protection and Youth Justice - Phase Two Report*. Melbourne: Monash University.

children. While no perfect method exists, the methodological approach applied in this current study aimed to generate data which complements the personal stories of young people and key stakeholders. It aims to provide a breadth of information about the children, their families, and the systems with which they interact, to generate a profile of their lives, often from early childhood.

## **2.4 Research gaps**

While there is an established association between child maltreatment and youth offending, the pathway of child protection-involved youth to criminal justice outcomes receives negligible research attention. Little detail is known about the characteristics and trajectories of cross-over children, or their offending outcomes. The research that there is has focused more on individual young people themselves, with little attention given to family characteristics, including those of parents and siblings, or their educational experiences.

### 3. Methodology

This study was a collaboration between Monash University Department of Social Work researchers and the Children's Court of Victoria. It was funded primarily by a Criminology Research Grant (CRG 03/15-16) with additional funding from the Victorian Department of Justice and Regulation, and undertaken between July 2016 and August 2018. The study was overseen by an advisory group led by Judge Amanda Chambers (President of the Children's Court of Victoria) and Partner Investigator Magistrate Jennifer Bowles.

#### 3.1 Study aims

The study set out to investigate the phenomenon of cross-over children before the Court, their characteristics and trajectories into offending. Cross-over children are defined as young people before the Criminal Division of the Children's Court, who have experienced current or previous statutory Child Protection involvement. The study also examined the role of the Court and other systems such as Child Protection and Youth Justice in their work with this group children. This study addressed the following research aims:

- To what extent are children and young people before the Criminal Division of the Children's Court of Victoria also clients of the Child Protection system?
- What are the factors that distinguish children and young people who 'cross-over' between the Child Protection and Youth Justice systems?
- What are the factors that contribute to the entry of those children and young people into the criminal justice system?
- What are the factors that keep children and young people entrenched in these systems?

#### 3.2 Methods

The study was both qualitative and quantitative in approach, using a mixed exploratory/descriptive research design to address the research questions. Data collection was two-fold: a detailed audit of Children's Court files, and key stakeholder consultations (focus groups and interviews), during the study period 2017-18.

##### 3.2.1 Case file audits

A detailed audit was undertaken of 300 Children's Court files, comprising both Criminal Division (CD) and Family Division (FD) files of cross-over children before the three Victorian Children's Courts in the study. Data were additionally gathered on the approach and processes taken by service systems towards this group of children and young people.

**Case identification.** Cases were identified via the electronic filing systems which manage cases brought before both the Criminal and Family Divisions of the Children's Court. The study sample comprised:

- All children (aged 10-17 years at the time of criminal charges) before the Criminal Division (CD) of three Children's Courts from which cases were drawn; and,
- Who had current or historical Family Division (FD) matters in the Children's Court, indicating statutory Victorian Child Protection involvement.

Cases were identified in chronological order from 2016 until the quota of 300 cases was filled in 2017. Given the study methodology, the following groups of children are not included in the sample:

- Children with solely non-statutory Child Protection involvement who come before the CD;
- Children with solely interstate Child Protection involvement who come before the CD; and,
- Children with statutory Child Protection involvement who presented solely with CAYPINS<sup>26</sup> (Infringement Notice) matters before the CD.

There were no other case inclusion or exclusion criteria.

**Data collection.** A case file audit instrument was developed with advice from the study Advisory Committee. Case file audits were conducted by the researchers at the two metropolitan and one regional Children’s Court locations. Court locations were purposively selected to form a diverse sampling frame within the available resources. It was anticipated that selected Court locations would support maximum variation in children’s CD and FD matters, socio-economic status, rurality, and culture.

Court	Characteristics
Melbourne Children’s Court	Central metropolitan Children’s Court
Moorabbin Children’s Court	Suburban metropolitan Children’s Court
Latrobe Valley Children’s Court	Regional Children’s Court

Four data sources were audited for each child. Data were collected from Court-based electronic record systems (both (1) Criminal and (2) Family Division systems), and from hard copy Children’s Court files (both (3) Criminal and (4) Family Division files). CD files were the files of the current matter(s) for which the child was currently appearing before the Court. FD files were the files of the child’s current or most recent FD matter before the Court. In most cases children’s FD files were at the same Court location as their CD files (65%), though in many instances these files had to be retrieved from other Court locations, or from the Public Records Office of Victoria in the case of archived FD files which had been finalised some years previously (7.3%).

Matter Type	Electronic files	Hard copy files
<b>Criminal Division (CD)</b>	Demographic information Current and historical charges Current and historical sentencing Magistrate requests for reports – Disability, Children’s Court Clinic Magistrate notations	Detailed offence information Nature of, and information contained in reports presented to the Court (e.g. Youth Justice, Disability Client Services (DCS), Children’s Court Clinic (CCC) assessments) Service utilisation (current/historical)
<b>Family Division (FD)</b>	Demographic information Current and historical court events and FD Orders (dates, duration, conditions), Secure Welfare placements (pre-finalisation of FD orders)	Nature of, and information contained in reports presented to the Court (Child Protection, Out-of-Home Care (OHC) reports, Educational reports, DCS reports) Service utilisation (current/historical)

<sup>26</sup> Children’s and Young Persons Infringement Notice System.

Case file audits were time consuming, and varied according to the extent of Criminal and Family Division involvement across the sample of children. Data were gathered on child demographics, family structure and history, education history, historical and current Child Protection involvement, court-directed secure care placement, Family Division Orders, out-of-home care placements, involvement with police Sexual Offences and Child Abuse Investigation Teams, historical and current criminal charges, Criminal Division sentences, Youth Justice involvement, and other service involvement (historical and current), including mental health, specialist therapeutic, disability, drug and alcohol, cultural or mentoring programs and services, among others.

Case file audits were fully completed for 274/300 children (91.3%). In the remaining cases, elements of children's hard copy file data were unavailable (13/300 FD files and 14/300 CD files), as the location of the file could not be determined, or the file was unavailable because of an ongoing matter at another Court location during the audit period. In these cases, much of the required information was garnered from other reports or historical files available (e.g. Child Protection information available in Criminal Division files, previous Family Division files containing education history information), minimising the amount of missing data. The approach taken was to utilise whatever data sources were available to gather, as far as possible, the information required by the case file audit instrument.

**Data analysis.** Case file data are primarily presented using descriptive statistics to examine minimum prevalence of various characteristics across the sample. Bivariate analyses are used to examine differences between subgroups (e.g. based upon gender or Indigenous status), and correlations between variables. Transgender children (n=2) were excluded from gendered analyses, and children whose Indigenous status was unknown (n=87 or 29%) were excluded from analyses based on Indigenous status. Results reported as significant are at least at the  $p < .05$  level of significance. Finally, logistic and linear regression analyses are used to identify factors predictive of offending subtypes or seriousness (see Section 4.7.7, Appendices 2-4).

The proportion of children appearing before the CD of the Court who were cross-over children were drawn from the total number of children appearing before the CD of the Children's Court between 1<sup>st</sup> June 2016 and 28<sup>th</sup> February 2017. Differences in the dates used to determine the *proportion* of cross-over children, and those of the *overall sample* of cross-over children arose due to a need to extend the sample data collection period to obtain the desired sample size. Most children from the cross-over sample appeared before the CD between 1<sup>st</sup> June 2016 and 28<sup>th</sup> February 2017 (n=289), and were included in the analyses relating the proportion of cross-over children. A small margin of error may be attributable to data relating to the proportion of cross-over children appearing before the Court owing to the automated process used to identify cases (e.g. where a single child has entries under multiple names).

**Data strength and limitations.** Typical of studies utilising clinical data-mining strategies, the methods used held both advantages and challenges<sup>27</sup>. Administrative data from electronic records were consistently available, and almost invariably accorded with details in children's hard copy files (dates, Court Orders etc.). However as anticipated, the nature of information contained in hard copy files varied, depending on the particular assessments and reports requested by or provided to the Court.

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<sup>27</sup> Epstein, I. (2010). *Clinical Data-Mining: Integrating Practice and Research*. New York: Oxford University Press.

As such, reported findings represent minimum prevalence data regarding the variables examined (e.g. children's uptake of services, prevalence of intellectual disability etc.). The results presented are thus the "best case scenario" as well as the most accurately-available depiction of the characteristics and trajectories of cross-over children and their families. Usefully, the approach captures the nature of the information regarding cross-over children which is made available to the Children's Court. It is a characteristic of the sample that children's files relating to more complex matters, or more significant involvement in either Division of the Children's Court, typically contained more detailed information than that of files relating to less intensive involvement. This should be borne in mind when considering audit findings.

An advantage of the chosen approach is that detailed contextual data regarding children's current and historical circumstances could be obtained from multiple sources, thus permitting cross-checking and triangulation for greater reliability (e.g. data regarding educational history contained in Child Protection reports or disability client services assessments). Where data sources contained conflicting information about a child's current circumstances (e.g. disability diagnoses), the most recently available data source was utilised.

### 3.2.2 Key stakeholder consultations

These consultations were with key stakeholders, professionals whose roles involve direct work with cross-over children.

**Recruitment.** Information sessions were held at metropolitan and regional Children's Courts, during which key stakeholders were informed about the study, invited to ask questions, and to register their interest in participating in the research. Study flyers were emailed to other stakeholders and agencies working with cross-over youth in metropolitan and regional areas. In some instances, information about the study was passed on to potential participants by their agency management (e.g. Child Protection, Victoria Police, Youth Justice). Participants opted-in to the study by emailing the researcher to register interest in a focus group. In some instances, key stakeholder agencies facilitated the organisation of focus groups. Participation in the study was voluntary, and there was no reimbursement.

**Data collection.** Semi-structured interviews and focus groups were conducted with key stakeholders, to explore:

- The key characteristics and trajectories of cross-over children;
- Differences between cross-over children and other children appearing before the Criminal Division of the Children's Court;
- Factors which lead to the over-representation of children from Child Protection backgrounds in the Criminal Division of the Children's Court;
- Aspects of the Children's Court which respond effectively to cross-over children;
- Key barriers for the Children's Court to respond more effectively to cross-over children;
- Participants' views on the relationship between the Children's Court and the broader child welfare system;
- Key challenges participants encounter in their work with cross-over children; and,
- Specific legislative and other strategies which participants would like to see introduced to more effectively respond to cross-over children.

The data gathered explored how the study respondent groups conceptualised cross-over children, including their needs, characteristics and trajectories. They informed how individual, service and systems level factors impacted on the experiences and outcomes of cross-over children. Key stakeholder consultations also provided information about key issues relevant to cross-over children which could be followed up in the Children’s Court case file audits.

**Sample.** Twenty-five semi-structured focus groups and interviews were completed with 82 key stakeholders between May and November 2017. Key stakeholder participants included Magistrates and Judges, police and police prosecutors, lawyers, Child Protection and Youth Justice professionals, education professionals, child and family mental health clinicians, and representatives from non-government agencies working with cross-over youth. All focus groups and interviews were audio-recorded and transcribed. Most consultations took place at Court venues (17/25) while the remainder were held at the informants’ agency work location (e.g. schools, police stations, and other non-government agency offices). One third of the consultations (27/82) were held in rural/regional areas. It should be noted that some of the rural and regional areas consulted in the study featured among the most socio-economically disadvantaged in Victoria. Compared to overall state figures, most of the regional area sample had a lower level of cultural diversity, a much higher proportion of Aboriginal and Torres Strait Islanders, lower educational attainment and individual and household income, nearly triple the state rate of unemployment and a higher proportion of single parent households. The findings relating to rural and regional areas should be read with this context in mind, as they may not always reflect the experience of other rural and regional areas.

The researchers conducted the focus groups and interviews, ranging from 30 to 85 minutes in duration, with an average of 53 minutes.

Participant group	Metropolitan	Rural/ Regional	Total Participants
Magistracy and judiciary	10	3	13
Police and police prosecutors	5	3	8
Child Protection professionals	13	2	15
Youth Justice professionals	3	2	5
Lawyers <sup>1</sup>	16	3	19
Indigenous Court and non-government agency staff	1	2	3
Other government and non-government services <sup>2</sup>	2	10	12
Education professionals <sup>3</sup>	5	2	7
<b>Total</b>	<b>55</b>	<b>27</b>	<b>82</b>

1. Lawyers include private lawyers, Legal Aid practitioners and representatives from Child Protection Legal Offices. 2. This group included child and family mental health clinicians, non-government organisations providing out-of-home care, child and family welfare, family violence, group conferencing and disability services. 3. Education professionals included representatives of government education departments and flexible educational programs.

**Data analysis.** Interview and focus group transcripts were entered into NVivo11 Software for analysis. An inductive content analysis approach was conducted, with secondary data-checking for validity and consistency. Open coding, searching for the repetition of words, information and ideas led to the development of common themes and sub-themes, that as closely as possible, reflect agency staff



contributions to the focus groups and interviews. Such an approach is appropriate given the limited literature in the area of cross-over children, particularly that which captures the views of the range of professionals participating in this study (Magistracy, police and lawyers, for instance). Themes reported in the findings constitute those most commonly recurring across focus groups. Alternative or unique viewpoints are also highlighted.

### 3.2.3 Ethical considerations

Ethics approval for this study was obtained from the Victorian Justice Human Research Ethics Committee (CF/164955) and the study is registered with the Monash University Human Research Ethics Committee (No. 0184). Key ethical issues relate to the protection of privacy due to the sensitivity of information contained in files, and provided by key stakeholders. As such, key stakeholders' identities are limited, and roles are withheld where not relevant to the comments made. Data from children's files are primarily presented in aggregate form. Case examples utilising pseudonyms are presented to both humanise and contextualise the data gathered from case file audits. This bringing together of qualitative and quantitative data aims to support a clear understanding of the realities facing both cross-over children, and the systems, services and individuals work with them.

## 4. Case file audit findings

This section presents the findings of the case file audits of 300 children appearing before the Criminal Division (CD) of the Melbourne, Moorabbin and Latrobe Valley Children's Courts between June 2016 and April 2017. The child's 'index matters' refer to the criminal matter(s) for which the child appeared before the CD of one of the above Children's Courts on the first occasion during the study period. Findings are presented as follows:

- Initial findings address the first research aim, determining the proportion of children appearing before the CD with statutory Child Protection involvement.
- Subsequent sections describe the characteristics of cross-over and their families, detail their Child Protection, out-of-home care and educational involvement, outline the co-occurring challenges faced by children, and present findings concerning children's service utilisation.
- Later sections address the nature and contexts of offending, sentencing outcomes, and Youth Justice involvement, including identification of factors associated with early offending onset, and level of offending in terms of more violent or aggregate charges.
- A final section presents comparisons of the sample based on the child's regional location (metropolitan vs regional).

### 4.1 Court data and socio-demographic characteristics

Of the 300 children, nearly two thirds appeared before the CD at Melbourne Children's Court, 10% at Moorabbin Children's Court, while 27% came before the Latrobe Valley Children's Court (Figure 1) for their index CD matters.

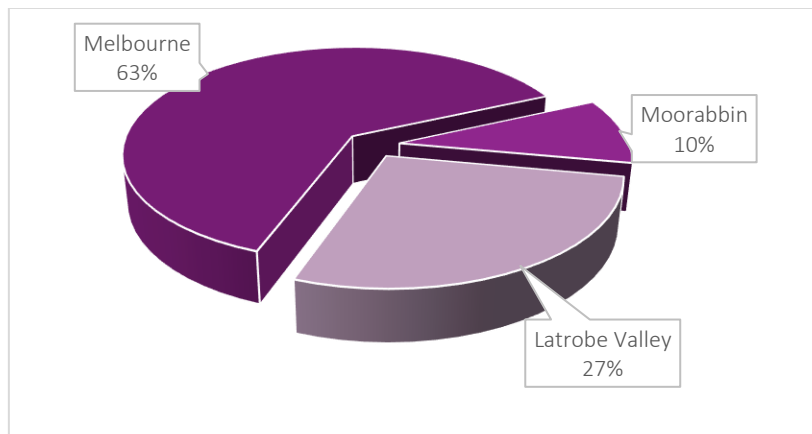


Figure 1. Court location - Criminal Division matters

#### 4.1.1 Proportion who are cross-over children

Data obtained from the Children's Court for the period between 1<sup>st</sup> June 2016 and 28<sup>th</sup> February 2017<sup>28</sup> indicated that 22% of *all children* appearing before the CD of the three Children's Courts during this period had *either* current or historical statutory Child Protection involvement. Smaller proportions of CD-involved children across the three Children's Courts had *concurrent* FD Orders (12%), indicating that

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<sup>28</sup> Differences in the dates used to determine the proportion of cross-over children, and those of the overall sample of cross-over children arose due to a need to extend the case file data collection period to obtain the desired sample size. Most children from the cross-over sample appeared before the CD between 1<sup>st</sup> June 2016 and 28<sup>th</sup> February 2017 (n=289), and were included in the analysis presented in this section.

they were subject to current FD Court proceedings or FD Orders. As indicated in Figure 2, the Latrobe Valley Children’s Court had a significantly greater proportion of total cross-over children (36%) (those with *either* current or historical FD matters), and cross-over children with concurrent FD matters (19%), compared to each of the other Children’s Courts<sup>29</sup>.

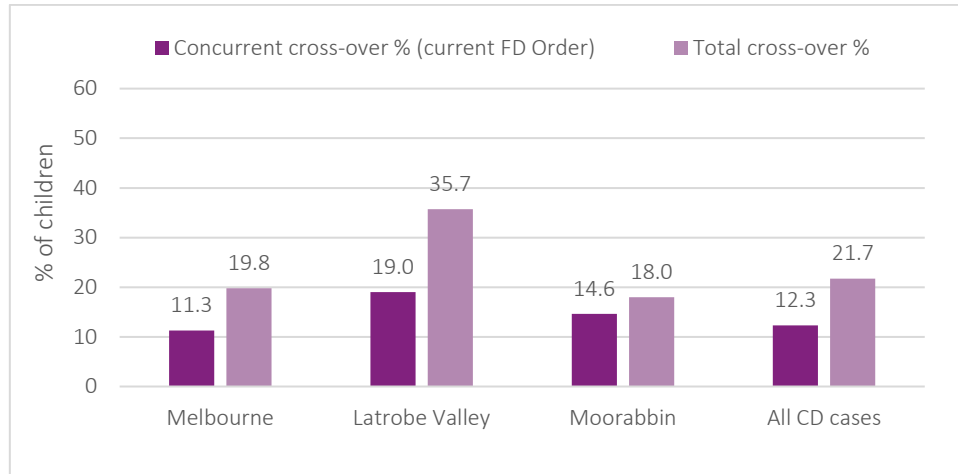


Figure 2. Proportion of Criminal Division-involved children who are cross-over kids

#### 4.1.2 Age and gender

In Victoria, children appearing before the Criminal Division of the Children’s Court must be aged between 10 and 17 years at the time of the alleged criminal offence. Children’s mean age was 16.2 years, and as shown in Figure 3 they were predominantly aged between 15 and 17 years (66%)<sup>30</sup>.

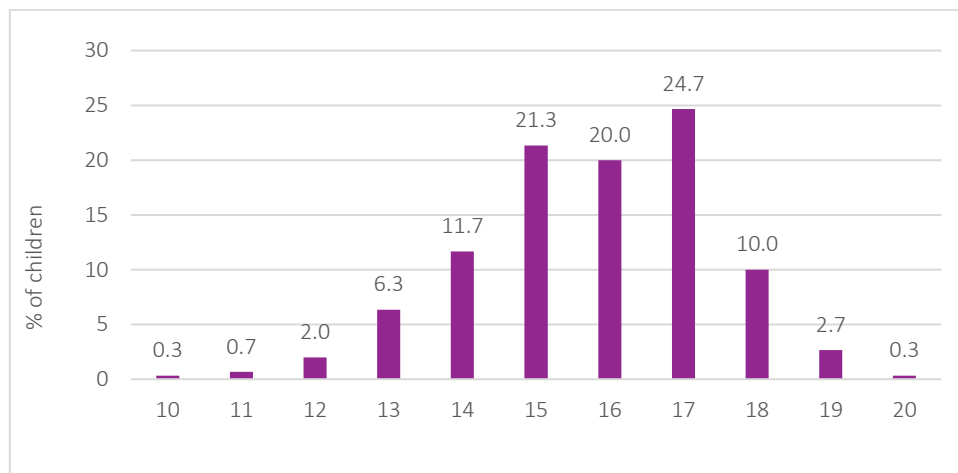


Figure 3. Age of children at index CD matter

Most cross-over children were male (68%), while 31% were female, and 1% identified as transgender. There was no difference in the mean age of male and female children, nor was there any significant difference in the gender distribution seen in metropolitan and rural/regional Courts.

<sup>29</sup> All  $p < .01$

<sup>30</sup> Where there was discrepancy between the child’s recorded date of birth in Family and Criminal Division files, the Family Division file date was used.

### 4.1.3 Indigeneity and ethnicity

**Indigeneity.** In 18% of cases Indigeneity was apparent from case files, while in 53% of cases it was confirmed that the child was non-Indigenous (Figure 4). In the remaining 29% of cases the child's Indigenous status was not apparent. There was no significant difference in the average age of Indigenous and non-Indigenous children in the sample. However, Indigenous children were significantly more likely to be having their CD matters heard at the Latrobe Valley Children's Court compared to non-Indigenous children<sup>31</sup>.

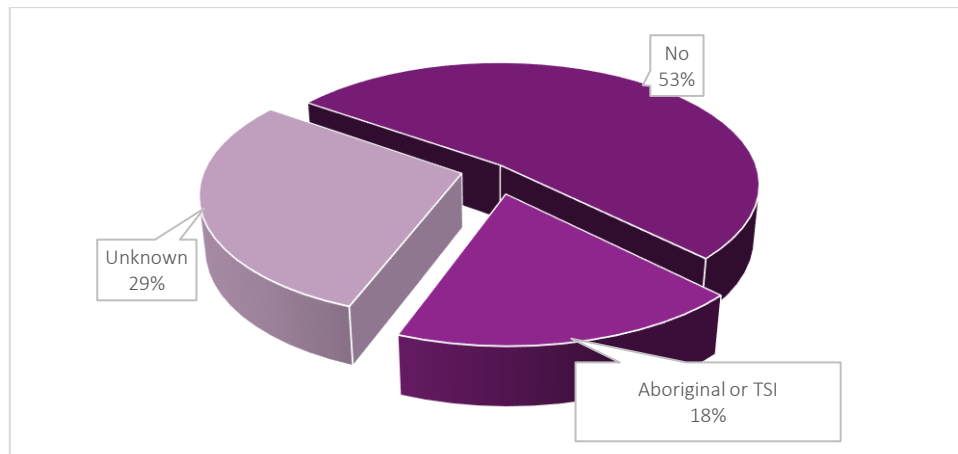


Figure 4. Indigeneity of children

**Ethnicity.** In nearly half of the cases (47% or 141/300 children), it was not possible to discern the child's ethnic background from case files (see Figure 5). Where ethnicity was known, cross-over children were most commonly from Aboriginal or Torres Strait Islander (18%), Anglo Australian (15%), Maori and Pacific Islander (9%), Middle Eastern (4%) or African (3%) backgrounds. 'Other' ethnicities included other European, New Zealander and Asian backgrounds.

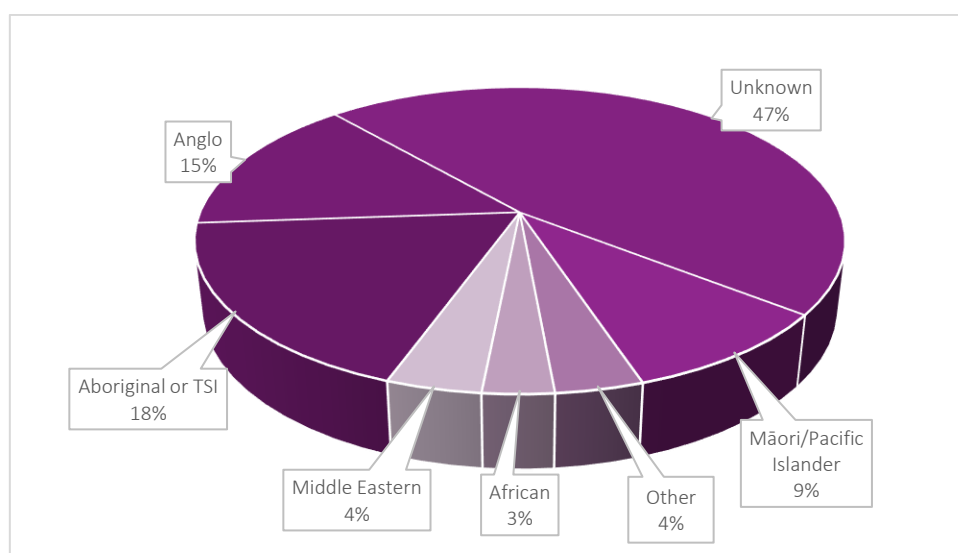


Figure 5. Ethnicity of children

<sup>31</sup> Indigenous children 38.2% (Latrobe Valley Court) and 18.4% (metropolitan Courts),  $p < .01$ . The proportion of Indigenous children whose CD matters were heard in the Latrobe Valley Court may be an underestimate, since children whose Indigenous status was 'unknown' were more likely to be heard at this regional Court (39.1%) compared to children whose Indigenous status was discernible from case files (23.5%) ( $p < .01$ ).

The above ethnicity classifications obscured the fact that a substantial minority of children (8%) had backgrounds of mixed ethnicity (e.g. Mixed Māori/Anglo or mixed Middle Eastern/European ethnicity). When these complexities are taken into account, smaller proportions of cross-over children are solely classified as being from Aboriginal or Torres Strait Islander (15%), Middle Eastern (3%), African (2%) or Māori/Pacific Islander (7) backgrounds.

#### 4.1.4 Child’s geographic location

As indicated in Section 4.1.1, nearly three quarters of the children in the sample (72%) were appearing before the CD of the metropolitan Children’s Courts, while the remaining 28% had their criminal matters heard at the regional Children’s Court. The Court venue where a CD matter is heard is determined based upon the region of the alleged offending and/or the child’s place of residence. Most children (78%) were located in regions covered by the three Children’s Court study locations (Northern and Western metropolitan, Southern metropolitan, and Eastern and South Eastern Rural and Regional). However, 36 children (12%) resided in other regions, 24 children (8%) were in custody<sup>32</sup>, and 3 children (1%) were homeless at the time of their CD matters.

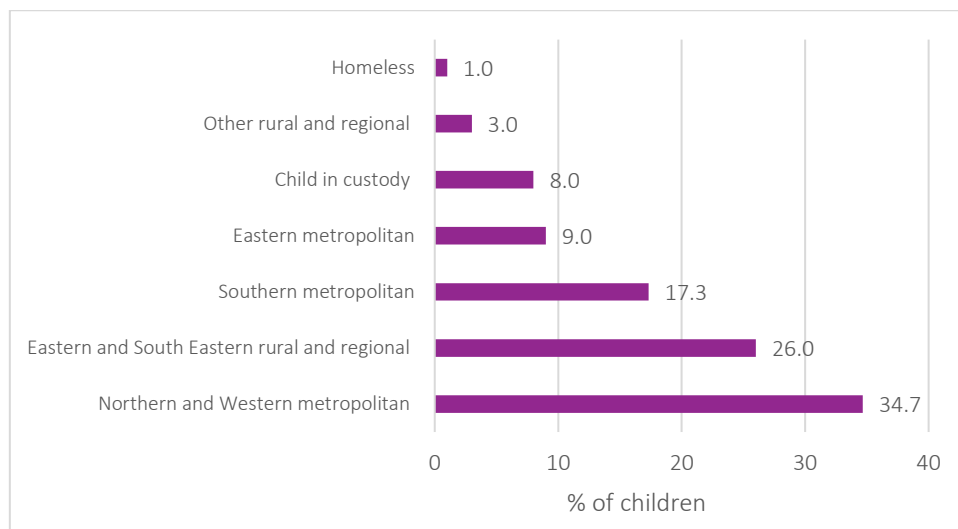


Figure 6. Residential location of children at time of index CD matter

#### 4.1.5 Family’s geographic location

This section focuses on children’s geographic location relative to their parents, with a view to understanding parents’ closeness or availability to cross-over children<sup>33</sup>. Where information was available, parents rarely resided together at the time of children’s CD matters. However most children (172/243 or 71%) had at least one parent residing in the same regional area at the time of their CD matter.

Children’s placement relative to parents varied widely. Many children were residing with one or both parents at the time of CD matters, (or did so prior to entering custody). At the same time, at least 23

<sup>32</sup> Children who were in custody until the time of sentencing were not counted as being located in custody, but rather the geographic location to which they were released.

<sup>33</sup> Identification of the location of children’s family (particularly parents) posed greater challenges compared to children’s location, and data were unavailable in 57/300 cases (19%).

children (9.4%) faced circumstances where neither parent was available. In Figure 7 below, children's parents are identified as being interstate, overseas, in prison, deceased, or having unknown whereabouts only under circumstances where *both* parents are so located. For instance, among the group of children was Mark, an 18 year-old male, whose mother cycled between custody and homelessness for much of his life, and whose father was unknown to him. Similarly, 17 year-old Luke's father was in prison at the time of his CD matters, while his mother had died the previous year.

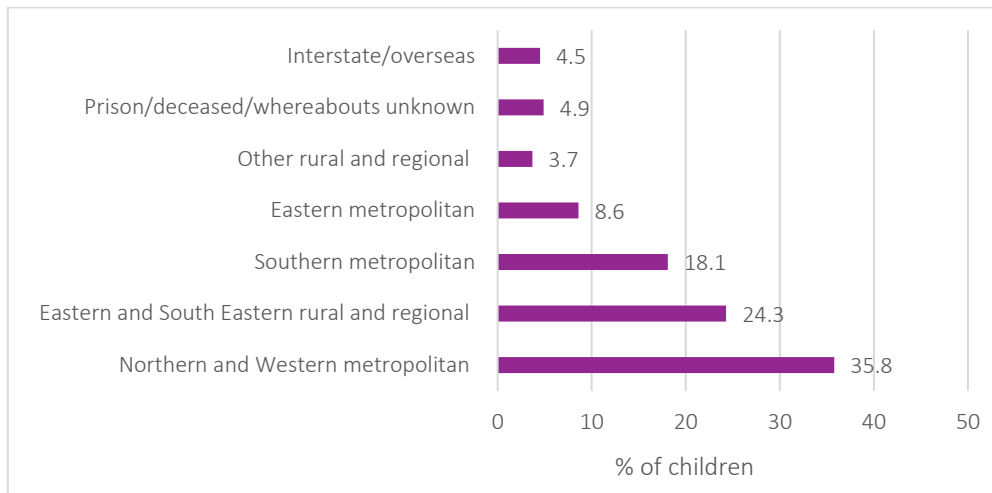


Figure 7. Most recently available location of children's parents

#### 4.1.6 Family structure

**Parents.** The relationship status of children's biological parents was apparent for 94% of children, around two thirds of whom had parents who were separated or divorced (see Figure 8). Smaller proportions of children had parents in married or de facto relationships (13%), or who were never partners (2%). Approximately one fifth of children had at least one parent who had died<sup>34</sup>, however in many instances parents were no longer in a relationship before the death of one or both parents. Childhood bereavement is further discussed in Section 4.2.3.

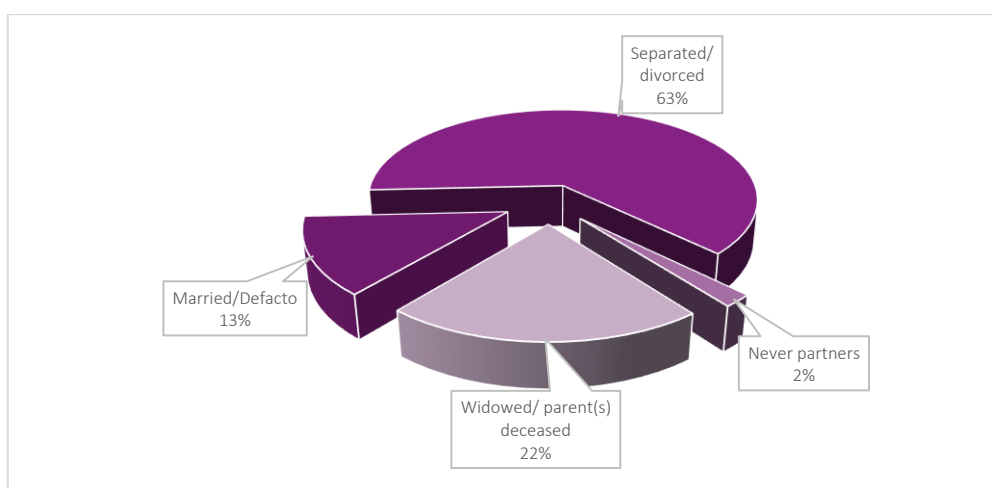


Figure 8. Relationship between children's biological parents (n=282)

<sup>34</sup> The reported proportion of children with deceased parents varies between this section and Section 4.2.3 due to different sample sizes available for each analysis (n=282 vs n=300). Overall 61 children had evidence of parental death recorded in case files.

There was also considerable variation in children’s level of contact with biological parents, from active involvement/living with one or both parents, no contact with either parent. The lack of contact with one or both parents was due to parent identity or whereabouts being unknown (commonly fathers), estrangement and parental death. In order to gauge a child’s degree of separation from parents throughout their life, children were divided between those who had, and who had not, experienced a period of at least 18 months without parental contact over their lifetime<sup>35</sup>. Children were significantly more likely to have experienced an 18-month period without paternal contact (41%) compared to maternal contact (18%)<sup>36</sup>, illustrating children’s degree of parental estrangement.

**Siblings.** This section presents the best-known data relating to siblings at the time of the child’s CD matters<sup>37</sup>. Figure 9 presents the data available for 288 children (97%), which indicated that that the majority (95%) had siblings, the number of which ranged from zero to 20 (Figure 10).

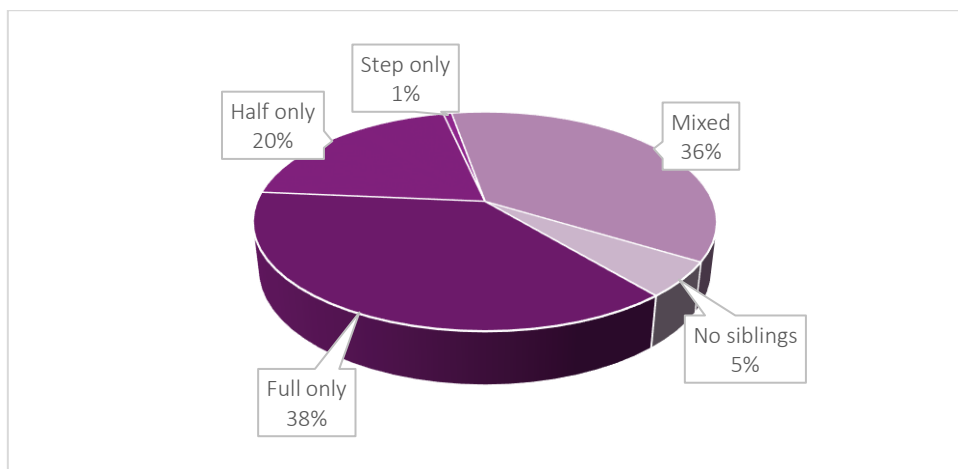


Figure 9. Children's sibling group composition

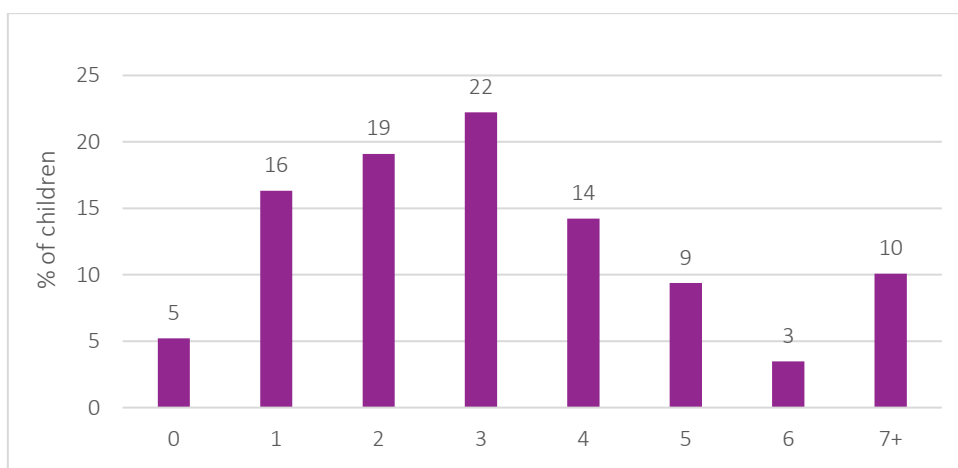


Figure 10. Number of siblings (including step and half siblings)

<sup>35</sup> Figures represent minimum prevalence data. In many case files children’s’ fathers were not mentioned at all. An 18-month period of separation from parents was only confirmed for children where it was explicitly indicated that the child and parent had no contact for this duration at some point in the child’s life. It was not assumed from a lack of data, or from parents being incarcerated, or residing interstate/overseas.

<sup>36</sup>  $p < .0001$

<sup>37</sup> Deceased siblings were counted in this data however foster or adoptive siblings, which a small number of children had, were not.

## Summary: Court data and socio-demographic characteristics

In the case file sample of 300 children, three quarters appeared before one of two metropolitan Children’s Courts, and one quarter came before a regional Children’s Court. Most were aged between 15 and 17 years, and nearly one third (31%) were female. Indigenous status was not apparent for around one third of children, though at least half were non-Indigenous, and at least 18% were Indigenous. Most children resided in the region of the Court hearing their CD matter, however 12% were in other regions, 8% were in custody, and 1% were homeless. Most children came from families where parents were divorced, separated or widowed, though 13% of children’s parents were married or in a de facto relationship. Disruption in parent-child relationships was common, particularly in relation to the paternal relationship, and *both* parents were estranged or unavailable to 10% of children. Reasons for parental estrangement included parental identity or whereabouts being unknown, parents living interstate or overseas, parental incarceration, parental death, parent-child conflict, and interpersonal violence in the parent-child relationship (in either or both directions).

## 4.2 Adverse and challenging childhood circumstances

Given this group of children’s involvement in the statutory Child Protection and youth justice systems, the presence in childhood of challenging and adverse events is self-evident. Yet cross-over children’s early circumstances have rarely been examined in detail. Data in this section are derived from multiple sources, including reports of various statutory bodies which were submitted to the Children’s Court (e.g. Child Protection, Youth Justice, the Children’s Court Clinic, and Disability Client Services). This section draws upon case file examples to illustrate the gravity and complexity of children’s circumstances, which are at risk of concealment through the adoption of social policy terminology and exclusive reliance on quantitative data.

### 4.2.1 Household family violence, mental illness, substance abuse, and criminal justice system involvement

This section describes the challenging and adverse circumstances existing within the childhood homes and families of cross-over children (Figure 11). While predominantly the prevalence figures indicate the presence of parental-related family violence, mental illness, substance abuse or criminal justice involvement, in many other instances exposure of children to these circumstances was through a step-parent or sibling. Figures indicate the *minimum prevalence* of children’s exposure to these circumstances based on case file data, and are likely to be underestimates.

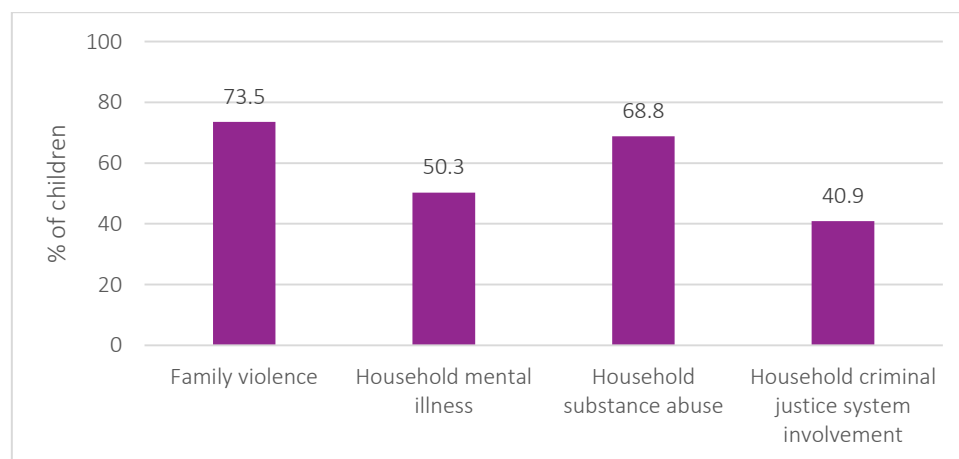


Figure 11. Minimum prevalence of adverse household experiences



Detailed analysis of the severity of exposure is beyond the scope of this report, though in the majority of cases this could broadly be described as being at the more severe end of the spectrum for family violence, household substance abuse and household mental illness. The exception was household criminal justice involvement, the degree of which was less consistently discernible from case files.

**Family violence exposure.** Exposure to family violence, encompassing the physical, emotional or sexual victimisation of another family member, was endemic among this group of children. Direct victimisation of the child by a household member is considered under the next section relating to child abuse and neglect (4.2.2). At a minimum prevalence of 74%, exposure to family violence was more widespread than any other identified characteristic of this group of children. Just over one-fifth of children were exposed to family violence perpetrated by both parents (22%).

In addition to parentally-perpetrated family violence, at least 28% of children were exposed to household family violence perpetrated by others, including step-parents, kinship carers, extended family, siblings and (rarely) romantic partners. In most cases (87%), this was perpetrated by caregivers, including step-parents and kinship carers. There were no statistically significant gender differences in relation to family violence exposure. However, nearly all Indigenous children (95%) were exposed to family violence compared to 71% of non-Indigenous children, a highly statistically significant difference<sup>38</sup>.

Acts of family violence to which children were exposed varied. For most children, exposure to family violence occurred over significant periods, from birth or early childhood, and cycling through multiple perpetrators (typically parents' partners). At a minimum, children were exposed to yelling, screaming and name-calling between family members, though it was rare that physical violence or threats were not involved. Many children had been exposed to severe family violence, and had been 'on the run' with mothers, rendering them homeless and needing to relocate to escape fathers or step-fathers who used violence. At the most severe level, children were exposed to the violent and extreme victimisation of one family member by another, resulting in incarceration of the perpetrating member, and serious injury, or death, of the victimised family member.

The victim of family violence in the majority of cases was the child's mother, though sometimes it was the father, a sibling, or an extended family member (e.g. grandparent). Family Violence Orders were regularly seen between family members, and parents and step-parents were often ordered to attend therapeutic programs (e.g. Men's Behaviour Change Program, relationship counselling), as part of Family Division Orders. In some cases parents were criminally charged due to breaches of Family Violence Orders, and/or criminal offending in relation to family violence. This sometimes resulted in the incarceration of parents/step-parents charged with homicide, assault, kidnapping, and other acts intending to cause injury.

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<sup>38</sup>  $p < .001$

### Examples of Family Violence incidents included a parent, step-parent or caregiver

- Victimising the child's mother while the child was in utero or newborn, including physical and/or verbal abuse of pregnant and breastfeeding mothers (e.g. the mother being punched, choked);
- Assaulting the other parent, including with objects or weapons;
- Holding knives/weapons to the other parent's throat;
- Yelling, swearing at, or belittling the other parent;
- Seriously threatening the other parent, including threats to kill;
- Breaking down doors to attack the other parent;
- Attempting to run over the other parent with a car;
- Attempting to set the other parent alight; and,
- Murdering the other parent.

### Case example: Darcy

*Darcy is a 17 year-old Indigenous male with charges related to property damage, theft, and assault. His charges commenced at 12 years of age, and he was previously sentenced to two Good Behaviour Bonds and a Probation Order. A Magistrate noted some of Darcy's offending was 'very violent'. Darcy was first notified to Child Protection at birth, and had 16 notifications and four substantiations. In his early life, Darcy's mother was subject to a 12 month supervision order, during which he was often in the care of his grandparents until he was a toddler. Early protective concerns related to parental alcohol and substance abuse, transience, and severe family violence perpetrated by Darcy's father, who was imprisoned on multiple occasions for violence towards his*

*mother, including attempted murder. At six, while Darcy was escaping family violence with his mother, she suddenly died from the impact of family violence. Darcy then lived initially with his father, who was subsequently jailed in relation to the violence against his mother. While residing with other family, Darcy was a victim of sexual abuse.*

*Following his father's release, Darcy was returned to his care and was subsequently physically assaulted, including having weapons held to his throat. It was during this period at 9 years of age when Darcy began using cannabis, and was expelled from school in Grade 6 for fighting. Other schools were subsequently reluctant to enrol him. Soon after, Darcy first entered out-of-home care at age 12, after his father repeatedly contacted services asking that Darcy be taken away. Feeling rejected, Darcy was placed in residential care but often absconded to family, or to spend time with other homeless children in the city. Around this time his offending began. He was arrested for shoplifting, and stated that he had no clothes, no money and nowhere to go. Though he has a large care team, and has experienced some supportive kinship placements, Youth Justice and other services have challenges working with Darcy as he is often missing for weeks at a time and cannot be located.*

**Household mental illness.** At least 50% of children had a family member with a mental illness, and both parents were identified as having mental illnesses in 16% of cases. A smaller proportion of children (8.3%) were exposed to mental illness of another household member such as step-parent or sibling (3%). There were no gender or cultural differences identified in the proportion of male/female, or Indigenous/non-Indigenous children exposed to household mental illness.

Parent and household members' mental health issues included anxiety, depression, bipolar disorder, post-traumatic stress disorder, personality disorders, and schizophrenia and related conditions. In many instances these appeared to be relatively severe in nature. While specifics of parental mental

illness were inconsistently noted in case files, at least 15 children (5%) had evidence of a parent or caregiver being hospitalised due to mental health issues, and 26 children (9%) had evidence of parental/caregiver suicidality and suicide attempts recorded (to which children were sometimes witnesses), or successfully suiciding (see Section 4.2.3 – childhood bereavement). Psychotic illness in a parent or caregiver was evident for 18 children (6%). Many parents and caregivers were depicted as behaving, at times, in a manner which would conceivably be highly frightening or otherwise hurtful to the child.

Aside from diagnosed psychiatric conditions, case files suggested that parents of cross-over children were often highly distressed. Intergenerational trauma histories and Child Protection involvement were commonly seen among those cases where such detailed information was available. Perhaps unsurprisingly, where information was available, it suggested that children's parents had also not been able to experience stability and safety in their own childhoods or often throughout their adult lives.

**Household substance abuse.** A minimum of 69% of children had a parent or household member who abused substances (drugs and/or alcohol), including non-parental household members in 22% of cases. These non-parental household members included step-parents, siblings or extended family (e.g. aunts or uncles with whom there was a kinship placement). In a small number of cases (3 children), the source(s) of the child's exposure to familial substance abuse was unclear from the file. For over one third of children (36%) *both* the mother and the father had indications of substance abuse issues. There were no gender differences in the proportion of males and females exposed to household substance abuse. Indigenous children, however, were significantly more likely to be exposed to household substance misuse (89%) compared to non-Indigenous children (65%)<sup>39</sup>.

Parental substance abuse patterns ranged in nature and severity. Some parents had long-term dependence on cannabis for instance, which appeared quite stable over the entirety of the child's life. At the other end of the spectrum were parents with severe polysubstance abuse problems, commencing from their own teenage years. Heroin, ice, marijuana, alcohol and prescription medications featured among parents with polysubstance use problems. Many of the children of these parents had been born substance-dependent due to their in utero drug exposure, and others experienced dangerous, abusive or neglectful circumstances related to parental substance abuse. For instance one child was found crawling over used syringes in infancy, another was located in a shopping centre, in a pram next to their unconscious mother. Many other children had found a parent overdosed on drugs, both non-fatally and fatally. Children were also often exposed to erratic, frightening, or neglectful behaviour by substance-affected caregivers.

Aside from exposure to household substance use, on occasion examples were seen of children who were introduced to, or supplied substances by parents or extended family (see Section 4.5.3). Conversely, in some instances, parents had more severe substance use problems in children's early life, but had managed to significantly reduce or cease substance use as the child grew older.

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<sup>39</sup>  $p < .001$

**Household criminal justice system (CJS) involvement.** At least 41% of children had a parent or close family member with CJS involvement<sup>40</sup>. CJS involvement included that of others with whom the child had close contact (identified for 14% of children), typically step-parents, and also siblings or extended family members (e.g. aunts or uncles with whom there was a kinship placement). There was no significant gender difference in the proportion of males (43%) and females (37%) exposed to household CJS involvement. On the other hand, statistically significant differences were seen in the proportion of Indigenous (62%) and non-Indigenous (35%) children who experienced household CJS involvement<sup>41</sup>.

The nature of household CJS involvement varied considerably. Some parents had served, or were serving, extensive sentences for serious violent crimes, or otherwise appeared to have quite lengthy criminal justice histories. For others, the only indications of CJS involvement were short community-based sentences for non-violent offences such as shoplifting. However, in at least 25% of cases, children had at least one parent or step-parent who had experienced adult custody, though it was not consistently clear whether these were remand periods or sentenced terms of imprisonment.

Familial criminal justice system involvement had various impacts on children. At the more severe end of the spectrum, these included the loss of parents and placement changes in response to parental incarceration (and sometimes deportation), victimisation of one parent by the other (e.g. assaults, homicides), and (though rarely) family members encouraging or forcing children to engage in offending.

#### 4.2.2 Physical, emotional, sexual abuse and neglect

Data concerning children's victimisation by direct experiences of physical, emotional, or sexual abuse, or neglect were collected from court documents, Child Protection reports and other reports presented to the court (e.g. Children's Court Clinic, police reports, paediatric forensic reports). Understanding the nature of maltreatment to which these children were exposed is also relevant to considering their experiences with criminal justice processes, particularly in relation to how they may conceive of and experience the adult infliction of 'punishment'.

Definitions of maltreatment adopted in this section are based on World Health Organisation and the International Society for Prevention of Child Abuse and Neglect recommendations<sup>42</sup> (2006, pp. 9-10):

- **Neglect** includes both isolated incidents, as well as a pattern of failure over time on the part of a parent or other family member to provide for the development and well-being of the child – where the parent is in a position to do so – in one or more of the following areas:
  - Medical/physical;
  - Health/environmental;
  - Education; and,
  - Supervision (including abandonment of the child).

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<sup>40</sup> Including parents, step-parents, siblings, half or step-siblings with whom the child had a relationship, kinship carers, and other extended family members with whom the child had a relationship (e.g. uncles).

<sup>41</sup>  $p < .001$

<sup>42</sup> World Health Organisation and International Society for Prevention of Child Abuse and Neglect (IPSCAN) (2006). Preventing child maltreatment: a guide to taking action and generating evidence. Geneva: World Health Organisation. [http://www.who.int/violence\\_injury\\_prevention/publications/violence/child\\_maltreatment/en/](http://www.who.int/violence_injury_prevention/publications/violence/child_maltreatment/en/)

Neglect excludes experiences of homelessness and poverty, though both were widespread among children, as the case files did not suggest these circumstances were under caregivers' control. These and other factors are discussed in later (see Section 4.2.4).

- **Physical abuse** is defined as the intentional use of physical force against the child that results in – or has a high likelihood of resulting in – harm for the child's health, survival, development or dignity. This includes acts such as hitting, beating, kicking, shaking, biting, strangling, scalding or burning a child, with or without the use of weapons.
- **Emotional abuse** is defined as inappropriate verbal or symbolic acts toward the child which fail to ensure a supportive environment, and which have a high probability of damaging the child's physical or mental health, or its physical, mental, spiritual, moral or social development. This includes patterns of name-calling, belittling, blaming, threatening, frightening, discriminating against or ridiculing; and other non-physical forms of rejection or hostile treatment.

While it is acknowledged that all forms of child abuse, neglect and maltreatment, including exposure to family violence, constitute emotional abuse, for the purposes of this analysis the definition is restricted to the kinds of acts described above. Rejection in the form of abandonment and hostile relinquishment of the child (i.e. excluding relinquishment which included a caring, ongoing relationship with the child) is defined as an act of neglect for the purpose of this audit.

- **Sexual abuse** is defined as the involvement of a child in sexual activity that he or she does not comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society. For the purposes of this analysis sexual abuse included direct sexual victimisation involving sexual contact with the child, as well as acts of voyeurism, exhibitionism, and exposing the child to adult sexual acts including intercourse and pornography.

The prevalence of childhood abuse and neglect noted in this section is conservative, and figures below should be regarded as minimum estimates (Figure 12).

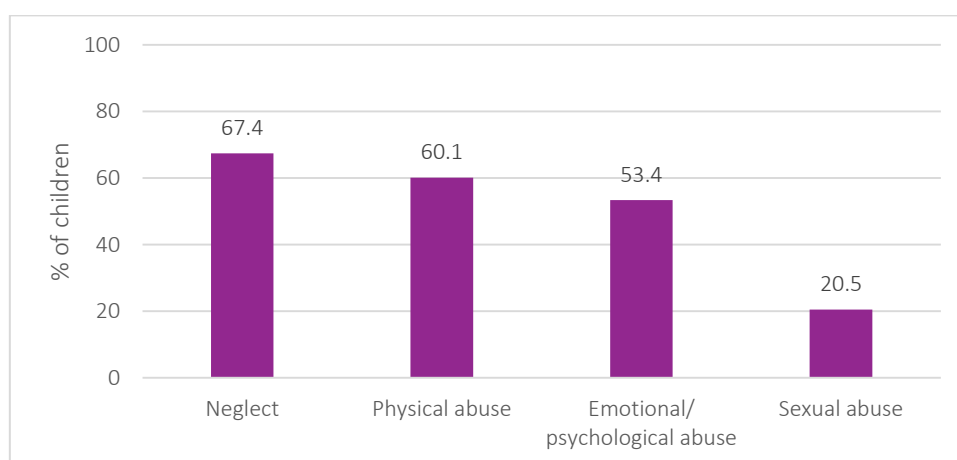


Figure 12. Minimum prevalence of neglect, physical, emotional and sexual abuse

**Neglect.** Quantifying neglect in this sample of children presented difficulties. Neglect was sometimes very apparent from case files (e.g. extreme household environmental neglect, lack of supervision, education or health neglect), whereas in other instances it was more challenging to establish. Emotional neglect was rarely able to be ascertained from case files, though a subjective impression is that this phenomenon was widespread. Using conservative estimates requiring clear evidence, 67% of children experienced neglect in at least one area. After family violence exposure, neglect was the most common harm children experienced. Nearly half of the children (48%) experienced neglect by both parents, and neglect by others was also experienced by 8% of children, namely other caregivers (e.g. kinship carers or step-parents).

There is no suggestion that parents or caregivers are necessarily at fault for neglect. Socio-emotional and financial resources impact upon caregivers’ capacities to provide for children. In some instances, neglect was clearly related to parental health issues, neurodisability or poverty. Yet what is aimed to be captured here is the child’s *experience* of neglect, rather than an attribution of blame for these circumstances.

No statistically significant differences by culture or gender were observed in relation to neglect. However, the children for whom neglect was apparent in case files had a significantly greater number of siblings (median of 3 siblings) compared to children where neglect was not apparent (median of 2 siblings)<sup>43</sup>.

<b>Examples of neglect by parents, step-parents and other caregivers</b>	
<p><b>Environmental</b></p> <ul style="list-style-type: none"> <li>• Exposing the child to hazardous environments, e.g. animal/human urine or faecal matter, drug paraphernalia, or other unsanitary conditions</li> </ul>	<p><b>Safety</b></p> <ul style="list-style-type: none"> <li>• Exposing child to dangerous people (e.g. registered sex offenders or substance-affected people supervising the child)</li> <li>• Exposing the child to weapons</li> <li>• Driving the child while substance-affected</li> </ul>
<p><b>Educational</b></p> <ul style="list-style-type: none"> <li>• Not enrolling the child in school</li> <li>• Not supporting the child to attend school</li> </ul> <p><b>Health and developmental</b></p> <ul style="list-style-type: none"> <li>• Not attending to the child’s medical needs</li> <li>• Not attending to the child’s expressed distress</li> <li>• Neglecting to feed the child</li> <li>• Not having food available for the child</li> <li>• Not clothing the child appropriately</li> <li>• Not attending to child’s personal hygiene</li> <li>• Not protecting the child from sibling or step-parental physical or sexual abuse</li> </ul>	<p><b>Supervisory</b></p> <ul style="list-style-type: none"> <li>• Abandoning the child</li> <li>• Leaving the child alone for age-inappropriate periods</li> <li>• Leaving the child with strangers</li> <li>• Not providing age-appropriate boundaries</li> <li>• Not searching for the child or notifying police when the child is missing (sometimes weeks)</li> <li>• Relinquishing the child without investigating supports</li> <li>• Refusing to collect children from police station or school, or to support the child at court</li> </ul>

<sup>43</sup> Includes half and step siblings. Mean number of siblings for children with and without neglect apparent = 3.7 vs 2.8 respectively,  $p < 0.05$ .

**Physical abuse.** At least 60% of children were physically abused by a household or family member, including 13% of children who had been physically abused by both parents. One quarter of children (23%) had also been physically abused by someone other than a parent, typically a step-parent, or extended family member including siblings, grandparents, and aunts/uncles. Physical abuse from extended family members sometimes occurred in the context of kinship placements where the perpetrator was the child’s carer. A small number of children were victims of physical abuse from foster carers or romantic partners. In addition to these experiences (not included in the figures), at least 12 children (4%) had experienced physical assault perpetrated by someone outside of the family, including neighbours, other children from school or residential care environments, or police. Males and females were equally likely to have been physically victimised (60% of each group). In contrast to findings relating to family violence exposure, there was no significant difference in the proportion of Indigenous (53%) and non-Indigenous children (65%) exposed to physical abuse.

The nature of physical abuse experienced by children varied. Parents or caregivers were rarely charged in relation to these incidents, despite children sometimes requiring medical attention, such as stitches, as a result of the abuse. It was equally rare that physical abuse resulted in children being removed from the home or caregiver, with the exception of those where the child was young (e.g. under 5 years), or the abuse resulted in bone fractures.

In typical cases children were more or less victimised by chronic violence perpetrated by angered caregivers, in conjunction with exposure to other maltreatment (e.g. family violence, emotional abuse and neglect). Most physical abuse constituted caregivers lashing out at children to punish, ‘discipline’, control, or otherwise frighten the child. Children were so punished, for instance, for not going to bed at the parents’ request, for being untidy, for losing or damaging the parent’s property, for being rude to neighbours, and for getting into trouble at school.

**Examples of physical abuse by parents, step-parents and other caregivers**

- Assaulting the child with objects such as belts, power cords, kitchen utensils, or chairs;
- Burning the child with flames or cigarettes;
- Bruising the child’s body;
- Grabbing the child by the throat, and/or choking them;
- Punching the child, including to the head;
- Throwing the child into walls and objects;
- Kicking the child;
- Restraining the child to chairs or other objects;
- Slapping the child’s face; and
- Pulling the child’s hair and ears.

There was substantial overlap between the presence of family violence and physical abuse in this group of children. While for 15% of children there was no indication of either family violence or physical abuse, 24% were exposed to family violence only, 12% physical abuse only, and around one half of children (48%) were exposed to both family violence and physical abuse. In other words, among children who were exposed to family violence, two thirds (67%) were also physically abused. Further examination of cumulative harm and adversity is contained in Section 4.2.5.

**Emotional abuse.** Excluding the emotionally abusive nature of other forms of child maltreatment (including family violence exposure), at least 54% of children experienced other direct forms of emotional abuse, predominantly from parents and other caregivers (e.g. step-parents or kinship carers).

More than one in ten had experienced this maltreatment from both parents (14%). Among the sample, females (62%) were more significantly more likely to have direct emotional abuse incidents in their files compared to males (50%)<sup>44</sup>.

### Examples of direct emotional abuse by parents, step-parents and other caregivers

- Dismissing the child's abuse experiences, or blaming the child for these (e.g. blaming the child for the child's sexual victimisation, blaming the child for other abusive punishments);
- Cruelly rejecting the child (e.g. stating they hate the child, that they hope the child dies, telling the child they are unwanted, repeatedly threatening to abandon or relinquish the child);
- Displaying threatening, frightening or aggressive behaviour toward the child;
- Threatening to kill or harm the child;
- Name-calling towards the child (e.g. 'slut', 'idiot', 'bitch', 'retard', 'dog', 'damaged');
- Confining children in cupboards and dark rooms, depriving the child of water and toilet facilities;
- Kicking or locking the child out of home, including at young age(s) and to homelessness;
- Humiliating the child as punishment (e.g. shaving the child's head);
- Threatening the child with the parents' suicide and/or exposing children to suicide attempts;
- Denigrating or punishing the child's need for care (e.g. wanting closeness with the other parent, labelling the child as 'attention-seeking');
- Requiring child to consistently care for younger siblings and family members at an inappropriate age, including requiring/encouraging the child to miss school to do so; and,
- Encouraging or forcing (e.g. via threats) the child to engage in criminal or harmful acts (e.g. stealing and other serious crimes, substance abuse, prostitution, and begging for money).

**Sexual abuse.** More so than other forms of maltreatment, sexual abuse was difficult to establish and enumerate from case files. Sexual abuse included experiences of sexually abusive contact (rape, fondling, groping and other forms of sexual assault), as well as the child's victimisation by acts of voyeurism, exhibitionism, and exposure to adult sexual acts including pornography, by adults. The sexual exploitation of children by adults, including transactional acts as well as exploitative relationships, was also included.

Case files often included allegations by the child and/or others (e.g. parents, workers), but for various reasons these were not always investigated or prosecuted by police or Child Protection (e.g. the child not wishing to give evidence, child being too traumatised to testify). Therefore, allegations of sexual abuse, excluding those which police, Child Protection, or other qualified clinicians suggested may be fabricated, were included. Children who accessed sexual assault services were also included as having experienced sexual abuse, except when it was identified that this was in relation to their own sexually-abusive behaviours. At times, there were suggestions that a child may have been sexually abused (e.g. a mother suspecting that her ex-partner may have sexually abused a child). Such cases were not enumerated for the purposes of this section. Also excluded were those children who had a substantiated notification of sexual harm, without any further evidence of the nature of the abuse. This was because risk of sexual harm may be substantiated under circumstances where sexual abuse had

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<sup>44</sup> This difference approached statistical significance ( $p=.06$ , 2-tailed).



not occurred, for instance, where a parent permits a registered sex offender to live in the family home, or to care for the child.

Based on the above criteria, at least 21% of children had sexually abusive experiences, and a further 6% of children (17 children) had indications of possible sexual abuse. Most sexual abuse was perpetrated by people other than parents<sup>45</sup>, including step-parents or step-grandparents, uncles, cousins, parents' friends, neighbours, carers (including kinship and foster carers), siblings, step-siblings, school peers, neighbourhood children, other children in residential or foster care placements, teachers' aides, and strangers. Females (36%) were significantly more likely than males (13%) to have sexually abusive experiences recorded in their case files<sup>46</sup>. No differences were identified in the proportion of Indigenous (22%) and non-Indigenous (21%) children whose case files evidenced their sexual abuse.

### 4.2.3 Childhood bereavement

As previously indicated, a substantial proportion of children in the sample had experienced childhood bereavement, including loss of parents, siblings, step-parents, extended family and friends.

**Parental death.** At least 20% of children had at least one deceased parent, including 23 children whose mothers had died (8%) and 39 children whose fathers had died (13%). Analysis of the child's age at parental death did not reveal any significant trends<sup>47</sup> (Figure 13), however maternal deaths occurred somewhat more often between 4 and 8 years, while paternal deaths occurred somewhat more often between 12 and 16 years. Overall, 60% of mothers had died when the child was aged under 8 years, while 66% of fathers died when the child was aged over 8 years old.

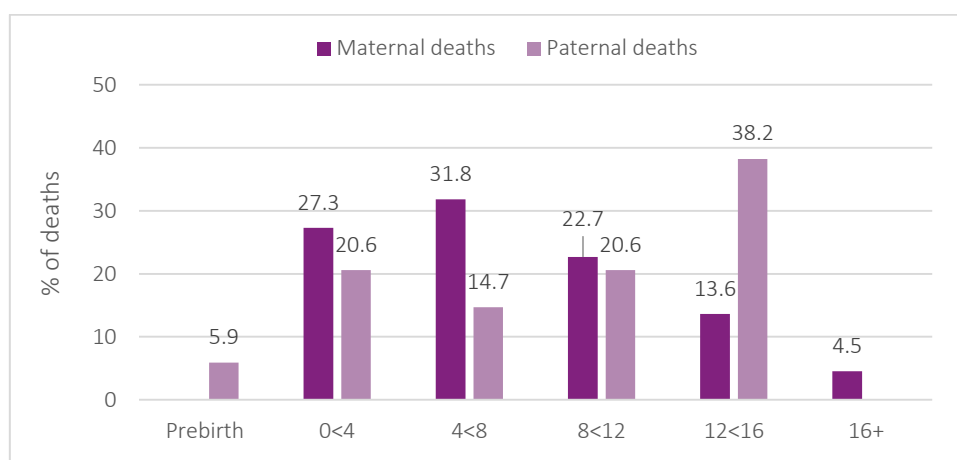


Figure 13. Age of children at parental death (years)

There were no significant differences based on gender or Indigeneity among children who had experienced parental death. Where the cause was known<sup>48</sup>, at least half of parental deaths (49%) were traumatic in nature, for instance sudden and unexpected deaths, or deaths as a result of homicide, suicide, overdose or motor vehicle accidents (MVAs) (Figure 14). Children were often further harmed by the circumstances of these traumatic deaths, which included several instances of the murder of one

<sup>45</sup> According to case file data seven children had experienced sexual abuse perpetrated by their fathers (2.3%), and two were sexually victimised by their mothers (0.7%).

<sup>46</sup>  $p < .0001$

<sup>47</sup> The year of parental death was identifiable for all but one of the mothers (96%), and for 34/39 fathers (87%).

<sup>48</sup> Information concerning the cause of parental death was available in 60% of cases (25/62 deaths).

parent by the other, and children discovering parents' bodies following fatal overdoses. Even where parental deaths were of natural causes, circumstances were often sudden and confronting. Examples were seen of children who experienced the sudden death of one parent while the other was incarcerated, children being present during sudden parental death due to fatal aneurisms, epilepsy, or asthma, and children who discovered the body of the deceased parent.

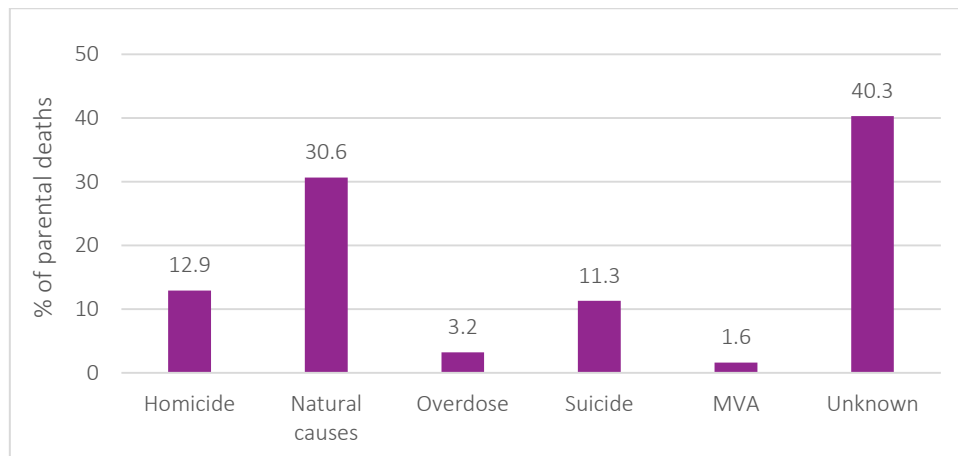


Figure 14. Cause of parental death

#### Case example: Bailey

*Bailey is a 16 year-old male who came before the CD with armed robbery, reckless conduct endangering life, theft of motor vehicle, property damage and other charges. His first police charges were at age 10, and included theft of motor vehicle charges, which were all dismissed (he was found doli incapax). Bailey was the subject of 22 Child Protection notifications commencing from birth, and five substantiations commencing from three years of age. Many notifications were assessed as maliciously arising from family feuds. Protective concerns related to parental capacity to manage Bailey and his siblings due to substance abuse, family violence, criminal activity, and significant neglect (including emotional, environmental and educational neglect). Bailey had regular school suspensions from Grade 4 for bullying, though his primary school was noted to provide a safe place where his welfare needs were met, for instance he could wash and clean his clothes, and sleep uninterrupted. After a family move, Bailey changed schools and by Grade 6 was attending for two hours per day with the support of an integration aide, during which he played with blocks alone. Soon after, he was expelled after an incident during which he damaged school property and chased after other students.*

*At this time, at age 11, Bailey first entered foster care, because he “went off his head”, and was unable to regulate his emotions and behaviour. He moved between foster care and his mother from 12 to 15 years, with no charges incurred during in this period. Bailey had been diagnosed with ADHD and had numerous accidents, including being hit by cars several times resulting in loss of consciousness. After his expulsion from school, he sporadically attended an alternative education program, where Bailey said he met a lot of ‘criminals’, and began to use cannabis daily from 13 years. While he wasn’t charged with offences, Bailey began offending again at the age of 13 years following the death of a grandparent. Two years later, at 15 years, Bailey’s father passed away from natural causes, and at the same time*

*his foster care placement broke down, precipitating his entry to residential care. Bailey reports that he began using ice at this time, which made him feel “angry and invincible”, and his offending escalated significantly leading to the current CD matters. Bailey was first remanded at 15 years, where he was diagnosed with an intellectual disability, and was released on a community-based order. He offended four days later and was sentenced to a custodial Youth Justice Centre Order.*

**Other death.** Aside from parental death, 12% of children had experienced some other significant death and/or bereavement, including 13 children who had lost at least one sibling (including full, half, step or foster siblings). The death of grandparents, aunts, uncles, extended family and foster parents were also experienced by 21 children. It is important to note that these extended family members and others were often key figures in children’s lives, many of whom were children’s primary caregivers at some time. Finally, at least four children had experienced the death of close friends as a result of overdose, suicide, or motor vehicle accidents. Again, the circumstances of these deaths were often traumatic, and several children were present at the deaths of close family and friends and caregivers. Other family members, including siblings, often died in violent circumstances including as a result of house fires, murders and suicide. There were no significant gender or cultural differences in the proportion of male/female or Indigenous/non-Indigenous children who had experienced these kinds of significant bereavements.

#### 4.2.4 Other factors: familial homelessness, intellectual disability and acquired brain injury

A range of other factors were identified which potentially impacted on parental capacity to care for and protect children, including homelessness, intellectual disability, and acquired brain injury. In addition to these factors, poverty, unemployment, and parental health issues were also commonly noted from case files, though these were not able to be quantified consistently. Poverty was apparent from both the presence of homelessness/housing instability (see below) and other indicators of neglect for children (e.g. lack of food or adequate clothing), as well as the fact that it was rarely apparent that either parent had a history of employment. Parental health issues included severe epilepsy, asthma, heart conditions, obesity, and cancer which, in a number of instances, had also contributed to the parent’s death (see Section 4.2.3).

**Homelessness.** Homelessness, transience and unstable accommodation of parents, (both while caring and not caring for the child), were identified from files. In total, 17.7% of children had parents who were identified as experiencing homelessness, transience or unstable accommodation. Homelessness was most commonly identified among mothers (11%), or both parents (4%), and least commonly among fathers (3%). In many instances, the mother’s homelessness was associated with escaping family violence from her spouse, at times involving the child.

**Intellectual disability.** Overall, 5.3% of children had a parent or sibling who had an intellectual disability<sup>49</sup>. Only five of the children (1.7%) had one or both parents who presented with an intellectual disability. However in a further four cases, children’s mothers were suspected of having an undiagnosed

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<sup>49</sup> This is lower than reported figures which indicate that 7-9% of statutory Child Protection matters involve parental ID. See e.g. <https://aifs.gov.au/cfca/publications/parental-intellectual-disability-and-child-protection-key-i> and [https://minerva-access.unimelb.edu.au/bitstream/handle/11343/33783/65994\\_00000466\\_01\\_Pride%26Prejudice\\_2002.pdf?sequence=1&isAllowed=y](https://minerva-access.unimelb.edu.au/bitstream/handle/11343/33783/65994_00000466_01_Pride%26Prejudice_2002.pdf?sequence=1&isAllowed=y)

intellectual disability, and for another three children, mothers had some other cognitive or intellectual difficulty (excluding ABI) such as borderline intellectual functioning. Seven children (2.3%) also had a sibling with an intellectual disability.

**Acquired brain injury.** A total of 12 children (4%) had a parent or caregiver who had an acquired brain injury, including fathers (7 children), mothers (3 children), and other caregivers, such as kinship carers and step-parents (2 children). Additionally, data from case files suggested a further two mothers were suspected of potentially having an acquired brain injury but had not been assessed.

#### 4.2.5 Cumulative adversity

Examining the prevalence of individual challenging circumstances or adverse events fails to capture the multiple and complex nature of the difficulties the children faced. A cumulative score was therefore developed which totalled the number of the following ten (10) adverse and challenging circumstances faced by each child:

- Parental death;
- Exposure to family violence;
- Household mental health issue;
- Household substance abuse;
- Household criminal justice system involvement;
- Parental separation/divorce;
- Childhood physical abuse;
- Childhood emotional abuse;
- Childhood sexual abuse; and,
- Childhood neglect.

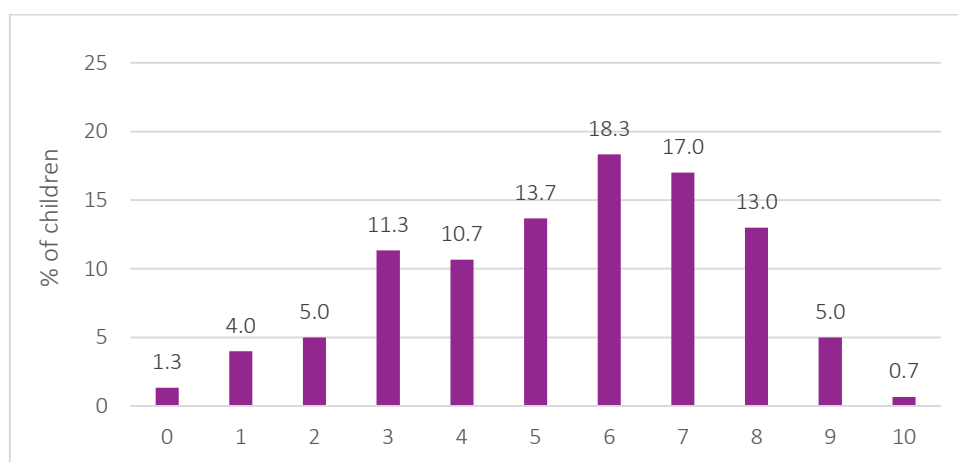


Figure 15. Minimum prevalence of cumulative adversity (score out of 10)

The mean number of adverse events experienced was 5.4. As shown in Figure 15 above, less than 2% of children had experienced none of these events, and only around 10% of children experienced fewer than three of the above adverse events. Conversely, two thirds of children (68%) had experienced five or more of these adverse childhood events.

**Cumulative challenging family circumstances.** Children were often cumulatively exposed to:

- Family violence;
- Household mental illness;
- Household substance abuse; and,
- Household criminal justice system involvement.

While for 13% of children, these challenging circumstances were not evident, more than 80% of children were exposed to at least one of these challenging family circumstances. One half of the children (51%) were exposed to three or more of these circumstances.

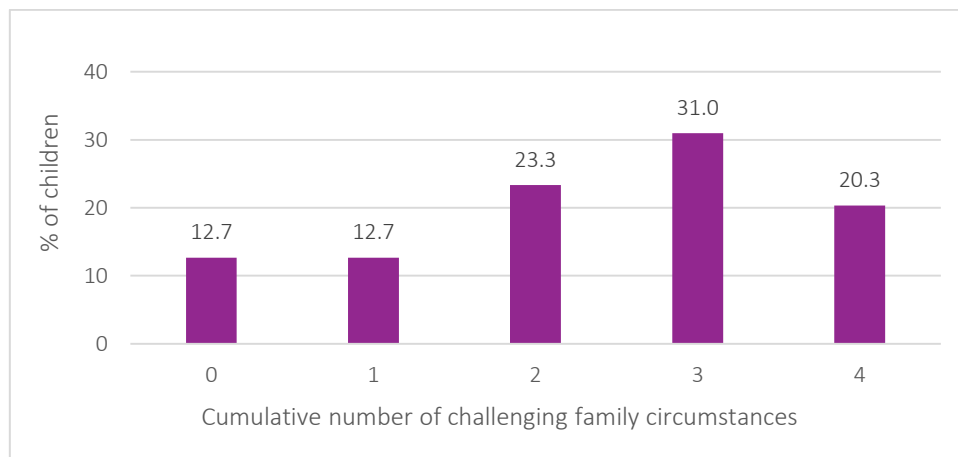


Figure 16. Minimum prevalence of cumulative exposure to household family violence, mental illness, substance abuse and criminal justice system involvement

The most common clusters of exposure to challenging household circumstances among children were:

- Family violence, mental illness, substance abuse and criminal justice involvement – 20%
- Family violence, mental illness, and substance abuse – 15%
- Family violence and substance abuse – 10%
- Family violence only – 6.3%
- Family violence and mental illness – 6%

Statistically significant positive correlations were observed between *all* household challenging and adverse family circumstances, presented in decreasing order of strength:

- Substance abuse and criminal justice system involvement (moderate,  $r = .394, p < .01$ )
- Substance abuse and family violence (moderate,  $r = .378, p < .01$ )
- Substance abuse and mental illness (small,  $r = .261, p < .01$ )
- Family violence and criminal justice system involvement (small,  $r = .254, p < .01$ )
- Family violence and mental illness (small,  $r = .249, p < .01$ )
- Mental illness and criminal justice system involvement (small,  $r = .138, p < .01$ )

**Multi-type maltreatment.** A limitation of the data is the lack of quantification of maltreatment severity or chronicity. However enumeration of multi-type maltreatment is possible as one indication of cumulative harm. The data indicated that children were also often cumulatively exposed to:

- Neglect;
- Physical abuse;
- Emotional abuse; and,
- Sexual abuse.

While 14% of children had not experienced these any of these forms of maltreatment according to case file data, two thirds of children had experienced two or more types of maltreatment, while 40% had been victimised by three or four of these types of maltreatment.

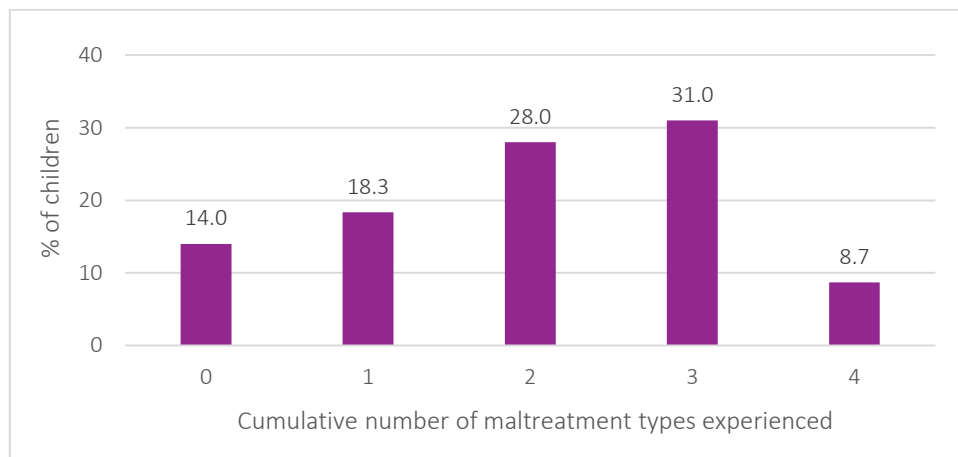


Figure 17. Minimum prevalence of cumulative exposure to neglect, physical, emotional and sexual abuse

The most common clusters of exposure to abuse and neglect among the children were:

- Neglect, physical abuse, and emotional abuse – 25%
- Neglect only – 10%
- Neglect and physical abuse – 9%
- Neglect, physical abuse, emotional abuse, and sexual abuse – 9%
- Physical abuse and emotional abuse – 7%

Statistically significant positive correlations were observed between the following maltreatment types:

- Physical and emotional abuse (moderate,  $r = .435, p < .01$ )
- Emotional abuse and neglect (small,  $r = .237, p < .01$ )
- Physical abuse and neglect (small,  $r = .176, p < .01$ )

### Summary: Adverse and challenging childhood experiences

Children were exposed to a range of adverse and challenging family circumstances. Family violence exposure was endemic among the sample (74% of children), and was more prevalent among Indigenous children (95%). Family violence was typically at the more severe end of the spectrum, and sometimes resulted in Intervention Orders, criminal charging of perpetrators, and children ‘going on the run’ with the victimised parent (typically mothers). At least 50% of children had a family member with a mental health issue, including serious mental health concerns which resulted in parental psychosis, parental psychiatric hospitalisation and parental suicide attempts for 5-10% of children. A minimum of 69% of children had a parent or household member who abused substances, and at least 41% had a parent or close family member who had contact with the criminal justice system. Around 5% of children had a parent with either an intellectual disability or acquired brain injury. Cumulative challenging family circumstances were common, with three-quarters of children having experienced two or more of the following circumstances: family violence, household mental illness, household substance abuse or familial criminal justice system involvement.

At least 20% of children had a deceased parent, and 12% had experienced some other significant death of siblings, extended family and/or close friends. In many instances, deaths were sudden and/or traumatic in nature, and a number of children had discovered the body of a deceased parent or step-parent, or were present when the death occurred. Though a range of socio-economic conditions existed among the children, the challenging and adverse experiences described above often occurred the context of familial poverty, including experiences of transience and homelessness.

Children's maltreatment experiences indicated that at least 60% were victims of physical abuse, 53% of emotional abuse, 21% of sexual abuse, and 67% of neglect. Experience of multi-type maltreatment was also common, with two thirds of children having experienced two or more of these maltreatment types. Certain groups of co-occurring maltreatment types were more commonly observed, specifically physical and emotional abuse, emotional abuse and neglect, and physical abuse and neglect.

There was also overlap between maltreatment and other challenging and adverse events. For instance, among children exposed to family violence, two thirds were also physically abused. While physical and emotional abuse were relatively equally experienced from each parent, sexual abuse was likely to be perpetrated by others including step-parents or step-grandparents, other kith and kin, carers, or strangers. Females were significantly more likely to have experienced sexual and emotional abuse compared to males. Compared to other forms of maltreatment which were often perpetrated by one or the other parent, children were more likely to have experienced neglect from *both* parents.

Noted limitations were the challenge in identifying and quantifying children's experience of emotional neglect from case files, as well as the absence of more nuanced indicators of cumulative harm (severity or chronicity). Additionally, while this section has focused on outlining children's exposure to risks, also evident in case files were observations of supportive and loving relationships in children's lives. These included those sometimes experienced with parents, romantic partners, and others (e.g. former carers or workers, parents of romantic partners, grandparents and the child's cultural/ethnic community). The inability to quantify the presence of these supportive relationships, which potentially constitute a protective factor against more serious offending, is a limitation of the study approach.

### 4.3 Child protection involvement

Child Protection data were gathered from Family Division files, including Child Protection reports submitted to the Children's Court. There were limitations around these data, most particularly from the lack of information on non-statutory Child Protection involvement, and the inconsistent availability of data concerning interstate Child Protection involvement.

#### 4.3.1 Current statutory Child Protection involvement

Over one half of the children in the study (57.3%) were on a current Family Division (FD) Child Protection Order, at the time of their current Criminal Division (CD) matter. The children not on a current order however had a history of statutory Child Protection involvement. It should be noted that 39 children (13%) were aged 18 years and older at the time of their current CD matter, and were not eligible to be subject to an FD order<sup>50</sup>.

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<sup>50</sup> Only children and young people aged under 18 years may be subject to FD Orders.

**Grounds for most recent statutory Child Protection involvement.** Section 162(1) of the *Children Youth and Families Act (2005)*, directs that a child may be deemed to be in need of statutory protection where one or more of the following grounds exist:

- (a) Parental child abandonment with no suitable alternative carer available
- (b) Parental death or incapacitation with no suitable alternative carer available
- (c) Significant harm/risk of significant harm due to physical injury
- (d) Significant harm/risk of significant harm due to sexual abuse
- (e) Significant harm/risk of significant emotional or psychological harm likely to damage child's emotional or intellectual development
- (f) Significant harm/risk of significant harm to child's physical development or health

Within the legislation the harm referenced in grounds (c) to (e) may be brought about by a single act, omission or circumstance, or may accumulate through a series of continuing acts, omissions or circumstances (cumulative harm, Section 162(2)). Further, the Court may find the matter proven on the basis of *actual harm* suffered or the *likelihood* of such harm occurring in the future (Section 162(3)). Figure 18 indicates the proven grounds of the child's most recent Family Division matter, demonstrating that most matters were proven in relation to physical and psychological/emotional harm, or risk of such harm. Data were available for 276 children, with the remaining 24 children having FD matters which were struck out, in which Child Protection withdrew from proceedings, or which were ongoing at the time of the case file audit.

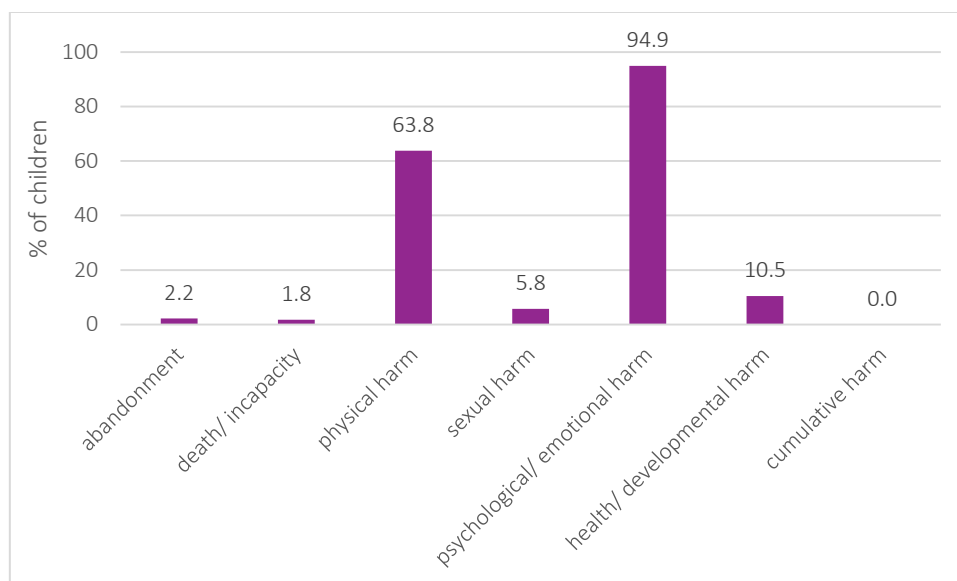


Figure 18. Grounds under which Family Division matters were proven

A Family Division (FD) matter can be proved on multiple grounds. The most common combinations of grounds under which children's *most recent* FD matter was proven (for the 276 children with proven matters) are listed in Table 1 below<sup>51</sup>.

<sup>51</sup> Remaining FD matters were proven on the basis of grounds (e)&(f) (2.5%); (d)(e)&(f) (1.1%); (a) (0.7%); (a)&(e) (0.7%); (b)&(e) (0.7%); (b)(c)&(e) (0.7%); (c)(d)&(f) (0.7%); (d)&(e) (0.7%); (f) (0.7%); (a)(c)&(e) (0.7%); (b)&(c) (0.4%); (c)&(f) (0.4%).



Table 1. Most common grounds under which children's most recent FD order was proven

Grounds proven	Number of children	% of proven FD matters
Physical harm (c) and psychological/emotional harm (e)	140	50.7%
Psychological/emotional harm (e)	75	27.2%
Physical harm (c), psychological/emotional harm (e), and health/developmental harm (f)	15	5.4%
Physical harm (c), sexual harm (d), and psychological/emotional harm (e)	9	3.3%
Physical harm (c)	9	3.3%
Other grounds/combinations of grounds	28	10.1%
Total	276	100%

**Type of Family Division Orders.** Child Protection Orders were being legislatively reviewed during the period of the study. For ease of presentation, terminology associated with FD Orders at the time of the study is used. Note that Custody to Third Party Orders are now abolished<sup>52</sup> (see information on Family Division Orders in Appendix 1). Overall, 43% of children were not on FD Orders at the time of their CD matters, and had solely historical statutory Child Protection involvement. Most of the remaining children were on final orders (i.e. not interim Orders) (Figure 19). Approximately 40% of children were under longer-term orders involving removal from the home, including Family Reunification Orders, Care By Secretary Orders, Permanent Care Orders and (the now abolished) Custody to Third Party Orders.

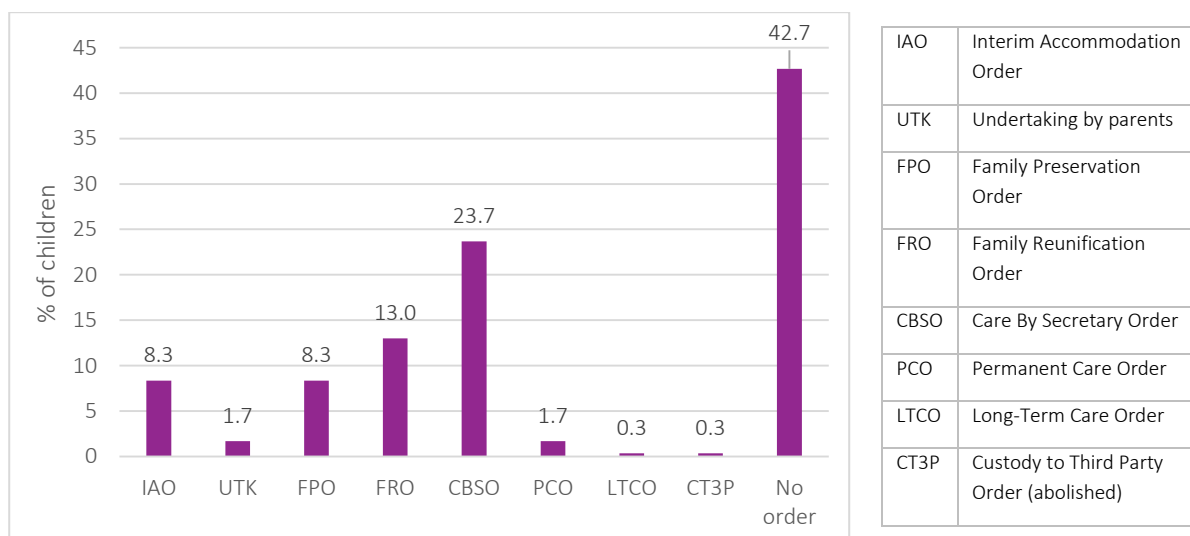


Figure 19. Children's Family Division Orders at the time of index Criminal Division matter(s)

**FD Court proceedings.** The number of judicial officers (Magistrates and Judges) presiding over children's most recent FD matter was able to be determined for 77% of children<sup>53</sup>. It should be noted that for some children, the most recent FD matter was in their early childhood. Where FD matters were ongoing, the number of judicial officers were totalled to the date that the index CD matter was heard. The

<sup>52</sup> Children who were on a Custody to Secretary Order are counted as being on a Family Reunification Order. Children who were on a Long-Term Guardianship to Secretary Order are counted as being on a Long-Term Care Order. Children who were on Supervision Orders are counted as being on a Family Preservation Order.

<sup>53</sup> The year(s) of the most recent FD case varied widely. Judicial officers were counted in relation to each Court event, including adjournments, for the child's most recent FD case.

number of judicial officers presiding over a child’s most recent FD matter ranged from one to 25. Greater numbers of judicial officers were typically involved in children with contested FD matters, those who had been under multiple FD Order types (e.g. IAOs, FROs and CBSOs), and those whose FD matters returned to the court for several extensions (e.g. CBSOs which must be extended every two years). Though around half the children had five or fewer judicial officers, nearly one quarter had eight or more judicial officers involved with their case.

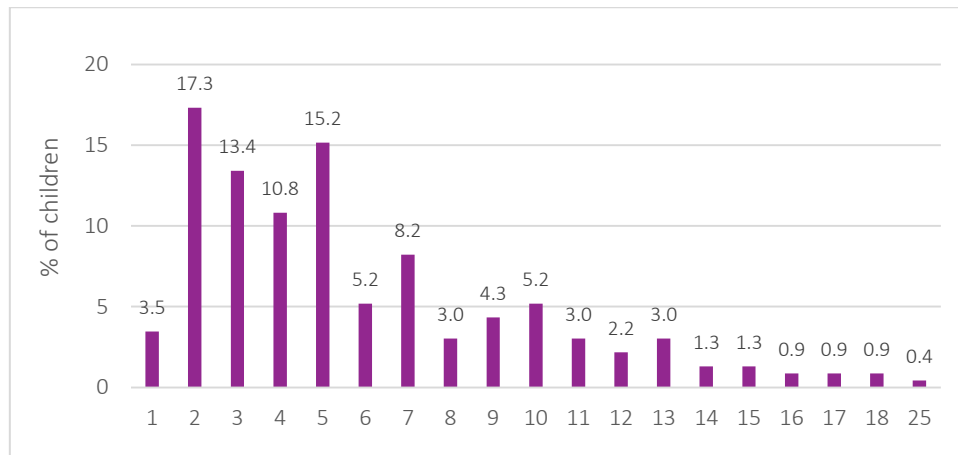


Figure 20. Number of judicial officers in relation to most recent FD matter

The time period between the initial and final Court event in relation to a child’s most recent FD matter was also determined (Figure 21). While 44% of FD matters were finalised within one year, 36% of matters returned to Court for two years or more. During this period a child may have been subject to several final orders (e.g. FROs or CBSOs), and these figures include matters which required extensions to custodial orders (e.g. CBSOs), made every two years.

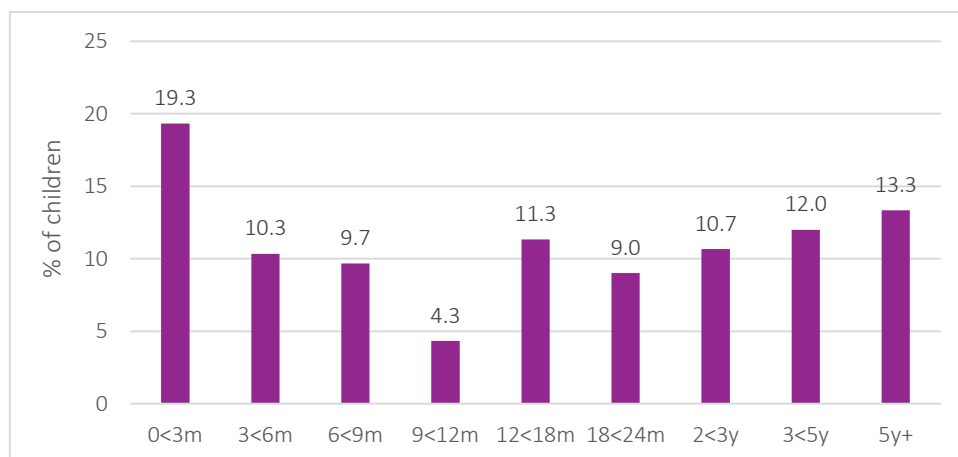


Figure 21. Time in Court for most recent FD matter

**FD Order to 18<sup>th</sup> birthday.** Children’s FD matters were examined to ascertain whether or not a child would be on a Care or Protection Order until their 18<sup>th</sup> birthday. For 47% of children this was not the case as either Child Protection had withdrawn from proceedings or allowed current orders to lapse, the current Protection Application had been struck out, or the Court had refused to make an Order. Approximately 20% of children would be on Child Protection orders to their 18<sup>th</sup> birthday, and the remaining 31% had ongoing FD matters at the time of their index CD matter being heard. Of those aged 18 years and older at the time of their index CD matter, one third (13/39 children) had been on statutory

FD Orders until their 18<sup>th</sup> birthday. It was also observed that for a number of children, statutory Child Protection involvement was reintroduced subsequent to the period of data collection.

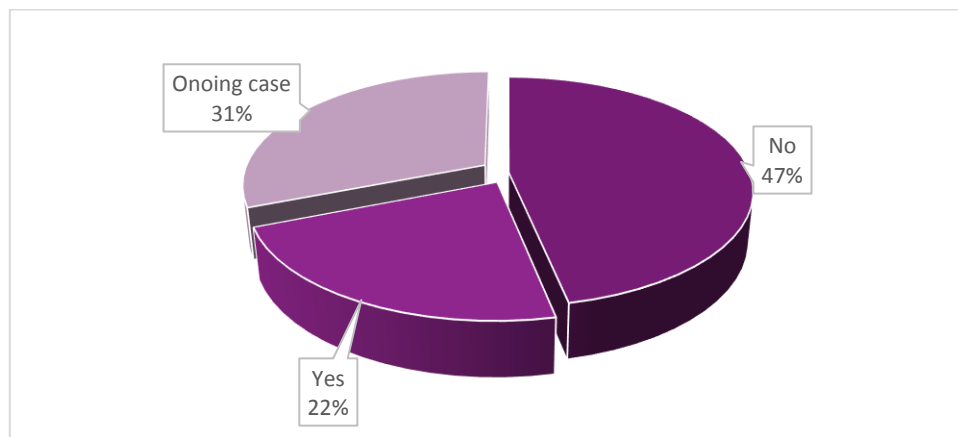


Figure 22. Did statutory Child Protection involvement continue to the child's 18th birthday?

**Current placement and carer(s).** At the time of their index CD matters, 43% of children were in out-of-home care (OHC) arrangements, and 57% were not, including 13% of children who were aged over 18 years at the time of their CD matters. It should also be noted that children's circumstances often changed rapidly, and a number of children were observed to move into OHC arrangements subsequent to their CD matters being heard. Figure 23 depicts the care arrangements for the 130 children who were in OHC and the 170 children who were not in OHC at the time of their index CD matters being heard.

Around two-thirds of children in OHC were formally in residential care (69%), with smaller numbers in the care of kith/kin or permanent carers (also mostly kin). A further three children were in foster care arrangements, and eight were in independent living (mostly lead tenant). 'Other' care arrangements included disability and mental health placements, as well as homelessness. Children not in OHC tended to be cared for by their mothers only, though smaller numbers were cared for by both parents (26 children), or fathers only (17 children). Around one fifth of those not in OHC were aged 18 years or older at the time of their index CD matter(s) being heard.

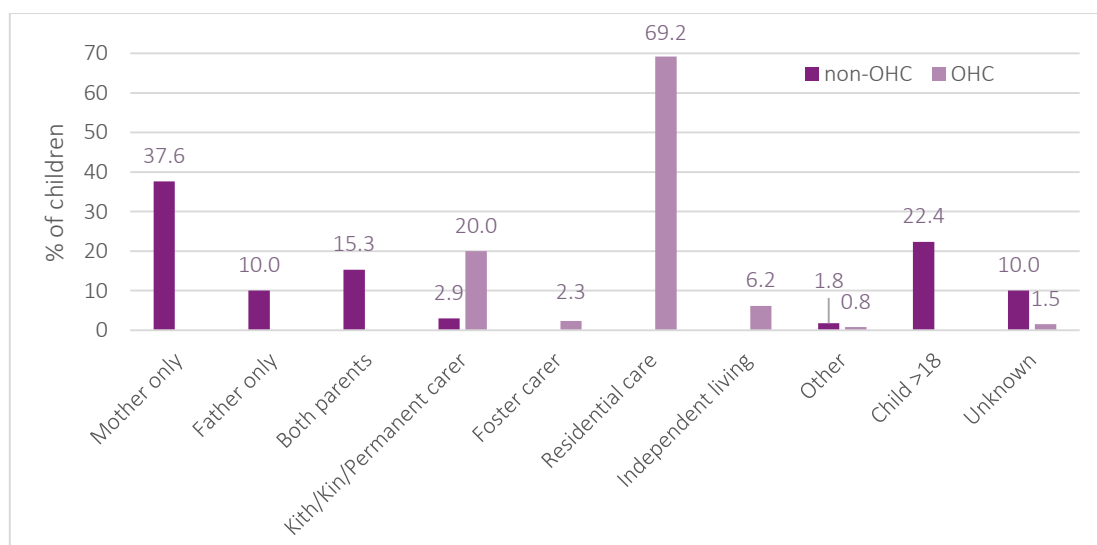


Figure 23. Children's care arrangements at the time of index CD matters

**Duration in care for children in OHC.** The duration in OHC, or the time since the child was last placed with parent(s) was determined for children in OHC at the time of their index CD matters (130 children). Note that children may have experienced multiple placements during this time. As shown in Figure 24, around one quarter of children had been in OHC for less than one year, and around 36% had been in OHC for less than two years at the time of their index CD matters being heard. On the other hand, around 25% of the children had been in OHC for over 5 years.

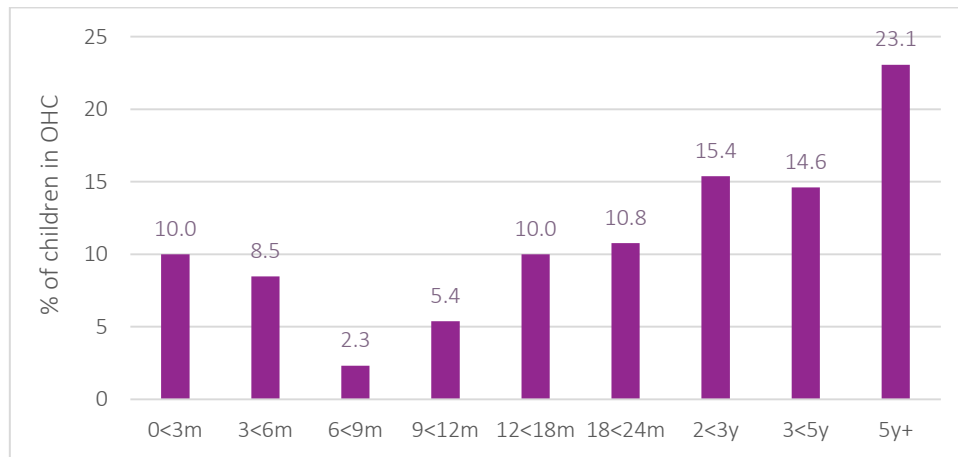


Figure 24. Time in OHC since last placed with parent for children in OHC at time of index CD matters

**Children in Youth Justice custody.** As previously indicated, 8.3% of children were in custody at the time of their index CD matters. This excludes children who were released from custody as the result of the CD hearing (e.g. those sentenced to community-based orders). Around 50% of the children in custody (14 children) were not in OHC at the time of their CD matters, including four children who were aged 18 years and older. These children primarily resided with their mothers, fathers or other kin (10 children) prior to custody. Children in custody who were in OHC primarily resided in residential care prior to custody, though a small number had been residing with kith and kin.

#### 4.3.2 Previous statutory Child Protection involvement

Case files were analysed in relation to historical Child Protection involvement. The data in this section contain some limitations as follows:

- **Extra-jurisdictional Child Protection involvement.** For at least 16 children (5.3%) there was evidence of interstate or overseas child protection involvement which was unable to be consistently captured. For a further 10 children (3.3%), it is possible that Child Protection involvement had occurred in another jurisdiction as they had lived interstate or overseas at some time.
- **Non-statutory Child Protection involvement.** Voluntary engagement with Child Protection services was difficult to capture. As such, the data potentially underestimate a child's non-statutory Child Protection involvement, including notifications, particularly for those children whose statutory Child Protection involvement was limited to early life.

**Number of previous notifications and substantiations.** A child’s number of Victorian Child Protection notifications prior to the most recent FD matter varied from zero to 53<sup>54</sup>. While 9% of these children had no Victorian notifications prior to the most recent FD matter, 24.3% of children had ten or more previous notifications. No significant differences were observed by gender or Indigeneity in children’s total number of notifications or substantiations.

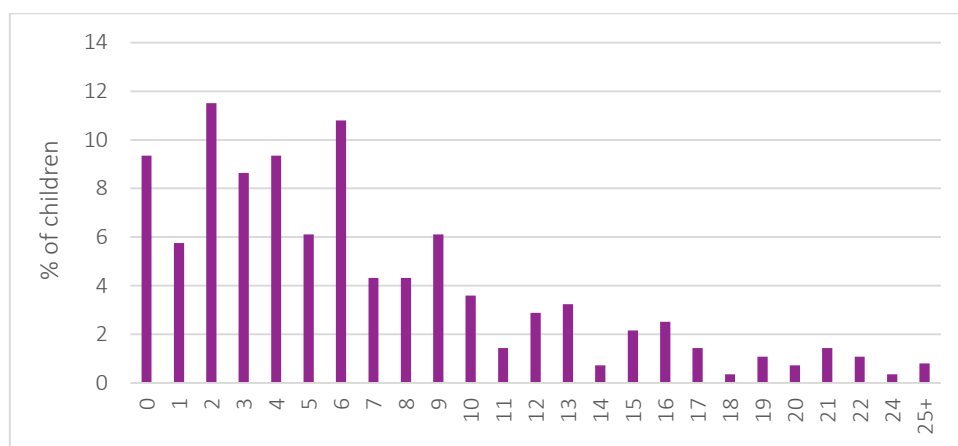


Figure 25. Number of previous Victorian Child Protection notifications

At least 70% of children with one or more previous notifications also had previous substantiations, which ranged from zero to seven substantiations per child<sup>55</sup>. Nearly one third of children with previous notifications had no previous substantiations, while around 11% of children had four or more previous substantiations.

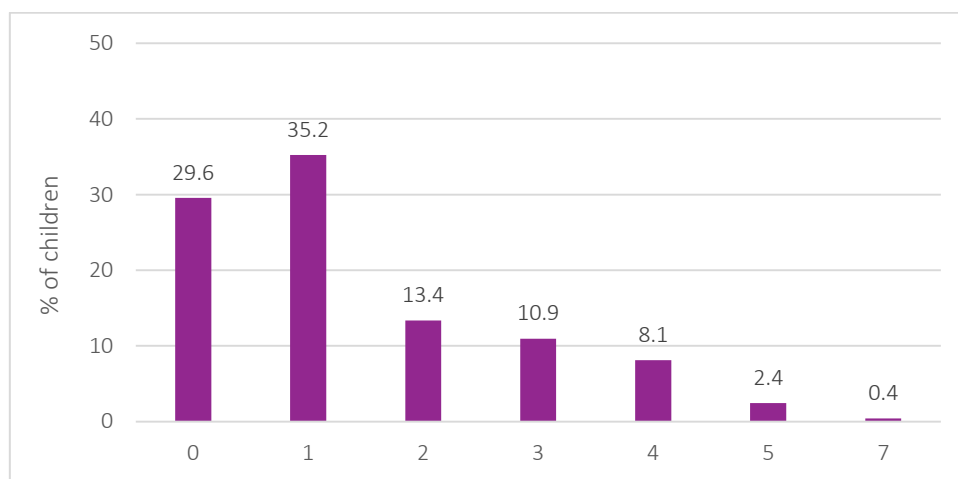


Figure 26. Number of previous substantiated Victorian Child Protection notifications (children with prior notifications only)

**Age of first notification and substantiation.** Age of first notification and substantiation was identified for 89% of children. As shown in Figure 27, 43% of children had first been notified to Victorian Child Protection in the first two years of life, including those notified pre-birth (seven children), and one quarter had substantiations prior to age two. Conversely, just over one quarter of children had no

<sup>54</sup> Data were available for 93% of children.

<sup>55</sup> Information about the number previous substantiated notifications (on any ground(s)) was available for 82% of children. Figures exclude extra-jurisdictional Child Protection substantiations.

notifications prior to 10 years of age, and nearly half of the children were aged ten years or older at first substantiated notification. No significant gender differences were observed in relation to age of first notification and substantiation. Furthermore, Indigenous children were no younger on average at their first notification than their non-Indigenous counterparts. Indigenous children were however, significantly younger at first substantiation compared to non-indigenous children in the sample ( $m = 6.9$  years vs  $8.7$  years,  $p < .05$ ).

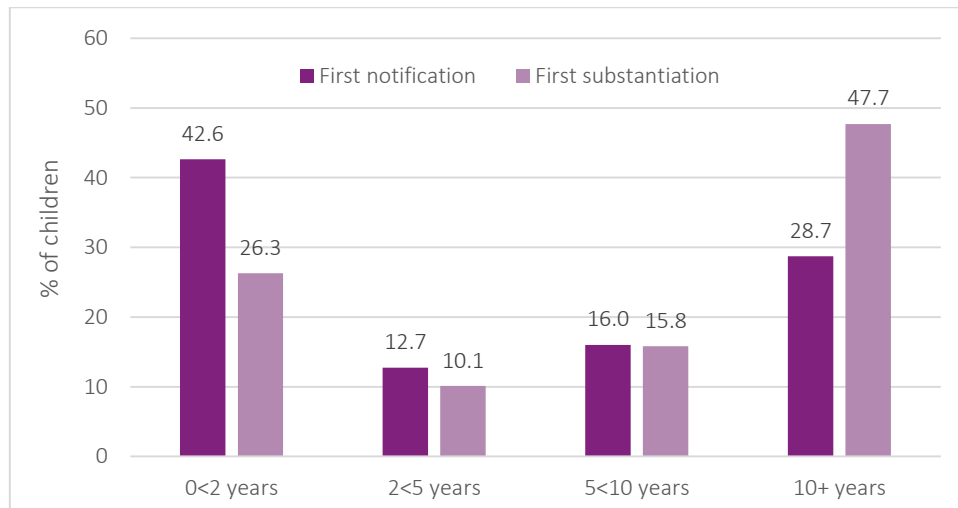


Figure 27. Age of first Victorian Child Protection notification and substantiation

Children could be divided into four groups based on their initial Victorian Child Protection notifications and substantiations as follows:

Initial Child Protection involvement	<5 years	5<10 years	10+ years
Early childhood (36%)	1 <sup>st</sup> Notification/ 1 <sup>st</sup> Substantiation		
Midchildhood (19%)	1 <sup>st</sup> Notification		
		1 <sup>st</sup> Substantiation	
Delayed late childhood (16%)	1 <sup>st</sup> Notification		1 <sup>st</sup> Substantiation
Late childhood notification (29%)			1 <sup>st</sup> Notification/ 1 <sup>st</sup> Substantiation

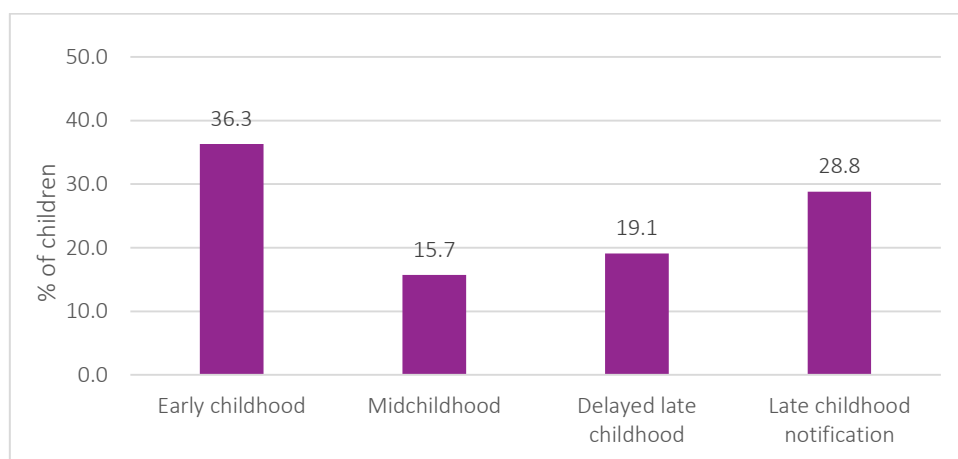


Figure 28. Patterns of initial Child Protection involvement

As shown in Figure 28 above, around one third of children had substantiations under five years of age, while just over one quarter were unknown to Child Protection before 10 years of age. The time between children’s first notification and substantiation varied widely, between zero days and fifteen years. However approximately 40% of children had their first notification substantiated, and half had a substantiated notification within nine months of their initial notification.

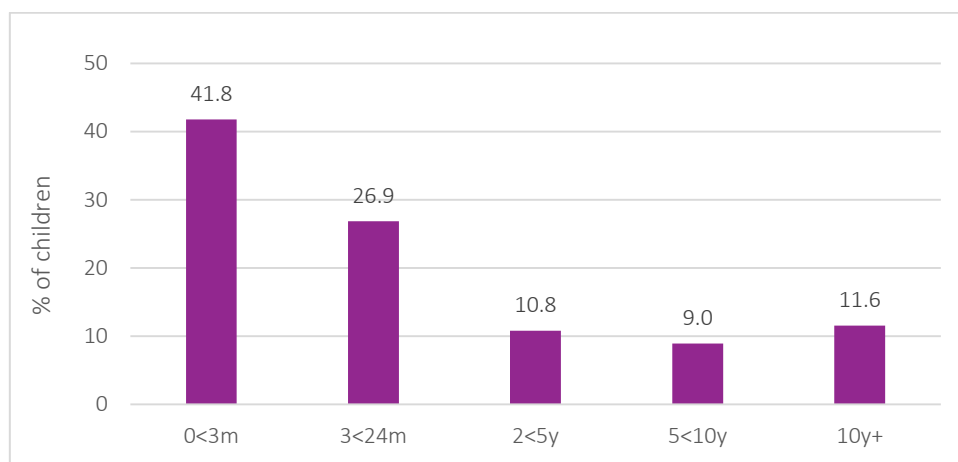


Figure 29. Time between first notification and first substantiated notification

**Grounds of previous notifications and substantiations.** Most children had been notified to Child Protection in relation to emotional and/or psychological harm, and more than three quarters due to physical harm or significant risk of physical harm (Figure 30). These two grounds were also the most commonly substantiated types of harm. Notifications relating to health/developmental harm and cumulative harm were also prevalent among children. Cumulative harm and sexual harm were proportionately the least likely notification grounds to be substantiated. It should be noted that significant risk of physical harm may also be determined in relation to the child’s risk-taking behaviour in adolescence (e.g. significant substance abuse in relation to which parents are unable or unwilling to provide boundaries), and is not always indicative of actual physical abuse.

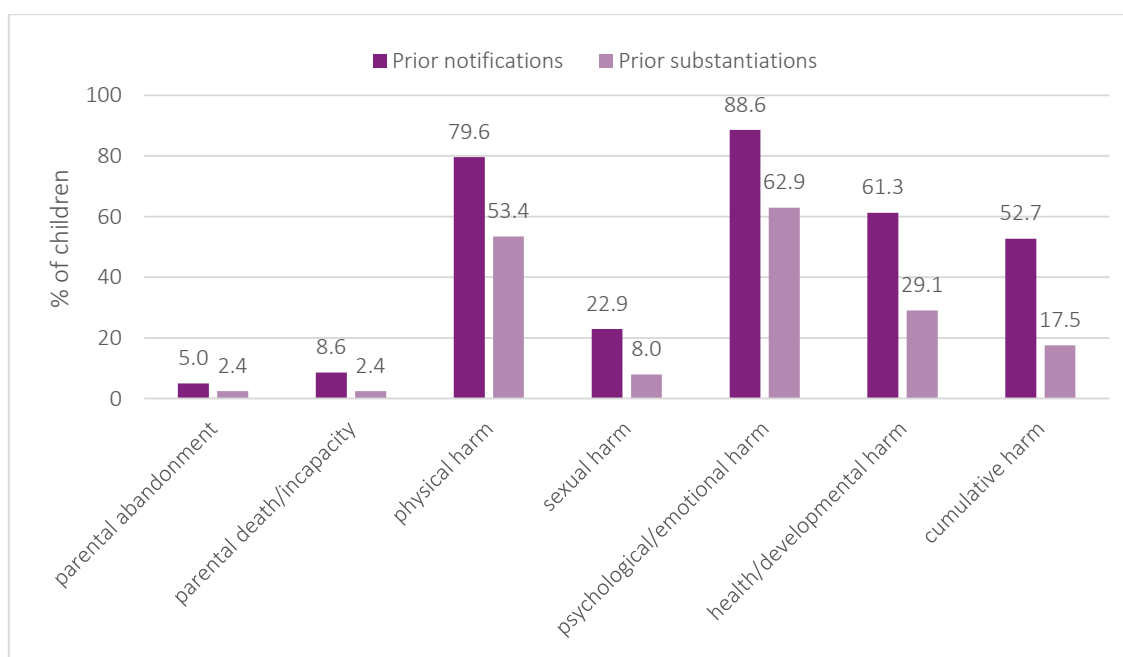


Figure 30. Ground(s) of previous Victorian Child Protection notifications and substantiations

History of multi-type maltreatment or risk of multiple types of harm was also evident among children. Based on the available data, less than 12% of children had been previously notified to Child Protection on only one ground (e.g. physical harm, sexual harm etc.), while around one half had been notified in relation to four or more different grounds. Similarly, over 50% of children had substantiated notifications on multiple grounds.

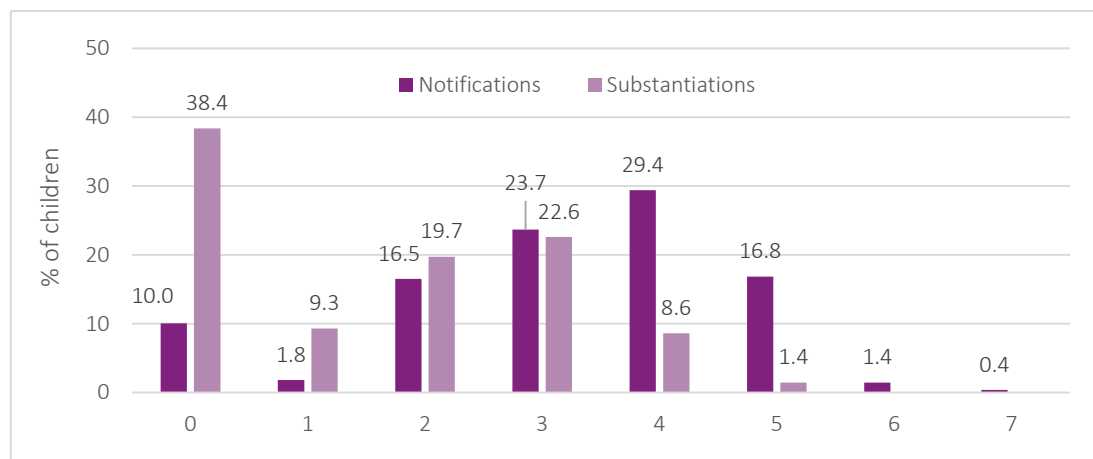


Figure 31. Cumulative number of ground(s) of previous Child Protection notifications and substantiations

**Previous statutory FD orders.** Almost all children had previously been subject to an Interim Accommodation Order, and more than one third had previously been subject to Family Preservation Orders and Family Reunification Orders (see Figure 32).

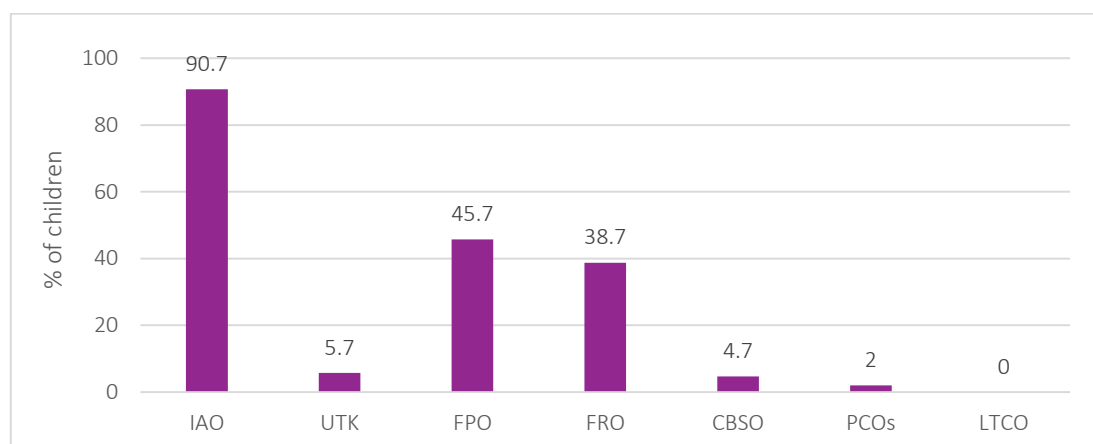


Figure 32. Previous statutory FD Order type(s)

Children’s number of previous statutory FD orders ranged from zero to 36, with a median of four previous orders. In total, this group of children had been subject to a 1551 statutory FD orders over their lives, the majority of which were Interim Accommodation Orders. Smaller numbers of Family Preservation Orders and Family Reunification Orders were evident in the case files, though less than 6% of children had been previously subject to long-term orders such as Care By Secretary Orders or Permanent Care Orders prior to their current FD Order.<sup>56</sup>

<sup>56</sup> Note that legislation relating to FD Orders was amended during the study period. See Appendix 1 for Family Division Order conversions utilised for consistency of reporting.



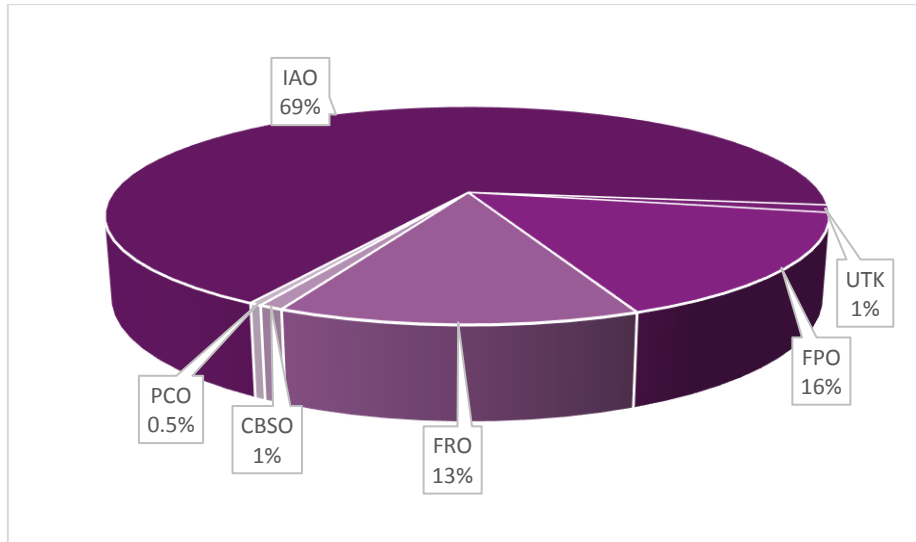


Figure 33. Total previous FD Orders<sup>57</sup>

**Previous out-of-home care (OHC) placement, placement types and OHC trajectories.** At least 52% of children had previously been in OHC placements prior to their current placement, including temporary placements and secure settings (Secure Welfare Services). This figure includes 16 children (5.3%) who had been placed in Secure Welfare Services *only* (i.e. no other OHC placements) on Interim Accommodation Orders<sup>58</sup>. Figure 34 below shows the age of first Victorian OHC placement.

Aside from formal OHC placements detailed above, some children had experienced informal kinship arrangements prior to their first OHC placement, and others had interstate OHC experiences not captured here. Nonetheless, the data demonstrate that nearly two thirds of the children ultimately placed in Victorian OHC only had their first OHC placement after the age of 10 years (62%). Overall, by the age of 10, 70% of cross-over children had not had an OHC placement.

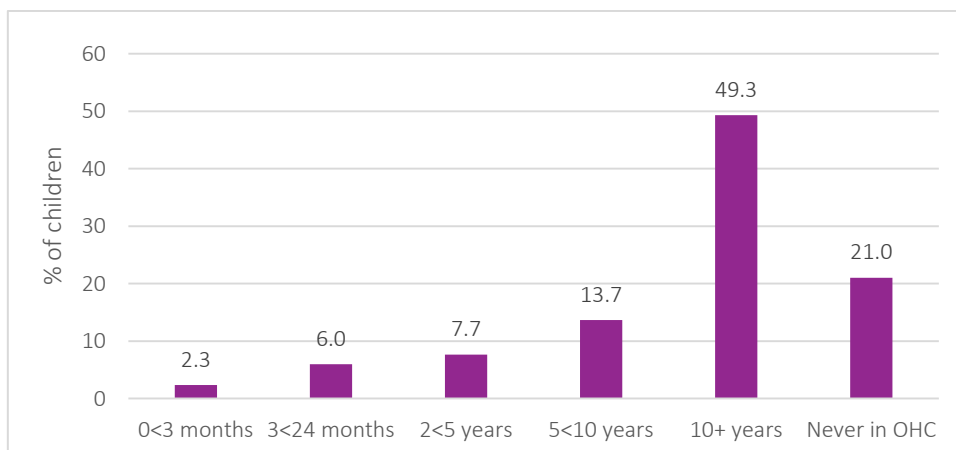


Figure 34. Age of first out-of-home care (OHC) placement

<sup>57</sup> IAO - Interim Accommodation Order, UTK – Undertaking by parent(s), FPO – Family Preservation Order, FRO – Family Reunification Order, CBSO – Care By Secretary Order, PCO – Permanent Care Order.

<sup>58</sup> Secure Welfare Placement is discussed in more detail in the next Section (4.3.3).

Placement in OHC after 10 years of age was observed to commonly occur in the context of:

- Parental incapacity/neglect (e.g. due to parental substance use, mental health concerns, homelessness, incarceration);
- Parental relinquishment due to inability to manage the child’s emotional/behavioural needs (e.g. challenging behaviour, substance use, absconding, or offending, including family violence towards parents/siblings);
- Parental relinquishment in the context of adolescent-parent conflict; and/or
- Maltreatment (e.g. physical abuse of the child).

Overall, 40% of children had experienced relinquishment by caregivers at some point, including by parents, kinship or foster carers. As indicated above, this most often occurred in the context of adolescent-caregiver conflict or owing to inability by parents/caregivers to manage children’s behaviours. Most children ultimately placed in OHC had been exposed to maltreatment and significant adverse childhood events. However, maltreatment and other adverse events tended to have occurred in the child’s earlier life, and less often acted as the catalyst for OHC placement after 10 years of age.

Figure 35 indicates the time between first notification, or first substantiation and the child’s first OHC placement. Of children who were placed in OHC, around 32% were so-placed within two years of their first notification, and 48% were placed in OHC within two years of their first substantiation<sup>59</sup>. It is unclear how these figures compare to other children placed in OHC, though it would appear that a substantial proportion of the cross-over children remained with parent(s) for significant periods.

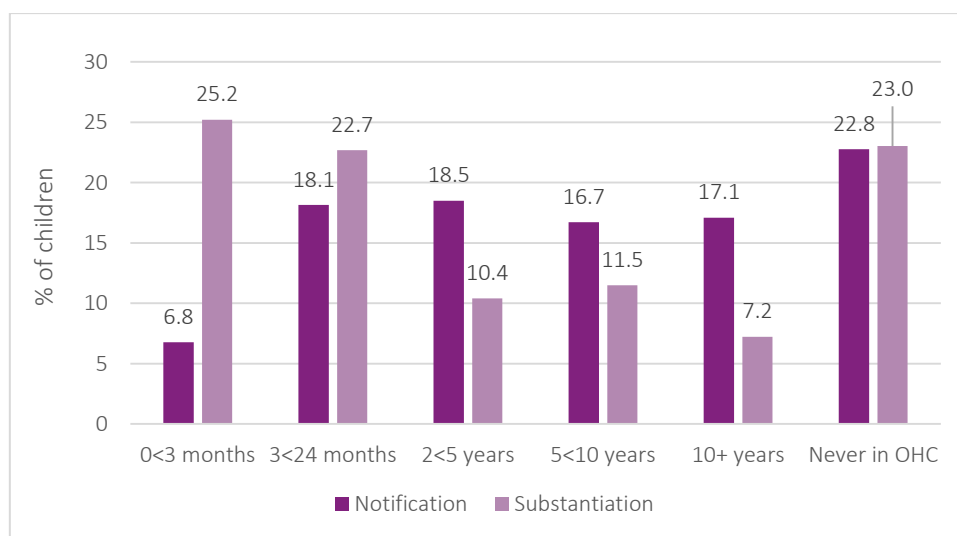


Figure 35. Time between first notification/substantiation and first out-of-home care (OHC) placement

Figure 36 shows the time spent in previous OHC placements, as well as the cumulative total time spent in OHC (including current placements) for children aged under 18 years, and those aged 18 years or

<sup>59</sup> Figures are for n=281 children (notifications) and n=277 children (substantiations) due to missing data.

older at the time of their index CD matters. Most children (79%) had been placed in OHC at some point in time. The total time spent in OHC ranged from zero to 17 and a half years, and the average cumulative time spent in OHC was 31 months (median 11 months). Overall, 40% of children had spent more than two years in OHC, while 14% of children had spent less than 3 months in care. Aside from statutory OHC placements, at least 30 children (10%) had spent significant periods of time in the voluntary care of others, primarily extended family (grandparents, aunts and uncles). Children placed in OHC experienced greater exposure to adverse and challenging life events compared to those never placed in OHC<sup>60</sup>. Children placed in OHC were also more likely to have:

- An intellectual disability<sup>61</sup>;
- A neurodevelopmental/neurological condition other than an intellectual disability<sup>62</sup>;
- A mental health diagnosis<sup>63</sup>;
- A trauma or attachment-related disorder diagnosis, behavioural disorder diagnosis, or experience of self-harm/suicidal ideation<sup>64</sup>; and,
- Exhibited sexualised behaviour<sup>65</sup>.

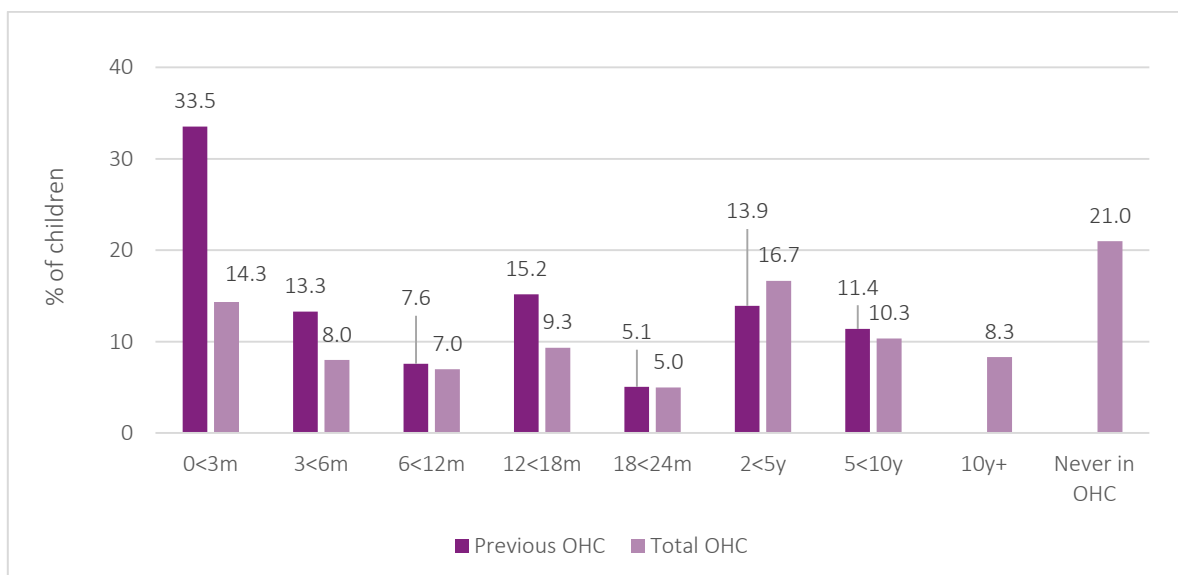


Figure 36. Previous time in out-of-home care (OHC) and cumulative total time in OHC

A strong correlation was observed between age of first OHC placement and total time in OHC ( $r = -.662$ ,  $p < .001$ ). Figure 37 below maps current and previous OHC trajectories for children aged under 18 years, and those aged 18 years and older (39 children). The data indicate that children currently in OHC were evenly divided between those who experienced current OHC only, those who had both current and past OHC placements, those who only had past OHC placement, and those who were never in OHC.

<sup>60</sup> Number of adverse/challenging events (out of 10), 5.5 (OHC placement) vs 4.3 (no OHC placement),  $p < .001$ .

<sup>61</sup> Placement in OHC – Intellectual disability (19.3% vs 8.9%,  $p < .05$ ).

<sup>62</sup> Placement in OHC – Other neurodevelopmental/neurological condition (58.8% vs 42.5%, this fell just outside of statistical significance at  $p = .051$ ).

<sup>63</sup> Placement in OHC – any mental health diagnosis (68.4% vs 32.1%,  $p < .001$ ).

<sup>64</sup> Placement in OHC – trauma/attachment-related disorder (22.5% vs 7.1%,  $p < .01$ ), behavioural disorder (23.8% vs 5.4%,  $p < .001$ ), self-harm/suicidal ideation (39.6% vs 17.9%,  $p < .05$ ).

<sup>65</sup> Placement in OHC – sexualised behaviour (23% vs 5.3%,  $p < .001$ ).

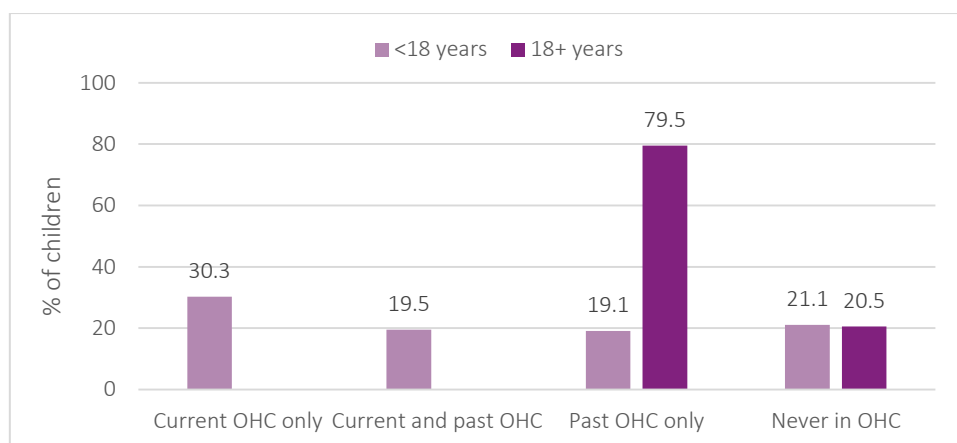


Figure 37. Children's out-of-home care (OHC) trajectories

Case file data did not permit quantification of number of placements, though most children placed in OHC were observed to experience little stability. While a small number of children experienced longer-term placements with kin, foster carers or permanent carers, in the main children had several breakdowns in placements with parents, kinship carers, foster carers and residential care. Of those children who had been in OHC, 19% had spent time in foster care, 60% had spent time in residential care, and 5% had a lead tenant placement. Among children in OHC at the time of their CD matters, 83% had been placed in residential care at some time.

While no differences were observed by gender or Indigenous status in relation to placement in residential care, children placed in residential care were more likely to have:

- An intellectual disability<sup>66</sup>;
- A neurodevelopmental/neurological condition other than an intellectual disability<sup>67</sup>;
- A mental health problem<sup>68</sup>;
- A diagnosis of mood disorder, trauma or attachment-related disorder, or behavioural disorder<sup>69</sup>; and,
- Exhibited sexualised behaviour or absconding behaviour<sup>70</sup>.

#### 4.3.3 Secure Welfare Services placement

Children may be placed in Secure Welfare Services (SWS) where there is a substantial and immediate risk of harm, and it is assessed that no less restrictive option exists to protect a child. The Children's Court can order such a placement for children subject to Interim Accommodation Orders, and Child Protection may order such a placement where children are subject to other FD Orders (Family Reunification Orders, Care By Secretary Orders or Long Term Care Orders). At least 28% of children had experienced a SWS placement, including 60 children (20%) who had Court-directed SWS placements, and 24 children (8%) who had other evidence of SWS placement in their files. This figure is significant since the use of SWS placement is relatively rare, and the figure represents an absolute minimum as

<sup>66</sup> Placement in residential care – intellectual disability (68.8% vs 45.5%,  $p < .01$ ).

<sup>67</sup> Placement in residential care - Other neurodevelopmental/neurological condition (58.8% vs 42.5%,  $p < .01$ ).

<sup>68</sup> Placement in residential care - Any mental health diagnosis (62.2% vs 30.3%,  $p < .0001$ ).

<sup>69</sup> Placement in residential care - 60.0% (mood disorder) vs 45.3% (no mood disorder)  $p < .05$ ; 65.5% (trauma/attachment-related disorder) vs 46.5% (no trauma/attachment-related disorder),  $p < .05$ , 78.9% (behavioural disorder) vs 42.0% (no behavioural disorder),  $p < .0001$ .

<sup>70</sup> Placement in residential care – sexualised behaviour (29.2% vs 9.9%,  $p < .001$ ); absconding behaviour (79.1% vs 60.1% ,  $p < .01$ ).

data relating to Child Protection-directed SWS placement were not consistently available. Children were generally placed in SWS due to high-risk behaviours placing them at substantial risk of harm, such as:

- Significant substance use;
- Absconding;
- Involvement in sexual exploitation or risk of sexual exploitation; and/or
- Serious mental health concerns and suicide attempts.

Females (39.4%) were significantly more likely to have indications of an SWS placement in their case files compared to males (22.5%)<sup>71</sup>. While Indigenous children were more likely to have experienced a SWS placement compared to non-Indigenous children (38.2% vs 24.7%), this difference was not statistically significant<sup>72</sup>. Further examination of issues surrounding placement in SWS, including conflicts between placing a child in SWS or remand is contained in Section 4.8.2.

#### 4.3.4 Therapeutic Treatment Orders

Where children exhibit sexually abusive behaviours, Child Protection may apply to the Family Division of the Children's Court for a Therapeutic Treatment Order (TTO), requiring the child to attend an appropriate treatment program to address the behaviours. Such Orders can be made for up to 12 months, and may be extended for a further 12 months. In total, 12 children (4%) were subject to a TTO, though it was evident from case file information that other children had attended similar therapeutic services on a voluntary basis.

#### Summary: Child Protection involvement

Nearly 60% of children were on a current FD Order at the time of their index CD matters, while the remaining children were solely subject to historical statutory Child Protection involvement. A child's most recent FD matter was most commonly proven on the grounds of risk of 'psychological/emotional harm' (94%), and/or 'physical harm' (64%). At their index CD matters, 40% of children were under longer-term FD Orders involving removal from the home; 43% of children were placed in OHC, while 44% were not. Additionally, 13% of children were 18 years and older at their index CD matters and ineligible to be under an FD order. Among children in OHC, most were placed in residential care (69%), while 22% resided with kith, kin, foster or permanent carers. For children who remained at home, the carer tended to be their mother (40%), though smaller numbers were cared for by both parents, or by their father. Approximately one-fifth of children were on Child Protection Orders to their 18<sup>th</sup> birthday, and 31% were involved in ongoing FD matters.

Examination of Child Protection histories revealed that almost all children had been the subject of previous notifications, and one quarter of children had ten or more prior notifications. While 43% of children had first been notified to Victorian Child Protection prior to age two, just over one quarter of children had no notifications before 10 years of age. The sample was evenly divided between children who had been first substantiated before (52%), and after 10 years of age (48%).

Most children (89%) had been notified historically in relation to emotional and/or psychological harm, and more than three quarters in relation to physical harm; these were also the most common substantiation grounds. Notifications relating to health/developmental harm and cumulative harm

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<sup>71</sup>  $p < .005$

<sup>72</sup>  $p = .08$

were also prevalent, though cumulative harm and sexual harm were proportionately the least likely grounds substantiated. Nearly two-thirds of the children ultimately placed in OHC had their first OHC placement after the age of 10 years (62%). OHC placements after 10 years of age commonly occurred in the context of parental incapacity (e.g. due to substance abuse), maltreatment, parental relinquishment due to inability to manage the child’s emotional/behavioural needs, or parent-child conflict.

Overall, 80% of children had spent time in OHC, which was more prevalent among cross-over children with an intellectual disability, with other neurodevelopmental/neurological conditions, with any mental health diagnosis, and with specific mental health diagnoses related to trauma and attachment-related disorders, or behavioural disorders. Finally, at least 28% of children had also experienced Secure Welfare Services placement, which was twice as likely among females compared to males.

#### 4.4 Education experiences

Data relating to current educational engagement were available for 95% of children, though the level of detail available varied. Figure 38 displays education-related case file data, which are supported by descriptive findings of children’s current engagement in education, training or employment, educational histories, challenges regulating emotion and behaviour at school, school exclusion, educational supports, and alternative and special education engagement.

##### 4.4.1 Current education, training or employment engagement

As shown in Figure 38, 17% of children were to some extent engaged with education, training or employment at the time of their index CD matters, and a further 5.5% had some indication of educational engagement (e.g. engaging with education in custody, being enrolled to soon resume education after school holidays). However even those children engaged in education, training and employment very rarely attended on a full-time basis, or even regularly, and they had almost invariably experienced historical educational disruption, disengagement and/or exclusion. At the same time, there were a handful of children whose educational engagement was high and consistent.

There was no statistically significant difference between the proportion of males (15.2%) and females (20.7%), nor the proportion of Indigenous (10.9%) and non-Indigenous (18.4%) children currently engaged in education, training or employment.

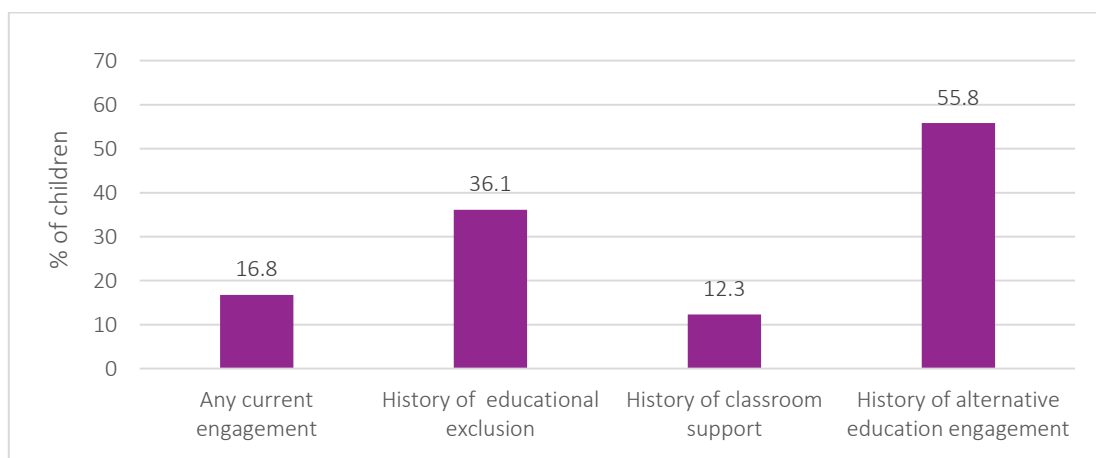


Figure 38. Minimum prevalence of current educational engagement, and history of exclusion, classroom support and alternative education

#### 4.4.2 Historic school engagement

Case file data indicated that cross-over children rarely experienced stable educational engagement. They were children with educational difficulties, beginning very often in primary school. School transience was frequently described, with many children attending three or more primary schools, and a range of secondary environments (e.g. conventional school, alternative school programs) for children who maintained a connection to the educational system. Poor school attendance was prevalent, often commencing from a young age, and it was common for children to have been placed on a modified timetable from primary school in response to emotion and behaviour regulation challenges. Examples were seen of children repeating primary school grades due to non-attendance, and secondary school engagement was often described as 'sporadic'. At the most severe end were children who had experienced educational disengagement for several years by the time of their CD matters. It was difficult to identify a specific 'age of educational disengagement' for each child, as trajectories typically included periods of disengagement, alongside times of attempted engagement or re-engagement, including with alternative educational options (e.g. flexible schools, tutoring, discussed in Section 4.4.4). Transience and low school attendance in *primary* school typically occurred in the context of:

- Parental transience, including intrastate, interstate and international movement;
- Parental educational neglect (e.g. not engaging with schools in terms of the child's attendance or behaviour, not enrolling the child, adequately feeding or clothing the child for school);
- Parents lacking resources to support child's education (e.g. finances, or being unable to drop the child to school);
- Current abuse, including exposure to family violence;
- Children avoiding school due to interpersonal conflicts, bullying, or racism;
- Placement changes for children in formal out-of-home care or informal care arrangements;
- Children emotionally and mentally overwhelmed by dealing with their family circumstances; and,
- School exclusion due to a child's emotion or behaviour regulation challenges.

Transience and low school attendance in *secondary* school was typically associated with:

- Placement changes for children in formal out-of-home care (OHC) or informal care arrangements, particularly entering OHC, or returning to family from OHC;
- Current maltreatment, including or exposure to family violence;
- School exclusion due to children's challenges regulating their emotion or behaviour;
- Children being overwhelmed and fatigued due to current health, behaviour, wellbeing and mental health challenges (e.g. significant anxiety or recent bereavement);
- Children feeling shame or anxiety about anticipated judgement or rejection (e.g. in relation to offending, being academically behind their peers, or anticipating future exclusion);
- Children attending appointments to manage various needs and challenges;
- Children being homeless or transitioning in/out of custodial and other secure environments (e.g. Youth Justice custody, mental health or secure welfare units);
- (Less frequently) children's caring responsibilities (e.g. towards younger siblings or their own child); and,
- Children avoiding school due to interpersonal conflicts, bullying or racism.

A child's social challenges were significant in the troubles they faced at school, including difficulties with bullying, racism, sustaining friendships, and involvement in peer conflict.

#### 4.4.3 School exclusion and children's behavioural and emotional regulation challenges

Challenges regulating behaviour and emotion in school settings were described for at least one half of children, in many cases commencing from primary school, and sometimes preschool.

Based on the available data:

- At least 36% of children had evidence of school exclusion (suspensions and expulsions);
- While school exclusion typically emerged for children in high school (e.g. 13 to 15 years), for 7.7% of children exclusion commenced in primary school;
- Male children were more likely to be excluded from school than female children (44.9% vs 16.7% respectively)<sup>73</sup>;
- There was no difference in the proportion of Indigenous (32.7%) and non-Indigenous (40.4%) children in terms of evidence of school exclusion;
- There was no statistically significant difference in school exclusion between children with (43.8%) and without (35.3%) intellectual disability, or those with borderline intellectual functioning (47.4%);
- Children with learning and communication disorders (54%) and ADHD/ADD (56%) were more likely to experience school exclusion<sup>74</sup>;
- Children with any mental health diagnosis (45.6%) were significantly more likely to have experienced school exclusion compared to those without a mental health diagnosis (24.5%); and,
- Children diagnosed with trauma/attachment-related disorders (51%), or behavioural disorders (62%) were significantly more likely to be recoded as experiencing of school exclusion<sup>75</sup>.

The nature of incidents leading to school exclusion included:

- A child's poor attendance, including late attendance, or truancy;
- Not completing schoolwork;
- Oppositional behaviour towards staff (e.g. 'talking back', being 'naughty', using abusive language, refusing to wear school uniform);
- Disruptive behaviour (e.g. being 'talkative', interrupting or walking out of class);
- Exhibiting sexually inappropriate behaviour, including inappropriate school internet use;
- Fighting with other students;
- Aggressive behaviours, including threatening, assaulting or attempting to harm staff or students, sometimes leading to Intervention Orders; and,

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<sup>73</sup>  $p < .0001$

<sup>74</sup> School exclusion – 54% (learning/communication disorder) vs 32.7% (no learning/communication disorder),  $p < .01$ ; 56.3% (ADD/ADHD) vs 29.9% (no ADD/ADHD),  $p < .001$ .

<sup>75</sup> School exclusion – 45.6% (any mental health diagnosis) vs 24.5% (no mental health diagnosis)  $p < .0001$ ; 50.9% (trauma/attachment-related disorder) vs 33.8% (no trauma/attachment-related disorder)  $p < .05$ , 60.7% (behavioural disorder) vs 31.2% (no behavioural disorder),  $p < .0001$ . Personality disorders and psychotic disorders were excluded from analysis due to small numbers.



- Children on occasion (but in reality rarely), displaying other dangerous, destructive or illegal behaviour at school (e.g. using substances at school, bringing weapons to school, theft or destruction of school/student/teacher property).

Qualitative data indicated that escalation in school behavioural and emotional regulation challenges often coincided with adverse social and relational difficulties faced by children, including:

- Escalating family violence in the home;
- Parental separation;
- Placement changes, particularly returning to family from formal/informal care arrangements, and moving into OHC arrangements;
- A current fractured child-parent relationship;
- Parental rejection or relinquishment;
- Parent or parent figure death (it was observed that expulsions often occurred soon after parental death);
- Current sexual abuse or sexual assault; and,
- Disclosure of abuse to parents (e.g. sexual abuse), particularly where disclosure was disbelieved or otherwise not responded to in a helpful manner (i.e. secondary trauma).

A secondary structural form of school exclusion occurred for some children who faced difficulties in re-enrolment after previous school exclusion or disengagement. Barriers to school enrolment included:

- The wrong time of year for new enrolments;
- Classes being full;
- Not having an appropriate program for the child;
- The child lacking birth certificates or parents not providing other evidence required to enrol the child (e.g. evidence of current address);
- Schools being unable to adhere to safety requirements for the child;
- Schools being unable to subsidise the level of support (e.g. classroom aides) required for the child;
- The child being too young for the available alternative education options; and,
- Schools refusing to enrol the child due to the child's educational history or criminal charges.

#### **Case example: Isaac**

*Isaac is a 15 year-old male, residing with his mother and siblings, who came before the court with 19 charges related to assault, theft, criminal damage, and trespassing. Isaac had 14 Child Protection notifications commencing from 13 months of age, six of which were substantiated. There were four periods of statutory Child Protection involvement with Isaac and his siblings, though he never entered out-of-home care. Concerns for Isaac were due to severe family violence exposure, paternal incarceration, physical and emotional abuse of Isaac by his mother, parental substance abuse and mental health challenges, and neglect. From age three, behavioural challenges for Isaac were observed, and he was given diagnoses of attachment disorder (age four), ADHD (age five), oppositional defiant disorder (age eight) severe reactive attachment disorder (age 10), learning and communication problems, and borderline intellectual functioning. His mother had a diagnosis of post-traumatic stress disorder due to her own victimisation, and she reported becoming*

*dissociated or highly frustrated in response to Isaac's behavioural challenges, at times leading to physical abuse.*

*Isaac frequently changed primary schools; he was barred from playgroups in primary school, and by Grade Three was being sent home at lunchtime. At nine years, Isaac was referred to a specialist social skills program, however he was excluded due to violence towards staff and students. By age 10 he was attending school for two hours per day, and his enrolment was described as "tenuous at best". Isaac's schooling was challenged by his bullying, by a lack of friendships, physically and verbally abusive behaviours, and stealing from other students. He was described as distracted in class and performing below his intellectual capacity. Issues were also noted with Isaac arriving to school with no food, or only junk food. A teacher's aide was required as a safety measure to support Isaac, however the school was unable to continue this arrangement in the long-term due to limited financial supports. Isaac was unable to participate in school activities such as school camp due to his behavioural challenges. He was ultimately expelled from this school at age 11 for assaulting the principal. His mother was uncontactable at this time.*

*While Isaac had some mental health interventions throughout childhood, his engagement appeared inconsistently supported by his caregivers. By age 11, mental health services declined to work with the family due to insufficient family supports. Likewise, child and family support services refused a referral, as mental health services were involved, and the family required more intensive supports than they believed could be offered. By age 12, Isaac was running away from home to avoid family conflict, affecting his engagement with school and supports. At this time his father also died, leading to a behavioural escalation and another school expulsion. At the time of his criminal matters at age 15, home continued to be an unhappy place for Isaac; there were ongoing protective concerns relating to absconding, substance abuse, and family conflict, particularly with an older brother involved with Youth Justice. During the period of his current criminal matters, Isaac was re-enrolled in school, and had sporadic attendance, which increased when he was living at home (as opposed to running away) and Child Protection provided transport support.*

#### 4.4.4 Supports and alternative and special education

Children faced other challenges which affected their schooling both socially and academically: developmental delay, language disorder, intellectual disability, and various mental health problems including attachment disorders, complex post-traumatic stress disorder, ADHD and autism. These are further outlined in Section 4.5. In such cases, a number of children were linked to non-mainstream educational options and were provided with other educational supports:

- 12% of children had a classroom aide, or funding to receive education-related behavioural support;
- 56% of children had engaged in alternative education arrangements, including alternative schools, home schooling, one-to-one tutoring, specialist disability schools, and education delivered in Youth Justice custodial environments;
- 18% of children had engaged in specialist educational programs and services targeting children in OHC settings (Springboard, LOOKOUT, and Navigator programs).

For some children experiencing educational disengagement, positive educational gains were seen at times, which tended to include some of the following elements:

- Ensuring a good match between the child's need and the educational arrangement;
- A responsive alternative education setting or arrangement;
- Provision of external support to attend school for some children in parental care (e.g. from Child Protection, Youth Justice, Disability Client Services or other providers);
- The school's capacity to invest in the child, and sometimes work closely with the care team;
- Placement stability, including sometimes being placed with a sibling;
- Finally, children were nearly always reported to have had positive educational experiences in custody, despite many having been disengaged for substantial periods prior to this time.

#### Summary: Education experiences

Around 17% of children were involved in education, training or employment, however this very rarely reflected full-time, or even regular attendance. Though a handful of children had high and consistent educational engagement, most children rarely had stable educational engagement, and their difficulties often commenced in primary school. School transience was common, as was low attendance, and many children were placed on a modified timetable from primary school owing to emotional and behavioural regulation challenges. For a substantial proportion of children (at least 50%) educational challenges were complex and long-standing, and appeared to be related to a child's unmet protective, mental health, and disability needs.

Transience and low school attendance were associated with family factors (including family transience, educational neglect, and current maltreatment), systems factors (e.g. OHC placement changes) individual factors (e.g. emotional/behavioural regulation challenges) and environmental factors (interpersonal conflicts, bullying). Children's social challenges formed a significant component of school difficulties, including experiences of bullying, racism, and other peer conflicts. Challenges regulating behaviour and emotion at school were described for at least half of the children, and at least 36% of children experienced school exclusion, including 8% who experienced exclusion in primary school. School exclusion was more common among males, and children diagnosed with trauma and attachment-related disorders, and behavioural disorders.

At least 12% of children had a classroom aide or funding to receive other behavioural support, just over one half had engaged in alternative education (e.g. alternative or specialist schools, home schooling, tutoring, and education delivered in Youth Justice custody), and at least 18% had engaged in specialist educational programs targeting children in OHC. Positive educational gains were supported by a good match between the child's needs and the educational arrangement, provision of support to attend school, school investment in the child and care team, and placement stability. Children's trajectories demonstrated that, with the right expertise, support, and environment, many children were able to be re-engaged with education.

#### 4.5 Co-occurring challenges

Information contained in case files indicated that children faced a range of cumulative co-occurring physical health, cognitive functioning, mental health, and behavioural health challenges. Data were

available for 93% of children, which are outlined in this section, and emphasise the complex and co-occurring nature of children's challenges<sup>76</sup>.

#### 4.5.1 Physical health

Information about children's physical health, including chronic health issues, were less clearly and consistently available in case files compared to that concerning other life domains. Yet 25.4% of children had physical health concerns described in their case files, including:

- Physical trauma including that due to physical assaults, abuse, and other serious accidents (e.g. car accidents, electrocution, being accidentally hit by cars);
- Significant sleep (insomnia, sleep apnoea), hygiene (bladder/bowel incontinence), dental and nutrition (malnutrition/overweight/underweight) concerns;
- Severe infections and infectious diseases including those due to health and environmental neglect (e.g. scabies, lice), secondary infections of injuries (including those acquired through physical assaults/abuse and accidents) and sexually transmitted infections;
- Congenital and acquired hearing impairments (both temporary and permanent);
- Asthma, eczema and allergic rhinitis;
- Seizures;
- Other serious chronic respiratory and cardiovascular conditions requiring regular outpatient monitoring; and,
- Other serious gastrointestinal and genitourinary conditions, including those requiring surgery at birth or in early childhood.

Also evident were challenges in addressing children's physical health needs. These challenges arose for a variety of reasons previously described in the literature relating to children involved with child protection and youth justice, including transience, avoidance of assessment, self-neglect, reluctance, anxiety, or other inability to adhere to treatment and rehabilitative regimens due to children's complex life circumstances. Secondary complications owing to neglect of physical health and wellbeing were also observed among those with health issues listed in their files (e.g. wound infections, suboptimum healing of burns, fractures, etc.).

#### 4.5.2 Intellectual, neurodevelopmental and neurological conditions

Around half of the children (48%) had a diagnosis of intellectual disability, borderline intellectual functioning, attention deficit hyperactivity disorder/attention deficit disorder (ADHD/ADD), learning or communication disorder, or other diagnosed neurodevelopmental or neurological condition<sup>77</sup>.

No significant differences were observed between the proportion of Indigenous and non-Indigenous children diagnosed with any of these conditions. Significant gender differences were, however, observed in this area. Males were more than twice as likely to have one of the above diagnoses listed

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<sup>76</sup> Data represent minimum levels of prevalence among cross-over children. Assessments may never have been undertaken for various conditions and disorders. This is likely given children's transience, and the evidence in many case files of children refusing or being unable to participate in assessments. Where assessments or diagnoses have been completed, it is possible that this information may not have been reported in the case files.

<sup>77</sup> 'Other' neurological and neurodevelopmental conditions include foetal alcohol spectrum disorder, autism spectrum disorder, Tourette syndrome, acquired brain injury/organic acquired memory disorder, and epilepsy.

in their files compared to females<sup>78</sup> (59% vs 25.3% respectively). Gender differences were statistically significant<sup>79</sup> for all conditions, with the exception of intellectual disability and ‘other’ disorders.

Shown in Figure 39 below, at least 29% of children had received a diagnosis of ADD/ADHD, and nearly one quarter had specific learning difficulties and communication disorders. Nearly one in five of the children (17.2%) had also been diagnosed with an intellectual disability. ‘Other’ neurological and neurodevelopmental disorders observed among cross-over children included autism spectrum disorder (autism, Asperger’s syndrome), epilepsy, foetal alcohol spectrum disorders, Tourette’s syndrome, acquired brain injury, and acquired organic memory disorder as a result of substance abuse.

Data relating to severity of intellectual disability (ID) was available in 81% of cases (38/47 children), and in most instances (34/38 children or 89%) the ID was classified as mild, while the remaining 11% were classified as moderate. The timing of ID diagnosis in relation to offending onset was also examined where data were available (34 children). In most instances (24/34 children or 71%) the ID was diagnosed *prior* to offending behaviour emerging, while for the remaining 10 children ID was diagnosed *after* offending commenced, sometimes as part of assessments undertaken in relation to the child’s CD involvement.

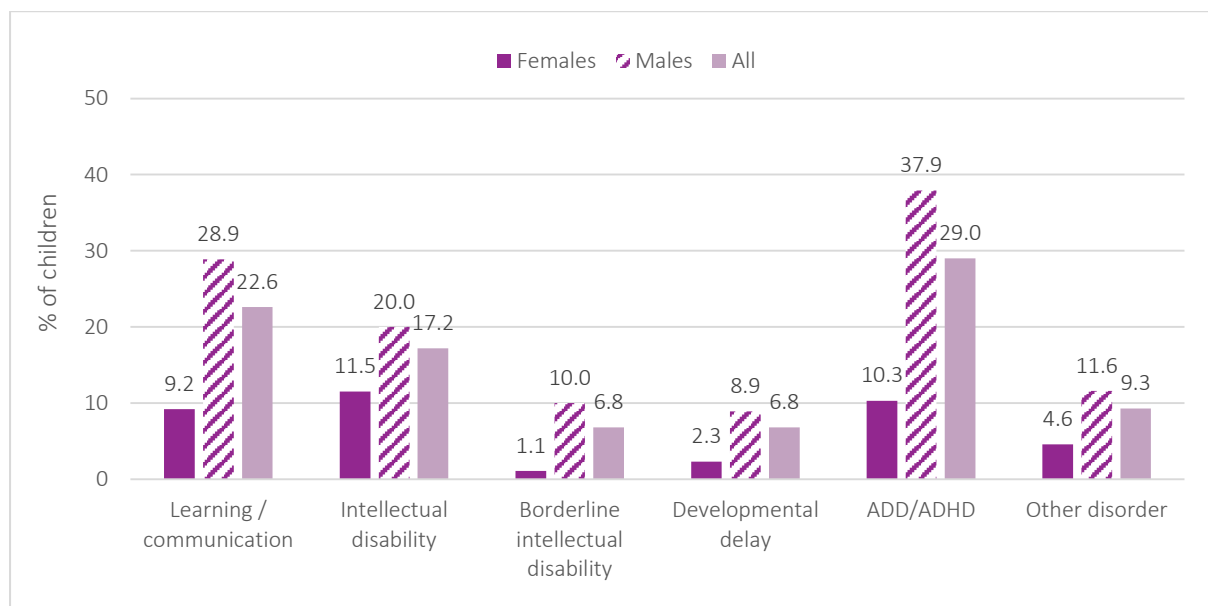


Figure 39. Minimum prevalence of intellectual disability, neurodevelopmental, and neurological conditions

Comorbidity (having multiple diagnoses) also featured frequently in relation to the above conditions. As depicted in Figure 40, more than 25% of children had two or more of the above diagnoses. Diagnostic disagreements and revisions were apparent in relation to neurodevelopmental conditions (e.g. ADHD) and mental health issues, resulting, in many instances, in a lack of clarity concerning children’s neurodevelopmental, psychiatric, and behavioural presentations. For instance, diagnoses related to ADHD were, in a number of instances, later revised by other clinicians in later childhood or adolescence to a range of other diagnoses such as complex post-traumatic stress disorder, developmental trauma disorder, reactive attachment disorder, conduct disorder, learning disorder or a combination of the above.

<sup>78</sup>  $p < .0001$ . Analysis excludes transgender children due to small sample size.

<sup>79</sup>  $p$ -values: Learning/communication ( $<.01$ ), Borderline ID ( $<.01$ ), Developmental delay ( $<.05$ ), ADD/ADHD ( $<.0001$ ).

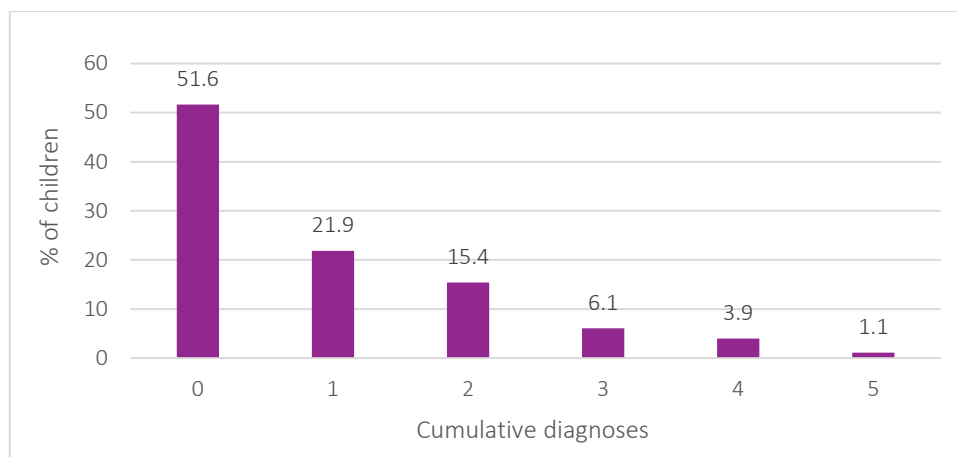


Figure 40. Comorbidity in intellectual, neurodevelopmental and neurological conditions

#### Case example: Joseph

*Joseph is a 14 year-old Indigenous male who came before the Court with 58 charges including threats to kill, assault, and property destruction, all of which occurred at or about his residential care unit. Joseph was primarily raised by his mother with whom he lived until 13 years of age, and he was exposed to early family violence, and substance abuse (including in utero exposure), and parental mental health difficulties (including suicide attempts). Joseph had nine prior Child Protection notifications commencing from nine years of age, none of which were substantiated. At age 13, he was relinquished by his mother due to significant behavioural challenges and entered residential care, where he immediately began to be charged with offences. Further behavioural escalation occurred a few months later, when Joseph’s father suddenly died from natural causes. An Independent Third Person supporting Joseph at police interviews from age 12 raised concerns that Joseph did not appear to understand his rights, however he proceeded to be charged. At court, a Children’s Court Clinic assessment determined that Joseph had a moderate intellectual disability, alongside significant mental health diagnoses including post-traumatic stress disorder, conduct disorder, anxiety, and symptoms of autism spectrum disorder. The criminal matters were struck out due to a lack of fitness to plead, and Commonwealth disability services were engaged to coordinate appropriate supports for Joseph’s long-term care.*

#### 4.5.3 Mental health and substance abuse challenges

As shown in Figure 41, a mental health diagnosis had been made for at least 61.2% of children, though the nature of these diagnoses were not always clear, or had been revised over the years. More than one third of children (35.2%) had a history of self-harm, suicidal ideation or suicide attempts, and more than one in ten had been treated in an inpatient child or adolescent psychiatric unit, or had been subject to an involuntary mental health treatment order. This excludes children who only used outpatient hospital mental health services, and those who only spent time in hospital-based schools or behavioural units. It was not possible to consistently quantify the severity of mental health issues based upon case file data. Children’s self-harm, suicidal ideation and suicidal behaviours often commenced from a young age, and included children who:

- Threatened suicide;
- Had multiple suicide attempts, from as young as six years old;

- Withstood persistent and distressing suicidal thoughts;
- Engaged in scratching, biting, cutting, gouging, punching, strangling and cutting themselves;
- Overdosed on medications;
- Engaged in head-banging behaviours, from as young as infancy;
- Intentionally ingested poisonous or toxic substances or objects;
- Stepped in front of moving vehicles, or laid on train tracks;

Depending on the professional or circumstances, children’s self-harming behaviours were at times characterised as indicators of emotional and psychological distress, while at other times were depicted as behavioural issues, or attempts at manipulation.

No significant difference by gender or Indigeneity were found in the proportion of children with *any* mental health diagnosis. However females (49.4%) were significantly more likely to have a history of self-harm, suicidal ideation, or suicide attempt listed in their files compared to males (28.6%)<sup>80</sup>. Data relating to diagnosed mental health issues did not always reflect the level and prevalence of psychological and emotional distress which was apparent from qualitative data in children’s files. Such distress tended to be attributed to ‘underlying trauma’, ‘attachment issues’ and ‘complicated/traumatic grief and loss’, and not necessarily attached to any specific mental health diagnosis. Distress often manifested as the cluster of ‘emotional regulation challenges’, ‘self-harm/suicidality’ and ‘challenging behaviour’ among children.

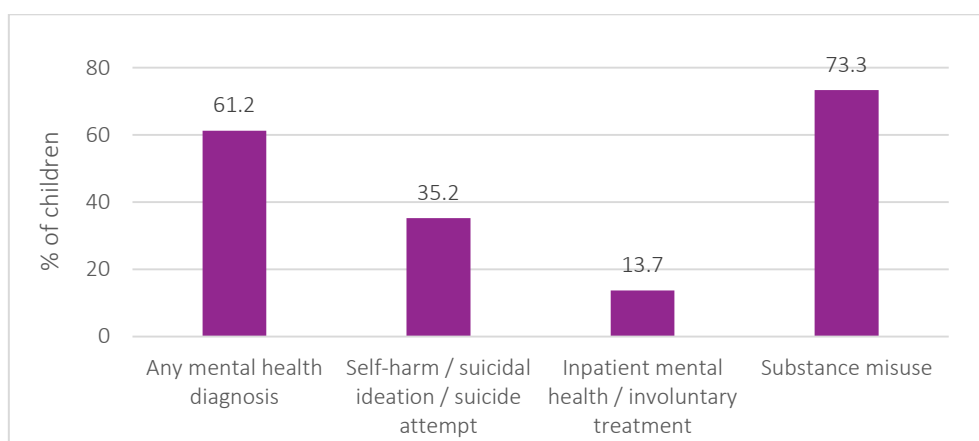


Figure 41. Minimum prevalence of mental health issues and substance misuse

Mood disorders were the most prevalently diagnosed (28%) (E.g. anxiety, depression, bipolar), followed by behavioural disorders (e.g. conduct disorder, oppositional defiant disorder and severe behavioural disorder), trauma and attachment-related disorders (e.g. post-traumatic stress disorder, complex post-traumatic stress disorder, reactive attachment disorder) (Figure 42). Psychotic disorders (5.3%) refer to schizophrenia, schizophreniform disorder, and psychotic episodes. Personality disorders were not readily diagnosed in this group given their age, however clinicians referred to ‘emerging’ personality disorder for 3.5% of children. ‘Other’ mental health conditions included adjustment disorder. These figures are not accurate prevalence estimates, given that some children’s mental health diagnoses were not articulated in case files. However the data provide a reasonable indication of the manner in which mental health clinicians understand the psychiatric experience of this group of children.

<sup>80</sup>  $p < .005$

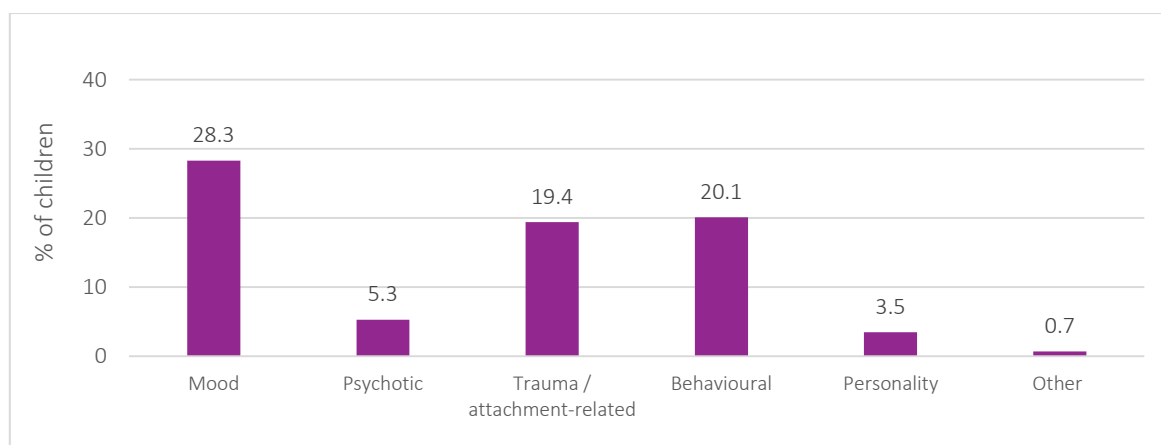


Figure 42. Minimum prevalence of psychiatric diagnoses

As indicated previously (Figure 41), three quarters of children (73%) had substance misuse described in their files<sup>81</sup>. Quantification of substance use severity among children was not possible, though this varied from opportunistic alcohol and cannabis use, to regular cannabis and/or inhalant use, to severe polysubstance or alcohol use. Some children reported commencing substance use from nine, 10 or 11 years old (including cannabis and alcohol), while others were described as arriving at school intoxicated. Children regularly using cannabis by age 12, and regularly chroming, or using ice or heroin by age 14 were not unusual. At the most acute end of the spectrum, some children suffered drug-induced psychoses and acquired brain injuries in the context of stimulant, alcohol or inhalant misuse. At least 40% of children had used ‘hard’ drugs including ice, other amphetamines, heroin or inhalants. No significant gender or cultural differences were observed in relation to substance misuse; however the proportion of Indigenous children with ‘hard’ substance use was somewhat higher than that of non-Indigenous children (53% vs 39%), though this difference was not quite statistically significant ( $p=.06$ ).

Qualitative case file data revealed that children largely understood their substance use as a response to intolerable inner and outer experiences. Children reported using substances to “*block stuff out*”, “*escape*”, “*sleep*”, “*self-medicate*”, “*cope*”, “*numb feelings*”, and to “*feel invincible*”, providing context as to why cessation of substance misuse is so challenging for this group. Both substance misuse, and ‘hard’ drug use were significantly more prevalent (approximately double) among children who had a deceased parent<sup>82</sup>. These findings accorded with qualitative case file data suggesting parental death, particularly that occurring in adolescence, was accompanied by increased substance misuse. In order to test these observations quantitatively, two logistic regressions were undertaken (see Appendix 2). These analyses indicated that parental death was associated with double the odds of substance misuse, and 2.9 times the odds of ‘hard’ drug use among cross-over children, after controlling for the effects of age, mental health diagnoses, and challenging behaviours. A mental health diagnosis was also significantly predictive of substance use, resulting in 3.6 times the odds of substance misuse, and 4.3 times the odds of ‘hard’ drug use among cross-over children. Children who experienced other major deaths (e.g. siblings, foster parents, and friends) were also significantly more likely to misuse substances (86%), and to use ‘hard’ drugs (52%) compared to children for whom no such deaths were noted

<sup>81</sup> Substance misuse was identified for children using alcohol and drugs above low-level adolescent experimentation.

<sup>82</sup> Substance misuse – 86.4% (deceased parent) vs 70% (no deceased parent),  $p < .05$ . ‘Hard’ drug use – 52.5% (deceased parent) vs 36.7% (no deceased parent),  $p < .05$ .



( $p < .05$ ). Conversely, no differences in substance misuse or 'hard' drug use were observed based upon the presence or absence of substance misuse among children's parents.

#### Case example: Inaya

*Inaya is a female of African background who came before the Court in relation to assault and other charges occurring just prior to her discharge from out-of-home care at age 18. After arriving in Australia as a refugee in mid-childhood, Inaya had seven Child Protection notifications between nine and 15 years of age (including two substantiations) however there was no statutory intervention at this time. Protective concerns for Inaya included physical abuse, emotional abuse, and neglect relating to lack of supervision and the level of responsibility placed on Inaya to care for younger siblings. Cultural conflicts concerning Inaya's family role and developmental maturation led to increasing emotional abuse and rejection by her father in early adolescence. Police charges of Inaya commenced from 15 years, including assaults, intentionally causing injury, public drunkenness and resisting police. Highly distressed, Inaya entered residential care at 16 years, and escalated in her opportunistic use of alcohol, cannabis and inhalants. She soon began to be hospitalised and placed in secure care in response to substance abuse and suicide attempts, where she disclosed deep grief at her family's rejection. By age 17 she was using ice daily with peers from residential care, though she was able to be engaged by a youth mental health clinician.*

While substance use with peers was commonplace, the involvement of adults in children's substance use was also apparent in many case files, for instance:

- A number of children were noted to be introduced to substance use and/or escalating substance use (e.g. intravenous drug use) by parents, or to use substances with parents;
- Adults outside of the family were sometimes involved in the sexual exploitation of children in exchange for substances, or money to fund substance use;
- Familial and extra-familial adults were sometimes involved in the criminal exploitation of children in exchange for substances.

Overall, four key relationships linking substance misuse and criminal charges were identifiable from case files, namely:

- Children offending in the context of substance-related disinhibition;
- Children offending to repay drug debts to older youth and adults;
- Children becoming involved in sexually exploitative relationships to support substance misuse, and subsequently being drawn in to criminal behaviour via these relationships;
- Offending related to the acquisition or possession of substances (i.e. charges related to possession of illicit and pharmaceutical drugs, or stealing alcohol or inhalants such as deodorant).

#### Case example: Nicholas

*Nicholas is a 16 year-old male who came before the Court with 18 charges related to motor vehicle thefts, unlicensed driving, possessing drugs and receiving stolen goods. He had four prior criminal matters (a total of 75 charges) commencing from 14 years. An early Child Protection notification related to maternal substance use and physical injury of Nicholas*

*and his siblings; however most of Nicholas' 11 notifications were received between nine and 15 years of age, three of which were substantiated. Concerns primarily related to family conflicts, including physical altercations between Nicholas and his stepfather, parental emotional and physical abuse of Nicholas as attempts to discipline, and his absconding and lack of school attendance. In late primary school, Nicholas was diagnosed with a moderate to severe expressive and receptive language disorder, ADHD, and various mental health diagnoses (reactive attachment disorder, anxiety, and conduct disorder).*

*Nicholas began drinking alcohol from age 11, and by age 12 had disengaged from school and was regularly running away from home. He began using ice and other drugs daily, supplied by men in their 30s and 40s, with the understanding that Nicholas would then "do the crime" to pay back what he owed. While Nicholas progressed well when supported by intensive services, challenges would often re-emerge upon service closure. He first entered out-of-home care at age 15 following maternal relinquishment, though there were ongoing reunification attempts. While on remand in relation to his offending, he was diagnosed with having a mild intellectual disability. Nicholas appeared to excel in the structured custodial environment, where he engaged with school and his support services, and attended therapeutic appointments. He was released from custody on a Family Division Order to remain with his family and continue to engage in ongoing supports.*

#### 4.5.4 Behavioural challenges and risks

Case files noted high proportions of children who displayed challenging behaviours (72.4%), and absconding behaviours (running away) (69.5%), and smaller proportions of children displaying sexualised behaviours (19.4%), or being identified as at-risk of sexual exploitation (12.5%).

**Challenging behaviours** included:

- Verbally or physically aggressive abusive behaviours (e.g. at school, with family, in placement, including 'aggressive outbursts' or threats to harm others);
- Throwing and damaging property (e.g. punching walls, breaking windows, causing significant property damage in residential care and other institutional environments);
- Racist, sexist or bullying behaviours;
- Fire-lighting; and,
- Spitting or yelling.

Factors associated with challenging behaviours reflect those understood from previous studies. However it is important to articulate these factors given the associations between challenging behaviours and children's offending (see Section 4.7.7). Challenging behaviours were significantly more likely among children with the following characteristics and diagnoses:

- Male gender<sup>83</sup>;
- Learning/communication disorder<sup>84</sup>;
- Intellectual disability<sup>85</sup>;

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<sup>83</sup> Males vs females, challenging behaviour (82.7% vs 51.1%,  $p < .001$ ).

<sup>84</sup> Learning/communication disorder, challenging behaviour (84.1% vs 69.4%,  $p < .05$ ).

<sup>85</sup> Intellectual disability, challenging behaviour (87.5% vs 69.7%,  $p < .05$ ).

- Other neurodevelopmental/neurological disorder<sup>86</sup>;
- Mood disorder<sup>87</sup>;
- Trauma/attachment disorder<sup>88</sup>;
- ADHD/ADD<sup>89</sup>;
- Behavioural disorder<sup>90</sup>;
- Substance misuse<sup>91</sup>; and,
- ‘Hard’ drug use<sup>92</sup>.

**Absconding behaviours** also varied, and included both running away from the family home, and from out-of-home care placements, as well as absconding from a range of service environments (Youth Justice appointments, school, and other therapeutic appointments). Children’s absconding:

- Sometimes commenced from a young age (e.g. 10 years old);
- Could result in the child missing for several weeks or months, sometimes to interstate locations;
- Was generally observed to escalate in duration and regularity over time;
- Was sometimes noted to escalate coinciding with children’s experience of significant or distressing events, for instance the death of a parent, escaping family violence, entering residential care, or disclosing sexual abuse history;
- Sometimes became a ‘chronic’ or entrenched behaviour, resulting in children whose whereabouts was typically unknown to Child Protection for significant periods (e.g. weeks or months), or for whom numerous missing persons warrants existed (e.g. 50 or more).

Children running away from the family home or kinship carers were observed to be escaping family violence, physical or emotional abuse, and family conflict (e.g. in relation to their own substance abuse or sexual/romantic behaviour development). At times, the child’s absconding behaviour was part of the reason for the most recent Child Protection intervention, where parents (usually mothers and other carers) requested help from Child Protection regarding the child’s behaviour. Some children absconded from one caregiver to another, for instance a kinship carer to a parent, or from one parent to the other. Children absconding from out-of-home care placements:

- Often absconded from care back to parents or step-parents;
- Often absconded to associate with other high-risk youth or adults, typically involving substance use, and at times offending or sexual exploitation by older adults;
- Were often noted to “sleep rough”, typically in the city or abandoned buildings, resulting in extremely neglected presentations (e.g. lice, scabies, being substance affected), and stealing food and other necessities;
- Females often absconded to associate with romantic partners, in what were often characterised by professionals as exploitative or abusive relationships;
- Females were often recognised as being at high risk of sexual exploitation while absconding.

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<sup>86</sup> Other neurological/neurodevelopmental conditions, challenging behaviour (92.3% vs 70.8%,  $p < .001$ ). ‘Other’ neurological and neurodevelopmental conditions include foetal alcohol spectrum disorder, autism spectrum disorder, Tourette syndrome, acquired brain injury/organic acquired memory disorder, and epilepsy.

<sup>87</sup> Mood disorder, challenging behaviour (82.5% vs 68.8%,  $p < .05$ ).

<sup>88</sup> Trauma/attachment disorder, challenging behaviour (85.5% vs 69.6%,  $p < .05$ ).

<sup>89</sup> ADD/ADHD, challenging behaviour (90.1% vs 65.7%,  $p < .001$ ).

<sup>90</sup> Behavioural disorder, challenging behaviour (91.2% vs 68%,  $p < .001$ ).

<sup>91</sup> Substance misuse, challenging behaviour (75.7% vs 63.2%,  $p < .05$ ).

<sup>92</sup> ‘Hard’ drug use, challenging behaviour (80.5% vs 66.9%,  $p < .05$ ).

Entrenched absconding behaviour was at times recognised by professionals as a type of “fight or flight” response to high levels of physiological arousal, for instance that due to conflict, anxiety, or other traumatic ‘triggers’. Absconding as an established coping strategy was particularly problematic for children whose bail conditions required them to maintain a curfew, or to reside at a particular location.

**Sexualised behaviours** were seen in around one fifth of children (19.4%), and included behaviours solely occurring in earlier childhood (i.e. under 10 years), as well as behaviours emerging in adolescence. Rarely, these behaviours attracted some of the criminal charges which brought children before the Court. Sexualised behaviour included:

- Sexually abusive behaviour, typically involving siblings/step-siblings, cousins, peers, or care co-clients;
- Rape and bestiality;
- Viewing inappropriate/illegal pornography, or pornography in inappropriate places (e.g. school)
- Posting sexualised material online; and,
- Exhibiting sexually inappropriate behaviours at school, towards carers, co-residents or workers (e.g. flashing, groping, sexual comments or threats).

Children who had experienced sexual abuse were significantly more likely to exhibit sexualised behaviours<sup>93</sup>, though most children (67.8%) who had sexually abusive experiences did not exhibit such behaviours.

**Sexual exploitation/risk of sexual exploitation** was identified for a smaller proportion of children (12.5%), typically young females displaying absconding behaviours. Examples of risk of sexual exploitation included:

- Adults exchanging goods, drugs or money with children in return for sexual behaviours;
- Specific targeting by paedophiles of children in out-of-home care settings;
- Children’s engagement in relationships which were exploitative by virtue of age differences (i.e. statutory rape);
- Children whose other behaviours placed them at risk of sexual exploitation (e.g. indiscriminate contact with adults online or in public, requesting/accepting gifts and favours from strangers online).

Among this group of cross-over children, those who had experienced sexual abuse were significantly more likely to have experienced sexual exploitation, or be identified as at risk of sexual exploitation<sup>94</sup>. No significant differences were observed between Indigenous and non-Indigenous children in relation to behavioural challenges, however gender differences were identified across all behavioural challenges (Figure 43). Females were more likely to display absconding behaviours and be at risk of sexual exploitation, while males were significantly more likely to display challenging behaviours and sexualised behaviours<sup>95</sup>.

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<sup>93</sup> Sexualised behaviours - 32.2% (sexual abuse history) vs 15.9% (no sexual abuse history),  $p < .01$

<sup>94</sup> Risk of sexual exploitation – 33.9% (sexual abuse history) vs 6.8% (no sexual abuse history),  $p < .0001$ .

<sup>95</sup>  $p$ -values were as follows: Females - absconding behaviour ( $<.005$ ), risk of sexual exploitation ( $<.0001$ ); Males - challenging behaviours ( $<.0001$ ), sexualised behaviours ( $<.05$ ).

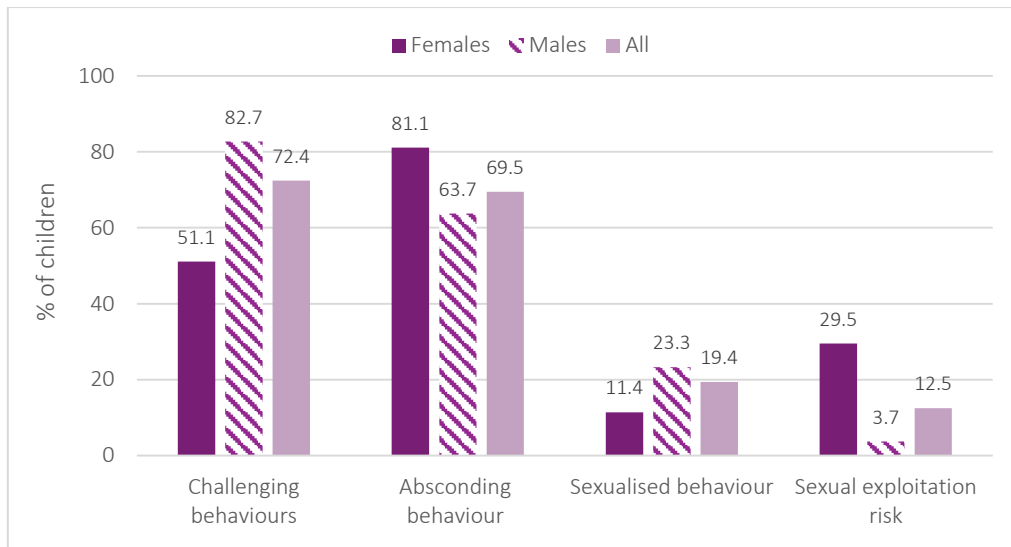


Figure 43. Minimum prevalence of behavioural challenges

#### 4.5.5 Early parenthood

Overall 16 children (5.7%) were young parents, comprising 12 females (13.6% of females) and 4 males (2.1% of males). Additionally, one female was pregnant at the time of her CD matters, and another male was in circumstances of unclear paternity with respect to an infant. Young parents were aged 14 to 19 years at the time of their CD matters. It was not always possible to discern from files the child's age at the time of becoming a parent. Where data were available, there was evidence of Child Protection involvement in relation to 79% of the children's children (11/14 cases), while the remainder of offspring were supported by their maternal or paternal grandparents.

#### 4.5.6 Cumulative co-occurring challenges

A cumulative score was developed for each child totalling the number of the following nine (9) co-occurring challenges which children faced:

- Intellectual disability;
- Other neurodevelopmental/neurological condition<sup>96</sup>;
- Mental health diagnosis;
- Self-harm/suicidal ideation/suicide attempt;
- Substance misuse;
- Challenging behaviours;
- Absconding behaviour;
- Sexualised behaviour; and,
- Sexual exploitation/risk.

As shown in Figure 44, three quarters of children presented with three or more of the above co-occurring challenges. The mean number of above challenges among children was four (median=4), and no differences were observed in the mean number of challenges between males and females, nor Indigenous and non-Indigenous children.

<sup>96</sup> Excludes developmental delays where intellectual disability has been diagnosed.

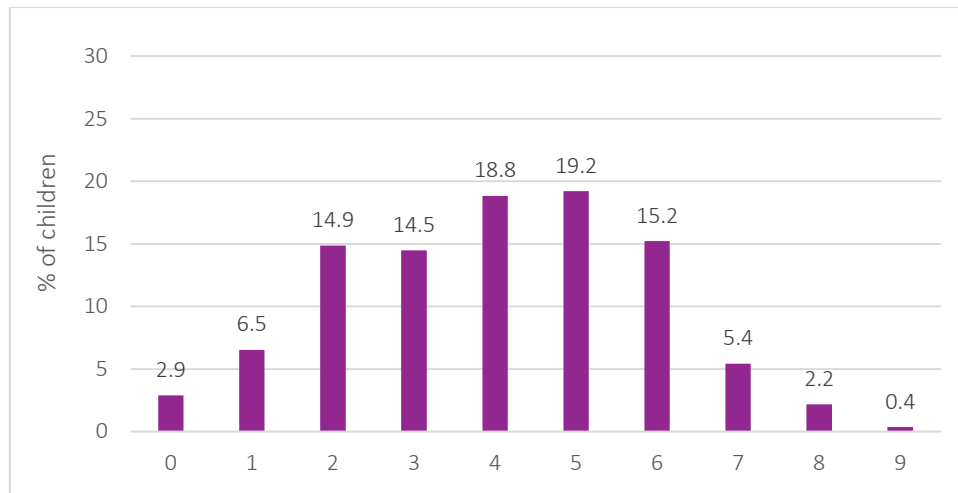


Figure 44. Cumulative co-occurring challenges

#### 4.5.7 Relationship between cumulative harm and co-occurring challenges

A key question is the extent to which exposure to cumulative adversity and maltreatment impacts upon children's outcomes.

A cumulative score was developed for each child which totalled the number of the following four (4) types of maltreatment to which they were exposed:

- Physical abuse;
- Emotional/psychological abuse;
- Sexual abuse; and,
- Neglect.

Figure 45 presents the proportion of children presenting with various intellectual, neurodevelopmental, neurological, mental health and behavioural outcomes, based upon multi-maltreatment type exposure. Compared to children whose case files indicated no exposure, the proportion presenting with each outcome increased between 10% and 39% for children exposed to all four types of maltreatment. Statistically significant increases were observed in the proportion of children presenting with:

- self-harm, suicidal ideation or suicide attempts (38.6% increase);
- hard drug use (inhalants, ice, other amphetamines or heroin) (36.8% increase); and,
- trauma and attachment-related disorders (28.9% increase)<sup>97</sup> among children exposed to all four forms of maltreatment, compared to those with no record of such maltreatment.

Small but statistically significant correlations were observed between children's cumulative exposure to multiple maltreatment types and:

- Self-harm, suicidal ideation or suicide attempt ( $r = .216, p < .001$ )
- Trauma/attachment-related disorders ( $r = .155, p < .01$ )
- Challenging behaviours ( $r = .151, p < .05$ )
- 'Hard' drug use ('ice', other amphetamines, heroin, or inhalants) ( $r = .120, p < .05$ )

<sup>97</sup> Multi-type maltreatment and suicidal behaviours/suicidal ideation ( $p < .005$ ), 'hard' drug use ( $p < .005$ ), trauma/attachment-related disorder ( $p < .01$ ).

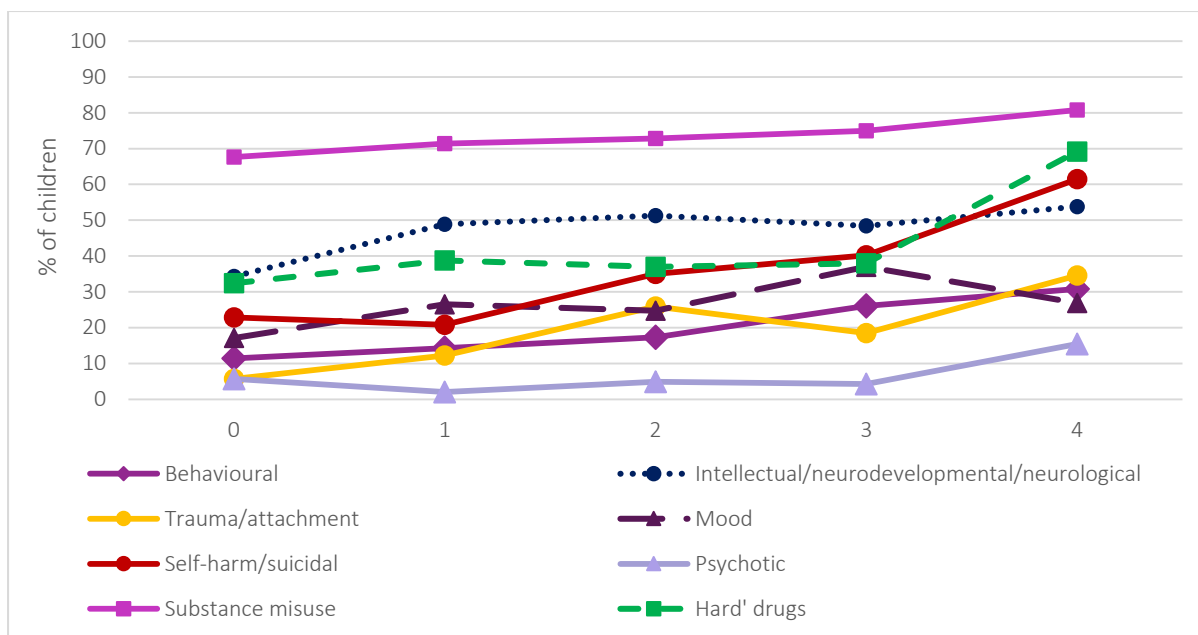


Figure 45. Cumulative maltreatment and children’s co-occurring challenges

The remaining outcomes and presentations were 10-20% more prevalent with increased exposure to multiple maltreatment types, including challenging behaviours, behavioural disorders, mood disorders absconding behaviours, and any substance misuse, and presentation with intellectual/neurodevelopmental/neurological disabilities or disorders, though these increases were not statistically significant. Similar associations were not observed between co-occurring challenges and Child Protection notifications/substantiations. The only exceptions were that increased notifications were observed among children with health concerns and those with diagnosed intellectual disabilities<sup>98</sup>. This suggests a need to further investigate the use of Child Protection notifications/substantiations as indicators of child maltreatment.

A second cumulative score was developed for each child which totalled the number of the following four (4) types of adverse circumstances to which children were exposed:

- Family violence;
- Household substance abuse;
- Household mental illness; and,
- Household criminal justice system involvement.

Small but statistically significant correlations were observed between children’s cumulative exposure to the above adverse circumstances and:

- Intellectual disability ( $r = .187, p < .01$ );
- Trauma/attachment-related disorders ( $r = .138, p < .05$ ); and,
- Sexualised behaviours ( $r = .167, p < .01$ ).

<sup>98</sup> Mean Child Protection notifications – 9.9 (intellectual disability) vs 6.2 (no intellectual disability),  $p < .0001$ ; 8.3 (health concerns) vs 6.4 (no health concerns),  $p < .05$ .

### Summary: Co-occurring challenges

One quarter of children had a physical health concern noted in case files, and various secondary complications owing to neglect of physical health were observed. Challenges addressing health concerns included children's transience, avoidance of assessment, self-neglect, and reluctance, anxiety, or other inability to adhere to treatment regimens. Around one half of children had diagnosed neurodevelopmental or neurological conditions: around one third had received a diagnosis of ADD/ADHD (29%), 23% had specific learning difficulties or communication disorders, and 17% had been diagnosed with an intellectual disability, commonly in the mild range. Intellectual disability was diagnosed prior to criminal justice involvement in around 70% of cases. Males were more than twice as likely to have one of the above diagnoses listed in their files compared to females (59% vs 25%), with significant gender differences across nearly all conditions.

A mental health diagnosis was made for 61% of children, and 35% had a history of self-harm, suicidal ideation, or suicide attempts. More than 10% had been treated in an inpatient child or adolescent psychiatric unit, or had been subject to an involuntary mental health treatment order. Females (49%) were significantly more likely to have a history of self-harm, suicidal ideation or suicide attempt listed in their case files compared to males (29%). Among diagnoses, mood disorders were most prevalent (28%), while 20% of children had been diagnosed with each of trauma or attachment-related disorders, and behavioural disorders, and 5% with a psychotic disorder.

Three quarters of children (73%) evidenced substance misuse, the severity of which varied from regular cannabis and/or inhalant use, to severe polysubstance or alcohol use. At least 40% of children had evidence of 'hard drug' use. At the most acute end of the spectrum, some children suffered drug-induced psychoses and acquired brain injuries as a result of stimulant, alcohol or inhalant use. No significant gender or cultural differences were observed in relation to substance misuse, though Indigenous children were somewhat more likely to have used 'hard' drugs. While substance use with peers was the norm, the supply of substances to children by adults was also apparent in several cases. A high proportion of children displayed challenging behaviour (72%), and absconding behaviour (70%), with smaller proportions exhibiting sexualised behaviours (19%), or being identified as at risk of sexual exploitation (13%). Children with sexual abuse histories were significantly more likely to display sexualised behaviours, and be identified to be at risk of sexual exploitation. Finally, 6% of children were young parents, comprising 14% of females and 2% of males.

The presence of multiple co-occurring challenges was widespread, with three quarters of children presenting with three or more challenges. Significant positive correlations were observed between children's exposure to multi-type maltreatment and self-harm, suicidal ideation or suicide attempts, trauma and attachment-related disorders, challenging behaviours, and 'hard' drug use. Similar correlations were not observed between children's co-occurring challenges and their number of Child Protection notifications or substantiations.

### 4.6 Service, agency and program contact

This section examines case file data relating to children's lifetime contact with a range of generalist and specialist services, agencies and programs. Contact was noted where there was evidence of engagement beyond referral, including participation in assessments. Data were available for most children (n ≥294 children), however underestimates of service, agency and program contact could be



expected. Nonetheless this information is useful for understanding the range of services with which cross-over children have contact, and challenges to engagement and service provision for this group.

Figure 46 indicates the proportion of children who had contact with a range of legal, clinical, welfare, justice, cultural and educational support services, agencies and programs. Where services or programs traversed these categories, they were counted in both (e.g. Indigenous-specific leaving care services). Additionally, at least 9.2% of children had some engagement with YHaRS (the Youth Health and Rehabilitation Service)<sup>99</sup>. Where it was apparent which YHaRS services were accessed (e.g. psychology services, medical examination), these were counted under the corresponding category.

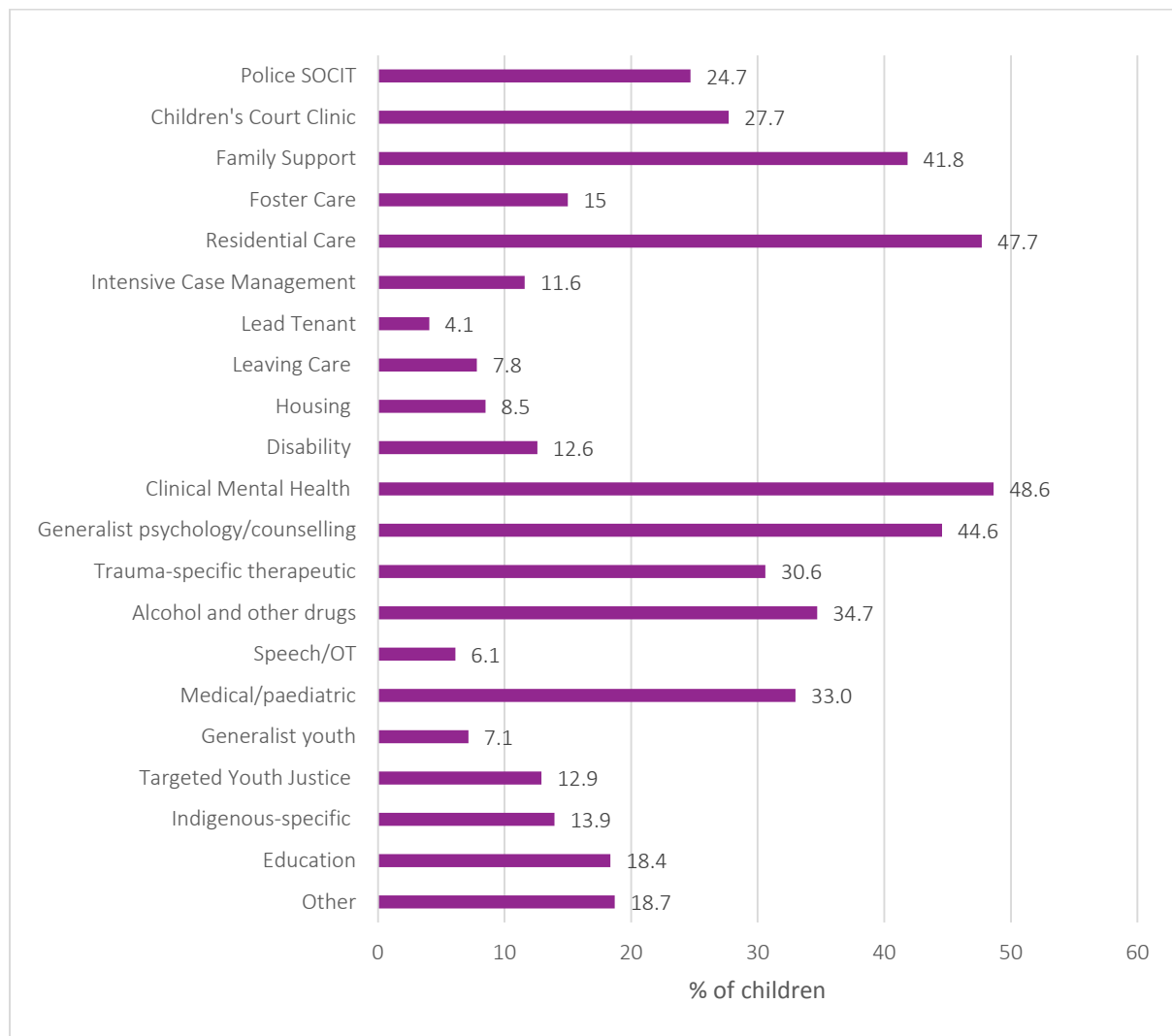


Figure 46. Minimum prevalence of service, agency or program contact

#### 4.6.1 Police Sexual Offences and Child Abuse Investigation Teams (SOCIT)

At least one quarter of children had contact with police SOCIT, who investigate allegations of sexual offences and other child abuse (mainly physical abuse) both allegedly committed *against*, and committed *by* children. As shown in Figure 47 below, most children had SOCIT contact in relation to their own victimisation (75.3%), rather than their own offending or alleged offending (32.9%).

<sup>99</sup> Service operated by a consortium of providers consisting of YSAS, St Vincent's Hospital and Caraniche.

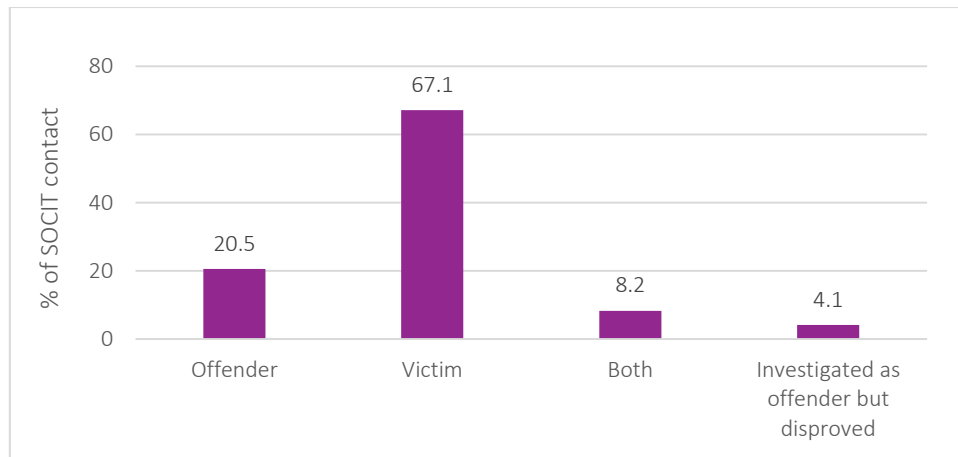


Figure 47. Minimum prevalence of police SOCIT contact

No statistically significant cultural differences were observed regarding the proportion of Indigenous and non-Indigenous children with SOCIT contact, or who were investigated as victims versus offenders. It is possible that differences were not significant due to the small sample size, as no Indigenous children were solely investigated as offenders. Conversely, females were significantly more likely than males to:

- Have evidence of any SOCIT contact compared to males (34% vs 20%)<sup>100</sup>; and,
- (Among children with SOCIT contact) to have experienced this contact in relation to their own sexual or physical victimisation (100%) compared to males (55%)<sup>101</sup>.

Challenges investigating children’s physical and sexual victimisation primarily related to the availability of evidence. In a number of instances investigations were unable to proceed due to children’s incapacity to provide evidence, including hesitance to proceed with police statements and physical examinations. This hesitance was usually described as being due to the traumatic nature of the experience and material, or a desire to protect the perpetrator or relationship with the perpetrator (primarily the case in relation to girls currently experiencing sexually exploitative relationships).

#### 4.6.2 Children’s Court Clinic (CCC)

The CCC is a centrally-based, independent clinical service providing psychological and psychiatric assessments for children and families who come before the Victorian Children’s Court. Overall, 27.7% of children had a CCC assessment completed in relation to either their Family or Criminal Division Court matters. A further 4% of children had an assessment requested in the Criminal Division, though it is unclear that these assessments were able to be completed for reasons explored further below.

As shown in Figure 48, most of children’s contact with the CCC was in relation to their Criminal Division (offending) involvement, rather than Family Division (Child Protection) involvement. The CCC had provided the Criminal Division of the Court with various requested assessments, including general assessments, *doli incapax*, *fitness to stand trial*, other neuropsychological, and alcohol and other drugs assessments. Family Division assessments concerned the placement of the child, and parental contact arrangements, general assessments, and sometimes cognitive assessments.

<sup>100</sup>  $p < .05$

<sup>101</sup>  $p < .0001$ . Children with SOCIT contact in relation to both alleged victimisation and perpetration were counted in both categories.

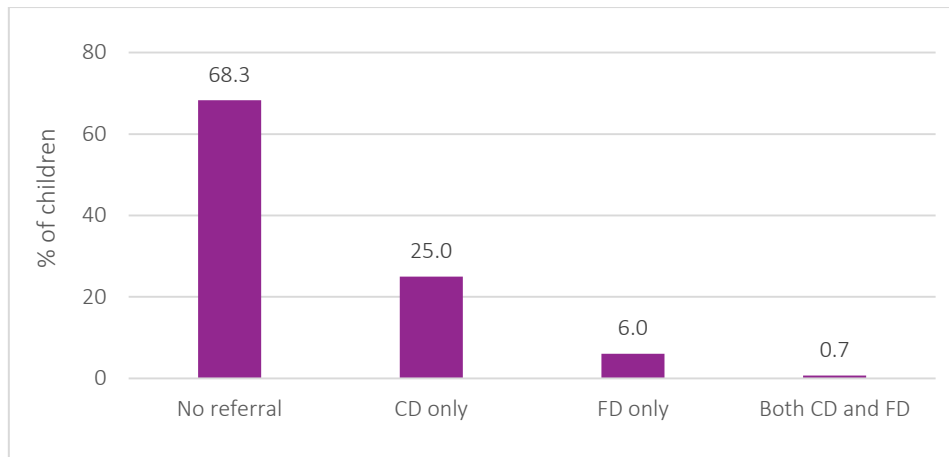


Figure 48. Minimum prevalence of Children's Court Clinic contact

CCC assessments were sometimes requested but unable to be completed, or were delayed or rescheduled for various reasons, including:

- Assessment waiting lists (up to four months in some cases);
- Youth Justice facility lockdowns preventing transport to assessments;
- A child refusing to attend or to be transported to assessments (including children in regional locations and in Youth Justice custody);
- Child's whereabouts unknown or child absconding; and,
- Child otherwise unable to engage in the assessment due to their emotional, psychological or physical presentation (e.g. overly agitated, substance affected, etc.).

The available Children's Court Clinic reports provided detailed information of children's current and historical circumstances, including family and intergenerational phenomena. This information was useful in:

- Supporting Court and other statutory decision-making processes (e.g. *doli incapax* assessments)
- Supporting ongoing work with the child or family, as reports were often able to be released to other parties (e.g. Criminal Division reports released to Child Protection and out-of-home care providers);
- Identifying where further assessments may be helpful or necessary;
- (In the Criminal Division) highlighting the relationship between children's current unmet protective or therapeutic needs, and their challenging or offending behaviour;
- Highlighting the characteristics of appropriate care placements (e.g. foster care placements, specialist disability and mental health placements) which could best support children and potentially reduce offending;
- Highlighting the lack of appropriate placements (e.g. insufficient foster care placements leading to residential care placement, lack of alternative care facilities which could provide respite care for children and families to prevent residential care placement);
- Highlighting the contribution of inappropriate adult intervention to children's behavioural challenges; and,
- Identifying strategies which families or carers could implement to better support children.

A limitation of some CCC reports (also seen with Youth Justice reports), was that historical Child Protection involvement, including out-of-home care placement, was not always outlined in cases where the child had subsequently returned to reside with family. However this information was not always relevant to the report's purpose (e.g. *doli incapax* or cognitive function assessment).

#### 4.6.3 Family support services, out-of-home care and housing

Children and their families had engaged with a range of child and family welfare services. Observations about engagement with these services included the following:

- A substantial proportion of children had been engaged (or been engaged via parent(s)) with family support services (41.2%) including Child First, Family First, and other placement prevention and family support services (e.g. adolescent support services, parenting programs etc.). Child and parental levels of engagement with these services fluctuated significantly both between children and families, and over time.
- While it was not possible to estimate the number of placements, lifetime foster care placement (15%) was far less common than lifetime residential care placement (47.7%) among cross-over children. Additionally, a few children had resided in specialist disability and mental health placements, either historically or currently.
- Several children technically placed in residential care actually rarely accessed these placements, rather they tended to return to family, abscond to homelessness, or be of unknown whereabouts for significant periods.
- While 20% of the sample were in out-of-home care and aged between 16 and 17 years, leaving care services were engaged with a much smaller proportion of children (7.8%). Difficulties arranging leaving care service provision for children in Youth Justice custody were noted, due to the child needing to reside in the intended catchment area in order for referrals and wait list allocation to proceed.
- The 25 children (8.7% of the sample) who accessed housing and homelessness services were significantly older than those who had not (17.3 years vs 16.1 years)<sup>102</sup>. These children had contact with a range of services, including youth refuges and youth homelessness services, emergency accommodation (e.g. motels), transitional accommodation, and (rarely) public housing. Children faced homelessness in the context of transitioning from custody, leaving care, experiencing familial (e.g. parental) homelessness, and escaping familial physical abuse. Homelessness service access by parents, including with the child, was not included in this category, which solely related to the child being the key service user.

#### 4.6.4 Clinical and therapeutic services

Children's contact with a range of clinical or therapeutic services was noted, including assessment and treatment with:

- Clinical mental health services<sup>103</sup> (48.6%);

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<sup>102</sup>  $p < .001$

<sup>103</sup> Includes contact with any inpatient child and/or adolescent mental health services, Child and Adolescent Mental Health Services (CAMHS), Child and Youth Mental Health Services (CYMHS), Orygen Youth Health, and private psychiatry, Youth Justice mental health clinicians.

- Psychology and counselling services, including generalist or focused psychology<sup>104</sup> (44.6%);
- Trauma-specific services<sup>105</sup> (30.6%);
- Alcohol and other drug services<sup>106</sup> (34.7%); and
- Speech, sensory or occupational therapy services (6.1%).

With the exception of speech/sensory/occupational therapies, between 30 and 50% of children had contact with each of these service types, often from a young age. Three quarters of children (76.5%) had attended at least one of these service types, and a quarter had contact with between three and five of the above service types. As with other services, levels of engagement varied widely, both for the individual child over time, and between children. No differences were observed by culture or gender in relation to clinical service access, with the exception that females were significantly *less* likely to have accessed alcohol and other drug services compared to males (26.1% vs 39%)<sup>107</sup>. This is noteworthy since females and males presented with similar prevalence of substance abuse and ‘hard’ drug use (e.g. heroin, ice, inhalants).

There was a haphazard pattern to children’s engagement with clinical and therapeutic services, which was not necessarily reflective of the level of need. For some children, service contact consisted only of assessments, with minimal extended engagement. Other children had years of consistent therapeutic intervention. A range of barriers to service engagement were identified, which are detailed below in Section 4.6.6.

#### 4.6.5 Other support services

Finally, children’s contact with a range of other support services was noted, including:

- Medical/paediatric services<sup>108</sup> (33%);
- Disability Client Services (DCS), including registration with services and DCS secondary consultation to Child Protection and Youth Justice (12.6%). A further four children had contact with community-based disability-related services (e.g. SCOPE, MACNI). Overall 68.8% of children with an intellectual disability diagnosis had some evidence of contact with disability services;
- Indigenous-specific services<sup>109</sup> (13.9%) - overall 76% of children whose case files indicated they were Indigenous had accessed Indigenous-specific services;
- Targeted youth justice early intervention or support programs<sup>110</sup> (12.9%);

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<sup>104</sup> Headspace counselling/psychology, grief and loss counselling, school psychologist or counselling services.

<sup>105</sup> TakeTwo, Centre Against Sexual Assault (including participation in AWARE program for sexually abusive behaviours), Gatehouse Clinic, and Australian Childhood Foundation and Children’s Protection Society services.

<sup>106</sup> Alcohol and other drug specific services (inpatient and outpatient), and targeted alcohol and other drug counselling.

<sup>107</sup>  $p < .05$

<sup>108</sup> Includes paediatricians, Aboriginal health services, hospital services including outpatient clinics, pregnancy services, and Youth Justice specific Youth Health and Rehabilitation Service (YHaRS).

<sup>109</sup> Including Aboriginal Health Services, Aboriginal Co-Ops, Aboriginal counselling, healing, alcohol and other drug, housing, child and family, recreation, mentoring, leaving care, art, and education services.

<sup>110</sup> Including Youth Justice Community Support Service, Youth Support Service, engagement with police Youth Resource Officers and other Victoria Police programs/units, custodial mentoring programs, cultural-specific youth justice diversion and mentoring programs, specialist Koori (Aboriginal) Youth Justice programs, Australian Community Support Organisation services.

- Specialist education programs and services<sup>111</sup> (18.4%);
- Generalist youth services<sup>112</sup> (7.1%); and,
- ‘Other’ service contact<sup>113</sup> (18.7%).

#### 4.6.6 Observations on service engagement

A number of general observations were made in relation to service engagement. Identified barriers to service engagement included those at the level of families, children, and services/service systems, including:

**Families.** There were challenges in terms of service engagement by families, both in relation to their own, and the child’s needs. For children who remained at home, or who returned home from care, there were examples of parents unwilling or unable to engage, or to support children’s engagement with services in childhood or adolescence. Case files made plain missed opportunities for early intervention, both in terms of early *life* and early *in the offending trajectory*, for instance:

- Examples were seen of parents who were unable to afford therapeutic interventions;
- Therapeutic intervention was sometimes undermined by familial transience or parent’s unmet support needs;
- Some parents did not follow-up referrals relating to children’s therapeutic needs (e.g. mental health or behavioural needs), or were uncontactable by specialists;
- Some parents (often single mothers), were at times overwhelmed by the demands placed on them coupled with their limited resources. Parents were often trying to respond to multiple responsibilities and concerns, including needs of other siblings, employment and financial issues, family violence, separation, homelessness, and their own trauma, mental health, and substance abuse challenges. This contributed to a lack of follow-up in relation to a child’s early life and early offending needs;
- Examples were observed of a parent’s reluctance to engage in family work, believing the focus ought should be on the child (i.e. viewing the child as the ‘problem’); and,
- Family services and other services (e.g. child and adolescent mental health) closed the referral due to parental lack of engagement.

While the above are framed as family-related challenges or barriers, they may also reflect limitations in service effectiveness with this group of children and families.

#### Case example Ryan

*Ryan is a 13 year-old male who came before the Court with 35 charges including multiple thefts of motor vehicles, aggravated burglary and driving dangerously. His charges commenced from 11 years of age, including assault, property damage and threats to harm, and he had previously been sentenced to a non-supervisory CD Order. Ryan was first notified to Child Protection at seven months of age, and had four notifications by age 10 (none substantiated) related to supervisory and educational neglect, housing issues, and parental*

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<sup>111</sup> Contact with specialist educational programs targeting the Child Protection cohort, e.g. Navigator, Springboard, LOOKOUT services, Berry Street CIRC program, Anglicare TeachAR program, Streets Ahead Program, Koorie Engagement Support Officer and other specialist education worker engagement, as well as educational needs assessments. This excludes engagement at specific alternative education schools.

<sup>112</sup> Local Youth Resource Centres and Youth Services, generalist youth workers, adolescent support services, youth groups.

<sup>113</sup> Mentoring programs, music/art/animal/play/recreational/life story therapies, other cultural-specific programs, Driving programs (L2P, Handbrake Turn), generalist recreational programs, and participation in team sports.

*lack of service engagement. Ryan was born with a congenital condition requiring repeat and painful surgery. He was also diagnosed with developmental delay, learning difficulties, and moderate language disorder in early childhood, for which he received speech therapy for two years. In later childhood he was diagnosed with attention deficit hyperactivity disorder, emerging conduct disorder, and was observed to have an insecure attachment style and complex traumatic stress responses. Ryan's mother struggled with substance abuse and mental health problems, and his older brother was involved with police. His father perpetrated "extreme" family violence in the home, and had aggressive behaviours which resulted in long-term incarceration in Ryan's late childhood. An adolescent family violence incident perpetrated by Ryan resulted in statutory Child Protection involvement, and a supervisory FD order to his mother. However she struggled to cope, and phoned police on several occasions in relation to Ryan's aggression and property damage which threatened their housing.*

*While Ryan's mother supported his referral for mental health assessment at age 10, he was not supported to attend subsequent appointments, and the service closed the referral. Likewise, intensive family supports closed due to his mother's sporadic engagement with them. Ryan's mother struggled to care for the needs of Ryan and his siblings, despite her care and concern for her children, and services could not meet these gaps. At age 11, Ryan was found wandering the city in the evening and his mother was uncontactable; around this time his offending commenced, and Ryan was soon remanded at age 12. Ryan remained in the care of his mother until her involvement in a police pursuit in a stolen vehicle. At age 13, Ryan entered residential care and disengaged from education. Through his initial Criminal Division Court involvement, Ryan began to engage with mental health supports and was formally diagnosed with a mild intellectual disability and autism spectrum disorder. Youth Justice held concerns regarding the level of supervision available in his mother's care; Ryan's behaviour would escalate at home, he struggled with self-regulation, and this on occasion led to police involvement. Services such as disability and mental health became involved, however all closed at various time due to a lack of engagement by Ryan and his mother. At the time of his current Criminal Division matters, his Family Division matters were ongoing, and Ryan was residing between residential care and his mother's home. Clinical specialists recommended a secure residential arrangement due to Ryan's lack of self-regulation and self-control, however no such services were identified to exist in Victoria.*

**Individual children.** As indicated previously, 24% of children were noted to sometimes refuse referrals, disengage from services, or to have minimal or sporadic service engagement. Such engagement patterns are not unusual among children and young people with complex support needs. Nor are such situations entirely problematic, as children were often willing to engage with *some* services, workers or clinicians, while declining to engage with others. The challenge, it seemed, was finding the right 'fit' for each child. Several factors emerged from case files as contributing to children's service refusal or limited engagement capacity, including:

- A lack of interest in the service(s) offered;
- Perceiving the service as not helpful;
- Workers or clinicians going on leave, with the child reluctant to re-start with a new worker or clinician;

- Transience – children moving to a new location and being reluctant to re-start with a new worker or clinician, or falling out of a service catchment area;
- Inability to participate in assessments due to current acute physical or mental health problems (e.g. being unwell, being in untreated psychosis);
- Absconding;
- Service refusal due to previous negative experiences with the specific service or service type;
- Not liking the allocated worker or clinician; and,
- Concern about the consequences of engagement (e.g. children refusing antenatal services due to concerns about being encouraged to terminate pregnancy).

**Services.** Services at times refused or were unable to work with children and families for various reasons, including:

- The household or placement conditions perceived as unsuitable for conducting therapeutic work with the child or family (e.g. disorganised, unhygienic, unsafe, violent);
- Family not engaging in the service (e.g. not attending office-based appointments);
- Child viewed as ineligible given similar services' involvement with the child or family;
- Child or family not meeting service intake criteria;
- Child or family being viewed as too high-risk or complex for the service;
- Exiting the child from the service (e.g. behavioural units, detox, homelessness services) due to the child's behaviours (e.g. violence, disruptive behaviour);
- Unable to meet the child's specific service needs (e.g. due to physical disability);
- Seeing other needs as a priority for work (e.g. substance abuse needing to be addressed prior to trauma-based therapeutic work);
- Long waiting lists (up to six months), (e.g. for intensive family supports, therapeutic programs for sexually abusive behaviours, adolescent family violence programs, youth refuge beds, youth detox, specific youth justice support services);
- Service unable to access the child in Youth Justice custody;
- Residential care staff forgetting children's appointment(s); and,
- The child assessed as no longer in need of support.

#### Case example: Maja

*Maja is a 13 year-old girl on remand in relation to 10 charges including reckless conduct endangering life, assault, and resisting police, which occurred in the context of her residential care placement. She has one prior criminal matter of 21 charges related to assault, threats to kill, and property damage, with charges commencing from 12 years of age. All the prior charges occurred whilst in residential care, and related to altercations with staff, and damage to residential care property. Maja had been given Diversion in relation to these charges, and was directed to continue to engage with mental health and other support services. Maja was first notified to Victorian Child Protection at age 11 in relation to altercations between her siblings, however there was a previous interstate notification in early childhood, where her mother had requested respite care for Maja and her siblings. Maja experienced her mother as emotionally abusive and rejecting, and professionals noted disrupted attachment between mother and child. Maja's disclosures of sexual assault at age 10 and school bullying experiences were disbelieved by her mother, who labelled Maja as "attention-seeking". At this age, Maja began to smoke cannabis, obtained from her*



*mother. By age 12, Maja was engaging in serious self-harm, including severe deliberate self-injury, head-banging, drinking poisonous substances, and repeatedly attempting suicide, for instance by stepping in front of traffic. Maja's mother was assessed as unable to respond protectively to her mental and behavioural health needs, and Maja entered residential care, where she began to attract police charges within five months.*

*Maja was diagnosed with a number of mental health problems, including early psychosis, parent-child relational issues, attachment disorder, post-traumatic stress disorder, and borderline personality disorder traits. Her carers struggled to respond to her needs, which included chronic deliberate self-harm, suicidality, running away, high risk-taking behaviour, sexual exploitation, and severe emotional distress. For 18 months, Maja cycled between various institutional environments. Psychiatric services repeatedly assessed her as having "a severe behavioural disturbance" indicative of chronic rather than acute concerns. Some mental health professionals, as had Maja's mother, assessed her emotional and behavioural challenges as attempts to "facilitate gain". Conversely, Maja indicated that she felt "very sad" when self-harming, was craving a "mum and family", and could not understand why others, including her mother and other professionals, labelled her behaviour as attention-seeking. Maja was continually excluded from mental health inpatient services, and while assessed as needing a safe environment, residential care staff struggled to provide this in the community. While she had over 20 secure care admissions, and various residential care placements, there was a lack of coordinated care strategy to support Maja. A criminal justice system response was ultimately invoked in relation to a serious violent incident, resulting in her receiving a long-term custodial sentence.*

#### 4.6.7 Informal supports

Informal support was present in children's lives through relationships with romantic partners, friends, church groups and cultural community. Though difficult to quantify, positive informal supports were very influential for some children. In many instances, reduction in, and desistance from, offending was related to the development of supportive relationships, such as those in the following case examples.

##### **Case example: Callum**

*Callum is a 17 year-old male charged with criminal damage and affray in relation to an assault committed in Youth Justice custody. His police charges commenced at 13 years, including charges of criminal damage and assaulting police; he had since accrued more than 140 charges, three community-based orders, and two custodial youth justice sentences. Callum had one substantiated Child Protection notification in relation to sexualised behaviours in preschool, at which time he received specialist therapeutic services. Callum remained in the care of his mother, however he began displaying more challenging behaviours as he grew older, both at school and in the home. After moving between his father's and mother's care, Child Protection became reinvolved at age 14 due to Callum's threatening and violent behaviour towards his mother, for which he received his first criminal charges. Child Protection referred Callum and his mother to mediation and adolescent mental health services. After further notifications relating to Callum's challenging behaviours at home, he was relinquished by his mother. His father was unwilling to work towards reunification, and Callum entered residential care.*

*He began using cannabis at this time, and shortly afterward was expelled from school. His care team assessed his behaviour as consistent with significant trauma and attachment issues, including anger and emotional regulation difficulties. Callum would phone his mother up to five times a day whilst in care, and his offending and challenging behaviour escalated, resulting in criminal damage, assault, contravention of bail conditions, and contravention of family violence intervention order charges. It was difficult for Callum to experience stability and consistency of support in out-of-home care as he was remanded on a number of occasions. In custody, Callum was observed to feel intimidated and remain close to staff; he was diagnosed by mental health professionals as having precursors of Antisocial Personality Disorder. While in custody at age 17, Child Protection referred Callum to leaving care services and withdrew. Upon release, Callum resided with extended family, before moving in with his girlfriend. His girlfriend's family described Callum as "a pleasure to have", and he began working in their family business. Callum had no further offending up to his sentence date, a period which included one month in the community, and was sentenced to a community-based order.*

#### **Case example: Thomas**

*Thomas is a 17 year-old Indigenous male who came before the Criminal Division with 65 charges relating to assault, recklessly causing injury, shop thefts, and resisting police among others. His prior offending included 113 charges commencing from 12 years of age, and he had previously been sentenced to one unsupervised order, and five supervised community community-based orders. Thomas was first notified to Child Protection at age six, and his first statutory intervention occurred at age seven, when his mother was hospitalised in relation to acute mental health concerns (psychosis), during which she had physically abused and threatened to kill Thomas. Thomas was then placed with his father for a couple of years, whom Thomas recalled being alcohol-affected, verbally and physically abusive, and neglectful (for instance requiring Thomas to make his own meals and obtain his own transport). Thomas reports beginning to smoke cigarettes and cannabis from age seven. Over the next few years, Thomas resided in various kinship and foster care placements, where he disclosed being yelled at, physically assaulted, and an attempted sexual assault. He did engage in some specialist therapeutic counselling during this time.*

*After attempts to reunify Thomas with his mother failed due to her declining mental health, he was placed in residential care at age 11, and had 10 out-of-home care placements over the next two and a half years. During his time in residential care, Thomas made some friends with whom he offended, one of whom subsequently died of an overdose. By this time Thomas was in a "bad place", and a "dark head space"; he began using ice and inhalants to "block out stuff from past". He was diagnosed with post-traumatic stress disorder, and was often cycling between remand and residential care settings. At age 16, Thomas entered a specialist placement with other Indigenous young people, where he participated in Indigenous cultural healing services, and engaged with community Elders and programs. He ceased using substances, and became strongly connected to his Indigenous culture and community, who described him as an emerging leader. Later, Thomas was supported by his extended family and community through the sudden death of a close family member. At the*

*time of his CD matters, he had not reoffended for six months, and was sentenced to a supervised community-based order.*

### Summary: Service contact

At least one quarter of children had contact with Victoria Police's SOCIT unit, most of which was in relation to their own victimisation, rather than their offending. Challenges investigating children's physical and sexual victimisation were identified, primarily related to the child's incapacity to provide evidence, including hesitance to proceed with police statements and physical examinations. Overall, 28% of children had a CCC assessment completed, including 26% in relation to CD matters, and 7% in relation to FD matters. While valued for their content, delays and inability to complete assessments were noted due to waiting lists, Youth Justice lock-downs, children going missing, refusing to attend assessments, or being unable to engage in assessments due to their current presentation.

A substantial proportion of children and families had involvement with family support services (41%), though engagement fluctuated significantly both between children and families, and over time. Among cross-over children, lifetime foster care placement (15%) was far less common than lifetime residential care placement (48%). Engagement in leaving care services was lower than expected, and difficulty arranging leaving care service provision for some children in Youth Justice custody was noted. Nine percent of children accessed housing and homelessness services, including youth homelessness services, transitional accommodation, and (rarely) public housing. Children faced homelessness in the context of transitioning from custody, leaving care, experiencing familial (e.g. parental) homelessness, and escaping familial physical abuse. Most children attended at least one of clinical mental health, trauma-specific, or alcohol and other drug services. While presenting with similar prevalence of substance misuse and 'hard' substance use, females were less likely to have accessed alcohol and other drug services compared to males (26% vs 39%). Thirteen percent of children had contact with disability services (69% of children with an intellectual disability), and three quarters of Indigenous children were known to have accessed an Indigenous-specific service.

Service engagement challenges were noted in relation to families, individual children, and services. Examples were seen of parents who were unwilling or unable to engage, or to support children's engagement with services in childhood or adolescence. Missed opportunities for early intervention were identified, both in terms of early life and early in the offending trajectory, related to familial challenges. One quarter of children had at times refused referrals, disengaged from services, or had minimal engagement, yet most were willing to engage with some services, while declining to engage with others. Factors contributing to service refusal or limited engagement included a lack of interest, staff turnover, the child's transience or absconding, current acute physical and mental health issues, and previous negative experiences. Services at times refused, or were unable, to work with children and families due to waiting lists, the household or placement conditions being viewed as unsuitable for the work, lack of engagement, children not meeting service criteria, and service exclusion due to the child's or families' level of risk, or the child's behavioural presentation.

## 4.7 Offending and Youth Justice involvement

This section contains data relating to children's offending and Youth Justice involvement, including historic offending and Criminal Division (CD) sanctions, and current CD involvement at the time of the study (index CD matters).

#### 4.7.1 Age of offending onset

As shown in Figure 49, 41% of children were younger than 14 years at their *first police charge*, and nearly one quarter were younger than 14 years old at their *first finalisation of Criminal Division matters*. In contrast to first CD sentencing, first CD finalisation includes children whose matters were struck out (9 children), or who were assessed as *doli incapax* (incapable of being criminally responsible by virtue of age/maturity) (10 children). Considerable geographic variations were also seen (see Section 4.9), with children before the regional Court evidencing a younger peak age of initial police charges.

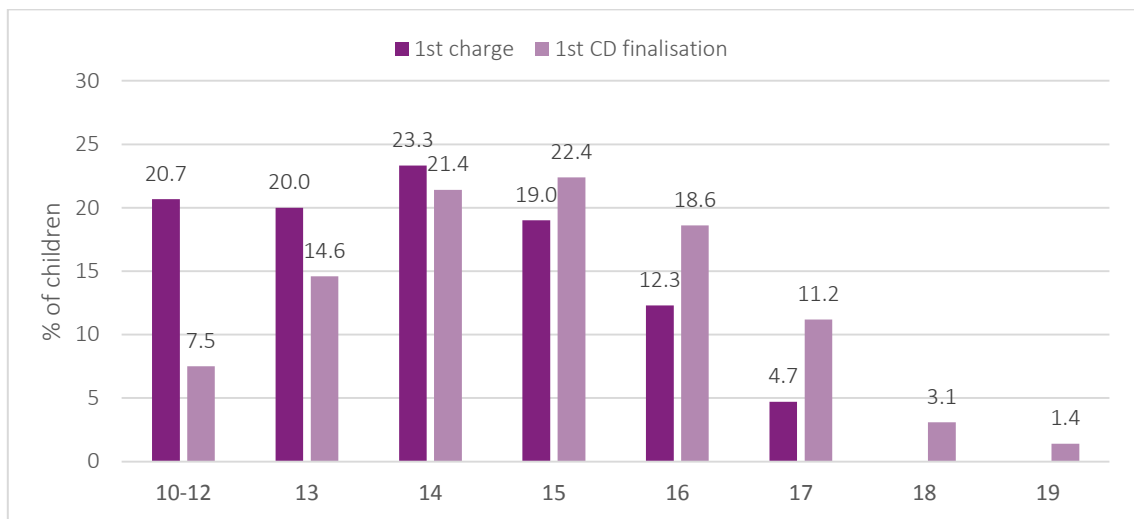


Figure 49. Age (years) at first police charge and first Criminal Division finalisation

Figure 50 below compares the age of first CD sentence of cross-over children (n=220 who had ever been sentenced) with all children sentenced in Victorian Courts in 2008-09<sup>114</sup>. While the state wide data are somewhat dated, the figures indicate a significantly younger age of first sentence among cross-over children. Nearly one quarter of cross-over children were aged under 14 years at their first sentence, three times the proportion seen among sentenced Victorian children in 2008-09 (8%).

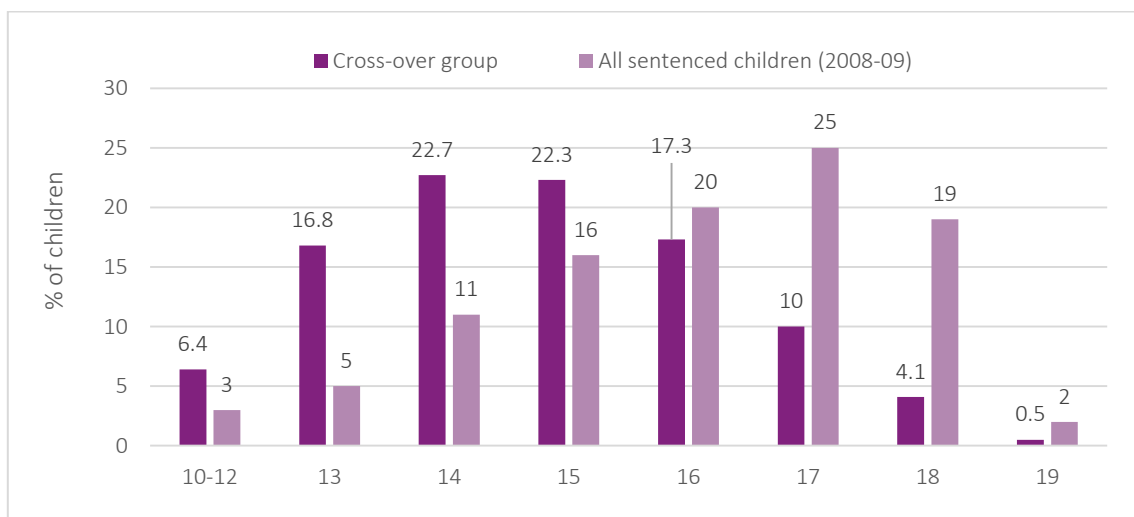


Figure 50. Age at first sentence (cross-over sample vs sentenced Victorian children)

<sup>114</sup> Data from Sentencing Advisory Council (2016). *Reoffending by Children and Young People in Victoria*. Melbourne: Sentencing Advisory Council. Figures for cross-over exclude children only placed on Diversion.

#### 4.7.2 Number of current and prior charges

The number of alleged offences consolidated in children’s index CD matter ranged from one to 136 (median = 7)<sup>115</sup>. Large numbers of charges were often consolidated for adjudication (Figure 51), and more than one third of children (39%) had 20 or more charges consolidated in their index CD matter. More than one third (43%) of children had no prior charges, meaning that their index CD matter was their first CD Court appearance.

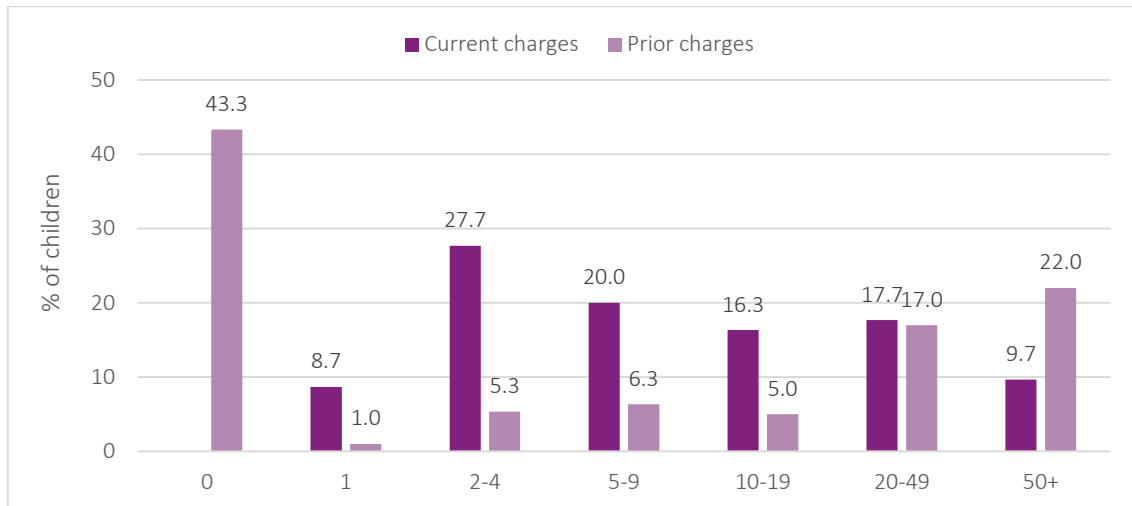


Figure 51. Number of current and prior charges

The large volume of charges consolidated in some children’s index CD matter generally reflected their accrual of charges over time. For more than one third of children (35%), charges had accrued over a period of more than six months. Conversely, for 44% of children, all charges consolidated in the index CD matter occurred within a single month (Figure 52).

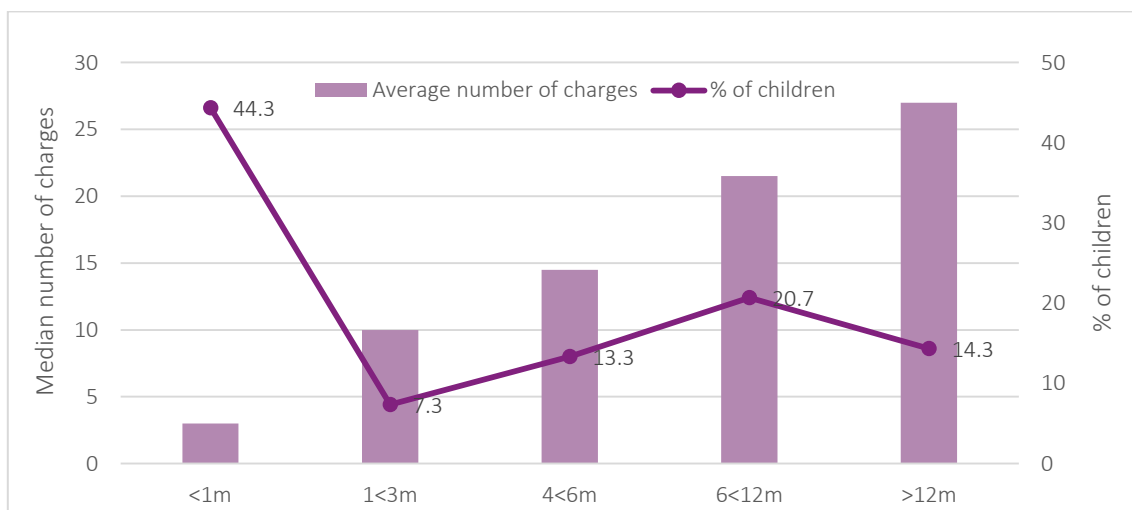


Figure 52. Period between initial and final charge in current index CD matters (months)

<sup>115</sup> Mean = 17 charges, SD = 21.8.

### 4.7.3 Offence types

Examination of current and prior charges revealed that 86% of children had been charged with offences against the person<sup>116</sup>, and 91% with property offences<sup>117</sup>. Offences against justice procedures were also common among cross-over children (72%), though this figure is likely to have been inflated due to legislation temporarily in operation in the study period which criminalised breaches of bail conditions. Alongside these criminal charges, 48.8% of children had an infringement-related (CAYPINS) matter.

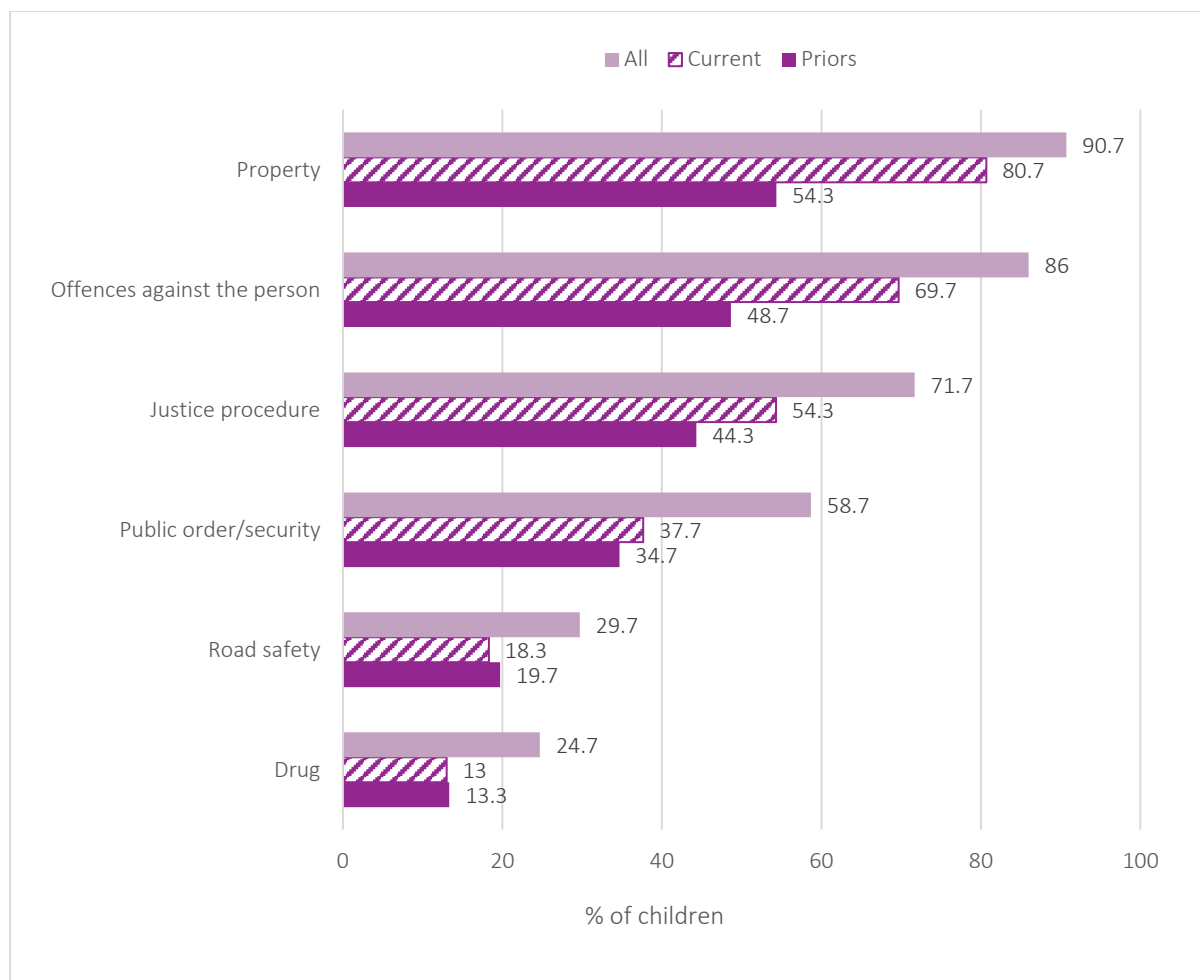


Figure 53. Current and prior alleged offence types

### 4.7.4 Contexts of offending

Qualitative examination of the contexts of children’s offending drew upon descriptions gathered from a range of documents, including police briefs, Youth Justice reports, and group conferencing reports. As there were variations in data availability, the findings presented are primarily qualitative, though quantitative findings are included where possible.

Three major contexts of offending were identified among cross-over children, namely i) adolescent family violence, ii) residential care-based offending, and iii) group-based offending with peers, older youth and adults. While the entirety of children’s criminal charges are not captured by the above

<sup>116</sup> Among children charged with offences against the person in their index CD matters, 9 children (3% of the sample) were charged sexual offending. Overall, 15 children (5%) had a prior, current or pending sexual offence charge.

<sup>117</sup> Property offences include theft/deception offences as well as property damage offences (e.g. criminal damage, graffiti).

contexts, they reflect a substantial proportion of children's offending. Aside from these contexts, children's charges sometimes related to behaviours they engaged in alone, which were unrelated to residential care placements or adolescent family violence (e.g. shoplifting of food, alcohol, or clothing, sexual offending, trespassing, or arson). Other contexts of offending are also described, including charges relating to interactions with the criminal justice system (e.g. damaging police or Youth Justice property). While some children's offending solely related to one of these contexts, other children had charges associated with most or all of these contexts.

**Adolescent family violence.** Adolescent family violence (AFV) was common among cross-over children, and included acts and alleged acts of physical and verbal violence, property damage, and threatening or intimidating behaviour towards family members, and current or former romantic partners. A minimum of 32.7% of children had AFV incidents described in their case files, though these did not always result in criminal charges.

Adolescent family violence:

- Usually occurred in the context of long-standing parent-child conflicts;
- Was most commonly perpetrated against the child's mother, who alongside the child, was often also a victim of family violence from one or more partners throughout the child's life;
- Was sometimes perpetrated against siblings, grandparents and partners or ex-partners;
- Commenced for some children when 10 or 11 years old;
- Ranged from low-level (e.g. throwing a candle) to life-threatening severity of violence (e.g. strangulation of partners, or stabbing caregivers);
- Was sometimes the sole cause of children's criminal charges, particularly charges relating to property damage or destruction (e.g. smashing a window), and assault charges; and,
- Resulted in intervention orders by caregivers (usually mothers), which precipitated the child's exclusion from the family home, and entry into out-of-home care.

Similar incidents occurring in the context of residential care are discussed in the next section. No significant differences were identified by gender or Indigenous status in relation to AFV incidents. However children coming before the regional Court were significantly more likely to have AFV incidents recorded in their files compared to the other children<sup>118</sup>. Other factors significantly associated with children having AFV incidents recorded included:

- Neurodevelopmental or neurological disorder, including intellectual disability<sup>119</sup>;
- Mental health diagnosis <sup>120</sup> (specifically attachment or trauma-related disorders, or behavioural disorders); and,
- History of challenging behaviours<sup>121</sup>.

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<sup>118</sup> AFV - Latrobe Valley vs other Courts (44% vs 28.2%,  $p < .05$ ).

<sup>119</sup> AFV - any neurodevelopmental/neurological disorder including intellectual disability (41.8% vs 26.9%,  $p < .05$ ). Includes borderline intellectual functioning, learning disorder, attention deficit hyperactivity disorder, autism spectrum disorder, Tourette's syndrome, foetal alcohol spectrum disorder and epilepsy.

<sup>120</sup> AFV - any mental health diagnosis (40.1% vs 23.9%,  $p < .01$ ), attachment/trauma-related diagnosis (49.1% vs 29.1%,  $p < .05$ ), behavioural disorder (52.6% vs 28.8%,  $p < .01$ ). No significant differences were found in relation to mood disorders, personality disorders or psychotic disorders, though sample sizes for the latter two were small.

<sup>121</sup> AFV - challenging behaviours (43.4% vs 7.7%,  $p < .001$ ).

Intervention order data were not systematically collected as part of this study, yet case file material demonstrated that many children were the subject (respondent) of intervention orders, predominantly taken out by family members, usually the child's mother. Examples were also seen of co-residents in out-of-home care, out-of-home care staff, and ex-partners having intervention orders on children. While such orders are administered via a separate system to that of Criminal and Family Division (Child Protection) matters, children may be criminally charged for contravention of intervention orders. In total, 19% of children had a criminal charge related to contravening an intervention order, commonly against a family member.

Complexities were observed regarding the use of intervention orders with this group of children. For instance some children did not appear to understand the intervention order, while others appeared to be encouraged to have contact by their family, in breach of intervention orders. At times intervention orders were reciprocally held by children and others (e.g. mothers, fathers, siblings), illustrating the complexity of family dynamics involved in these cases.

#### **Case example: Adrian**

*Adrian is a 13 year-old boy before the Court on 61 charges for a range of offences, including Persistent Contravention of a Family Violence Intervention Order. He had 17 Child Protection notifications and four substantiations from 23 months of age, and two earlier periods of statutory Child Protection involvement in mid-childhood, both resulting in Supervision Orders to reside with his mother. Adrian's parents separated in his infancy, and he has minimal contact with his father, who experienced substance abuse challenges and transience. Adrian's mother struggled with her own trauma history, and Adrian was exposed to substance abuse, family violence, and supervisory and emotional neglect from his mother and her partners. He was also sexually abused by several males in childhood, including a former stepfather who subsequently suicided.*

*Professionals noted Adrian's emotional and behavioural challenges (including restlessness, aggression and nightmares) commenced in primary school, coinciding with his sexual victimisation. While he participated in some counselling after the abuse was exposed, Adrian's mother and later partners struggled to manage his behaviours, alongside those of other similarly-victimised siblings. There was substantial conflict and violence between siblings, as well as property destruction from early childhood. Adrian began running away from home by age 11. After a serious family violence incident later that year, police applied for an Intervention Order excluding Adrian from the home, and he went to live with a family friend. Feeling deeply rejected, during this period Adrian would return home at his mother's request, then police would again be called due to further incidents. Despite the involvement of family services and trauma-specific services, his mother was unable to manage, and permanently relinquished Adrian at age 11. After a brief kinship placement he entered residential care, but continued to spend much of the week at home. At this time, Adrian's father suddenly died, and professionals noted an escalation in his behavioural challenges, resulting in Adrian being charged with offences both inside and outside residential care. Through Criminal Division proceedings, Adrian was diagnosed with a mild intellectual disability at 12 years of age, and was sentenced to a supervised community-based order. His Youth Justice case manager noted that Adrian appeared confused about the Family*



*Violence Intervention Orders, the conditions of which had been varied multiple times to enable contact with various family members, and to support reunification attempts.*

Another key concern is the availability of therapeutic, mediation and support programs to respond to the complex contexts in which adolescent family violence occurs. These complex contexts include the presence of poverty, child maltreatment and neglect, Child Protection involvement, parental family violence, mental health issues and substance abuse, and children's similar challenges in relation to disability, mental health issues, or substance abuse. Key challenges noted regarding adolescent family violence programs included:

- **Target age groups:** Adolescent family violence programs in Victoria typically target children aged between 12 and 18 years<sup>122</sup>, yet the case file data suggest that behaviours were either continuously present from early childhood, or in many instances appeared earlier than 12 years. Also noted at times were the lack of programs or services able to support children involved in abusive relationships, who were victims of family violence from current or former partners (e.g. children aged 13-14 years); and
- **Waiting lists:** While up to three week waiting times to access family mediation and adolescent family violence programs were typical, at times children and families waited for significantly longer periods to access these programs (e.g. six weeks).

**Residential care-based offending.** As highlighted by several previous studies, residential care featured prominently as a context of offending among cross-over children. Residential care-based offending for this purpose refers to acquisition of criminal charges occurring within and in the surrounds of the residential care placement. Based upon the available data, at least 17% of all children in the sample had residential care-based charges (either current or historical), and over one third (35.7%) of cross-over children *ever placed in residential care* had residential care-based charges<sup>123</sup>. As with other data, the figures represent minimum proportions, as it was not always possible to identify the context of all children's charges.

The proportion of children with residential care-based charges significantly increased with the cumulative time spent in residential care (Figure 54)<sup>124</sup>. A logistic regression was conducted to ascertain if the child's advancing age over time accounted for this relationship (see Appendix 3). The findings indicated that cumulative time in residential care remained significantly predictive of receiving residential care-based charges, even after controlling for the child's age. Among children who had spent less than six months in residential care, around 12% were identified as having residential-care based charges, compared to 55% of children who had spent 18 months or more in residential care.

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<sup>122</sup> <https://services.dhhs.vic.gov.au/adolescent-family-violence> viewed 12th July 2018.

<sup>123</sup> This figure should be regarded as an absolute minimum. The true figure is likely to be considerably higher as information was not available concerning the contexts of all historical charges.

<sup>124</sup> A significant positive correlation was observed between cumulative time in residential care (<6m, 6<18m, 18m+) and acquisition of residential care-based charges (Pearson correlation .178,  $p < .05$ ). This correlation still maintained significance even when the child's age was accounted for in a linear regression analysis (see Appendix 3).

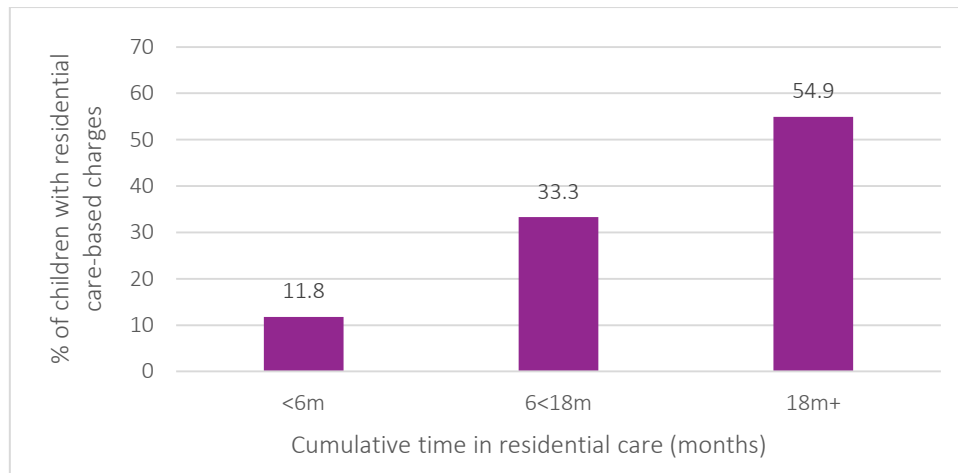


Figure 54. Minimum proportion of children with residential care-based charges

Children were charged with a range of offences in relation to their presentation and behaviour in residential care, including:

- Property offences (typically criminal damage, intentionally/wilfully destroying property);
- Deception offences (typically theft, sometimes burglary);
- Offences against the person (typically assault, using threatening words, threats to harm, throwing objects, or reckless conduct endangering life).

Case file examples of the incidents leading to these charges in residential care included children:

- Smashing an egg and a mug;
- Stealing the residential unit vehicle along with co-residents;
- Graffiti on the unit carpet and curtains;
- Removing the property of a co-resident which had previously been shared willingly;
- Damaging a kettle, microwave and toaster;
- Breaking or damaging unit windows, doors, walls and furniture (e.g. chairs);
- Damaging unit vehicles (e.g. letting down tyres, breaking windows);
- Threatening to damage unit, staff or co-resident's property;
- Threatening to harm staff or co-residents;
- Engaging in behaviour which might endanger staff or co-residents (e.g. throwing objects, pointing objects in the direction of others); and,
- Assaulting staff or co-residents.

Case file data indicated that residential care-based incidents leading to criminal charges often related to:

- A child's challenging interactions or lack of interaction with family (e.g. rejecting/abandoning experiences, being unable to reunify with parents or siblings);
- Feelings of rejection, being ignored, or otherwise triggered by interactions with unit staff (e.g. children struggling to be refused requests or told 'no' by staff);
- Attempts to gain love, care, and attention from unit staff;
- Changes to the unit stability or routine (e.g. changes in staff or co-residents); or,
- Interactions with co-residents, including conflictual interactions and engaging in offending behaviours together (see below – Group-based offending).

Characteristics of residential care-based offending and charges in the current study reflect those identified in previous research, for instance:

- A number of children were identified whose offending *solely* consisted of charges acquired in residential care placements;
- Some children's charges commenced immediately or shortly after being placed in residential care environments;
- Other children's offending included charges both inside and outside residential care placement;
- There was little consistency in relation to the charging of children with residential care-based behaviours (e.g. sometimes they were charged and sometimes not, different units employed different practices);
- Children sometimes incurred additional charges after police were contacted due to their manner of engagement with police (e.g. assaulting police, resisting arrest).

When only considering the group of children who had experienced residential care placements, no significant differences were observed by gender or Indigenous status in relation to receiving residential care-based charges. However various mental and behavioural health diagnoses were associated with a significant increase in the likelihood of having such charges, including:

- A mental health diagnosis<sup>125</sup>;
- Challenging behaviours<sup>126</sup>;
- Emerging/personality disorder diagnosis<sup>127</sup>;
- Trauma and attachment-related disorder diagnosis<sup>128</sup>;
- Behavioural disorder diagnosis<sup>129</sup>; and
- 'Hard' drug use<sup>130</sup>.

The timing in relation to 'hard' drug use and residential care-based charges was unclear. Examples were seen of children whose hard drug use commenced after they first received residential care-based charges, emphasising the fact that the above associations should not be considered causative. Children with an intellectual disability or other neurological or neurodevelopmental condition were no more likely to receive these charges *compared to other children placed in residential care*. However, children with intellectual disabilities were over-represented among children in residential care, and overall were twice as likely to have received residential care-based charges compared to children without an intellectual disability<sup>131</sup>. This suggests a need for attention to the circumstances of children with intellectual disabilities who are placed in residential care. This group may, for instance, require specialised placements, staffing or approaches. While these associations are perhaps unsurprising, they

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<sup>125</sup> Residential care-based charges - 43.9% (any mental health diagnosis) vs 12.1% (no mental health diagnosis),  $p < .001$ .

<sup>126</sup> Residential care-based charges - 42.2% (challenging behaviours) vs 8.7% (no challenging behaviours),  $p < .01$ .

<sup>127</sup> Residential care-based charges - 75% (emerging/personality disorder diagnosis) vs 34.1% (no emerging/personality disorder diagnosis)  $p < .05$ . Personality disorder diagnoses were typically described as 'emerging', and predominantly included Antisocial Personality Disorder and Borderline Personality Disorder.

<sup>128</sup> Residential care-based charges - 55.6% (trauma/attachment-related diagnosis) vs 29.8% (no trauma/attachment-related diagnosis)  $p < .01$ . Trauma and attachment-related diagnoses include reactive attachment disorder, complex post-traumatic stress disorder and post-traumatic stress disorder.

<sup>129</sup> Residential care-based charges - 48.9% (behavioural disorder) vs 30.5% (no behavioural disorder)  $p < .05$ .

<sup>130</sup> Any residential care-based charges - 28.1% ('hard' drug use) vs 11.1% (no 'hard' drug use)  $p < .001$ .

<sup>131</sup> Any residential care-based charges - 31.3% (intellectual disability) vs 15.6% (no intellectual disability)  $p < .05$ .

do reinforce the need for trauma-informed and disability-informed mental and behavioural health expertise among adults coming into contact with children in these care environments.

Examples were seen of children who were better-supported to regulate their behaviour in residential care. Consistent with previous knowledge in this field, detailed assessment, effective care teams, specialist therapeutic placements, placement routine and stability, reduced client numbers, enhanced matching of co-residents, increased staffing, reduced staff rotation, and disability expertise (where relevant) were all qualitatively observed to promote children's emotional and behavioural wellbeing in residential care.

#### **Case example: Cooper**

*Cooper is a 12 year-old Indigenous boy, often observed as sad and angry, whose 'troublesome' behaviour in residential care resulted in 82 placement-related charges including assault police, threats to injure, and criminal damage. A previous matter with 34 similar charges commencing from age 11 was struck out (doli incapax). Cooper was first notified (and substantiated) to Child Protection at four months old, and has a total of eight notifications and four substantiations. Despite being loved by his parents, Cooper's early life included extreme neglect and family violence exposure (resulting in his mother having broken bones), and both parents' imprisonment, mental health, and substance abuse concerns (including use of heroin and ice since their teenage years). While there was brief statutory Child Protection involvement in his early life (a Supervision Order to his mother), Cooper was able to remain in parental care. Poverty and transience, including periods of homelessness featured in his childhood, and leisure time for Cooper and his siblings was preoccupied with seeking basics such as food. Though many services were involved, Child Protection became reinvolved at age 10 due to ongoing family violence (which included an Intervention Order against Cooper's father), his father's drug relapse, neglect (no food in the house) and lack of safety for Cooper and his siblings. Around this time Cooper was first expelled from school due to violent behaviour, and he was later expelled from several other schools for various behavioural concerns, including arson.*

*At age 11, Cooper entered out-of-home care, however due to his significantly impaired development, he was placed in residential care, separating him from his siblings. Cooper was assessed by several clinicians who diagnosed him with reactive attachment disorder and complex post-traumatic stress disorder. Though placed in therapeutic residential care, his behavioural challenges (e.g. threatening and assaulting staff, stealing, running away) meant staff sought police responses to Cooper's behaviour. A repetitive cycle began, with Cooper being bailed 13 times in a six-month period. Incidents included Cooper being arrested for assaulting a worker, and being too agitated for police to interview him, as well as Cooper going missing, and being located by police lying on train tracks at age 12. Mental health units regularly refused to admit Cooper, identifying his difficulties as being due to underlying trauma, rather than acute mental health concerns. Outpatient mental health services were unable to engage Cooper, and specialist trauma services refused to work with him due to a lack of placement stability. The difficulties Cooper experienced with others, particularly carers, were understood to centre on his need for love, care and trust, his sense of being rejected by his family, and his extreme challenges with emotional regulation, impulse control, and self-soothing. Clinicians advised the primary need was to establish a*

*secure relationship which Cooper could experience as honest, empathic, and reliable, within a predictable and safe placement. “Zero-tolerance” approaches to behavioural incidents in residential care environments were assessed by some clinicians as being in conflict with a therapeutic approach, and unlikely to be effective given Cooper’s particular developmental challenges. However the residential carers were under-supported and under-experienced to manage Cooper’s complex support needs. Interventions delivered through the Criminal Division resulted in a positive relationship being built with a Youth Justice case manager, additional secondary therapeutic consultation to the residential care facility, one-to-one mentoring with an Aboriginal cultural mentor, and an education mentor being assigned to Cooper, all with observable positive benefits.*

**Group-based offending.** A large proportion of children had engaged in offending which occurred with others or in groups. Group-based offending was seen among children among a range of children, including those in all types of out-of-home care placements, as well as those remaining at home. Children engaged in offending with other children and young people known via:

- Family, kith and other kinship relationships;
- Local neighbourhoods;
- School;
- Residential care;
- Homelessness networks/sleeping rough; and,
- Youth Justice environments.

Case file data by chance revealed relationships between the children in the study sample (Table 2). These relationships were often complex, and could have an impact on children’s offending behaviour and youth justice involvement. Two children who were co-residents in residential care, for instance, could be friends, co-offenders, and then enemies within a relatively short period. While not applicable to all children, within the sample there were noteworthy groups of children whose lives and offending were significantly entwined. These observations illuminate the social and relational contexts of children’s offending, providing a counterpoint to the individualistic view of the child and their behaviour. While data were not systematically collected, at least 33 children (11%) were seen to have been ordered by the Court not to associate with one or more other children in the sample as part of bail conditions.

Table 2. Relationships observed between children in the sample

Relationship	Description	Relationship to offending/ CD involvement
Siblings	At least eight sibling groups existed in the sample, comprising at least 18 children (6% of the sample).	Siblings sometimes offended together, or were exposed to offending by an older sibling.
Romantic partner or ex-partner	Some children were currently or previously in romantic relationships with other children in the sample, including becoming parents together.	Children were sometimes exposed to higher risk offending and other behaviours (e.g. substance use), through their romantic partners, children were at times ordered not to associate with their current or previous romantic partners.

Co-clients and/or co-offenders	A number of children had currently or previously resided with one another, commonly in residential care settings. Children had sometimes been exposed to offending, and had sometimes offended with other children in the sample.	Children were required under Court Orders not to associate with other children in the sample, sometimes necessitating out-of-home care placement changes.
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Much of children’s most serious, damaging and violent offending could be characterised as group-based offending. Generally speaking, children engaged in group-based behaviours which were far more harmful, violent and destructive than those in which they engaged alone. Importantly, this type of offending was the most visible and injurious to the broader community. Offence types involved in group-based offending varied, and included engagement in:

- Property-related offences (e.g. property damage, thefts, motor vehicle thefts and police pursuits, burglary);
- Trespassing and aggravated burglary;
- Robbery and armed robbery; and,
- Assault and affray in groups of varying sizes.

A key type of group-based offending involved children stealing motor vehicles, and sometimes becoming involved in police pursuits. This was among the most serious offending contexts, and was more common among cross-over children who had received custodial sentences. Overall, 34.7% of children had at least one theft of motor vehicle charge. Other findings relating to charges of motor vehicle theft in the sample included:

- Males (41.7%) were significantly more likely to have theft of motor vehicle charges compared to females (20.2%)<sup>132</sup>;
- No differences relating to motor vehicle theft were found by Indigenous status, placement in out-of-home care or placement type;
- While children with an intellectual disability (ID) were not significantly more likely to have theft of motor vehicle charges than children with no ID (45.8% vs 34.2% respectively), children with *borderline intellectual functioning* were significantly more likely (57.9%) to have such charges compared to children with no intellectual disability (ID) (32.1%) ( $p < .05$ )<sup>133</sup>;
- Children with emerging/personality disorder diagnosis were significantly *less* likely to have theft of motor vehicle charges<sup>133-134</sup>; no other mental health-related differences were seen;
- Significantly higher proportions of children with motor vehicle charges were found among children with substance abuse problems, those with a history of ‘hard’ drug use, and those with a history of challenging behaviours<sup>135</sup>;
- Children whose CD matters were heard in the main metropolitan court were significantly *more* likely to have charges related to motor vehicle theft compared to children whose CD matters

<sup>132</sup> Males vs females - any motor vehicle thefts (41.2% vs 20.2%,  $p < .0001$ ).

<sup>133</sup> These figures should be interpreted with caution due to the small number of children classified as having a borderline intellectual disability (n=19) or emerging personality disorder (n=10) diagnosis.

<sup>134</sup> Emerging/personality disorder - motor vehicle thefts (0% vs 37%,  $p < .05$ ).

<sup>135</sup> Motor vehicle thefts - substance misuse (43.9% vs 17.6%,  $p < .0001$ ), ‘hard’ drug use (49.1% vs 26.9%,  $p < 0.001$ ), challenging behaviours (40.5% vs 23.1%  $p < .01$ ).

were heard in the other two courts<sup>136</sup>. This is likely to be due to this Court hearing many of the CD matters relating for children held in Youth Justice custody, a more high-risk cohort; and,

- Children with theft of motor vehicle charges were thirteen times as likely to have had a custodial sentence compared to children without motor vehicle theft charges<sup>137</sup>. Motor vehicle thefts are not necessarily the sole cause of these children receiving custodial sentences, rather this type of offence seemed to be associated with children's involvement in a group-based dynamic or subculture involving heavy substance use and other high-risk activities.

#### Case example: Ali

*Ali is a 17 year-old male from a Middle Eastern background who came before the Court with 29 charges including armed robbery, thefts of motor vehicles, and reckless conduct. He had two prior criminal matters (total of 105 charges commencing from age 14), for which he served two previous custodial sentences. Ali was first notified to Child Protection at five years old in relation to risk of physical, health/developmental, and psychological harm. A second notification at age 11 of physical abuse by his father was substantiated, and three notifications the following year of family violence exposure, physical abuse, and educational disengagement were each closed at intake, with referrals to community services. At age 13, Ali was located in the company of an older adult, substance affected, and sleeping rough to escape family conflict and violence. He disclosed to police and Child Protection ongoing physical abuse and family violence exposure, including his father breaking down doors to attack Ali and his family, resulting in an Intervention Order. Statutory Child Protection intervention at this time resulted in a Supervision Order, at which time Ali's parents separated. Resulting challenges with emotional regulation caused school difficulties for Ali, including loss of consciousness (fainting), and peer conflicts, and he was soon after refused entry into five different schools. Approaching the end of the Supervision Order period, Ali began to be charged with serious offending, occurring in the context of a 'gang' of friends, who commonly valued 'respect'. Though described as respectful and enthusiastic during his latest custodial sentence, Ali was estranged from his family, and released to homelessness. Ali reports that at the time he was residing alone in emergency housing, and offered money to drive others to engage in offending, which he was unable to refuse. He received a further custodial sentence.*

Another factor occasionally related to group-based offending was the involvement of adults, including parents, kith and kin, others with whom children were involved in sexually exploitative relationships, and strangers, including those met while children absconded. Some examples of adult involvement in children's offending included:

- A boy with an intellectual disability was being reportedly forced and threatened by his uncle to engage in mobile phone thefts;
- A 14 year-old child was witness to a murder and made to assist with disposal of the body by extended family;
- A 16 year-old boy was encouraged to assault a victim whom adults had lured and kidnapped, and to dispose of evidence;

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<sup>136</sup> Melbourne (41.0%), Moorabbin (24.1%), Latrobe Valley (24.1%) ( $p < .01$ ).

<sup>137</sup> Motor vehicle thefts - any custodial sentence (40.4% vs 3.1%,  $p < .0001$ ).

- A 16 year-old boy was in the company of a 39 year-old ‘uncle’ who stole a vehicle and petrol, and was involved in a police pursuit. The child was charged with all offences and Department Health and Human Services (the child’s legal guardian) subsequently applied for an intervention order against the older man on the child’s behalf;
- A 15 year-old girl was charged with theft and burglary which occurred in the company of a 33 year-old substance abusing man with whom she was in an exploitative relationship. An intervention order was applied against the man, and he was charged in relation to the offending.

**Other systems-related charges.** Many children were also noted to incur charges through their interactions with a range of other systems in which adult roles were to support the child’s care, wellbeing or protection, for instance:

- An 11 year-old girl was charged with property damage and assault in relation to behavioural escalation against the worker transporting her from sibling access back to her OHC placement;
- A 16 year-old boy was charged with threats to seriously injure and property damage in relation to behavioural escalation while accessing his psychiatrist;
- A 14 year-old boy in the midst of a psychotic episode was charged with assault police and resist arrest in relation to behavioural escalation when police attempted to return him from his home to his OHC placement.

Other cases were seen in which children were charged in relation to their interaction with the criminal justice system. For instance, children were charged in relation to interactions with police and Protective Service Officers, and there were several examples of children who had been charged with offending while in Youth Justice or police custody (e.g. resist arrest, property damage, and assaults on remand or while serving custodial sentences). Overall, 38.3% of children had incurred one or more charges relating to their interaction with the police or the broader justice system<sup>138</sup>.

#### 4.7.5 Sentencing

This section presents data relating to CD outcomes in relation to children’s *index* CD matters (n=266 children) and *initial* CD matters (n=275 children). Overall, 89% of children (262 children) were sentenced in relation to their index CD matters (Figure 55).

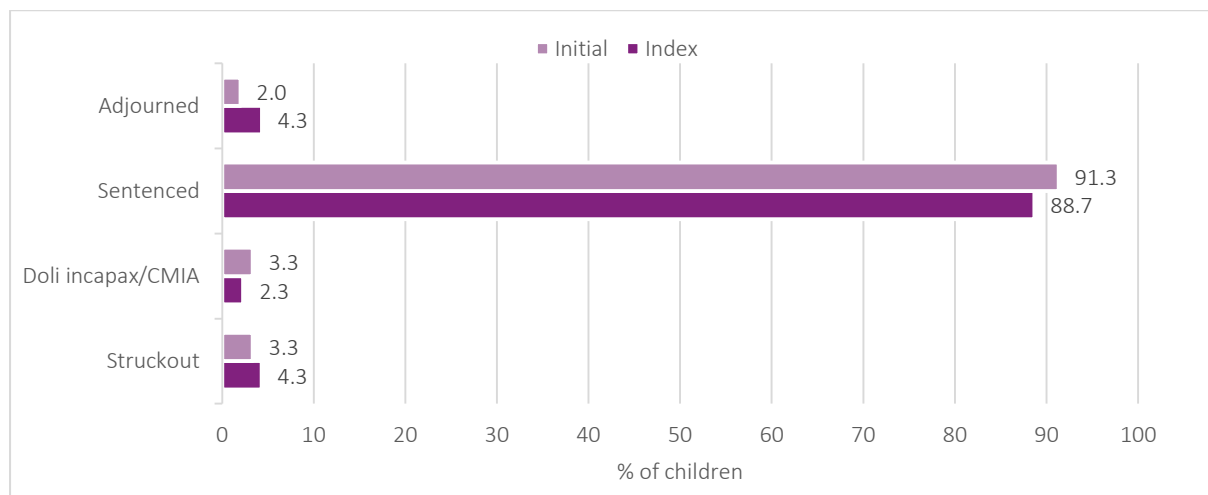


Figure 55. Initial and index CD Court outcomes

<sup>138</sup> These figures exclude charges related to offences against justice procedures (e.g. contravening bail conditions).



**Sentencing outcomes.** Initial and current sentencing outcomes are shown in Figure 56, which excludes:

- Children whose matters were struck out or withdrawn;
- Children with a finding of *doli incapax*, or unfit to stand trial under the Crimes (Mental Impairment and Unfitness to be Tried) ('CMIA') Act 1997 (Vic); and,
- Children whose matters were adjourned (either to the Children's Court or higher Courts)<sup>139</sup>.

Overall, ten children (3%) were at some point found to be incapable of being criminally responsible (*doli incapax* – 7 children)<sup>140</sup> or not guilty under the CMIA (*not fit to stand trial* – 3 children) in relation to their initial or current CD matters. Of these 10 children, most had an intellectual disability (6 children) or borderline intellectual functioning (1 child). By the time of the audit, two of these children had received subsequent CD sentences (a Good Behaviour Bond and a Youth Attendance Order, respectively). The other children had not come before the CD again during the period of data collection.

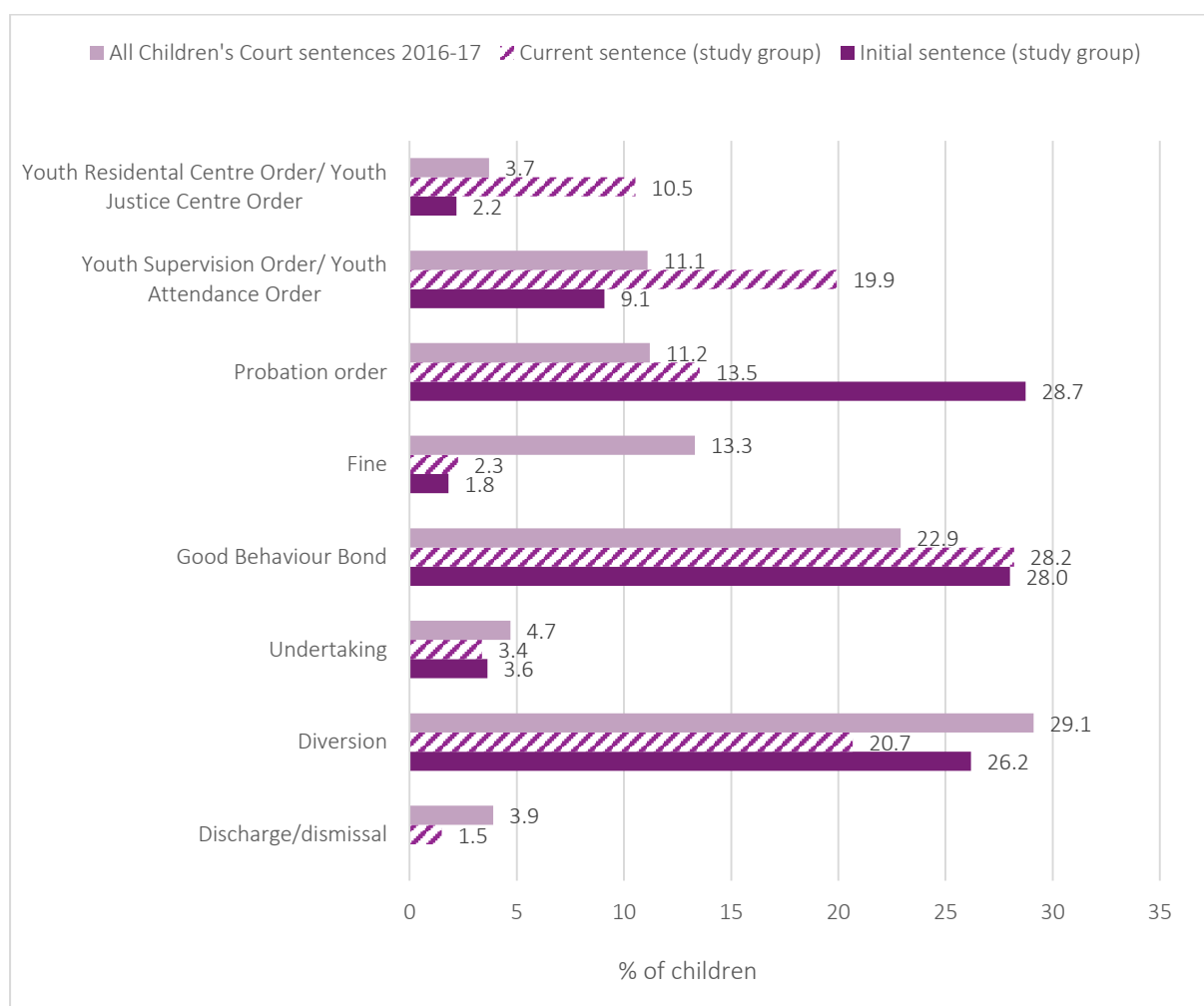


Figure 56. Sentencing outcomes for index and initial CD matters<sup>141</sup>

<sup>139</sup> It should be noted that there is some overlap in this data as the index matter was the initial CD matter for a substantial minority of children (43%).

<sup>140</sup> *Doli incapax* refers to a rebuttable presumption that children aged between 10 years (the minimum age of criminal responsibility in Victoria) and 14 years of age are not sufficiently intellectually and morally developed to appreciate the difference between right and wrong.

<sup>141</sup> Data relating to all children coming before the Criminal Division of the Children's Court were obtained from the Victorian Sentencing Advisory Council, <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-childrens-court>, viewed 10<sup>th</sup> July 2018. Where cross-over children had received multiple sentences on the same day (e.g. combination of custodial and community-based orders), the most severe sentence imposed was counted.

As indicated in Figure 56 above:

- Around one fifth of cross-over children had their index CD matters dismissed, predominantly after successful completion of diversionary programs, and sometimes participation in Therapeutic Treatment Orders;
- More than one quarter of cross-over children had a Probation Order as their first sentencing outcome;
- Nearly one in ten cross-over children had a Youth Supervision Order or Youth Attendance Order as their first sentencing outcome; and,
- Around 2% had a custodial sentence at their first sentencing outcome.

Children whose first CD court outcome was a custodial sentence were all male. These outcomes included Youth Residential Centre Orders (mean age 12.9 years) and Youth Justice Centre Orders (mean age 16.2 years). Compared to all children coming before the CD of the Children’s Court in 2016-17, cross-over children tended to receive higher sentencing outcomes, for instance they were:

- Significantly less likely to have matters discharged, dismissed or diverted (22.2% vs 33%)<sup>142</sup>;
- Equally as likely to receive any unsupervised order (Fine, Undertaking, Good Behaviour Bond or Probation Order), but significantly less likely to receive a Fine (2.3% vs 13.3%)<sup>143</sup>; and,
- Significantly more likely to receive a custodial sentence (10.5% vs 3.7%)<sup>144</sup>.

**Prior sentences.** Around half of the children (54%) had prior sentences, the number of which ranged from zero to 15<sup>145</sup>. Additionally, 6.3% of children had a previous CD matter which had been struck out or withdrawn. Instances were also observed of children having prior CD sentences in other jurisdictions (not included in these figures), though this was rare. Figures 57 and 58 show the number and nature of previous sentences among the 162 children with priors, around half of whom had one or two priors only.

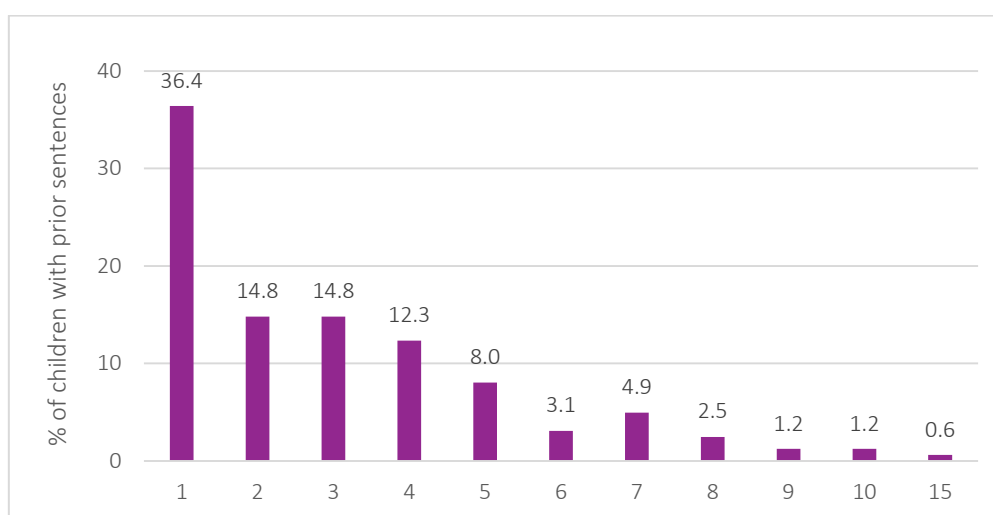


Figure 57. Number of prior CD sentences (n=162)

<sup>142</sup>  $p < .0001$

<sup>143</sup>  $p < .001$

<sup>144</sup>  $p < .0001$

<sup>145</sup> Mean = 1.65 prior sentences. Median = 1 prior sentence.

As would be expected, children with priors were significantly older ( $m= 16.7$  vs  $15.7$  years)<sup>146</sup>. No significant differences were observed in relation to priors based on gender, Indigenous status, current FD Orders or placement in OHC.

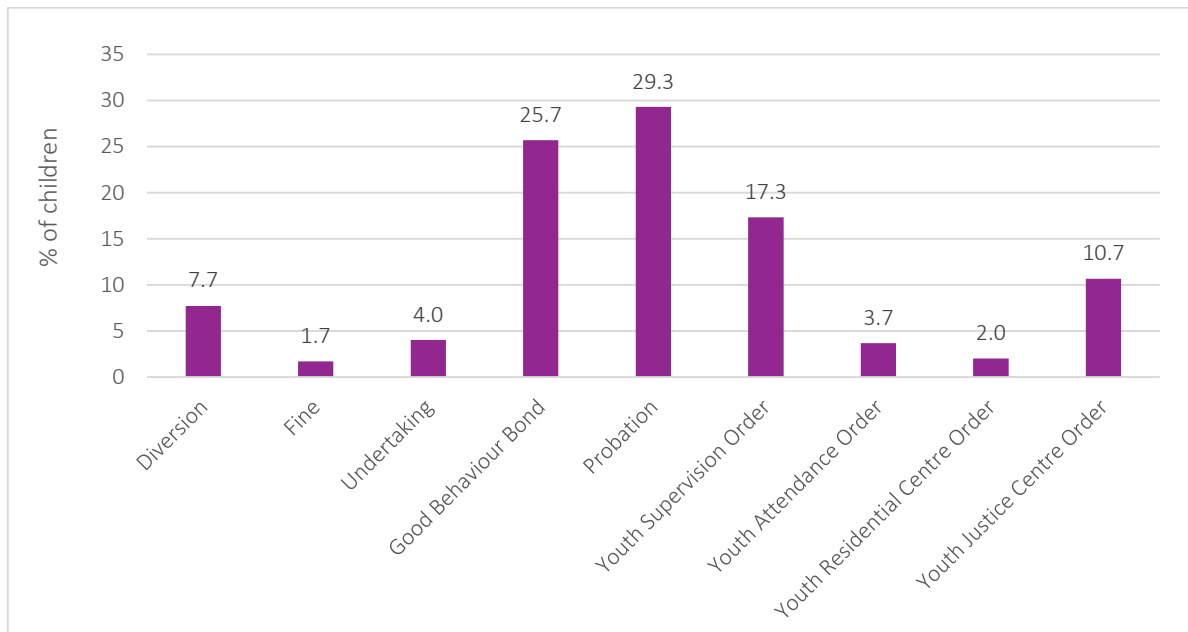


Figure 58. Prior sentence types imposed (n=162)

Figure 59 shows the proportion of children with priors who received one, two, or three or more diversions, unsupervised, supervised and custodial CD orders<sup>147</sup>. Many cross-over children appear to experience substantial periods of their youth under Youth Justice supervision (e.g. three or more years).

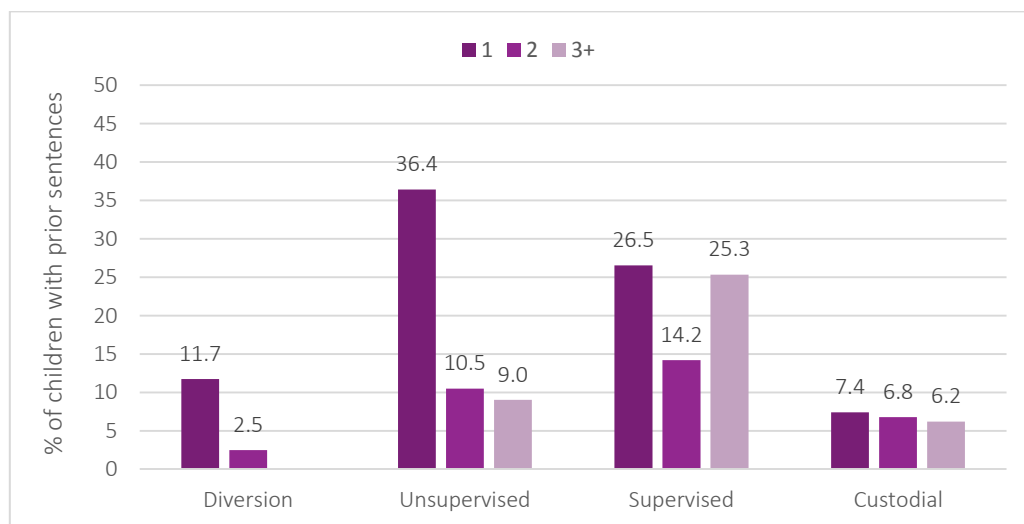


Figure 59. Previous CD sentences among children with priors (n=162)

<sup>146</sup>  $p < .0001$

<sup>147</sup> Unsupervised orders include Fines, Undertakings and Good Behaviour Bonds. Supervised orders include Probation, Youth Supervision Orders and Youth Attendance Orders. Custodial Orders include Youth Residential Centre Orders (<15 years) and Youth Justice Centre Orders (15+ years).

The above data show that a small proportion of children (20% of all those with priors) had received more than one unsupervised sentence. The figures also indicate that some cross-over children received multiple supervised orders. For instance, around 40% of children with priors had received two or more prior supervised orders, with the maximum number received by any young person being nine prior supervised orders. In the absence of further context, it could seem as though children are being given 'too many chances', however closer inspection of the cases involved revealed a more complex picture, for instance:

- At times children had spent a significant time on remand (e.g. two months or longer), and this was taken into account in relation to sentencing (e.g. resulting in an unsupervised order);
- While the sentencing guidelines and hierarchy outlined in the *Children Youth and Families Act 2005* aim to create a clear, just process in relation to sentencing, police and court systems are at times unable to keep pace with the rapidity and volume of some children's charges. Children were therefore often sentenced in relation to past charges which *preceded the previous sentence*, and could theoretically have been consolidated into a previous Order. Hence what appears to be multiple unsupervised or supervised sentences, at times reflects administrative factors; and,
- More commonly Judges and Magistrates were required to sentence children in relation to a combination of charges occurring prior and subsequent to the previous sentence.

**Breaches.** For 37% of children, current charges associated with their index CD matters breached a previous CD order. A smaller number of children (17%), had prior sentences, but their current charges had not breached those sentences. Finally 46% of children had no prior CD sentences.

**Remand and custodial sentences.** A key concern regarding cross-over children is their over-representation in Youth Justice custody. Overall, 42% of cross-over children had been in Youth Justice custody (including remand), 12% had received a custodial sentence, and a further 4% had received a custodial sentence between the date of their index CD matters and the date of the file audit. As indicated previously, several children had incurred additional charges in custody and on remand. Examples were seen of children who were charged with violent and property-related offences in custody, and charges related to breaching the order or security of the detention centre. Children's victimisation in custody was also apparent in relation to assaults and bullying in these environments. Children were also noted to be vulnerable in custody due to a range of factors, including their age, appearance, withdrawal from substances, suicidality, and their conflictual relationships with other children present in this context.

#### 4.7.6 Criminal Division Court proceedings

This section contains information relating to CD court proceedings of children's index CD matters, including the time frames for proceedings, information available to magistrates, and use of assessments.

**Time to sentencing.** As shown in Figure 60, two thirds of children were sentenced within a year of the first charge involved in the index CD matter.

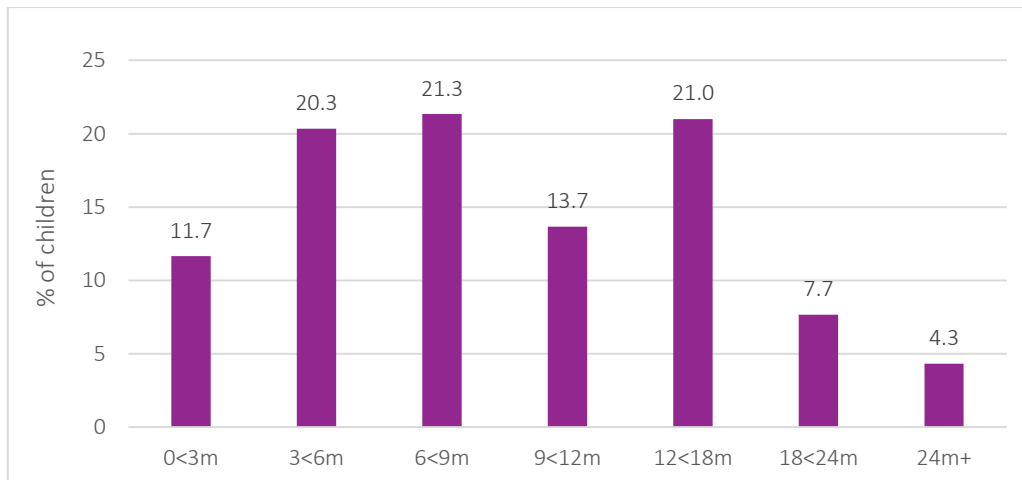


Figure 60. Time between earliest charge and sentencing of index CD matter (months)

A range of information was provided to, and requested by, Magistrates and Judges in relation to sentencing children’s CD matters. Where hard copy CD files were available (91.3%), at least one report was submitted to the CD of the Court in 58.8% of cases (Figure 61).

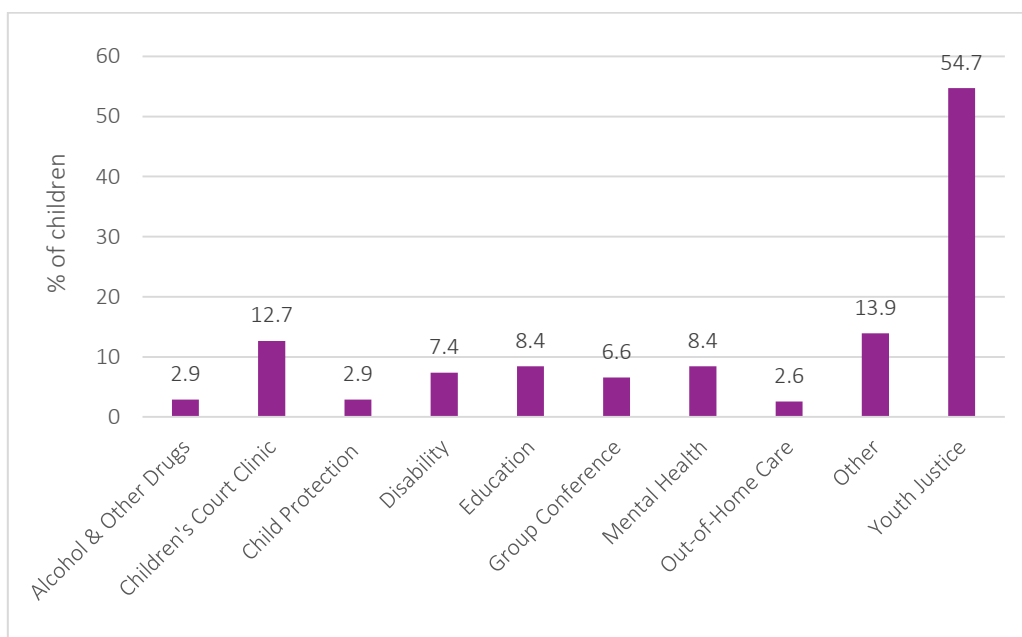


Figure 61. Service sector of reports and information provided to the Criminal Division of the Court

Reports provided to the Court included:

#### Youth Justice (YJ) Reports

- YJ reports included presentence reports, diversion assessments, diversion completion reports, supervised bail assessments, and breach reports;
- YJ reports generally contained a wealth of information, canvassing the child’s family circumstances, Child Protection involvement, offending, health, mental health, disability, education and other supports and activities with which the child was engaged;

- Sometimes YJ professionals had difficulties engaging the child for various reasons (e.g. the child absconding), and consequently information provided to the Court was minimal, or based upon Child Protection data;
- In more than a handful of cases, information provided to the Court by YJ regarding Child Protection involvement was inconsistent with the child's FD files. This was seen among a number of children who were currently residing with family, and who had typically never been removed from home. Historic Child Protection involvement, including notifications, substantiations and protection applications, were not always detailed in Youth Justice reports to the Court. It is however, possible that this information had been provided to the Court in other ways, or the YJ worker was aware that the Court was already aware of this information. On the other hand, difficulties providing accurate data to the Court may reflect communication challenges between Youth Justice and Child Protection departments;
- YJ reports indicated that there was a subgroup of cross-over children who were highly challenging to engage in the community. Additionally, it was noted that YJ in many instances applied tailored approaches to engage cross-over children, for instance conducting outreach to residential care, or using informal discussion instead of worksheets to engage in offence-related discussions. Children's young age, attachment styles, difficulties trusting adults, co-occurring neurodevelopmental disorders and disabilities, substance abuse, and mental health challenges were all noted to generate barriers to complying with community-based Youth Justice Orders.

#### Children's Court Clinic (CCC) Reports

- Information relating to CCC contact has been detailed elsewhere (see Section 4.6.2). For the purposes of the CD of the Court, CCC reports were requested in 12.7% of cases, including *doli incapax* assessments, general assessments, alcohol and other drug assessments, and neuropsychological assessments. As detailed previously, while there were sometimes significant delays accessing these assessments in the first instance, many examples were also seen of children refusing to participate in assessments when they became available. This included cases of children suspected of having intellectual disabilities who were unable to be assessed. Where CCC assessments were completed, they were greatly able to inform sentencing and service provision for the child.

#### Disability Reports

- Disability Client Services (DCS) engagement was noted for 9.3% of children overall, and a DCS report was requested in 7.4% of current index CD matters. These included assessment of the child's eligibility for receiving DCS services, comprehensive client overview reports, and service plans to integrate disability supports into the child's sentencing plan;
- As with other assessments, significant waiting times of up to five months were noted for some children to access disability (Target Group) assessments. At times, children were held on remand during this period (or part thereof) in order for these assessments to inform sentencing and planning.

### Child protection and out-of-home care services reports

- Child Protection reports were rarely provided to the CD, though Child Protection information was generally available in Youth Justice reports;
- Similarly, out-of-home care services rarely provided reports to the CD, and among reports provided were those which outlined offending, rather than supported the child. Conversely, other Child Protection reports were seen which did not outline the child's current offending and CD involvement.

### Alcohol and other drugs, mental health, education and other Reports

- Aside from alcohol and other drugs (AOD) or mental health assessments completed by the CCC, alcohol and other drug assessments, reports and certificates of course completion (e.g. AOD education) were sometimes provided to the Court by agencies and private practitioners;
- Reports and letters of support from education providers and education support services were also provided to the Court, commonly voluntarily by the school or education support program.
- Group Conferencing Reports were requested by the Court as part of the child's sentencing process. It is unclear how the rate of cross-over children's participation in Group Conferencing compares to the broader population of children coming before the CD;
- Other reports provided to the Court included reports from medical services, homelessness services, Indigenous-specific support services, Youth Justice Community Support Services (YJCSS), certificates of completion of various programs, letters of apology from the child, letters of support from family and other agencies, police reports, and Victim Impact Statements;
- At times other historical reports were provided to the court, including previous psychological/psychiatric assessments, and Child Protection reports.

### 4.7.7 Factors related to offending among cross-over children

This section presents factors related to three criminal justice related outcomes, namely:

- Age of first charge;
- Total number of charges; and,
- An offence against the person charge.

The relationships shown in Table 3 below are not evidence of causation, rather they suggest associations between these factors and earlier offending, more voluminous offending, or greater likelihood of being charged with offences against the person<sup>148</sup>. The identification of subgroups of cross-over children at greater risk of earlier or more serious offending can support more informed responses to this group. In Table 3, the factors marked with an asterisk are *significantly* associated with a younger age of first charge, a greater number of total charges, and increased likelihood of receiving an offence against the person charge, respectively, among cross-over children. A greater number of asterisks indicate a more significant association between these factors and each outcome.

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<sup>148</sup> Data has not controlled for age, which shows a small significant association with total number of charges ( $r = .159, p < .01$ ).

Table 3. Factors associated with first charge under 14 years, total charges and offences against the person

		First police charge < 14 years	Total charges <sup>1</sup>	Offence against the person charge <sup>2</sup>
Socio-demographic	Older age	N/A	**	
	Male		*	*
	Indigenous	***	*	
Offence factors	First charge <14 years	N/A	***	***
	Theft of motor vehicle charge	***	***	***
Adverse childhood events	Neglect	***	*	
	Cumulative maltreatment <sup>149</sup>	*		
	Family violence exposure	*		
	Familial substance abuse	**		
	Familial criminal justice system (CJS) involvement	**		
	Parental death after 10 years of age		**	
	Cumulative maltreatment and adversity <sup>150</sup>	***		
Child Protection factors	Younger age of first notification	**		
	Younger age of first substantiation	***		
	Current FD order	***		
	Age of first out-of-home care placement	*		
	Current out-of-home care placement	**	*	
	Current residential care placement	*	*	
	>6 months cumulative residential care		**	
	>18 months cumulative residential care	*	**	
Education	School exclusion		**	
Co-occurring challenges	Cumulative number of co-occurring challenges	**	***	*
	Neurological or neurodevelopmental conditions (excluding intellectual disability)	*	**	
	Mental health diagnosis		**	*
	Trauma/attachment-related disorder		*	
	Behavioural disorder		**	
	Substance misuse		***	**
	'Hard' drug use	**	***	*
Challenging behaviour	*	***	*	

\* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$  1. Total charges include current and prior charges. 2. Offences against the person include charges classified under Divisions 1 to 5 of the Australian and New Zealand Standard Offence Classification (ANZSOC), encompassing homicide and related offences, acts intended to cause injury, sexual assault and related offences, dangerous or negligent acts endangering persons, and abduction, harassment and other offences against the person.

**Age of first charge.** Indigenous children on average were younger at their first police charge compared to other cross-over children. Younger age at first police charge was also associated with receiving a later

<sup>149</sup> Cumulative exposure to abuse and neglect score as described in Section 4.5.6. Score out of 4 (Physical abuse, emotional/psychological abuse, sexual abuse, and neglect).

<sup>150</sup> Cumulative adversity score as described in Section 4.5.6. Score out of 10 (Parental separation, parental death, neglect, physical abuse, emotional abuse, sexual abuse, family violence, familial mental illness, familial substance abuse, and familial criminal justice system involvement).



charge of motor vehicle theft, having charges related to offences against the person (violent charges), and receiving a custodial sentence<sup>151</sup>. Numerous adverse childhood events and harms, including neglect and other forms of maltreatment were associated with a younger age of first police charge, as were younger ages of initial Child Protection notifications and substantiations, and intellectual disability. Furthermore, a cumulative effect was identified reflecting a small but statistically significant relationship between the number of adverse childhood events experienced and the age of first police charge. Simply stated, the greater number of adverse childhood events experienced, the younger the child was, on average, at their first police charge. Aside from the factors associated with having a first police charge under 14 years, a younger age of first police charge was also significantly associated with:

- A higher number of Child Protection notifications<sup>152</sup>;
- Having a current Family Division Order<sup>153</sup>;
- Intellectual disability<sup>154</sup>;
- Any mental health diagnosis<sup>155</sup>;
- Trauma/attachment-related disorder diagnosis<sup>156</sup>;
- Behavioural disorder diagnosis<sup>157</sup>; and,
- Substance misuse<sup>158</sup>.

Further analysis revealed that compared to children whose first police charge was at 14 years of age or older, cross-over children whose first police charge occurred *under 14 years of age* were significantly more likely to first enter out-of-home care between 2 and 10 years of age<sup>159</sup> (though equally likely to enter OHC under 2 years of age, after 10 years of age, or to never be placed in out-of-home care (Figure 62)).

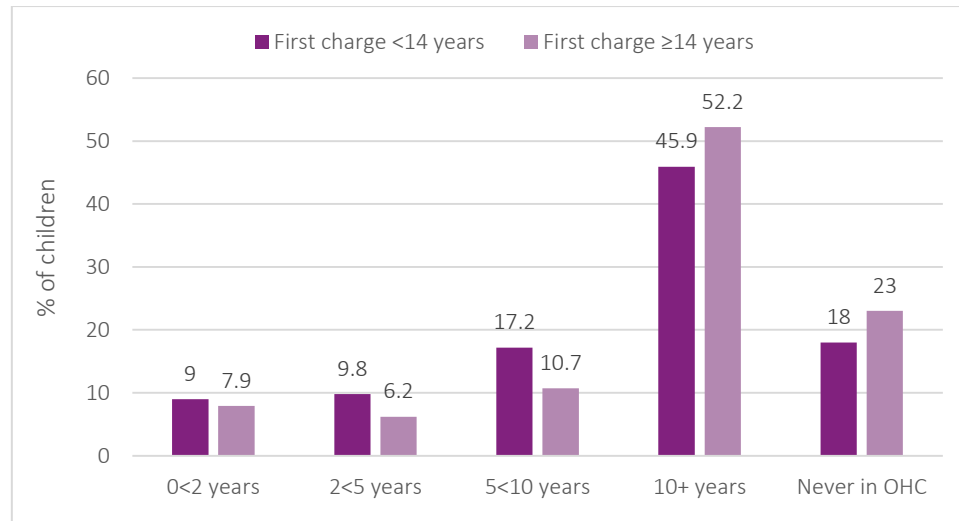


Figure 62. Age of first entry into out-of-home care vs age of first police charge

<sup>151</sup> Custodial sentence - 58.3% (first police charge <14) vs 37.3% (no police charge <14),  $p < .05$ .

<sup>152</sup> Age of first police charge - number of child protection notifications (Pearson correlation =  $-.155$ ,  $p < .05$ ).

<sup>153</sup> Age of first police charge - current FD Order ( $m = 13.9$  vs  $14.9$  years,  $p < .001$ ).

<sup>154</sup> Age of first police charge - intellectual disability ( $m = 13.7$  vs  $14.4$  years,  $p < .01$ ).

<sup>155</sup> Age of first police charge - any mental health diagnosis ( $m = 14.1$  vs  $14.6$  years,  $p < .05$ ).

<sup>156</sup> Age of first police charge - trauma/attachment-related diagnosis ( $m = 13.7$  vs  $14.4$  years,  $p < .01$ ).

<sup>157</sup> Age of first police charge - behavioural disorder diagnosis ( $m = 14.1$  vs  $14.7$  years,  $p < .01$ ).

<sup>158</sup> Age of first police charge - substance misuse ( $m = 14.2$  vs  $14.6$  years,  $p < .05$ ).

<sup>159</sup> First entry to out-of-home care 2<10 years – 27% (police charges <14) vs 16.9% (no police charges <14),  $p < .05$ .

In order to evaluate the unique predictive impacts of various factors on children's likelihood of first being charged under 14 years, a logistic regression was performed (see Appendix 4). Variables in the above table were entered which were significantly associated with having a first police charge under 14 years, with the exception of Indigenous status (due to missing data), variables which repeated similar constructs (removal of total ACE score and challenging behaviours, captured in other variables) and factors potentially following the first police charge (e.g. theft of motor vehicle, current and Family Division Orders and/or out-of-home care placements, age of first out-of-home care placement, and substance misuse/'hard' drug use). The only variable with a unique and significant contribution to predicting an earlier first police charge was child neglect. Cross-over children who had been neglected had 2.2 times greater odds of being first charged by police under the age of 14 years compared to other cross-over children.

**Total number of charges.** When considering factors related to a child's total number of charges, the cross-sectional nature of this data should be kept in mind. This group of children are of varying ages, and it is unclear how findings relating to total charges would differ by the time all children reached 18 years of age. Similar analyses should be replicated with a longitudinal cohort of cross-over children in order to verify findings.

In bivariate analyses, children's total number of charges were associated with socio-demographic characteristics (age, male gender, Indigeneity), measures of adversity (neglect and parental death after age 10), and care and education factors (placement in out-of-home care, residential care, school exclusion). Children's total number of charges were most strongly associated with co-occurring challenges, including neurodevelopmental disabilities, mental health diagnoses (particularly trauma and attachment-related diagnoses), and behavioural challenges (behaviour disorder diagnosis and presence of challenging behaviours). Additionally, a greater number of charges were observed among children whose police charges commenced prior to 14 years, and those who had a theft of motor vehicle charge (both indicators of generally more serious offending in this sample).

In order to evaluate the predictive impact of various factors on children's total number of charges, a linear regression was performed (see Appendix 4). Variables in the above table were entered which were significantly associated with the total number of charges, with the exception of Indigenous status (removed due to missing data). Hard drug use was also removed due to overlap with substance misuse. To determine any impact of residential care placement on top of the above-mentioned factors, three durations of residential care placement were examined, including i) any residential care placement ii) placement for more than 6 months, and iii) placement for more than 18 months. Variables with a unique significant contribution to explaining variation in the total number of charges were:

- Age – for each additional year in age the number of charges increased by 11 on average;
- Gender - males had 20 more charges than females on average;
- Parental death after 10 years of age - associated with an increase of 26 charges on average;
- First police charge under 14 years of age - associated with an increase of 47 charges on average;
- Substance misuse - associated with an increase of 20 charges on average.

In addition to the above variables, placement in residential care including placement for more than six months *did not* further explain variation in children's total number of charges, though spending more

than 18 months in residential care did ( $p<.05$ ), and was associated with an additional 15 charges on average.

**Offences against the person (OAP).** A large proportion of children (86%) had at least at least one charge related to offences against the person (OAP), broadly analogous with violent offending. Factors which were significantly associated with having an OAP charge included male gender, younger age of first police charge, cumulative number of co-occurring challenges, mental health diagnosis, substance misuse, 'hard' drug use, and challenging behaviours<sup>160</sup>. Exposure to family violence and school exclusion each also approached statistical significance (both  $p=.06$ , 1-tailed). In a logistic regression analysis (see Appendix 4) the only factors which made a statistically significant unique contribution to predicting OAP was the age of first police charge ( $p<.001$ ) and male gender ( $p<.05$ ), though the presence of hard drug use ( $p=.060$ ) approached significance as a predictive factor. As shown in Figure 63, each additional year in age at first police charge was associated with a 39% decrease in the odds of having an OAP charge on average.

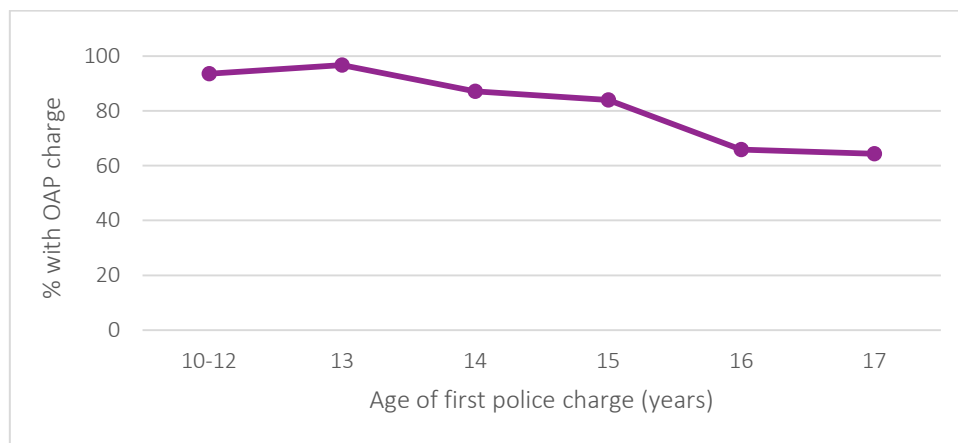


Figure 63. Proportion of children with offences against the person (OAP) charge by age of first police charge

**Other factors related to offence types.** No other differences relating to current/prior offence types were observed based on current/lifetime OHC placement. Certain gender and placement-related differences relating to offence types were identified as follows:

- In relation to current offence types, males were significantly more likely to have current road safety charges compared to females<sup>161</sup>;
- In relation to all offence types (current and prior), males were significantly more likely to have been charged with offences against the person (89.2% vs 78.7%), drug offences (29.4% vs 14.9%), and road safety offences (36.3% vs 16%)<sup>162</sup>;
- No significant differences were detected between Indigenous and non-Indigenous children in relation to current or all offence types.

Analysis of offence types based upon OHC status revealed that children currently in OHC were more likely to have current property offence charges compared to children not in OHC (85% vs 77%), though

<sup>160</sup> Care should be taken with interpreting these findings since the children were mostly under 18 years at the time of their index CD matters, and it is possible that some would ultimately be charged with OAP not captured in these analyses.

<sup>161</sup> Road safety offences - 22.6% males vs 9.6% females,  $p<.01$ .

<sup>162</sup>  $p$ -values – offences against the person ( $p<.05$ ), drug offences ( $p<.01$ ), road safety offences ( $p<.001$ ).

this difference only approached statistical significance ( $p = .08$ , 2-tailed). However, for children placed in residential care, significant differences in offence types were observed were in relation to being charged with property/deception offences, for instance:

- Compared to all other children, children *currently placed in residential care* were significantly more likely to have been charged with property/deception offences as part of their current *index CD matter* (92% vs 76%), and to have *ever* been charged with property/deception offences (97% vs 88%)<sup>163</sup>;
- Compared to all other children, children *ever placed* in residential care were also significantly more likely to have *ever* been charged with property/deception offences (96% vs 86%)<sup>164</sup>.

With the exception of property offences, substance misuse and ‘hard’ drug use were each associated with increased lifetime prevalence of each offence type (violent, drug, public order, driving, and justice procedure offences)<sup>165</sup>, as well as theft of motor vehicle charges specifically. Additionally, ‘hard’ drug use was associated with increased prevalence of adolescent family violence incidents, and receiving residential care-based charges.

### Summary: Offending and Youth Justice involvement

A substantial proportion of children were aged under 14 years at their first police charge (41%), and their first CD finalisation (22%). Most children had been charged with property offences (91%), offences against the person (86%), and offences against justice procedures (72%). Three key offending contexts were identified among cross-over children: adolescent family violence (AFV), residential care-based offending, and group-based offending. At least 33% of children had evidence of AFV incidents, which were more prevalent among children before the regional Court, and among children with any neurodevelopmental/neurological disorder, trauma/attachment-related disorder, or behavioural disorder. The child’s mother was the most common victim of AFV, and AFV was at times described in relation to children as young as 10 years. Intervention orders as a result of AFV regularly precipitated the child’s exclusion from the home, and entry into out-of-home care, and charges related to contravention of Intervention Orders were seen among 19% of children. Key challenges noted regarding AFV programs were the target age group excluding younger children aged under 12 years, and waiting lists to access programs and services.

At least 17% of all children had residential care-based charges (current/historical), including at least 36% of those children who were ever placed in residential care. Acquisition of such charges increased with cumulative time spent in residential care. Residential care-based charges were more prevalent among children with challenging behaviours, and those with diagnoses of emerging/personality disorders, trauma and attachment-related disorders, and behavioural disorders. As a group, children with intellectual disabilities were over-represented in residential care, and were overall twice as likely to have received residential care-based charges compared to other children in the sample.

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<sup>163</sup> *p-values* – index CD matters include property/deception offences ( $p < .01$ ), ever charged with property/deception offences ( $p < .05$ ).

<sup>164</sup>  $p < .01$ .

<sup>165</sup> For instance ‘hard’ drug use and offences against the person (43.9% vs 15.4%,  $p < .05$ ), drug offences (61.1% vs 32.9%,  $p < .001$ ), public order offences (48.2% vs 28.2%,  $p < .05$ ), offences against justice procedures (47.4% vs 19.7%,  $p < .001$ ), driving offences (52.3% vs 34.7%,  $p < .05$ ).

Group-based offending was identified both among children placed in out-of-home care, and those who remained with family. Various associations were identified between children in the sample, including sibling relationships, romantic partners/ex-partners, and co-clients/co-offenders. At least 11% of children had been ordered by the Court not to associate with one or more other children in the sample as part of bail conditions. Group-based offending tended to be the most serious offending, and the most visible and injurious to the broader community. At the most serious end, 35% of children had theft of motor vehicle charges, which were more common among males, children with borderline intellectual functioning, substance misuse, 'hard' drug use, and challenging behaviours. Children with theft of motor vehicle charges were ten times more likely to have received a custodial sentence. Additionally, 38% of children had incurred one or more charges relating to their interaction with the police or the justice system, including property damage in custody, or assaulting police.

Most children (89%) were sentenced in relation to their index CD matters, though a small number were at some point found to be incapable of being criminally responsible (*doli incapax* or *not fit to stand trial*), most of whom had an intellectual disability/borderline intellectual functioning. For their first sentencing outcome, over 25% of children had a Probation Order, nearly 10% had a Youth Supervision Order or Youth Attendance Order, and around 2% received a custodial sentence. Compared to all children coming before the Children's Court in 2016-17, cross-over children tended to receive higher sentencing outcomes (e.g. less likely to receive diversion/fine, and more likely to receive a custodial sentence). At least 42% of children had been in Youth Justice custody (including remand), and 16% had received a custodial sentence by the time of the file audits. While several children were charged with offences in custody, children's victimisation and vulnerability in custody was also apparent (e.g. being assaulted, bullied, or suicidal).

The CD of the Court received reports and assessments for 59% of children, most commonly Youth Justice reports (55%) and Children's Court Clinic reports (13%). Challenges were noted in supporting children to participate in assessments, the timeliness of assessments (e.g. Disability Assessments, Children's Court Clinic assessments), and in some instances the omission of historical Child Protection information for children who had returned to family.

Among the sample, a younger age at first police charge was associated with various indicators of maltreatment and Child Protection involvement, Indigeneity, and children's co-occurring challenges, particularly intellectual disability. The only uniquely predictive variable of an earlier age at first police charge was child neglect; cross-over children who had been neglected had 2.2 times greater odds of being first charged by police under the age of 14 years compared to other cross-over children. Children's total number of charges were significantly associated with age, gender, experiencing parental death after 10 years of age, being aged under 14 at the first police charge, substance misuse, and having spent longer than 18 months (cumulatively) in residential care. Finally, the factors significantly predictive of having an offence against the person charge were a younger age at first police charge and male gender, though the presence of 'hard' drug use approached significance as a predictive factor. Among cross-over children, each additional year in age at first police charge was associated with a 39% decrease in the odds of being charged with an offence against the person.

## 4.8 The criminal justice-Child Protection nexus

Points of intersection between the criminal justice and Child Protection systems have already been discussed, such as the connection between adolescent family violence and entry into OHC, and children in OHC receiving residential care-based charges. Additional points occur also, such as:

- The nexus between Child Protection involvement with children with offending behaviour, and Child Protection decision-making about case referral or case closure;
- Placement of Child Protection-involved children with offending behaviour; and,
- Criminalisation of welfare concerns.

### 4.8.1 Child Protection involvement

**Referral to Child Protection from CD.** There is provision under Section 349 of the *Children, Youth and Families Act* (Vic) 2005 for children to be referred by the CD of the Children's Court to Child Protection services, however no such referrals were identified among case files. Children were more often notified to Child Protection by police or Youth Justice owing to concerns regarding their welfare; such referrals occurred for at least 16 children. A number of children had Protection Applications made on the date of their criminal charges, or during a subsequent period of bail or diversion, where it became evident to Youth Justice that child welfare concerns were substantially related to the child's offending. In these instances, Child Protection had usually been involved historically (either voluntarily or in a statutory capacity) but had withdrawn involvement prior to the offending. Despite these referrals, Child Protection did not always assess a need for their involvement. This was often when risk of harm, generally in adolescence, was viewed as arising from the child's own behaviour rather than caregiver maltreatment.

**Child Protection case closure.** Withdrawal of Child Protection involvement with cross-over children was another phenomenon identified among the case files, and was observed to be directed by legislative limits, and professional assessment, for instance:

- **Assessment of the parents as protective and/or willing to engage with services:** Case closure decisions were made where parents were assessed to be protective (e.g. notifying the police when the child was missing), and/or were voluntarily engaging with appropriate services.

#### Case study: Pili

*Pili, a 17 year-old male of Pacific Islander background, arrived in Australia at 12 years of age. Child Protection became involved when he was 16 due to his father's physical abuse. Because of tension at home, Pili would run away to the city, stay with friends for extended periods, and sleep in libraries during the day. Pili was exited from school just prior to Child Protection involvement due to violence towards another student. At the time of Child Protection involvement, physical abuse by his father had resulted in wounds requiring stitches, and Pili's temporary placement in crisis accommodation. The physical abuse ostensibly was prompted by Pili's lack of school attendance. Child Protection initially took out an Intervention Order against Pili's father, (whom Pili described as 'a good bloke'), later revoked given his willingness to engage in a violence intervention program and other services. Child Protection subsequently withdrew on the basis of the child's age (17), and assessment that subsequent concerns mainly*

*related to Pili's behaviour. Pili's offending commenced during the period of Child Protection involvement, and it was assessed that Youth Justice would support ongoing service access.*

- **The child being remanded or sentenced in Youth Justice custody in older adolescence:** Child Protection generally closed a case or withdrew from ongoing FD Court proceedings around older adolescents (16 or 17 years of age) in Youth Justice custody. This withdrawal was presented as a lack of capacity or need for Child Protection to support children in custody, a reluctance to 'double-up' on services being provided by Youth Justice, or a lack of capacity to achieve final FD Orders for children aged 17 years and older. While somewhat understandable in the legislative context, a lack of Child Protection support for this group is philosophically troublesome for various reasons, for instance:
  - While from a systems resource perspective it is perhaps immaterial which Department delivers particular services to a child, it is conceptually problematic that the government service intended to supervise the child's correctional order (Youth Justice) should effectively act as the same child's unauthorised guardian, particularly for those children for whom family are unavailable (e.g. due to estrangement);
  - An effective and independent guardian is an important component of protecting or advocating for children in the event of abuse or neglect which could occur whilst in Youth Justice custody, and providing independent support and advocacy under other circumstances (e.g. Court support).

#### **Case example: Jake**

*Jake is a 17 year-old youth charged with assault which occurred in Youth Justice custody. Child Protection became involved with Jake when he was twelve months old, alerted by concerns about developmental delay. His mother, who had mental health and substance abuse concerns, refused Child Protection support and subsequently left the state. His father is unknown. Jake was exposed to significant family violence (physical and emotional abuse of his mother), and had seven siblings removed from his mother's care by the time he was 16 (including step- and half- siblings).*

*There were 11 Child Protection notifications concerning Jake across two states, relating to health, developmental and educational neglect, maternal mental health, homelessness and poverty, global delay, and family violence. At age seven, Jake was noted to be thin and to take food from other children. He was primarily raised by a step-father who later returned him to his mother during adolescence due to his challenging behaviours, though she was homeless and using substances at this time. By the age of 13 neither Jake nor his siblings were attending school due to behavioural issues. Child Protection supported Jake's mother to access housing and to share his care with her own mother, Jake's grandmother. At this time Jake was re-enrolled at school, and was diagnosed with intellectual disability and mental health problems. Child Protection became reinvolved at 14 years of age, when the school was unable to contact Jake's mother in relation to his education. Ongoing family violence exposure from his mother's partner became evident, including threats to kill, as well as his mother's suicidality, and her refusal of mental health support. Shortly thereafter,*

*Jake's mother and grandmother relinquished his care, due to escalating behaviours such as stealing, stating "he doesn't know the difference between right and wrong".*

*After a time in residential care, Jake was subsequently placed with his mother, who was living in a motel after a period of homelessness. Jake was later sighted by professionals, looking frightened. Soon after, he advised he had left his mother's care because "she had not been looking after me". After a year of transience between residential care and his mother, Jake was placed on a long-term FD Order due to his mother's ongoing substance abuse and homelessness. The following year at 15 years of age, he began to be charged with offences and was remanded in custody. While in custody at 16, Child Protection closed and it was assessed that disability and Youth Justice services could support Jake post-release. A subsequent Child Protection notification was made upon his release, as Jake's mother (then his legal guardian) was homeless, using cannabis and ice, and was unable to provide for his care.*

- **Leaving care:** Child Protection case closure is set at the child's 18<sup>th</sup> birthday under legislation current at the time of the study. It was often noted that there was an escalation in offending in the lead up to, and following, withdrawal of Child Protection services<sup>166</sup>.

#### 4.8.2 Placement of Child Protection-involved children

**Child Protection placements and bail.** A lack of suitable out-of-home care arrangements was identified as sometimes delaying bail for remanded children.

##### **Case example: Caleb**

*Caleb is a 15 year-old youth who recently entered residential care because of his family violence. Youth justice assessed that his behaviours indicated a history of trauma. His family history circumstances included a father who abused alcohol, and both parents had significant mental health problems. Growing up, Caleb was often transient between family members due to his mothers' mental health hospitalisations during psychotic episodes. He began to be charged with offenses commencing from his entry into residential care, including offending within the placement, returning to his family home where there were intervention orders against him, and offending outside the residential unit. Caleb had no criminal history prior to this time, but had begun using drugs earlier that year, leading to multiple psychotic episodes. It was noted that there were a highly volatile mix of clients at Caleb's residential care unit, his mental health difficulties (including anxiety) escalated in this placement. Youth Justice opposed Caleb's bail on the grounds that the residential care placement was inappropriate for supporting his desistance from offending.*

**Secure Welfare Services placement decision-making.** Dilemmas occasionally arise as to whether children ought to be placed in Secure Welfare Services (a time limited protective intervention), remanded into Youth Justice custody, or taken to mental health inpatient facilities for assessment. Such dilemmas were apparent where children were both 'at risk' (e.g. missing person), as well as in breach of Criminal

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<sup>166</sup> In September 2018 the Victorian government announced plans to pilot the option of extending out-of-home care arrangements to 21 years for some young people in out-of-home care.



Division orders (e.g. breaching bail conditions). The small number of secure care beds available (only 10 for girls and 10 for boys across the state), generate pressure to ensure these are reserved for cases involving a substantial and immediate risk of harm. While the Court can order such a placement for children subject to Interim Accommodation Orders, decision-making in other circumstances was observed to involve negotiation between various agencies and bodies, including police, Child Protection and Youth Justice, each of whom presented with particular, and at times conflicting, priorities and approaches.

The existence of this dilemma again reflects a complex concern about cross-over children, who are often both vulnerable victims, and at times serious perpetrators: how should existing systems negotiate the task of responding to children's 'needs' and 'deeds', in making decisions to protect and/or prosecute?

#### **Case example: Malia**

*Malia is a 13 year-old girl of Pacific Islander background with a recent onset of offending, who was charged with theft, robbery and assaults committed with other young people whilst running away from home. Though the subject of four Child Protection notifications between the ages of five and 12 in relation to physical abuse and family violence exposure, Malia remained residing with family without statutory Child Protection intervention. At the time of her CD matters, she was charged with various offences but continued to run away from home, breaching her bail conditions. While she was missing, Child Protection commenced statutory proceedings due to concerns for her welfare.*

*Police and Child Protection were at odds regarding whether, once located, Malia ought to be placed on remand for breaching bail, or in secure care due to protective concerns. Police concerns initially focused on Malia breaching her bail conditions, while Child Protection were concerned about the risks of harm including sexual exploitation. Later these concerns were reversed, with police noting there were "disruptions in the home", and suggesting that secure care ought to be considered. Conversely, Child Protection assessed that Malia's behaviours, though placing herself and others at risk, were predominantly criminal justice-related, and ought to be responded to by remand. The decision to remand Malia when located was agreed to by family, who indicated beyond physical abuse, which they conceded was ineffectual, they "didn't know what to do".*

*Upon further consideration of her age, time missing, and concerns regarding substance use and sexual exploitation, Child Protection revised their position. Malia was eventually located, placed in secure care, and later returned home. She later received a Good Behaviour Bond in relation to the criminal charges, and while there was no apparent intervention in relation to Malia as a victim of physical abuse, she was directed to undergo counselling including anger management to address her use of violence.*

**Lack of appropriate care placements.** A general lack of appropriate care placements was identified by professionals for a range of children, including those remaining with family, those in out-of-home care settings, and those requiring respite care. Inappropriate placements included those where children were placed with offending peers, where there was ongoing maltreatment including neglect, and where carers were ill-supported to respond to children. A lack of appropriate placements perpetuated

offending behaviour by limiting conditions for supporting desistance, as illustrated in the following case examples:

**Placement with offending peers.** Jordan is a 15 year-old youth with a mild intellectual disability and various mental health problems including ADHD, reactive attachment disorder, generalised anxiety disorder and adolescent conduct disorder. Jordan was placed in residential care at the time of his current offending, though his police charges had commenced from 12 years of age for which he had received two Diversions, and two Good Behaviour Bonds. Jordan had extensive Child Protection involvement commencing from under twelve months of age. Child Protection risks included maternal substance abuse (including exposure to heroin and methadone in utero), maternal mental health issues including significant trauma history, maternal neglect and emotional abuse, and exposure to step-parental mental health issues, substance abuse, and family violence. Jordan's father's whereabouts were unknown. He was removed from his mother's care because of concerns about parenting capacity, substance abuse, and family violence exposure, and he had four different caregivers from 18 months to six years of age. Jordan was described as aggressive and hyperactive from three years of age, and was suspended from school from age six. Whilst he was returned to his mother's care, there were ongoing concerns regarding parental substance use, family violence and parenting capacity. Jordan was permanently removed from home at 8 years, at which time he was placed in residential care. His mother expressed deep sadness about the impact of her life circumstances on Jordan, identifying similarities between both of their life experiences.

Jordan struggled with emotional and behavioural control, and was described as "desperate" for social acceptance, and therefore easily led. Prior to his most recent remand, the residential care unit had only one other client residing with Jordan. As a target of bullying in custody, he self-isolated, and also expressed concerns around his co-offenders being in the same space. Upon his release, two new older clients involved with Youth Justice had been placed in his residential care unit. Youth justice noted that most of his subsequent offending occurred in the context of his residential care placement with this peer group.

**Ongoing maltreatment.** Mitchell was placed on a Therapeutic Treatment Order in relation to sexually abusive behaviours against a sibling. He was removed from the care of his mother as a result of the charges, and placed with his father. In the course of attempting therapeutic work to address sexually abusive behaviours, it became evident that Mitchell was being subjected to physical and emotional abuse in the care of his father. The therapeutic treatment provider identified that the placement was incongruent with proceeding with the Treatment Order. No other suitable long-term placements were available for Mitchell at that time.

**Ongoing family conflict and lack of stable placement.** Matthew was a 16 year-old youth charged with property damage and resisting arrest during an adolescent family violence incident at his mother's home. Matthew was subject to five previous Child Protection notifications (one substantiated) commencing from four months old, which mainly related to emotional and psychological harm. Child Protection involvement had recently

*commenced at the time of the incident, and Matthew was living with his mother on a Family Preservation Order; she had previously relinquished him due to relationship conflicts and AFV. At the time of the incident, Matthew's mother was homeless, suffering from mental health issues, using ice, and pregnant. Matthew was noted to do well while residing away from his mother, however he would return home from these temporary placements with friends, in his attempts to recover some sense of belonging. A similar cycle would repeat wherein conflicts resulted in his ongoing exclusion from the family home.*

*Matthew was again excluded from the home after the latest incident, however he refused to enter lead tenant or residential care placements, and found his own temporary alternative accommodation. Child Protection withdrew, assessing it was in Matthew's best interests to have access to youth homelessness services if required, such services being unavailable to children involved with statutory Child Protection services. Matthew was assessed as being at high risk of homelessness as his mother would frequently relinquish him when angry, though Matthew believed his mother's home was preferable to other adolescent out-of-home care placement options. Matthew received a Diversion, and was required to participate in an AFV program. He was noted as the only person in the program without a parent present, and was unable to undertake the family communication exercises forming part of the program.*

#### 4.8.3 Criminalisation of welfare concerns

Several cases were identified where the child's offending behaviour was assessed by Youth Justice professionals and mental health clinicians as primarily relating to unmet welfare needs, rather than other criminogenic needs. Welfare concerns noted among cross-over children included mental health or disability needs, parental supervisory neglect, and family conflict. In these cases, professionals expressed concerns about children becoming entrenched in the criminal justice system.

##### **Case example: Ashley**

*Ashley is a girl of mixed Australian-European ethnic background, who had acquired charges at age 12 while emotionally distressed and living in residential care (criminal damage, assault), with further charges for assaulting police who were called to manage her behaviours. Ashley was the subject of nine Child Protection notifications from 1½ years old, none of which were substantiated. Protective concerns related to her mother's mental health difficulties, parental substance use (ice, chroming, cannabis and heroin), emotional abuse, risk of sexual abuse, and supervisory neglect. Growing up, Ashley only had yearly contact with her father, who also suffers from mental health issues and substance abuse problems. Statutory Child Protection involvement with Ashley commenced at 11 years of age due to a breakdown in the relationship between Ashley and her mother, who described Ashley in derogatory terms, blamed Ashley for her own heroin relapse, and refused to believe her disclosures of sexual abuse. For the next 12 months, Ashley was transient between her father, mother, and kinship care before entering residential care at 12 years of age. Youth Justice assessed that Ashley's behaviours related to her welfare needs and recommended a non-supervisory order.*

### Case example: Kirra

*Kirra is a 13 year-old Indigenous girl who came before the Court with 121 charges of assault, reckless conduct endangering serious injury, criminal damage, threats to kill, and shop thefts among others. She was first notified to Child Protection when one month old, and had 11 notifications and three substantiations in total. Initial concerns related to both parents abusing substances (including heroin), her mother's mental health difficulties, neglect, family violence and her father's criminal activity. In early life, Kirra was cared for by her father due to her mother's substance use. At age two, she had a 15 month foster care placement, prior to being returned to her mother and grandmother's care. Over the next 11 years, Kirra was highly transient, having 14 addresses listed in Child Protection files. At age six, her weight was noted to drop from the 90<sup>th</sup> to the 25<sup>th</sup> percentile in a year, and she was observed to be dishevelled and unbathed. Her school expressed concerns, and noticed Kirra was vague, withdrawn, and emotionally unstable. Though her parents separated, Kirra was exposed to ongoing family violence perpetrated by her step-father and mother, which resulted in her being physically victimised when she "got in the way". Kirra was also physically assaulted by her mother during an alcohol-fuelled incident (though she refused to make a statement against her mother), and reported being physically abused by a grandparent during this period.*

*At 12, Kirra was running away from home and staying with extended family, when she began chroming and offending. She was arrested stealing cosmetics, and an Independent Third Person was required for the police interview as her parents could not be located. Kirra disclosed that she hadn't seen her mother in a month, and any family for over two weeks. Her father had been released from prison six months earlier, and there were no attempts by either parent to resume her care. Experiencing deep feelings of rejection, Kirra was again placed in foster care at age 12, where she was sexually abused by a co-client, before running away and going missing for several weeks. Upon being located, Kirra went to live with a relative, who relinquished her a few months later due to her inability to manage Kirra's behavioural needs. After several kinship care breakdowns, and increasing feelings of rejection, Kirra was placed in residential care at 13 years. She wanted to be reunited with her mother, who was homeless and seen at the time heavily intoxicated, bruised and bloodied, wandering the street.*

*Kirra's aggression, substance abuse and offending increased in volume and seriousness, resulting in residential care-based charges. At 13, she was too young for many community healing and treatment services. Kirra was unable to be transported to detox on one occasion due to being too heavily substance-affected, and was unable to participate in individual therapy due to her level of substance abuse. Over the next 18 months she cycled between residential care and remand, and was the subject of 11 missing person's warrants. At one stage when Kirra was located without shoes, heavily substance affected, former workers decided to contact the police "given her presentation". Though Kirra requested to be returned to her placement, she was subsequently remanded. Neuropsychological assessments conducted in custody at age 14 determined that she had an intellectual disability, and other neuropsychological difficulties. Kirra was released on a community-based order with a number of services providing secondary consultation to her care team.*

## 4.9 Key regional differences

This section presents information examining key differences in the characteristics and service engagement of cross-over children who came before the CD of the regional (Latrobe Valley) and metropolitan (Melbourne, Moorabbin) Children’s Courts. As described in Section 4.1.1, the Latrobe Valley Children’s Court had significantly greater proportions of both total cross-over children (33%) and cross-over children with concurrent FD matters (18%) compared to the other Children’s Courts<sup>167</sup>.

**Socio-demographic characteristics and co-occurring challenges.** Compared to cross-over children coming before metropolitan Courts, those coming before the regional Court were significantly:

- Younger<sup>168</sup>;
- More likely to be Indigenous<sup>169</sup>;
- Less likely to have any substance misuse detailed in case files<sup>170</sup> (though no difference was observed in the proportion of children with ‘hard’ drug use);
- Less likely to have absconding behaviours detailed in case files<sup>171</sup>; and
- More likely to have a diagnosed intellectual disability (Figure 64), though less likely to have been assessed to have borderline intellectual functioning.

Case file data revealed that just over one quarter of cross-over children coming before the CD in the Latrobe Valley Court had a diagnosed intellectual disability<sup>172</sup>. Further, there was no significant difference in the proportion of Indigenous (19%) and non-Indigenous (22%) cross-over children before the regional court who were diagnosed with an intellectual disability. The younger age of first police charge among children before the regional Court reflects higher proportions of Indigenous children, and children with intellectual disabilities before the court, two groups with significantly younger age at first police charge<sup>173</sup>.

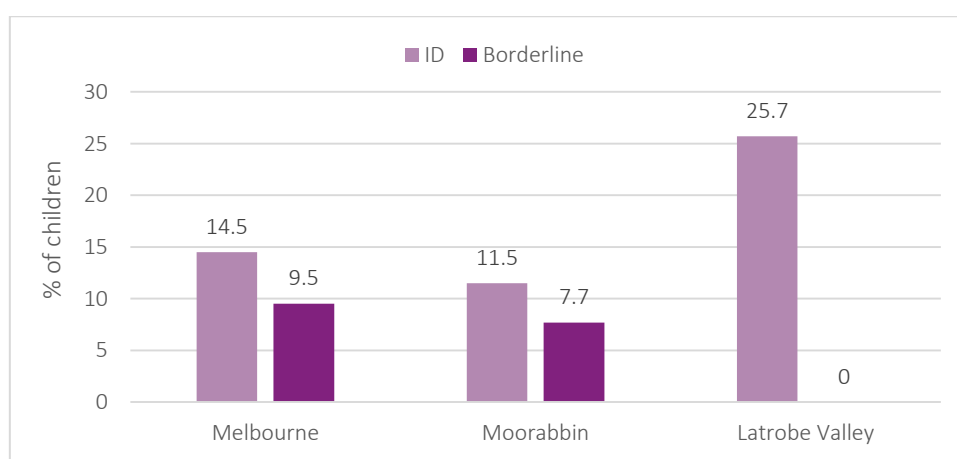


Figure 64. Regional variations in proportion of children diagnosed with intellectual impairments

<sup>167</sup> *p*-values - concurrent cross-over proportion (*p* < .0001), total cross-over proportion (*p* < .05).

<sup>168</sup> Mean age 15.9 vs 16.4 years (*p* < .05).

<sup>169</sup> Indigenous 42% regional vs 20.9% metropolitan (*p* < .01).

<sup>170</sup> Substance misuse 21.5% Latrobe Valley vs 38.2% metropolitan (*p* < .01).

<sup>171</sup> Absconding 59.5% regional vs 73.1% metropolitan (*p* < .05).

<sup>172</sup> Intellectual disability 25.7% Latrobe Valley vs 14.1% metropolitan (*p* < .05).

<sup>173</sup> Average age at first police charge 13.6 years (Indigenous) vs 14.5 (non-indigenous) *p* < .001; 13.7 (intellectual disability) vs 14.4 (no intellectual disability), *p* < .01.

**Adverse and challenging childhood circumstances.** Compared to cross-over children coming before metropolitan Courts, those coming before the regional Court were significantly more likely to:

- Be exposed to family violence<sup>174</sup>, and to have experienced parental separation or divorce<sup>175</sup>.

**Offending.** Compared to cross-over children coming before metropolitan Courts, those coming before the regional Court were significantly:

- More likely to have perpetration of adolescent family violence incidents noted in case files<sup>176</sup>; and,
- Less likely to have been in Youth Justice custody, including remand (reflecting the Melbourne Children’s Court hearing matters for children held on remand)<sup>177</sup>.

While children coming before the regional court were less likely to have ever received custodial sentences (7% regional vs 14% metropolitan), this was not statistically significant. No difference was observed between the proportion of children receiving a custodial sentence in Latrobe Valley regional Court and the Moorabbin Children’s Court (each 7%). Differences were however noted in the child’s age at their first police charge between metropolitan and regional jurisdictions. While the peak age of first police charge was 14 years in metropolitan locations, in the regional locations surveyed, it was 10-12 years (Figure 65). When interpreting this figure, it should be borne in mind that a number of children coming before the Melbourne Court were in custody, and may have also come from other regional locations.

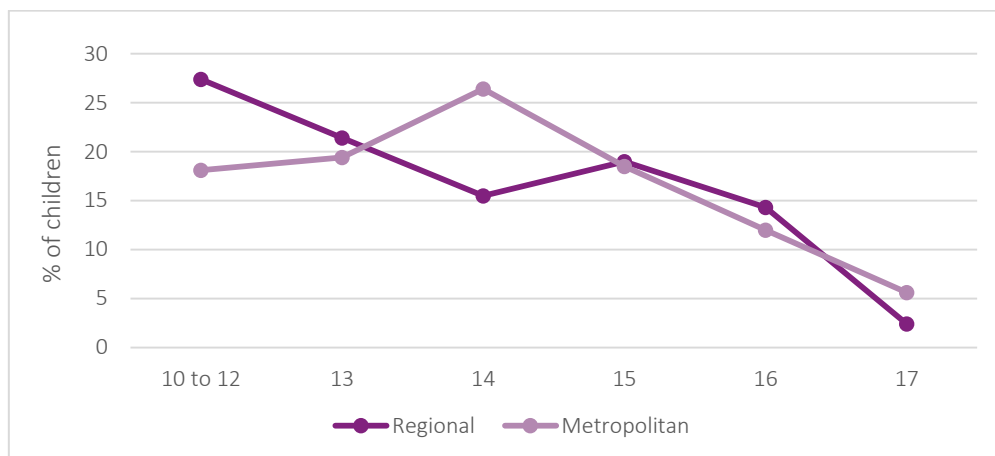


Figure 65. Age of first police charge (years) by Court location (regional vs metropolitan)

**Service, agency or program contact.** As shown in Figure 66, compared to children before the metropolitan Courts, children in the regional Court had significantly higher contact with:

- Lead tenant placements<sup>178</sup>;
- Leaving care services<sup>179</sup>;

<sup>174</sup> Family violence exposure - 82.1% (regional) vs 69.9% (metropolitan),  $p < .05$

<sup>175</sup> Parental separation/divorce - 95.2% (regional) vs 84.7% (metropolitan),  $p < .05$

<sup>176</sup> Adolescent family violence - 27.4% (regional) vs 15.7% (metropolitan),  $p < .05$

<sup>177</sup> Youth justice custody including remand 24.7% (regional) vs 48.4% (metropolitan),  $p < .001$ . No differences were observed in the proportion of children who had been in custody between the regional Court and the Moorabbin Court (both 24%).

<sup>178</sup> Lead tenant - 0% (regional) vs 5.6% (metropolitan),  $p < .05$ . This may reflect younger age of the regional sample.

<sup>179</sup> Leaving care services - 14.1% (regional) vs 5.6% (metropolitan),  $p < .05$ .

- Intensive case management services<sup>180</sup>; and,
- Disability Client Services<sup>181</sup>.

Conversely, based on case file data, children before the regional Court had significantly lower contact with:

- The Children’s Court Clinic<sup>182</sup>;
- Foster care placements<sup>183</sup>;
- Medical/paediatric services<sup>184</sup>;
- Youth substance abuse services<sup>185</sup>; and,
- Targeted youth justice programs (e.g. Youth Justice Community Support Service)<sup>186</sup>.

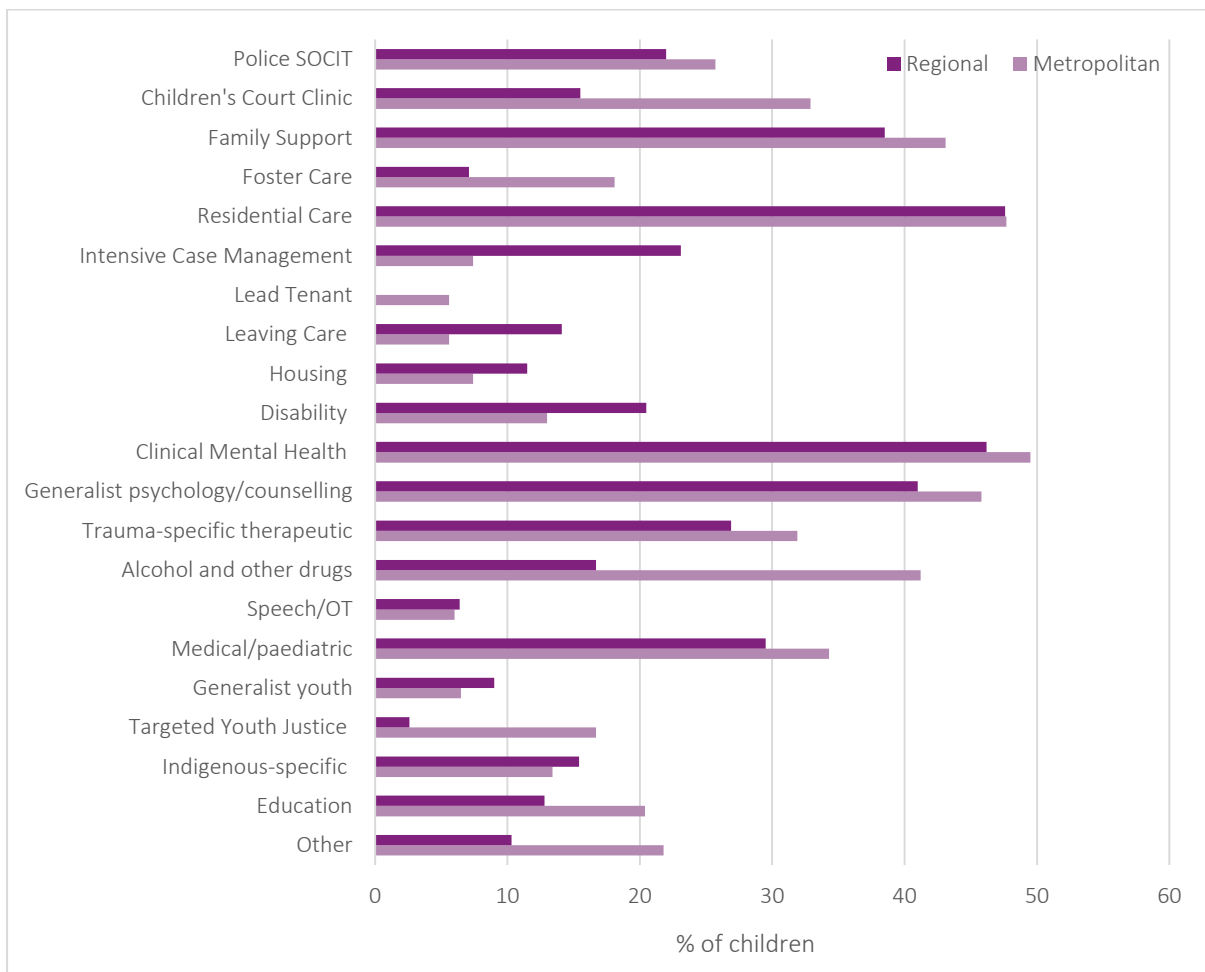


Figure 66. Regional vs metropolitan variations in service, agency or program contact

These data reinforce the need to account for regional differences when considering suitable approaches to cross-over children. Further, they support statements made by key stakeholders in the following section regarding regional service gaps.

<sup>180</sup> Intensive case management services - 23.1% (regional) vs 7.4% (metropolitan),  $p < .01$ .

<sup>181</sup> Disability Client Services - 19.2% (regional) vs 10.2% (metropolitan),  $p < .05$ .

<sup>182</sup> Children’s Court Clinic assessment - 15.5% (regional) vs 32.9% (metropolitan),  $p < .01$ .

<sup>183</sup> Foster care placement - 7.1% (regional) vs 18.1% (metropolitan),  $p < .05$ .

<sup>184</sup> Medical/paediatric services - 2.6% (regional) vs 11.6% (metropolitan),  $p < .05$ .

<sup>185</sup> Youth substance abuse services - 16.7% (regional) vs 41.2% (metropolitan),  $p < .05$ . Note that proportion of children with drug abuse listed in case files was 60.8% in regional areas and 73.2% in metropolitan areas.

<sup>186</sup> Targeted community youth justice programs - 2.6% (regional) vs 16.7% (metropolitan),  $p < .01$ .

## 5. Key stakeholder consultation findings

This section presents findings of interview and focus group consultations with professionals working with cross-over children. This sample included magistrates, police officers, police prosecutors, lawyers, Child Protection and Youth Justice professionals, and professionals from other government and non-government agencies delivering educational and support services as outlined in the methodology.

This section is divided into six parts, which present findings of the consultations relating to the following personal and interpersonal, services and broader systemic themes:

- **5.1:** Characteristics of cross-over children and their families
- **5.2:** The context and nature of offending among cross-over children
- **5.3:** ‘There’s definitely a difference’ – Indigenous Australian cross-over children
- **5.4:** Averting the pathway to Youth Justice
- **5.5:** Cross-over kids and the Children’s Court
- **5.6:** Responding to offending behaviour

### 5.1 Characteristics of cross-over children and families

The section outlines the key stakeholder perceptions of the personal and familial characteristics of cross-over children. Professionals predominantly understood cross-over children to be those who were in out-of-home care, specifically those placed in a residential care environment, as a result of statutory Child Protection intervention. A smaller number of participants acknowledged that some cross-over children, while having significant Child Protection involvement, remained living with their families.

#### 5.1.1 Family contexts of cross-over children

The family characteristics and contexts of cross-over children were discussed in all consultations. Participants spoke about cycles of poverty and disadvantage, struggles faced by parents of cross-over children, and how these challenges impacted on the lives of this group of children.

**‘That vicious cycle’ – poverty and social disadvantage.** Parents of cross-over children were observed to generally have experienced backgrounds of poverty and social disadvantage. Intergenerational Child Protection involvement, and at times criminal justice system involvement, were noted as prevalent familial characteristics:

*“15, 20 years ago, we had a new family come through, they’ve had kids who have had kids. So, we’re seeing 40 year-old grandparents. And it comes through as a Child Protection matter, and also a criminal matter as well. So, they just can’t get out of that vicious cycle.” – Participant 27*

*Dads are in jail, mums are in jail. More kids, their kids taken off them because they get to 16 and they’re having kids themselves and we’re seeing them in the Children’s Court. I’ve been here for ten years and I’ve seen tons of kids I was dealing with when I first arrived who are now their own kids are being taken off them.” – Participant 39*



Professionals' accounts depicted, in some instances, a sense of predetermined fate for cross-over children's outcomes because of their intergenerational histories. This was a view shared by professionals, or indeed young people themselves:

*“Participant 10: We’re seeing the next generation coming through. So, I think there is a lot of intergenerational trauma with these children – that was going to be their trajectory unfortunately.*

*Participant 9: Especially when parents – when they’ve come through the system, they’ve been high risk – what’s deemed as high risk youth. And then seeing their own teenage kids come through and they’re – it’s like they’re repeating their parents’ pattern. So, the behaviours are the same – like, you go back and you check files and it’s like you’re reading a current file of their child because it’s exactly the same stuff.” – Focus group 5*

**Challenges to wellbeing.** As detailed above, parents of cross-over children were generally observed to have experienced deprived childhoods of their own, resulting in numerous challenges to their wellbeing and circumstances. Parents were seen to face considerable difficulty with the sequelae of their own trauma histories, as well as current circumstances including poverty, homelessness and transience, and mental health challenges. Children’s exposure to family violence and substance abuse were frequently described, and families were typically depicted as marginalised, transient, socially and economically impoverished, and accordingly lacking in resources to manage these complexities:

*“Parents can't control their own behaviour let alone three or four children that they may have in short succession with limited funds - that seems to go on drugs or alcohol for the parents, so there's not much leftover. There's a lot of that in the area.” – Participant 7*

**Being exposed to familial offending.** While not portrayed as the norm, professionals alluded to a subgroup of cross-over children who are exposed to, and potentially participated in, parent and parental figure offending, including illicit substance use:

*“Poverty plays a huge role. I know I worked with a kid years and years and years ago whose first criminal offence occurred when he was three when his mother encouraged him to crawl through a window of a property and she pointed out something on a mantelpiece that she wanted that he took for her. That was around poverty and she was going to go and pawn that item to get money.” – Focus group 20*

**Missing the building blocks – impacts on parenting capacity.** The impoverished circumstances observed among the families of cross-over children were seen to result in limited parental capacity to provide boundaries, safety and prosocial role modelling:

*“For a lot of people that’s intuitive and you get told that by your parents, you always tend to do that, but these kids don’t have that necessarily; their parents might be facing their own substance abuse issues and aren’t capable of it.” – Participant 2*

Often cross-over children were reported have experienced breakdowns in the relationships between their parents, and/or between their family and themselves. Parental absence, abandonment or relinquishment of this cohort of children was typical. Parental absence could arise involuntarily, for

instance due to death, incarceration or psychiatric hospitalisation. Alternately, some parents were described as being unable to manage children's behavioural needs, or to have simply abandoned the child without explanation. Overall, cross-over children were depicted as often experiencing disconnection from their families:

*"... a lot of them don't have a strong connection to their family, particularly their Koori family and the culture, so we see a lot of that coming into Court and then through Koori Court especially. So that's an opportunity for us to get them involved into some Koori specific services and hopefully build their cultural knowledge and participation."* – **Participant 38**

**Rural and regional families.** Despite much similarity in the family contexts described by regional and metropolitan professionals, certain nuanced differences arose. Discussions of intergenerational offending and criminal justice involvement among families of cross-over children, for instance, arose more often within the rural and regional consultations:

*"Participant 24: The crime generally is generational, so, like, it's really normal for them to go and shoplift. Like, if you've got no money, you go and shoplift. So, it's hard to break that cycle as well.*

*Participant 22: That's a really good point, because we've got a massive percentage of their parents that are either dead or incarcerated.*

*Participant 24: Or openly talk about criminal activity that they commit themselves. You know, it's no secret.*

*Participant 22: And get the kids to commit for them as well, on their behalf."* – **Focus group 8**

In rural and regional areas, professionals also observed that cross-over children were rarely the only children within their respective family units, and often had complex extended family structures comprising step parents, and step- or half-siblings. Professionals noted a high degree of paternal absence and parental death among these cross-over children. In other circumstances, professionals described young people who lacked any family member to whom they could turn:

*"I see a lot of absent fathers in the high risk youth... I can probably name 10 kids off the top of my head where from very early on there's been this absent father and they've had real instability in their care... they're flicked between family."* – **Participant 9**

*"... the young person has rarely ever been in a position when the parent has died where they've had counselling or supports ... the surviving parent themselves have a multitude of issues and the young person very much sits outside that... And you can see when the death has occurred, the other parent's either had their own substance or mental health issues, and there has actually been no one there and nothing around. And quite often they're disengaged from school as well so they don't have those other protective factors when the parent dies."* – **Participant 11**

### 5.1.2 The co-occurring challenges of cross-over children

The familial circumstances and experiences outlined by participants understandably led to considerable challenges faced by cross-over children, which are further outlined in this section.

*'A rough go from day dot' – deprivation, harm and instability.* Participants outlined the complex challenges often facing cross-over children, including exposure to “*extreme dysfunction*”, and experiences of significant trauma, neglect and disrupted attachments. This is unsurprising given the definition of cross-over children as those experiencing statutory Child Protection involvement. Family violence was, however, acknowledged as pervasive in the childhoods of cross-over children, who were described as both exposed to violence, and/or physically victimised, typically by parents or parental figures:

*“... You're talking about kids who have been raised by kids. And you've got kids whose parents should have been ... placed out of that violent, violent environment. And now they're growing up with the same violent, violent environment.”- Participant 1*

*“I really feel that the people who have a history of Child Protection and then go onto criminality are often more damaged people. They're the people who start earlier, I think, but they've had histories of poor attachment, they've had multiple kinds of deprivations in childhood and trauma. I think they're a more traumatised group. Most often I think they could be the ones who go on to adult criminality and probably the more exacerbated end.” – Participant 37*

Alongside family violence experiences, professionals also described many cross-over children as being survivors of childhood sexual abuse and “*the whole gamut*” of offences against them:

*“I think if we were to look at all of our kids, they've all been exposed to family violence at a younger age, which – and I would say there's a high likelihood for a lot of them, although their disclosures start coming out around sexual abuse as well... there's children that have had the whole gamut of, I suppose, offences against them as children or been exposed.” – Participant 10*

Magistrates, alternative education professionals, and youth justice professionals among others recognised that the traumatic and challenging circumstances detailed above prohibited children from forming secure attachments with their caregivers. Considerable emotional and behavioural regulation difficulties were understood to arise in response to the cumulative impact of these experiences, which participants framed as skill deficits:

*“You'll have children who ... sort of had a rough go from the day dot, from Child Protection, domestic violence from the get-go, which then results in having neglect, trauma... So then also results in challenging behaviours. Which then results in parents parenting the way they were parented, which is usually with a lot of building blocks missed. So they don't know how to parent a really challenging child.” – Participant 52*

*“A key trait that I see is young people who've come from instability, family dysfunction, trauma, lacking those skills, essentially perpetuating some of that harm that's been caused to them through their ongoing behaviour, shooting themselves in the foot in a way, by having reactive responses to ongoing stress in their life... adolescents are reactive by nature... Adolescents coming from a damaged place, are more likely in my experience to be reactive and explosive in their reactivity.” – Participant 28*

Aside from early exposure to adverse events, the lives of cross-over children were also characterised as living “a really unsettled life”, and experiencing instability in relation to living circumstances, educational engagement, supports and relationships. The following Youth Justice professional described the challenges addressing offending behaviour in the absence of children having stability:

*“...a lot of our work is around trying to address this behaviour with the young people. A lot of the time they're not in a space where they're able to do that. Their life is so chaotic and they're constantly in that stressed fight or flight part of their brain. They're not able to slow things down enough and really address what's happening.” – Participant 14*

**‘Coping with it’ – substance abuse and mental health challenges.** Unsurprisingly, substance abuse and mental health concerns were outlined as prevalent features among cross-over children. Yet professionals outlined a degree of acuity in both substance abuse and mental health difficulties among some cross-over children, particularly at young ages, which appeared qualitatively more severe than anticipated. One such young person was described by the following participant:

*“We had one this week and he was only fourteen ... there's been reports for him but not been part of – like, not actively worked in [the Child Protection] system, and he's really, really unwell. Very much. Been charged with trafficking and things like that. And he has got gaping sores as a result of ice use and things like that, where he needs medical intervention. And you're like, you're 14. You shouldn't be, at 14. And he's now in this Youth Justice system so now he's gone down a whole different trajectory.” - Participant 10*

**Uncovering intellectual and neurodevelopmental disabilities.** Professionals described a moderate prevalence of intellectual disability, language disorder and foetal alcohol spectrum disorder amongst cross-over children. Several participants, including the following professionals, outlined cases where children had developed acquired brain injuries at young ages due to severe substance abuse:

*“Today I found out this kid has a disability that we haven't known about for 14 years. And it just explains so much about why he keeps doing what he's doing in terms of criminal behaviour, and he doesn't have the ability to see right from wrong and to be able to stop that.” – Participant 35*

One clinician explained the link between diminished verbal communication capacities and the resultant reliance, by some cross-over children, on behavioural communication strategies:

*“... Many of them have verbal learning difficulties. The majority of them don't treat with the world by language anyway and they cope by action, movement, doing...”- Participant 37*

While acknowledging their likely prevalence, participants outlined difficulties in obtaining intellectual and neurodevelopmental disability diagnoses for this group. This was attributed by professionals to challenges in engaging young people and families:

**“Participant 36:** *That one is a lack of engagement in the community, you can rarely access an adolescent in the community if they're transient, like their families have been, and they probably haven't been assessed throughout school, they haven't had consistent education throughout childhood.*

**Participant 34:** *And [neuropsychological assessments] are really daunting as well. Those assessments are long, they often go for more than a day so the teenagers don't want to do that, they don't have any time or energy unless they're locked up... And they're quite distrusting as well a lot of them, they're quite sceptical about 'what's the purpose of this assessment, and what are you going to use it for? Are you going to use it in court, are you going to use it to...' so they're quite distrusting.* – **Focus group 13**

Conversely some lawyers viewed the presence of undiagnosed disabilities and disorders among cross-over children as a failure on behalf of Child Protection services. There was a sense that intellectual and neurodevelopmental disabilities were uncovered as a consequence of criminal justice system proceedings. Some participants pointed out that eligibility for intellectual disability service access rests on young people having received a diagnosis of the condition prior to 18 years of age, potentially placing young people who remained undiagnosed in childhood at a considerable disadvantage:

**Participant 3:** *Loving, attentive parents can tell fairly quickly if there's something not quite right, but these kids get to 12, 13, 14 and then you might need to have them assessed and suddenly you find out, oh, the kid's got an IQ of 50, that's probably going to explain something.*

**Participant 2:** *Yeah, what I'm seeing is when they get to a certain point through the justice system we need a disability report and it's like this probably needed to be done when they were four, and they're 16.*

**Participant 3:** *Yeah. And then the problem becomes in the adult court is if they make it to 18 without being diagnosed with an intellectual disability which is possible, then it's not legal, you can't get them – then when they become involved in the adult justice system, the Justice plans aren't available to them, and they have to go through the mainstream court orders which they breach, and then end up in jail because we don't have suspended sentences, it's all fairly depressing.* – **Focus group 2**

**'Even if they can't put it into words' – sensing the internal world of cross-over children.** The internal worlds of cross-over children have received less research attention compared to that devoted to quantifying their experiences of maltreatment, placement instability or offending behaviours, or to examining the systemic factors influencing their outcomes. While the professionals' perspectives ought not to replace direct inquiry which listens to young peoples' voices, they nonetheless offer some insights. Overwhelmingly professionals depicted cross-over children as bearing an all-encompassing sense of abandonment, feeling themselves to be rejected, or marginalised and unloved by family, carers and other key adults:

*"... even if they can't put the words on it themselves, and even if it's not probably overtly spoken about by their Child Protection worker, I would be reasonably confident that each of those young children would have an experience and a feeling of rejection. And that's going to influence and potentially negatively impact on their next relationships, whether it's with carers, or just somebody that they're required to see... They're used to being let down... their experience is that people walk away, don't step forward."* – **Participant 28**

These emotional states were understood to arise in response to children's peer and family experiences, as well as their interactions with a range of service systems, including educational, legal, Child Protection, and Youth Justice systems. It is not suggested that these systems intend to bring about harm, but rather that systemic elements comprising "business as usual" are seen to repeatedly produce in children a sense of unworthiness and isolation. This can include systemic elements such as waiting lists, or workloads which inhibit professionals from giving time and attention to children:

*"... you have a Legal Aid representative with a thousand papers and they'll be there and they'll be looking through them with the kid's name on them, they'll turn around and say to the family 'who is it?' 'What are they doing?', and they're sort of flicking through. It's not their fault; it's just the system itself. It doesn't empower young people to feel like they're important or that they may help. You're just another number, you come in, you wait, your name gets called, you step in and the lawyers are just trying to flick through to find 'what case is this?', 'what have you done?' 'Are you pleading?' It's quite embarrassing, I often feel embarrassed for the young person ... I go there to support them because I feel like they just don't matter and it just reinforces this idea or this concept that 'I don't matter'." – Participant 65*

This sense of abandonment was seen to underlie a child's sense of shame about themselves, as well as feelings of anger, hopelessness and disappointment in relation to other people, environments and the broader community. Professionals depicted this cohort of children as experiencing themselves as intensely alienated from society. Participants believed a child's lack of belonging was related to offending behaviour; a young person taking on a criminal identity was seen to be both expressing a negative view of themselves, taken on board from their interactions with others, as well as displaying anger stemming from repeated experiences of rejection and abandonment:

*"You drive past mainstream schools... and you'll see those kids playing sport. We don't have a great capacity to do sport [at this alternative educational program] and that sort of thing. You'd say 'what are you looking at?' They'd say 'I wish we could do that' or 'I wish I was part of that'... they really do want to belong. So this idea that they're at our school just confirms the idea they don't fit somewhere else and there's something different about them. Sometimes they live up to that narrative that every action they take is to consolidate what they do know which is they're not wanted and they don't belong and don't fit. Committing crimes and partaking in risk taking behaviour, even though it's a negative confirmation is still confirmation of something safe to some degree." – Participant 65*

Professionals spoke about the lack of trust cross-over children have in others. This had a detrimental effect on their service experiences, for which positive outcomes are founded on consistent engagement with legal, Court and Youth Justice services, for example. Such expectations are at odds with the relational style and capacity of many cross-over children. This theme, noted in participant excerpts below, is further discussed in the relevant sections of the report relating to service engagement (see Section 5.4.4):

*"[...] it is very hard to get these kids to trust anyone. And so they will disengage pretty quickly. So they will sit in court, and so it takes time and real skill I think to begin to have an even kind of sort of genuinely reciprocal conversation with these kids." – Focus group 24*

*“... sometimes they'll open up to us, but we're just another adult who is just telling them what to do, and how to do it. And they have real feelings of, I think it's hopelessness, that turns into other things like anger and frustration. But feelings of just like, 'well who cares what happens to me?' because the resi unit isn't going to give them love.” – Focus group 22*

**Being part of something – social disconnection and connection.** In addition to internal experiences of abandonment and alienation, professionals described the very real disconnection between cross-over children and the broader community. Often commencing at a young age, this disconnection emerges in the context of family transience, school exclusion and changes in out-of-home care placements, disrupting relationships with peers and community:

*“.. [the] majority of the disengagement from schooling and a disengagement from any sort of program is a lot of the time adult intervention. So if you're being moved around residential care, you're being moved schools without your say. So when you get a kid who's got a rap sheet of 10 different schools that they've been to by the age of 12, that's not behavioural; that's adult intervention... So no attachment, no nothing, and no one kind of checking in... there's no real stable anything going on, no modelling of pro-social behaviours, how to interact. And then often these children end up isolated.” - Participant 52*

Social disconnection was compounded by offending; professionals thus viewed community connection as a key need of cross-over children:

*“... they're occupied with their time, so good programs, sporting programs. Yeah, and all those social activities where they can engage other young people, and elders, and learn different skills.” - Participant 38*

The absence of appropriate, responsible and consistent adult figures is a key feature in social disconnection of cross-over children, who had often to navigate services and processes such as court or school meetings alone. This placed both unrealistic expectations on children, and compromised service outcomes:

*“... the expectations put upon them to follow through and meet with workers independently, as children, are very different to what, say for instance, my children might be – if my children were asked to attend an appointment or were told there was a meeting with the headmaster about their behaviour at school, it would almost go unsaid that they'd be accompanied by a parent, and that the parent would take them. And sometimes the communication within care teams around the responsibility-taking for who's going to assist is not consistent, and other times it's absent, and the expectation is that the young person has to follow through and demonstrate at a very young age.” - Participant 28*

Consistent with previous research, children who were able to form relationships with key supportive adults were observed to experience more positive outcomes:

*“I've had some fantastic outcomes where they have clicked with the right youth worker from wherever, not necessarily the Department. And that's made a huge difference.” - Participant 42*

In terms of the recurring theme of “not belonging to anything”, professionals believed cross-over children held a powerful desire for belonging. While a preference for peers during adolescence is commonplace, this was heightened amongst this group of children, and “*potentially related to the absence of other adults in their lives*” (Focus group 24). This longing for connection and a sense of ‘family’ or group belonging could explain some offending in this group (discussed in Section 5.2.4):

*“I think the fact that they don’t live with family so they just want to fit in, so they’re more likely to offend with other young people so we get a whole bunch of kids, co-offenders that do the same thing.” - Participant 45*

**Sexual exploitation of cross-over children.** In around half the focus groups, professionals raised concerns about the sexual exploitation of cross-over children of all genders. Magistrates reported being “*shocked*” at the level of sexual exploitation observed, primarily associated with attempts to access illicit substances and transport, typically while absconding from out-of-home care placements:

*“... often at court they’ll be all hanging out together and it’s the stories that you hear about - I had a resi girl who was trading sex for ice in this sort of stuff and it’s just a lot of sad stories...”*  
– Focus group 22

Links between sexual exploitation and offending were also identified, wherein young people would meet older adults, generally males who were engaged with offending behaviour, through sexually exploitive relationships:

*“... you end up having people who are like 45 year-old partners of these girls...and then mixing with people who are doing that, which then results in some criminal activity. - Participant 52*

*“[Sexual exploitation] often makes them be involved in criminal networks, in a way. Like, some of the people they’re associating with are getting drawn into these networks, and then has a knock on effect of everything else... [the] vast majority of our kids are involved in sexual exploitation in some way.” - Participant 22*

Rural and regional participants reported particularly high levels of sexual exploitation of children, ascribed by one professional to “*a huge range of sex offenders in this region*”, from which police, Child Protection and Courts struggled to keep children safe. Social isolation and poor transport access in rural and regional areas were also seen to heighten children’s vulnerability to exploitation:

*“... they’re very adept at finding their way so they’ll steal a car rather than hop on a train, or they get on Facebook and they’ll say “Who’ll give me a lift?” and so we’ve had a number of adult male predators who are fielding these Facebook requests and offering support, overnight accommodation, drug of your choice and then we’ll see what happens. I think if you’re socially regionally isolated and if you’re reliant on other people to get you places you’re far more at risk of that predatory behaviour. We’re seeing a lot of that for young women in resi units and so they’re taking off from their resi units, going with older men and staying at their places. Every Friday afternoon we issue all these warrants to try and bring these kids back to the fold again.” - Participant 39*



Complicating this area in some cases was the fact that a minority of cross-over children at risk of sexual exploitation were also identified as having historically displayed sexually harmful behaviours towards others. Clinicians, Child Protection professionals, and police spoke about the systemic challenges in responding to children as both potential victims and potential perpetrators of sexual harm, with one respondent suggesting that children's vulnerability to victimisation was inadequately responded to in these cases:

*"...the statutory authority is really focused on particularly managing risk of that young person potentially harming others, where they don't seem to want to attend to the risk that the young people is at in terms of harm from others... It's the young peoples' engaging out on the street and putting themselves at risk that seems to be major risk that I would expect the service system to be managing. But it's often so focused on what is a very low risk possibility of the young people harming someone else in a sexual way." - Participant 12*

*"We've got quite a few kids who are really vulnerable to exploitation who have also been charged with offences as a perpetrator. [Police Sexual Offences and Child Abuse Investigation Teams] have faced that as well, they've got to work with them on one hand and so how do they do that? When they're trying to build rapport for their risk and their vulnerability, but they've also got to charge them and work with them that way... it's just something we've come across a lot recently [...] A bit hard, hard space." - Participant 36*

### Summary: Characteristics of cross-over children and families

A range of individual, familial, service and systems related phenomena were described by participants as influencing cross-over children's criminal justice trajectories. Consistent with the broader literature, justice-involved youth, and families of cross-over children very often had a background of poverty and social disadvantage. Parents' own challenges compromised their capacity to protect and support their children. Cross-over children were characterised as "having a rough go from day dot", experiencing significant childhood harm and instability. Family violence exposure, parental mental health problems and substance abuse were depicted as commonplace. Children's substance abuse problems, mental health concerns, and in some instances intellectual and neurodevelopmental disabilities, become more prevalent and acute as they grow into adolescence. A strong sense of alienation was coupled with a powerful desire for belonging amongst many cross-over children, which also contributed to a vulnerability to sexual and criminal exploitation.

## 5.2 The context and nature of offending among cross-over children

Property offences (e.g. theft, criminal damage, and property damage), assaults and threats were frequently described as common charges among cross-over children. This section outlines professional observations of cross-over children's emergent offending. Professionals described three key contexts of offending behaviour. The first two of these (adolescent family violence and residential care-based offending) constitute unaccompanied offending, while the final context (group-based offending) relates to offending with others.

### 5.2.1 Early onset and rapid escalation of offending

An earlier onset, and rapid escalation of contact with the criminal justice system were identified features of cross-over children's offending. Early onset of offending was most often raised in regional

focus groups, as well as focus groups with professionals working at the Melbourne Children's Court, perhaps reflecting the different regional cohorts of cross-over children.

Some police officers noted that they were in contact with this cohort of children for welfare reasons prior to them reaching 10 years of age, the age of criminal responsibility. Prior to the age of 10, one police officer indicated cross-over children would be identified as missing persons, or as being in the company of older youth and adult offenders. A case example was given of one child, identified as at risk at six years of age, who police believed would move into early offending:

*"... We've been having meetings about this young boy since he was six. Drug-affected, absconded since he was six [...] we knew when he got to ten it was going to be a nightmare, and it's a nightmare" - Participant 1*

Similarly, police in a regional Victorian area identified, by way of their use of an early intervention tool, that every child identified as being at risk of criminal justice contact had previous Child Protection notifications:

*"The police are really that frontline that are seeing that ... one predominant thing that's happened with that early identification tool is that there's been Child Protection notifications on every young person that's been identified, so that's a really significant thing." - Participant 19*

Early onset of offending and rapid escalation were also discussed in relation to children with early residential care placements (for instance, from 7 years of age), which professionals described as "breeding grounds for criminality":

*"...everyone's Child Protection-involved, the ages are much younger, majority [are in] residential care. And what we'll sort of see is... like a steady escalation, and sadly contagion of behaviour." Participant 52*

*"...so it's offending that is occurring in the residential unit is often what then becomes a trigger to early entry into the criminal justice system ... That can escalate really quickly because by the time the carers in the residential unit have decided that police response is the only response the police keep coming, more charges, and you quickly have a child that is on bail, breaching bail, multiple charges and suddenly from a pretty young age you're off." – Focus group 24*

On top of an already youthful cross-over children cohort, professionals in regional areas had observed a decrease in the age at which children's high-risk behaviours emerged. Behaviours and concerns which had historically surfaced in the mid-teens were being observed in children as young as 10 or 11 years:

*Participant 10: The age of our kids ... I was looking at the list of that yesterday and I was like 'wow, look at the age of these kids'. Like, we're looking 12, 13, 13.5, 14.*

*Participant 9: And they are, they're younger. The age group is younger.*

*Participant 10: They are getting younger. I'm finding by the time our kids get to 16/17 they're done. They're over it now, they're doing whatever... we've had to change our high risk youth*

*schedule to put on 10 year olds, which we'd never ever even thought about that years ago."* –  
**Focus group 5**

### 5.2.2 Adolescent family violence

Adolescent-perpetrated family violence was regularly described in relation to the subset of cross-over children who remained with or had returned to live with family. Despite remaining in the home, a few participants (including Child Protection professionals) observed that children in this subgroup typically displayed very high levels of risk-taking behaviour, including absconding, substance abuse and behavioural challenges, which despite parent willingness, were beyond their capacity to manage. Such children were often not removed from home because parents were willing to act protectively, despite their attempts being ineffectual in protecting the child from harm:

*"...parents have held them, they've done all they can to keep their children safe and they've put in all the interventions that they need and they've got all the support services in, however the children have got to a point where [parents] can no longer protect them. You know, we have a part of our legislation they're unable to protect, not unwilling, they're just unable to protect. So, I think that's the cohort at home... they're 12, 13. And the ones where I'm thinking of that are really standing out are, they're really high risk... they are being placed straight on remand, they are really high risk."* - **Participant 10**

This group of young people were commonly exposed to, or victimised by, family violence, historically and/or currently. When a child's repeated behaviours became unmanageable, parents tended to contact police as a last resort, with a not uncommon outcome of an Intervention Order application against the child. Criminal charges could also be laid about behaviour constituting family violence (e.g. assaults, threats, or criminal damage), or breaches of Family Violence Intervention Orders. Legal professionals reported an increase in the issuing of Family Violence Intervention Orders against children:

*"I would say particularly in the last three to six months we've seen a spike in it. So our family violence duty lawyers are seeing lots and lots of kids, because in those ones the kid is usually the respondent. So the parent has called the police to find out what to do, and the police have done their response that they're trained to do, but it's a legalistic response, and that's not to say they haven't also made another referral."* – **Participant 2**

A range of participants - particularly lawyers, Youth Justice and Child Protection professionals - expressed concern around the current Victorian adolescent family violence responses. Legalistic civil and criminal justice responses were depicted as blunt instruments which lack the capacity to respond to the nuances of adolescent family violence. Such approaches failed to address family needs. Police risk assessment instruments developed for measuring intimate partner violence were being applied to child-parent relationships, without modification for the different dynamics present in these relationships:

*"...it doesn't work well for kids... I've had police application for an 11-year-old kid against mum. The kid doesn't understand what that means... it just doesn't change behaviour and actually a therapeutic response is what you need. And in so many of those cases there might be a disability factor, a cognitive impairment, and the family needs lots of support... even if a*

*parent has called the police because something's happened, really they're just crying out for help.” – Focus group 22*

Child Protection and Youth Justice Professionals reported that children’s criminal charges might involve breaches of Family Violence Intervention Orders. It was noted by police, Child Protection and Youth Justice professionals, that the convoluted dynamics of some families saw parents encouraging children to return to the family home thus breaching the Family Violence Order.

*“I’ve got a client like that now where the mum has been abusing her since she was two. Nothing happens to the mum. Mum’s never been charged with anything, yet this girl’s 14 and now she’s in the system. And Mum even up until yesterday is angry that her daughter got Diversion because she thinks her daughter should’ve got jail. And she’s now fighting with her and hurting her physically, hurting her at home, so that her daughter will fight back so that she can call the police because she’s got the Family Violence Order... she was cutting her from the age of two, but Child Protection never removed her because Dad was a so-called protective factor.” - Participant 54*

*“Participant 62: ... the parents saying, whatever, come over -*

*Participant 63: ‘Come for dinner, I want to see you, I miss you’, and then the police are called and they incur more charges. It's breach of Family Intervention Order.” – Focus Group 20*

Lawyers and Child Protection professionals noted that conditions attached to Family Violence Intervention Orders excluding children from the family home were a factor driving children into the residential care system. The absence of lower risk placements available for adolescents would increase a young person’s risk of entrenchment in the criminal justice system:

*“... when Intervention Orders come into play then all of the exclusionary clauses can be attached to that, so therefore that just takes away that stable base for a young person. They're then 14, 15, you've been excluded from your home... we then have to place you somewhere, which generally isn't always great because our placement system is overloaded and we don't have lovely options all the time... I can think of a number of kids that I've had where we've had to put them in residential care and then there goes that cycle.” – Focus group 20*

Some professionals questioned the utility of a criminal justice response in the case of adolescent family violence, which one Youth Justice professional characterised as “a family issue”, which ought to be managed by Child Protection, but was “pushed and propelled into the criminal justice side”. At the same time, there were insufficient support and therapeutic responses, including Child Protection services and community programs. The justice system was thus a default, yet ill-matched, response to adolescent family violence:

*“... we feel conflicted. We want to say, well, yes, their offending is low level in the scheme of things. But in a way they’re not suitable for Diversion because we have nowhere to send them. So there’s sort of these kids that don’t belong in the criminal side with us because they’re not really criminals, as in, you know, your smash and grabs and stuff, car-jackings and whatever. But they are being criminalised because of a family issue, and there’s got to be somewhere*

*that is between diversion and [Youth Justice] where they fit, because they don't really fit with us. But we take them because you want to divert them, but we've got nowhere to divert them to."* – **Participant 54**

Lawyers also suggested that there were families who wanted a support and therapeutic response to adolescent family violence, rather than a criminal justice response. Yet police at times applied for Intervention orders, exclusionary clauses, and proceeded with criminal charges against children, despite the wishes of family:

*"... the police are applying for [Intervention Orders] even when the parents don't want them, and they're applying for them and excluding kids even when the parents don't want that as well. The legislation stops that from happening but it doesn't happen until they get to court. So you might have an Intervention Order that excludes a kid for over the weekend and then they're in [Child Protection] care for the weekend ... the police charges, they're charging them when the parents often don't want their kids to have a criminal record... So then you're forced into going through the normal criminal justice system, whether through diversion or ending up having a criminal record."* – **Focus group 22**

Whilst non-government agencies reported they delivered family violence support services, there were insufficient programs and services to support children and families in this arena. A shortfall in specific adolescent family violence supports was described by all study participants:

*"... there hasn't been enough follow through with the funding for support services in the community... these young people are coming through at higher rates. It's like, well, there's nothing out there for them. What do we do with these young people?"* – **Participant 53**

Professionals said there was a need for more holistic adolescent family violence responses, including co-location and collaboration between Child Protection, Youth Justice and family violence services:

*"There's such a huge focus on family violence when there needs to be dedicated liaison now that we're in a different department but co-located criminal justice, family violence, Child Protection workers, so they have someone who can provide that case management for both, but it doesn't exist at the moment."* – **Participant 49**

*"... there's some talk about a pilot perhaps being operated in an after-hours space where police responding to family violence matters with young people have a Child Protection practitioner with them ...that might help some of those crisis responses lead to less exclusion orders."* - **Participant 28**

### 5.2.3 Residential care-based offending

While acknowledging their diversity, most professionals saw cross-over children as the group of young people in residential care, in contact with the Criminal Division of the Children's Court:

*"... often children who have been involved in the Child Protection system for a long period of time and have been through multiple placements and ended up in residential care, at a very young age, they're some of the children that I tend to think come into contact with criminal court."* – **Focus group 20**

*“Participant 35: Even kids that haven’t touched Youth Justice can be exposed to that and quickly do start as they’re placed in residential care.*

*Participant 34: That’s probably I think one of our biggest factors that do lead this group into becoming part of the Youth Justice.*

*Participant 35: Residential care and peer influences.” - Focus group 13*

This section outlines the behaviours occurring in residential care placements which result in criminal charges, as well as what are the current responses to this problem. Children’s challenging behaviours in and around residential care placements are distinguished from group or peer-based offending occurring in the community (discussed in the next section). Residential care-based offending was by far the most recurrent topic raised by professionals, and was discussed by all study participants.

***Charging children inappropriately.*** While police responses to incidents in residential care were at times necessary, study participants stated that residential care staff often inappropriately called police to manage children’s behaviours. It was believed that challenging adolescent behaviour which would be managed otherwise in the family context became criminalised in the residential care environment. Professionals from each sector raised this concern, including Magistrates, lawyers, Youth Justice and Child Protection professionals, disability professionals, specialist child and family case managers and clinicians, and police. Participants, including lawyers and police officers, detailed numerous examples of such incidents, ranging from minor misbehaviour, to serious behavioural challenges, and property damage:

*“... it’s the culture there that unfortunately criminalises them in simple ways like smashing plaster, hole in the plasterboard in frustration. ‘We’re going to notify and have them charged’. Those sorts of things that wouldn’t happen in a family placement or a home environment.” - Participant 48*

*“...there was one, the child was too young and they came here and they said, ‘This kid’s put tomato sauce all over the walls and broken a door’ [...] and I said, ‘Too bad, they’re too young. And not only that, if your child had had that and that happen to them at home, would you have called the police?’” - Participant 1*

*“...we wouldn’t have been the only region, but had a spike in kids that were in the residential units, being charged with throwing food or damaging things. And whilst that’s not anything that you want to encourage, it was criminalising behaviour that at home would be tolerated probably to a greater extent, or there would be other interventions. So with the Department as the guardian, the person making decisions in relation to these children, it’s legalistic.”- Participant 2*

Case managers in two of the focus groups noted such behaviour usually occurred when a child was in an emotionally and physiologically heightened state, which would be amplified by police presence, or the threat of police attendance. A child then accrued additional charges, such that *“one small incident then becomes a really serious long amount of offences”* (Participant 11) in relation to their interaction with police:

*“A residential staff member says they can’t have something, so they throw something at them. It might miss the residential staff member and hit the wall, and that’s property damage. They might be distressed, police might attend the unit. They might be verbally abusive to police or spit on police and they’re charged for assaulting a police officer... charges like that when you’re working with traumatised children ... it’s really difficult. You can’t just change that, and they can’t just switch that off.” - Participant 23*

*“...if there’s an escalating young person and they see the [residential care] staff member go to the office, they’re already anticipating what’s going to happen in terms of a call to police, and they escalate further.” – Participant 28*

Conflict with police resulting in charges was described in relation to police execution of various warrants on children, as was the outburst of conflict between child co-residents in residential care, resulting in Intervention Orders and the need for placement changes. One such incident was described by a mental health clinician:

*“...when the police came to try and take [the child’s] brother, he assumed that his brother was going to be taken to a resi unit. So he tackled the policeman. Now you’ve got a young kid, you’ve got a big policeman... I thought, for God’s sake, why are you charging this child? Can’t a policeman deal with a child who’s trying to stick up for his brother without charging him? Why is this happening?” - Participant 37*

While professionals understood the reasons behind the utilisation of police responses in residential care settings, many observed these were at times inappropriate, criminalising, lacking in efficacy to support behaviour change, and inconsistent with the typical responses expected in family settings. Others suggested that these practices damage the potential for trust and the formation of a secure attachment between children and residential care staff, and may contribute towards children disengaging or absconding from residential care placements:

*“...it just makes it really, really difficult when the role of the people that are looking after these kids is a little bit different from what a parent’s role would be... they contact the police, they’ll rack up charges, and the next thing you know, the kid’s disengaging from his home, effectively, because he doesn’t feel safe there.” - Participant 26*

Conversely, in one focus group, participants also suggested there was a need for natural consequences in relation to behaviour harming others or property, and the need to protect staff in residential units:

*“Participant 22: There’s a fine line between actually wanting to set the boundaries and saying, ‘All right, well, that’s wrong. Here’s your consequence, we’re calling the police’. And the flip side of that is, we try and work through it as a carer or young person, and not call the police, and then they don’t learn because they think they’ve got off.*

*Participant 23: But then there’s also the worker safety of the residential staff. Like, they’ll get bitten or have things thrown at – you know what I mean? So, there’s got to be a police consequence for some of that.” – Focus group 8*

Residential care-based charges were incurred also by children for breaching bail conditions, for instance curfew. While subsequently amended, Victorian legislation in place between 2013 and 2016 had introduced new criminal offences for breaching bail conditions. As illustrated in the following example, this presented another area of tension, wherein out-of-home care providers or Child Protection professionals may notify Youth Justice of such breaches. Other examples were provided of police becoming aware of breaches through involvement in care team meetings. Some service providers believed such information-sharing to be collaborative, while others perceived this enhanced surveillance to be disproportionately criminalising of children in care:

*“I was telling sort of residential units to warn the police if a young person wasn’t back by bail curfew, just to give them a courtesy call and say, ‘All right, this person is in breach of their bail’ just to sort of really tighten up around that young person. And then the Youth Justice worker was saying, ‘Well, you’re breaching their privacy. You shouldn’t be allowed to – the resi units, it’s not their job to police bail’. I don’t know, I just thought of it as sort of an information sharing thing for me. It’s all a collaborative process that everyone should be informed if they are in breach of bail, but the Youth Justice workers, they were sort of seeing that we were criminalising the young person...” - Participant 22*

**Rapid accumulation of charges.** Once the process of charging children for residential care incidents had begun, Magistrates, police prosecutors and lawyers observed charges to rapidly accumulate:

*“... all of a sudden a child that has nothing within the criminal matter stream, to protect those workers they’ll start calling police. And at first it’s like ‘we don’t want to charge, we don’t want to charge’ then all of a sudden it gets worse or somebody gets injured and they’ll say ‘we want them charged’. Problem is that they’ll get charged then they’re in the criminal system and all of a sudden you might find 20 briefs within the space of six months.” - Participant 29*

**Inconsistency in charging cross-over children.** Professionals observed that as well as being at times inappropriate, responses to children’s behaviour in residential care environments varied widely. Inconsistent responses were observed between different staff members, different residential care units and providers, and different police officers, as described by the following participants:

*“Sometimes charges will be pressed for punching a hole in the wall, and other times charges aren’t pressed for punching a hole in the wall. And then it’s like, ‘Well, why did that person get charged and why is that person not getting charged?’” - Participant 22*

*“...we’d get a job for a kid who has assaulted their worker or what have you, and take reports, do it all. And then we’d go to another area with a different worker and every [residential care] unit dealt with the children and their reporting obligations in different ways. So, some units had to report every time a child broke a window or what have you, whereas other units would not do that.” - Participant 7*

Professionals held varying understandings about the factors driving the decision to contact police in relation to residential care incidents. Some participants suspected that staff simply followed organisational and Departmental protocols, which were variously believed centre on ideas of ‘natural consequences’. Others held that risk assessments, insurance issues, and occupational health and safety



concerns governed decision-making processes, such as the following professional, who identified organisationally-focused, rather than child-focused drivers:

*“... particularly property damage and even threats of assault, for instance, that the drive to report those in an immediate sense to police is driven by organisational issues, whether it’s insurance around property being repaired, ‘has it been reported to police’? Or management of worker health and safety in terms of potential injury or emotional harm to them from being in the line of fire for that behaviour. If those responses are driven by that, that’s not child-focused, and the attention’s not paid, I think, on what the end result is for the child – they’re brought into the criminal justice system.” - Participant 28*

Conversely, other professionals pointed out that the decision to charge children was ultimately at police discretion. Yet inconsistent police responses were also described. Several participant groups including out-of-home care case managers, Youth Justice professionals and lawyers, as well as police themselves explained that police sometimes experienced frustration in relation to ongoing residential care unit call-outs, and needing to respond to children’s persistently absconding behaviour:

*“... where a young person’s charged in those settings, [it] comes after a sequence of calls, and probably a frustration from police being called to that unit regularly to deal with a difficult kid that they don’t feel equipped to deal with. And frustration often feeds into the decision to charge a young person.” - Participant 28*

*“I know the police get sick of being called, they feel powerless because they talk to the kids when they’re there and they try to talk to them and work it out. But then their role can only go so far too before they’re overstepping the mark.” - Participant 2*

**Identifying more effective responses to residential care-based offending.** Participants were overwhelmingly united in the conviction that more effective responses to challenging and offending behaviours in residential care were possible. One participant identified that there must surely be *“better ways to deal with children who are angry in state care than charging them and bringing them to court”* (Participant 45). Lawyers, as well as Disability services, Child Protection and Youth Justice professionals, identified several strategies which they believed would improve outcomes in relation to residential care-based offending and challenging behaviours. These included:

- Implementing a State-wide protocol with Departmental (DHHS) oversight;
- Adopting collaborative interagency responses; and,
- Undertaking therapeutic skill-building work with young people.

Highly experienced Youth Justice and Child Protection professionals argued that a State-wide protocol for responding to challenging and offending behaviour in residential care would result in more consistent responses to children, and better support police and residential care staff in their work:

*“I’d like to see Child Protection deem a young person being charged with a criminal offence within their residential care setting as a significant event that requires a particular protocol of Child Protection response. I think if residential units individually can discern, and be given the*

*authority and be given the permission from their management and from Child Protection and from their external agency, to have that discretion, I sense that workers are often feeling quite caught, that they're compelled to follow a plan.” - Participant 28*

*“I feel like hitting my head against a brick wall because I do the majority of the work with the agencies and how they've responded, and they're the placement providers in out-of-home care, and what their strategies are. I feel like we do it one-by-one for each individual kid and it's just overwhelming ... It should be a State-wide or across the board strategy. It would make my job a hell of a lot easier.” - Participant 36*

Indeed pockets of individual innovative practice are already being developed and implemented in residential care settings, in the absence of a coordinated strategy. For instance, one professional described their development of a specific care team approach between police and out-of-home care case management in relation to managing absconding behaviour:

*“... we had plans with young people who had clear established absconding behaviour, for instance. In some cases where we had effective good care teams to provide a weekly or a fortnightly update to the [police] on this night, and on this night they missed curfew, but not the call to the local police or 000 on each night at five past nine if the curfew's nine o'clock. Because again, it triggers that reactive response from police of 'we've been left to carry the can for a welfare issue'. So it further criminalises that risk-taking behaviour.” - Participant 28*

*“We've got the proactive policing unit now engaged with [Child Protection] in part of those conversations along with some of our partner agencies...unpacking all of that. They've assigned additional [police] youth officers as a resource... so they're part of the care teams. They're part of the conversations about the young person, they're part of the broader strategy.” - Participant 13*

In relation to direct work with children, practitioners believed that therapeutic and skill-building responses to behavioural challenges in residential care would constitute a more effective long-term approach than criminal justice responses:

*“Participant 35: you'd review what happened, what were the triggers, what were the precursors and what in that individual's circumstance is the best way to respond? And the care team approach would need to ascertain that, what therapeutic specialists, what's the best way?”*

*Participant 36: Yep reacting straight away and calling the police is not the way because the kids, when they do that, are very heightened.*

*Participant 35: It's only the actual threat of harm or someone's safety is at risk that you need to use those emergency services, I think anyway. Agencies have different perspectives and views on that.” – Focus Group 13*

Finally, in a few instances, professionals spoke about implementing collaborative responses between Child Protection, police and disability services to better support children in residential care. The following lawyer had observed significant benefits resulting from such an intervention:

*“...this was a boy with a really significant intellectual disability –Disability Client Services uncharacteristically stepped in very, very proactively and managed his matters in a way that in fact diverted him from that path of ‘you are just going to wind up remanded because people can’t manage you’.” - Participant 48*

#### 5.2.4 Group based-offending

The professionals study participants noted that offending among cross-over children quite often occurs in groups. This third context relates to offending among cross-over children occurring with peers, older adults and occasionally family members.

**‘Exposure’ and ‘contagion’.** Professionals described exposure to co-offending in residential care placements. Children entering residential care with little criminal intent were seen to be “*exposed to*”, “*mixed with*” and “*influenced by*” other children with more entrenched offending behaviours. They were understood to get quickly get “*dragged in*” and ended up “*going along*” with peers to integrate into the environment:

*“... they feed off each other... they may go in [to residential care] as still a half decent kid, but of course then they’re exposed to some real hard-core kids that have been in the system for a long time but have learnt much further advanced criminal activity ... so that of course they all learn that.” - Participant 32*

*“It’s contagion. They’re so peer group orientated and now with social media the culture around offending is transmitted really quickly. And so a couple of them – we’ve just had this bang, bang, bang increase in this small group doing incredibly serious offences like 10 car jackings, 12 armed robberies.” – Focus group 24*

Some professionals noted that offending peers would enter children’s lives when they were absconding from home:

*“I think about a family that I’ve had that a few children have gone into the criminal activity. They were running away from home and they were being influenced by peers and that was because of the parental issues.” – Focus group 20*

Once involved with peer groups, children were described as “*egging each other on*” to participate in peer-based offending, characterised by a broad range of offence types, including altercations with police, car theft and police pursuits, and offending to pay off drug debts, as described by the following lawyer and Youth Justice professional:

*“... that’s the other sort of offending that you often see as well is at the train station, hanging around, getting into disputes with [Protective Services Officers], that kind of stuff and often groups of resi kids here the together” – Focus group 22*

*“... their offending is out of their life circumstances. So they’re not young people that you would say have criminal intent or are choosing to have a criminal lifestyle. It is just a part of their circumstances, who they associate with... when young people go into out-of-home care,*

*into residential care, they may have never offended and we see quite quickly they commence offending when they're in that situation.” - Participant 11*

**Wanting to belong.** As depicted by the professional above, rather than being driven by antisocial intent, a child’s offending in this context was seen as a desire to belong, previously described in Section 5.1.2. The desire for belonging with a peer group is normative, but is intensified for children who lack secure adult attachments, and who experience physical and emotional disconnection from family and schooling. In these circumstances, a child would place great value on belonging, and connection with peers was more powerful than any criminal justice system consequence which could be threatened or administered. Professionals described the ultimate objective, for which young people were willing to pay the price of criminal justice sanctions, was feeling part of something, being accepted, and being “taken in”:

*“From a very young age they’ve been removed from family situations and so they want to find something they belong to. How they get there and how they think about it is often, it leads them to places like [youth detention] which we have talked about. It’s still a sense of belonging that that’s more powerful than often the action, and the negative consequences of the action itself. It’s more important to belong and be part of something.” - Participant 65*

In effect, cross-over children were seen to reclaim a sense of family and community through peer networks, where belonging is founded on shared histories, and cemented via collective experiences of offending and criminal justice system involvement:

*“Participant 41: ...there might’ve been attempts to reunite them with Mum and Dad for whatever reason either there’s rejection so the dealing with anger, disappointment, rejection sometimes maybe from a biological parent. Then there’s a need to want to gravitate towards a peer group because ‘They accept me, I belong, they don’t let me down, they don’t disappoint me.’*

*Participant 39: And they come to court with them. Their peer group is always there because they’re there for offences as well.” – Focus group 16*

Loyalty in these relationships was expressed by ‘sticking up’ and ‘taking a hit’ for peers and co-offenders:

*“...the idea of friendship for the boys especially is really powerful and so is their sense of feeling a part of something. And it’s often around a group of friends, or a friend. And these kids will often do something, they’ll take a hit, they’ll do time in order not to give up on their friends or their relationship because it’s the final thing they’ve got.” - Participant 65*

**Criminal exploitation.** In more than one third of the focus groups, participants described criminally exploitative relationships between young people and older peers, family members, and other adults who were involved in offending behaviours. This phenomenon of cross-over children being “exploited by adults” has not emerged clearly in previous research. Criminal exploitation of this group of children was identified by Magistrates, Youth Justice and Child Protection professionals, alternative education professionals and non-government case managers. Cross-over children were identified as being particularly vulnerable to criminal exploitation by older adults because of their youth, impressionability,

desire for connection, belonging, and adult approval. Some participants expressed that criminal exploitation was the initial pathway by which some children became involved in offending:

*"... their first offence was usually with a peer or an association with someone. It wasn't necessarily their choice by themselves. They weren't doing it alone. It was sometimes through the associations of – and sometimes quite older connections. So it wasn't just offending with someone of their own age. There was the kind of peer association which was really critical."* - **Participant 11**

*"... a few of the children that I'm thinking about have offended with older children, or your older youths, and have found that they talk about them being their 'family', and their 'family' supporting them and loving them and taking them in."* – **Focus group 20**

Examples were given of adults supplying children with illicit substances, leading children to offend to repay drug debts. Other instances were detailed of children recruited to traffic illicit drugs, collect debts, steal goods including vehicles, or be otherwise aiding criminal activity by older youth and adults. Children were targeted due to their vulnerability and likelihood of receiving lesser criminal justice sanctions, or no sanction where they are under 10 years old (the Victorian age of criminal responsibility):

*"... they're so insecure but they'll find older people in community that will get them to help offending. So they're brought into these networks that they really shouldn't be part of... the one I just mentioned earlier about the shop theft – he was standing, watching as a look out for a 25 year-old who was doing a reverse shop theft – but he still gets the charge for it... they just can't escape."* - **Participant 22**

**"Participant 35:** *We have a lot hanging around the [local] train station, [the other local] train station. They meet older adults and we know at the moment that there is a younger cohort that are recruited by adults to do crimes like steal cars and stuff like that.*

**Participant 34:** *Because they can't face the justice system, even ones under ten.*

**Participant 36:** *Yep, run drugs for them."* – **Focus group 13**

Links between substance abuse, sexual exploitation and criminal exploitation were very often raised in rural and regional focus groups. It was suggested that the younger age of high-risk children observed in these areas may be related to the use of 'ice' (crystal methamphetamine) in the region, seen among children "Anywhere from sort of 12 upwards", which provided a gateway to child exploitation:

*"Ice is a massive issue in this area. The kids are getting involved with ice, and then the people that are supplying the ice are sort of getting them to do crimes on their behalf to pay off bills and stuff like that."* - **Participant 22**

**"Participant 10:** *they might be committing crimes to – like, the drug use, like to get money to buy the drugs, they're going and having sex with people.*

**Participant 9:** *Or they engage with sex with people to get the drugs straightaway... And then the relationship builds between – I say the relationship loosely - but it builds between the*

*young person in the sexual exploitive relationship, and then they use that relationship to engage the young people to commit crime for them.” – Focus group 9*

Professionals highlighted the discrepancy between systemic responses to children’s sexual exploitation, which had historically resulted in punitive responses towards children, and their criminal exploitation by older youth and adults, which lacks a similar systemic recognition and responsiveness. This frustrated many participants, particularly Child Protection professionals and others, who suggested the need for more targeted responses to disrupting child criminal exploitation:

*“... you see it in terms of cars, break and enters, that come over the front page of the Herald Sun as gang-related issues that at times it is about actually, this is a form of exploitation and how the criminal justice system and our system sees that and intervenes...” – Focus group 20*

*“...too often we see ... at times, people exploiting children who are vulnerable to those kind of offenders who are adults, and then that behaviour being criminalised. So how do we separate those things out? So we're doing it in a really targeted way, in terms of sexual exploitation, but I think in particular for young men in terms of their offending, there's a challenge for us as a system.” – Focus group 20*

### 5.2.5 Developing a criminal identity

Alongside the generation of relationships and networks engendering some sense of belonging, professionals described cross-over children who become more entrenched in offending as having developed a criminal identity, and associating themselves with a particular youth offending subculture. Contributing to this identity development were aspects of mutual teaching and learning, normalisation of offending and consequences, bonding via shared experiences, attaining milestones and experiencing rites of passage, displaying mannerisms consistent with the subculture, obtaining expertise in offending, gaining respect from peers, and ultimately identifying with the subculture.

Some participants, mostly from a regional area, observed children being involved in significant exchanges of knowledge with one another, regarding both offending, and dealings with the criminal justice system:

*“Like the car theft – one young person learnt how to steal cars from somebody, and then I think about eight young people in the one area started stealing... it's a bit of chain effect in that sense.” - Participant 23*

*“... they might nod their head [in Court] and look like they're remorseful, but I think deep down they know 'You're not going to lock me up, and I've got to do something fairly severe before you are going to lock me up. I know that because of the past times that I've been in Court, but also I've got all my friends here, I've got my older brother here. He's heard those speeches from Magistrates before, they come into court and we still don't get locked up'.” - Participant 41*

Study participants noted that offending and criminal justice involvement was rapidly normalised for some children. Various milestones and “rites of passage” were described - including arrest, remand, and for some children, the first custodial sentence – which strengthened bonding to, and identification with, the subculture norms:

*“... what you’ve got is a kid who’s exposed to all of those children telling them ‘oh it’s okay, mate, you’ll just get a rap on the shoulders’.” - Participant 29*

### 5.2.6 Offending in rural and regional communities

Participants outlined several challenges for cross-over children in regional locations by virtue of living in a smaller community. These challenges are not unique to cross-over children and would conceivably apply to all children involved with the criminal justice system. Nevertheless, they are relevant to the overall experience of rural and regional cross-over children.

Participants depicted a loss of anonymity associated with living in a smaller community. As such, they suggested the community was well aware of children, and indeed families, who had attracted police attention. Under such circumstances, professionals believed it was sometimes difficult for children not to be stigmatised and ostracised by the community, where *“everyone knows who you are”*, and *“everyone takes on the same attitude towards a family”*, and to be given a real opportunity to ‘start over’. One participant shared that they had requested a Court hearing be relocated due to the perceived risk of community stigma:

*“I’ve asked for the whole lot to come down to [this town], away from [that town]. Small town, the two or three of the ladies who are the gossip of the town, they sit at the Court every time there’s Court. And they let everyone in the town know who’s been bad, and what’s what. You see people in Melbourne don’t understand that kind of mentality. It’s really different here.” - Participant 1*

Similarly, in the following example, practitioners indicated that a small group of cross-over children were ‘run out of town’ in one rural setting:

*“Participant 9: We had a cohort of kids in [rural town].*

*Participant 10: We were actually getting calls by police saying ‘they’re impacting our crime stats, we need to do something’. Like, it was really, really –*

*Participant 9: The community members were ringing and saying ‘we’re scared of these people’.*

*Participant 10: Pretty much they got run out of town. Like, to be really, really honest, they got ran out of town.” – Focus group 5*

Aside from the risk of being ostracised by community, it was seen to be more difficult for children to remove themselves from antisocial peers and networks in smaller communities. Child and family practitioners recollected that children who were able to break free from entrenched offending had been supported to relocate to other areas:

*“Participant 23: They have actually physically moved out of the community as well. It kind of went hand in hand.*

*Participant 22: It’s often when we move them as well. Like, we’ve said, “To give yourself any chance, we’re going to move you out of the area”, and then they do alright.*

*Participant 23: They’ve got a bit of a support network somewhere else and then they seem to do a lot better.”*

**Participant 22:** *We're trying as much as we can to get people out of the [area]. So, it might be presenting in the sort of metro panel so they can get better services and they can move to sort of metro areas as opposed to here, or even sort of looking just out of the [area]. A lot of the kids have moved to [a nearby town], and are doing slightly better than when they'd be here because this is such a tiny area.* – **Focus group 8**

Conversely, other participants described advantages of working within a small community. First, professionals were often familiar with children's family and community contexts. Magistrates were aware of intergenerational circumstances and the historical victimisation of cross-over children. Child Protection and child and family welfare professionals also described being able to locate missing children more easily, due to the limited locations to which they could abscond:

**Participant 24:** *The community is so small as well, which is really difficult... all the networks generally are the same – like, everyone is linked in with everyone.*

**Participant 23:** *Most of our clients know each other...*

**Participant 24:** *You generally have the same kind of places that you go and look for everyone when they're missing and you normally can find a few of them.* – **Focus Group 8**

### Summary: The context and nature of offending among cross-over children

The contexts in which young people from Child Protection backgrounds become involved with offending behaviours were identified as: being a perpetrator of adolescent family violence, involvement in residential care-based offending, and group-based offending in the community. While some of these data echo findings of previous studies, particularly concerns regarding children being charged with minor residential care-based offences, they also include new insights. The importance of adolescent family violence as a gateway to residential care placement and more entrenched criminal justice involvement among cross-over children was highlighted. Participants emphasised the need for more effective responses to disrupt this trajectory. Professionals also drew attention to the criminal and sexual exploitation of cross-over children, and their relationship to observed offending in this group. Offending behaviour among cross-over children was often identified as having an early onset and rapid escalation, particularly among children in regional areas.

## 5.3 'There's definitely a difference' - Indigenous Australian cross-over children

### 5.3.1 Understanding Indigenous over-representation

Reflecting national and international trends, Indigenous children are over-represented in both the Family and Criminal Divisions of the Children's Court. Professionals viewed a range of individual, service and systemic factors as contributing to this over-representation. Both Indigenous and non-Indigenous participants spoke to the complexity of social issues impacting on the Indigenous community, particularly poverty, substance abuse and family violence. While professionals viewed the challenges facing Indigenous and non-Indigenous communities were not dissimilar, certain key differences were outlined. First, professionals (particularly Indigenous service providers), noted that the families of Indigenous cross-over children were survivors of the impact of European settler colonialism and the Stolen Generations. The transgenerational impact of these experiences, including the decimation of family, community and cultural connections experienced by individuals, families and Indigenous peoples were outlined:



*“... that trans-generational trauma, and that sort of dates back, you know, we talk a lot about the Stolen Generations, and what they went through; and then the problems that they developed from that, you know, being disconnected from their families, and taken and putting into boys home, very isolated, and eventually developed other issues, substance abuse and other things; and that we definitely see that passed down into various generations. Their children see their role models I suppose displaying behaviours that we wouldn't, that aren't very social, and aren't great behaviours, and then they often are led into the same direction.” -*  
**Participant 38**

Second, both Indigenous and non-Indigenous professionals observed that there was more contact with Child Protection and the criminal justice system throughout Indigenous families and communities. This theme was particularly salient in the non-metropolitan consultations. The involvement of Indigenous families and communities with these systems was understood to add “an additional layer of trauma”, disconnection, and socio-economic disadvantage experienced by Indigenous children:

*“... there's definitely a difference between Koori kids in the system and non-Koori... if you've got a young Koori kid that's going through the system, nine times out of ten Dad's been in the system or the Mum or uncle... Whereas, you won't get that with a lot of - you might get a family that has one or two here and there, like a white family that might have a couple of brothers inside, but not three or four generations ...That's where it is at the moment now. You've got grandfathers - you've got grandkids, Dads and grandfathers going through, so three generations.” –* **Participant 5**

Thirdly, participants believed that socio-economic deprivation was pervasive in Indigenous communities. Indigenous service providers believed that experiences of familial incarceration coupled with exposure to, and familiarity with, risk in some Indigenous communities, ‘normalised’ Youth Justice involvement for some Indigenous children. Some Indigenous professionals noted that Youth Justice custody sometimes provided a safer environment for some Indigenous children than that which was generally available in their community:

*“Participant 6: They're so used to going [to youth detention]. Those boys, they're so used to going there. It's not, 'You're going to [youth detention] for six months. See you later'... it doesn't faze them. They're probably better in there; that's how they see it. They've got a bit of structure, they've got people to talk to, they're fed, they're safe, they've got beds. You know what I mean? Like, the stuff that happens in the community... they're probably bed-hopping, probably sexually assaulted, probably - it's not spoken about, but -*

**Participant 5:** *Yeah, exposed to stuff.*

**Participant 6:** *Exposed to stuff, getting methamphetamines, alcohol, debt-collecting.” –* **Focus group 6**

### 5.3.2 Acknowledging the complicated relationship between Indigenous peoples and Child Protection systems

The involvement of Child Protection services with Indigenous communities was frequently commented on by professionals, with a diversity of views about the appropriateness of the degree and nature of Child Protection intervention with Indigenous children and families. Particular characteristics typified

the relationship between Indigenous people and Child Protection services. Professionals commented that, given their personal and collective histories, Indigenous people were often both fearful and mistrusting of Child Protection services. This equally applied to relationships with police. These factors often stood in the way of Indigenous people accessing support in matters of, for example, family violence or indeed other family needs, for fear of their children being removed:

*“...we see more Koori kids in the Criminal jurisdiction than we do in the Family Division because if there’s family violence in the home they’re not going to police. Mums and Dads are not going to the police because the Department will come in and remove the kids. So you’ll just see the kids moving to an aunt’s or Gran’s, and there’s smoking and drinking there and then they’ll move on again and then they’ll get picked up by police for stealing a car in order to get somewhere... they don’t trust anyone so Mum’s not going to go to the police about the family violence. Yet the families are more disintegrated and there are less safe options for them to go. So go to Gran’s for a bit but there’s an uncle there who’s a child sex offender or using ice. I think the problems in the Koori community are more deep, more widespread than in the white community.”- Participant 39*

One participant stressed these challenges to Indigenous individuals’ service engagement, and noted that that an inability to account for the ways in which cultural differences impacted on parental engagement with Child Protection risked more Indigenous children being taken into out-of-home care and “not able to be returned”. Conversely, others including police and lawyers, suggested that the desire to preserve cultural connections often resulted in reluctance on the behalf of Child Protection to intervene and remove Indigenous children from family or Indigenous carers, where this was at times warranted. Some participants believed this reluctance resulted in a higher risk threshold for Child Protection intervention with Indigenous children, and their subsequent greater exposure to neglect, maltreatment and placement instability. One participant detailed a case in which an Indigenous child in a long-term placement was moved to a placement intended to support greater cultural connection, which was not able to be sustained:

*“A person was called as an expert to say whatever the attributes of the placement that’s longstanding, you always endeavour to attempt the cultural placement. That was the outcome of the Court Order and it lasted two weeks. It was with someone who was highly improbable, very challenged, never on paper looking terribly good. And sure enough it collapsed instantly.”- Participant 48*

This professional noted the challenges impacting on Child Protection decision-making with respect to Indigenous children:

*“... do we owe it to the First Nation of this land to try that anyway, even if it’s going to crash and burn, to make up for past events? Maybe the answer is absolutely. And maybe the answer that you favour that each time notwithstanding the appeals to logic of the alternative, maybe it is the only way you get where you want to get. And on the Family Division side maybe you say we’re not going to keep taking them away even if the parents present these huge challenges. And by that mechanism, you then have kids on this side who are in intact placements.”- Participant 48*

Conversely, another professional detailed frustrations with a lack of Child Protection intervention with an Indigenous child who subsequently began offending from age 10:

*“...they said ‘we want you to manage this recidivist’, this, you know, ‘this recidivist offender’. And I said, ‘before I even agree to manage this recidivist offender, let’s go back and look at how many times [Child Protection] have had access into this child’s life’ ... fifty something notifications from the time he was born until then ... always to remain in his Indigenous family’s life. He had burns early in his life, and you know, just a multiple of things.” -*

**Participant 1**

### 5.3.3 Disconnecting from culture in care

Concerns were also raised by professionals about cultural disconnection among Indigenous children in out-of-home care, which was attributed to phenomena identified in previous research including inadequate cultural support planning and implementation, and challenges identifying Indigenous kinship carers:

*“We do have an issue up here with the Aboriginal placement plans and the Aboriginal Cultural Plans perhaps not being followed. We all have stories of it’s taken the Department two years to actually discover that children were Kooris. So you then tend to find that the longer that they’re in care the more disconnected they come from their family and culture, because often the placements aren’t done in a culturally appropriate way. -*

**Participant 3**

While there has been an historical emphasis on identifying kinship placements for Indigenous children in out-of-home care, one professional in a non-metropolitan location identified increased numbers of Indigenous children in residential care placements in the region<sup>187</sup>:

*“..we’re getting more and more in residential care now, which – not that you want any kid in residential care, but particularly the young Aboriginal kids, we try and keep them out of residential care at all costs, but yeah, we’re getting more and more. We’ve got a specific Aboriginal unit in [a nearby town] now, and the kids there... there were three boys in there, and they were just wild, non-stop all the time. There was criminal stuff going on. So, yeah, it’s not vastly different at all.” -*

**Participant 22**

### Summary: Indigenous Australian cross-over children

While challenges facing Indigenous and non-Indigenous communities were noted to bear resemblance, key differences were outlined. Transgenerational impacts of European settler colonialism and the impact of the Stolen Generations, greater contact with Child Protection and the criminal justice system and heightened socio-economic deprivation were understood to add “an additional layer of trauma” for Indigenous children and families. Complex relationships were described between Indigenous peoples and Child Protection systems, and conflicting views arose regarding Child Protection involvement with Indigenous children. Some participants suggested Indigenous families were disadvantaged and poorly-supported by these systems, while others argued that a desire to preserve cultural connection resulted in higher Child Protection risk-thresholds being applied to Indigenous

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<sup>187</sup> This aligns with case file data which indicate that 35% of Indigenous cross-over children were currently in residential care, and 49% had ever been placed in residential care. There were no significant differences in residential care placement (current or historical) observed between Indigenous and non-Indigenous children).

children. Finally, concerns were raised about cultural disconnection among Indigenous children in out-of-home care.

## 5.4 Averting the pathway to Youth Justice

This section presents key policy and practice shifts which, in the view of professional stakeholders, would reduce the Youth Justice involvement of Child Protection-involved children. Focusing on prevention, the material in this section addresses domains outside criminal justice responses, including family and early life experiences, education systems, child and family welfare services and statutory Child Protection responses, including out-of-home care systems. It also acknowledges broader social elements and dynamics relevant to understanding cross-over children.

### 5.4.1 Delivering statutory and non-statutory family support

Professionals believed better-supporting families was crucial to disrupting the pathway to criminal justice involvement present in cross-over children. Two key themes emerged relating to family support and intervention: the need for earlier and more intensive support for families, and delivering whole-of-family approaches.

**Needing earlier and more intensive family support.** It was observed that cross-over children often have histories of multiple Child Protection notifications yet receive minimal statutory involvement or support to navigate family support services:

*“Often accompanying that is a degree of services struggling to engage in a meaningful manner with these young people. Often I see, and particularly in my [roles with high risk adolescents], it was not unusual to come across young people facing remand ... who had had multiple Child Protection involvements. Quite typically there might be a number of reports and investigations, but not many substantial involvements in terms of long term orders.” – Participant 28*

*“Very often you see kids like that who have 12 previous notifications and you go back through the history and you see what happened to them at three, or four, or five and nothing was done in terms of early intervention. I think that plays a role in it definitely.” – Participant 34*

A range of participants, including lawyers, Indigenous support workers, and specialist child and family clinicians, stated that where statutory Child Protection services were involved, they perceived practice approaches and resourcing to have shifted to solely focus on the child, instead of “*assisting the entire family as a family unit*”. It was also suggested that families were inadequately supported to address the issues and needs which brought about Child Protection involvement in the first instance. Study participants were united in their understanding that failure to deliver intensive and early support to families increased the likelihood of poor outcomes for children, including their involvement in offending. These were largely understood as systemic issues, rather than individual professional shortcomings:

*“... the lack of help for families, of course, is absolutely endemic, it is scandalous. It is scandalous... Now we have so many examples of cases that aren't allocated, of cases where there's turnover after turnover. When you ask to speak to the worker, ‘oh no I'm not the worker. Oh no she left last week’, or the turnover is affecting families, it's affecting the children. When you haven't got input for the families and I know I've bashed this to death, but*

*when you haven't got input for families ... you're paving the way for criminality.” - Participant 37*

*“...the child welfare system doesn't support families or the children. It's easy to come round and make an application, and the Magistrate will listen to the application and they believe that where they've put this kid is the right thing to do, but... it's not helping the family. They don't support the family, they don't try circuit breakers even for the parent. You know what I mean? The parents, 'This is what you've got to go and do. Go and do it'. What are the barriers for the parents going to do it? So that's not achieved. The kids go in for their Orders and they get put into long term orders. Then there's all this abandonment stuff and there's all this more - you know, more psychological stuff going on and it just makes it worse.” -*

**Participant 6**

A minority of professionals also stressed that Child Protection approaches with families remain too adversarial and punitive, compromising the effective relationships which form the foundation for successful work with families:

*“...it's an adversarial system with the Department, they're not always – it depends, it can really vary – but sometimes they're not so neutral that it's almost more about punishing those parents – not in every case at all but sometimes – than actually looking at what they could engage early on to prevent it going further down that pathway.” - Participant 43*

*“... it comes from the top. It's not the young workers, the young workers are well meaning. The young workers are pretty intelligent but they come in and with the ethos that they have around them they go out and alienate people. They get then spat upon and I think if anybody tried to take my child I'd get pretty - and they don't know how to handle that. And so they go after 18 months and you have another crop and you've still got the same ethos at the top of blame.” - Participant 37*

Professionals also spoke about the need for greater family supports following reunification, an identified high-risk period for family breakdown and “a huge increase in offending”. Community-based family support services were also seen as unavailable to parents, or referrals were inappropriate, resulting in lengthy delays in Family Division Court proceedings.

**Participant 46:** *... the Department would say we'll link them in with an integrated family service. We say, 'Great. What is that? What does that look like? Which service? What's the wait list?' Parents are putting their hand up and saying, 'Fabulous. Get me on board'.*

**Participant 47:** *And then you come back to Court and the [Child Protection] worker has changed, and the referral wasn't put in, and you're in the same position.*

**Participant 46:** *Or it was never appropriate in the first place but 'I didn't actually put that in, that was the ex-worker and they should have known not to put that type of referral in but we've got the right referral in and it's now a 12 week wait'.” – Focus group 17*

**Needing whole-of-family approaches.** Given the importance of family in relation to cross-over children's challenges, a range of participants (including Child Protection practitioners, child and family clinicians, lawyers, Koori support workers and professionals non-government agencies) recommended a greater

emphasis on whole-of-family approaches by the broader child and family welfare system. Whole-of-family approaches were also recommended in Youth Justice and adolescent family violence spaces. Optimistically, Child Protection professionals detailed positive outcomes when they are able to work with families where children displayed early challenging or offending behaviour:

*“... when Child Protection are involved you have more services that you're able to enable maybe more so than Youth Justice because you have all the different programs ... like the Family-Led Decision-Making component, Aboriginal Family-Led Decision-Making ... utilising those services to support the family to empower parents, and even in some cases develop the skills of the parents, that then they can transfer through their parenting with the young people...if you're getting that at quite an early stage in the child's offending part, it can be worked. Because a lot of the time these kids are seeking something that they're lacking at home. If you can somehow identify what that is, and provide that within the family home, that has been something that's worked well.” – Focus group 20*

Some innovative suggestions emerged including the potential for intensive Diversion options targeting cross-over children in the Family Division of the Children's Court:

*“... there should be a diversion court in the family division in the sense that something comes to court that's not that serious perhaps, a PA by notice or something like that, they should get stuck right into it and look at this family and support them so that it doesn't get to the point where the children are removed... I think there should be a thing called the Children's Court as in there's a Drug Court and a Koori Court and they should be specifically designed towards supporting families with children who are in crisis and this Court should do it. And we should have those services on tap.” - Participant 42*

Additionally, a need for enhancing the availability of Indigenous services was identified, with one Indigenous professional sharing that *“often our services aren't funded enough to meet the demand and to address all the issues” (Participant 38).*

#### 5.4.2 Addressing systemic Child Protection challenges

This section details the findings concerning statutory Child Protection intervention with children, many of which will be recognisable to those familiar with the Child Protection and out-of-home care sectors. These phenomena constitute systemic barriers preventing children from experiencing safe, stable, supportive and coordinated Child Protection experiences. On the one hand, these challenges were understood to result in missed opportunities for intervening early and steering children away from contact with Youth Justice (systems neglect), while in other instances systemic factors potentially contributing to criminal justice outcomes (criminalisation) were identified. Topics raised by professionals largely concerned children in out-of-home care arrangements, and primarily focused on challenges related to case management, out-of-home care placements, and limitations of statutory intervention with children.

**Systemic demands outweighing resources.** The recent increase in the number and rate of children receiving Child Protection services over the past five years was noted by professionals. Systemic Child Protection limitations were largely attributed to an imbalance between demands and resourcing. Professionals believed this led to an incapacity to deliver the range of activities and services which could

improve children's outcomes, such as more intensive early intervention family support, locating potential kinship carers, and increasing the volume and range of out-of-home care options:

*"Participant 53: Child Protection are at capacity, and their availability to meet with the families regularly and do some of that intensive work is really limited.*

*Participant 54: But sometimes they've even closed... they've closed them.*

*Participant 53: Or they're eager to close because they're so under the pump, they don't have the resources to keep these kids involved." – Focus group 19*

*"...if you resource the Child Protection system well, and you catch those kids when they're really young, then you've got a chance of preventing it." - Participant 83*

**Removing children to out-of-home care.** A minority of participants believed that children are in some instances left in family circumstances from which they ought to have been removed by statutory intervention:

*"It's really difficult when you go down and you listen to like ABC presenter Stan Grant saying, 'No child should' you know, 'Police don't need to take any more children'. And I feel like, oh... I just want to get up and say, 'Mate! Go to their house. They've got no sheets on the bed. There's no food in the house'... I had a young boy ...his parents ... they didn't have a house. And that had caused a lot of problems. So he slept with a big Boondi Stick next to his bed. Well it wasn't a bed, just a mattress on the floor, in case someone came back in and screamed at him. But [Child Protection] doesn't remove, won't remove... their whole values on removing any children. And when you say, 'This kid's at risk of blah blah blah', they go, 'Oh no that's not at risk for us'. I go, like 'do they have to die before they're at risk?'" - Participant 1*

Others described the challenge of proving cases involving cumulative harm in Children's Court environments, to support more intensive statutory intervention with children and families where warranted:

*"...the cumulative harm.... that's the ones where if we came to Court the likelihood is that the response from the Court would be pretty limited – certainly not to the level of removing children from that situation and certainly probably not even removing a father from the family home unless the mother was strongly supportive of that, and we know all the reasons why Mum often doesn't support that." - Participant 49*

Conversely, some Magistrates contended that they did support the removal of children where parents are unable to address risks relating to child maltreatment:

*"Participant 40: Personally I think it's wrong. If know there's a problem earlier on you get them away from [...] their parents and give them some hope.*

*Participant 39: I think we do a lot of that. I think we do remove them a lot and I think we make a lot of Permanent Care Orders in this region ... I am very conservative when it comes to removing kids if parents are not stepping up." – Focus group 16*

Yet other Magistrates did not believe that child removal was an effective response to addressing the issue:

*“Somehow you’ve got to stop the cycle. And stopping the cycle – you know, the trend to making quick decisions and taking children away early to stop the cycle – that doesn’t work either, because that becomes a, sort of, Stolen Generation. It doesn’t work. They always want to find their family somehow.” - Participant 82*

**Diminished protective intervention with older adolescents.** Related to the question of child removal, some participants observed diminished levels of Child Protection intervention with adolescents, particularly those who are 16 or 17 years. This was understood by some to be due to the limited time to acquire a final Child Protection Order before the end of statutory intervention at 18 years, and by others as due to the difficulty of proving that older adolescents require protective intervention, particularly where the risk of harm arises from the child’s own behaviour. Yet professionals acknowledged there was a group of cross-over children who presented with high levels of risk-taking behaviour, and whose welfare needs contributed significantly to their risk of offending or reoffending. One education professional suggested that Child Protection regularly did not get involved in such cases, rather *“they just wait until that behaviour manifests as offending behaviour ... And that’s the intervention”*. Some professionals also acknowledged that statutory limits to Child Protection intervention at 18 years of age contributed to diminished involvement with older adolescents, including those in custody, and generated substantial disruption in the lives of older adolescents in out-of-home care:

*“You’re less likely to get an assertive Child Protection response in relation to a kid who’s 16, because they’re viewing the end’s in sight. So the system itself, and the set-up of the scope of their involvement, creates this notion that if we just see it through till then, then it’s off our hands... And so that means there’s less investment in now, and that’s going to have a negative impact on the likelihood of that kid progressing into the justice system, if they’re on the edge of it at that time.” - Participant 28*

*“...you have a 17-year-old who's been excluded from the family home because say a family violence incident happens... they are in custody because they're homeless so they're an unacceptable risk of reoffending, and then the Magistrates won't give them bail because you have no place to get them bailed to, so you have to do try to get them into a refuge... You see these kids who are 17, with the Department may have previously been involved but won't get involved with now because they can't get a final order in place. There is actually nothing stopping [Child Protection] from getting involved with them because they could, they could issue a Protection Application, but they choose not to because they know they can't get a final order out of it... so these kids who are 17 just languish in custody.” - Focus group 22*

Youth Justice professionals and lawyers were critical of the lack of Child Protection intervention with older adolescents who were homeless due to family conflict, or engaged in challenging, high risk-taking or offending behaviour. Professionals considered that the criminal justice system had become the default systemic response to welfare concerns in older adolescents, where Child Protection were *“totally missing in action”*. Indeed, some study participants suggested that Child Protection services might avoid intervention, or reduce their level of involvement where Youth Justice services were involved, perceiving the child as receiving support from Youth Justice services:



*“... [Child Protection] are like, ‘Oh, okay. If there’s someone else involved, we’re going to withdraw.’... as soon as Youth Justice were involved, ‘Okay. We’re going to take a backseat. Youth Justice just do everything’. And then Youth Justice became like the ad-hoc workers who - in effect, these young people are entering the system due to welfare issues. And the YJ workers end up doing everything.” - Participant 53*

*“Child protection practitioners often aren’t interested in the criminal justice system, they’re Family Division embedded, and that’s another sphere and another world, and it’s concerning because it influences their practice. There’s not that global perspective of ‘where’s this kid going to next?’... I see YJ often dismayed at the lack of either current Child Protection involvement, closure decisions, assertive child protection involvement” – Participant 28*

**Improving consistency of guardian support.** Study participants spoke about the challenges of Child Protection work, and described examples of good practice by individual Child Protection professionals:

*“Impossible, impossible. I mean, they have to tolerate, you know, all the negativity that comes with being a Child Protection worker anyway... they’ve got to balance this shocking role, this difficult role of being a social worker and trying to help, but at the same time being a prosecutor.” – Participant 82*

Yet professionals also described inconsistencies in Child Protection case management, for instance variations in the skill level of workers, in the level of support children receive, and in the communication between Child Protection and other professionals including Youth Justice workers and lawyers. Child Protection staff turnover and staffing changes were described as problematic and compromising of the capacity to deliver more consistent support to children:

*“... it’s not for the goodwill of people, it’s not - it’s the huge turnover. It’s the fact that young workers don’t know what to do, it’s the fact that they don’t know how to engage people, it’s the fact that you’ve got a blaming principle going on.” - Participant 37*

The issue of staff turnover was similarly also raised in relation to contracted non-government agencies delivering out-of-home care services, particularly residential care services. Yet, where skilled and experienced Child Protection workers were available, it was noted that outcomes for children were more positive:

*“... what these kids do need, they need one person in their lives to navigate, to stay with them throughout whatever process it is that they’re going through to pull it all together. The numbers we’re talking about aren’t that great. So what if they had a worker that was their worker for whatever... That helps see them through and connect all the points because it must be so confusing for them.” – Focus group 24*

The most common guardianship-related concern was the inconsistency in court support for children in out-of-home care who are involved with the Criminal Division. This was contrasted with their involvement in Family Division matters, where participants indicated Child Protection were consistently available<sup>188</sup>.

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<sup>188</sup> The issue of Court support is further discussed in Section 5.5.9.

**Needing a range of home-based care options.** Study participants believed that the limited adolescent home-based care options contributed to criminal justice system entrenchment among children in out-of-home care. Child protection professionals indicated that there were minimal foster care options available for adolescents, particularly those with more complex support needs, including children experiencing difficulties with emotional and behavioural regulation, substance abuse problems, or involvement with the criminal justice system. Professionals described two trajectories among early adolescents in need of out-of-home care placements:

- One group who are settled in kinship or foster care placements, but whose trauma-related behaviours emerge during early adolescence (e.g. 11 years), triggering placement breakdowns; and,
- A second group who were not placed in out-of-home care, but whose trauma-related behaviours cannot be managed by family, leading to child placement in out-of-home care, typically in early adolescence.

In the absence of other appropriate and available kinship options, Child Protection services are left with the only option of placing children in residential care:

*“... we can’t get foster carers for young adolescents so the age, the young age of which these kids are subject to the sort of contaminating effect of being in resi and the growth of antisocial attitudes is really hitting ever younger, ever younger, which is a real worry” - Focus group 24*

Magistrates, though doing their utmost “to make the legislation work in the way that it’s supposed to” (Focus group 24), were frustrated by this lack of choice. Some reported feeling compelled to place children in environments not conducive to positive outcomes, “because there are no reasonable options”, even though “the same problems are just going to continue” (Focus group 24).

**Residential care concerns.** Significant concern was expressed about residential care settings, in which children experiencing the greatest adversity, and with the fewest protective factors present, were often placed:

*“...residential units... tend to be – even with the best intentions of the staff that work there – somewhat of a dumping ground for kids who have a plethora of problems. And we’ll often find a young person will go into a resi unit for the first time, no criminal history... and very, very quickly there will be an escalation and they will be moving into the criminal system” - Focus group 24*

Concerns regarding residential care related to two key issues which are familiar from previous reports and literature, namely the colocation of children with high levels of support needs and risk-taking behaviours and aspects of residential care staffing.

**Co-locating vulnerable children.** The difficulties related to colocation of children with high support needs have been described in previous sections of this report, particularly in relation to group-based offending (section 5.2.4):

*“...if an adult goes to jail well it is expected than when they come out of jail they will have learnt some new things that we possibly didn’t want them to learn in jail... it’s just a peer*

*pressure... you're exposing them to you know things that you're trying to keep out of their realm of sort of everyday interaction... And they will offend too." – Participant 30*

In addition to exposure to more ingrained offending behaviour, children were noted to expose one another to additional risks in residential care settings, including interpersonal violence, substance abuse and sexual exploitation. Though Child Protection, residential care providers and other agencies such as police clearly do their utmost to minimise and reduce the impact of these risks, they persist due to the nature of current systemic constraints:

*"There's contamination. I've had matters of Intervention Orders against co-residents at a resi unit. Everybody's got to be moved away because they've been fighting and threatening each other." - Participant 41*

*"I feel utterly pessimistic about their future... Just piling them into resi care is just hopeless and it's compounding the problems, multiplying it. The kids are getting sexually abused, they're being assaulted in resi care. It's only compounding their trauma and giving them less to care about." - Participant 39*

*Staffing challenges in residential care.* Residential care settings are staffed by rotating staff, and have a high level of staff turnover. Professionals believed that *"the ability to attach to someone and connect to someone takes a really long time"* and in these contexts children lacked a consistent caring guardian figure in their lives:

*"Participant 69: ... they get different workers every 12 hours or whatever, every six hours, rotating through, there's no consistency, so they don't think anyone cares about them from an adult perspective.*

*Participant 70: They don't actually have a parent figure as such." – Focus group 22*

*"Even in the so-called therapeutic residential centres, or residential homes there's no continuity of staff. Staff turnover is hard and they can't recruit to those. So their therapeutic aspirations are very hard to achieve if you don't have consistency of staff and appropriately qualified staff." – Focus group 24*

Residential care staff were viewed as not having *"much hold"* over children in their care, and as often ineffectual in providing rules and limits. Participants suggested that these dynamics resulted in children beginning or continuing to engage in risk-taking behaviours including substance abuse, and being involved in offending and sexual exploitation. In each instance, risk-taking behaviours involved children absconding from residential care settings for brief or extended periods of time:

*"... if the kid says at ten o'clock I'm going out, the kid's going out. They can't lock the door, they can't, you know, pull them by the ear. They can't touch them, can't do anything." - Participant 30*

*"The resi unit in fact really does nothing. It's just here is a place where there's a bed. There's virtually – well, while we have rules there's no enforcement of them. If they come back drinking or drug-affected or go out at 2am, they can't be stopped." - Participant 75*

Serious concerns were detailed regarding the risks to which children may be exposed when absconding from residential care:

*“...what is the role of the staff of a resi unit where the girls go out at night and are picked up by men for prostitution? Cars come by, it's known, we know that it happens. Resi staff must know that it happens. What are resi staff doing about that? Why are these children not contained at night, like you would be in a normal home, you don't let them run the streets at night. Why when you're in care with - in Government care, can you do things that your own parents wouldn't allow you to do? And then you call the cops on them for peccadillos. It just begs belief.” - Participant 37*

While some participants saw the absconding of children from residential care as a failing of staff, others suggested that the particular model of care may be unsuited to certain children, who required a more secure setting:

*“Children in the Department care absconding, child in the Department care prostituting themselves, children in the Department care and being absent for weeks, absconding every other day. One of the children had had 20 warrants in the last five months. Now, again, it'd be easy to blame the Department for that, but the reality of the matter is a lot of those children are just so damaged that nobody could care for them, in the absence of some sort of secure facility.” - Focus group 24*

*Identifying what works in residential care – therapeutic units, secure units and staff expertise.* Participants noted the current Victorian policy push to reduce the numbers of children placed in residential care. Yet some also acknowledged positive aspects of residential care, recognising that some children in residential care are *“actually in a really good place, [a] really stable placement”*. In contrast to mainstream placements, therapeutic residential care placements were praised in some focus groups, with one Magistrate indicating *“they're having good outcomes for really troublesome young kids and we need more of those placements”*. Another lawyer highlighted positive outcomes when such models are well-staffed and supported:

*“... we had [a therapeutic residential unit] for a period of time, there were kids that got amazing outcomes there they wouldn't have got if they'd been elsewhere for a whole range of maybe quite okay reasons. Back at the period when that was working okay.” - Participant 48*

One participant outlined the observed advantages of therapeutic models for children in residential care, which were largely attributed to the structure and staffing expertise in such units:

*“... it's isolating the kid, it's putting this really intense structure around them where they've never had structure. Some of these kids have just been running absolutely wild. Suddenly they've got structure, suddenly they've got consequences. Suddenly something's actually working reasonably well for them, they're not getting into trouble so much because they're actually busy. The workers in those units are quite expert at managing them. They come into Court and they sit next to them and they tell you what they're doing. The workers are very good and engaged...” Participant 39*

Similarly, other participants understood that challenges experienced in mainstream residential care environments were sometimes due to a mismatch between children's needs and the levels of staff training and experience; staff with greater training, skills and experience were observed to respond in more nuanced ways to children's needs, including challenging and offending behaviours:

*"Resi's like kind of a gateway into [Youth Justice] and criminality, because it's people taking care of them who don't really have any training, who don't really know what they're doing to having - no one does it maliciously." - Participant 52*

*"In the non-therapeutic [residential care unit staff are] not trained at all. They're literally just told if there's a problem lock yourself in the office and ring the police. That is the only training that they have tended to receive. [A therapeutic residential care professional] was telling me a kid smashed a coffee cup so we cleaned it up, we talked about what happened. So that's where we're seeing some slight differences in the better trained workers in the therapeutic places." - Participant 3*

### 5.4.3 Improving the educational experiences of cross-over children

The diminished educational attainment and heightened educational disengagement among children in out-of-home care and Youth Justice settings is widely acknowledged. Yet the pathways and factors contributing to these outcomes are perhaps less clear, particularly among cross-over children. Professionals in almost all focus groups noted the early educational disengagement of cross-over children, and outlined various contributing factors. Strategies believed to support educational retention or re-engagement of cross-over children were also identified.

**Timing of educational exclusion and disengagement.** Professionals depicted two main trajectories of educational disengagement among cross-over children:

- Disengagement/exclusion from mainstream education occurring in primary school; and,
- Disengagement/exclusion around the transition from primary to secondary school.

Cross-over children rarely had significant secondary school involvement. Previous research has identified the transition from primary to secondary school as a high-risk time for educational disengagement, particularly so for child-protection involved youth; these findings were echoed particularly by stakeholders in rural and regional areas. Participants in two regional focus groups (non-government agencies and Child Protection professionals) observed that this group of children often 'struggle to stay', experiencing the transition from a single primary classroom and teacher to a high-school setting with different peers, teachers and classes, challenging. They also understood it to be easy for these children to become 'lost', and 'to get out' of secondary schooling, and to be effectively permitted to disengage:

*"... [the] transition from primary school to secondary school, that's where we've lost them. Like, I think if we were to look at nearly all of our kids, most of them have not probably been involved in secondary school past probably about the third week of Year 7." - Participant 10*

Several professionals, primarily alternative education specialists, also indicated that a subgroup of cross-over children experienced far earlier educational exclusion and/or disengagement, beginning in the primary school years. Case examples were detailed of children coming before the Criminal Division

of the Children's Court who had experienced high educational mobility, early school difficulties and exclusion, and were without contact with educational systems after Grades 3, 4 or 5 (at 9,10,11 years of age):

*"... I think by the time we get them at secondary school a lot of that damage has already been done, that disconnect from family services, schools, a lot of these kids have been removed from or excluded from mainstream schools two or three times, expelled or stay at home and don't go and are not pushed to go." - Participant 65*

*"They'll be identified early by the school...You'll get a Grade Three teacher, the Grade Two teacher that can identify these kids, no doubt." – Focus group 24*

Finally, alternative education providers also noted that any kind of transition or disruption to young peoples' routines increased the capacity for educational disengagement. Out-of-home care placement, changes in placements, moving in and out of custodial environments, moving from residential care to lead tenant placements, and leaving care were identified as circumstances disruptive to relationship-building between children and schools:

*"I think it's just that transition of relationships of adults in out of home care and that disconnect from family for those kids that are involved in sentencing or [Youth Justice custody] or whatever else. I think that breaks up the continuity of the relationship so I think for all our schools relationship has become really important, a cornerstone for being able to connect. It's much easier when there's consistency of attendance and attendance is impacted by obviously involvement with justice, it's harder to get kids in out of home care, it's often harder to get support around getting to school, there are so many different contacts, you're contacting people that you, as a worker, you start to have a relationship with one person, that person leaves." - Participant 65*

Professionals conceptualised the association between educational disengagement and offending as primarily being about children disengaged or expelled from school, lacking structure, having 'too much time on their hands', and becoming involved with other young people who were similarly situated:

*"... they're often not going to school, I think they've just haven't got much to do... then they just start hanging out together, doing stuff." - Participant 22*

*"... having them engaged in school and having them get the help that they need and what have you, and them staying with this structure rather than having all this time on their hands to go and commit offences and to get in with the wrong crowds and things." - Participant 7*

**Factors relating to educational exclusion and disengagement.** Several familial, individual and systemic factors were understood to contribute to these educational outcomes. At the family level, some participants identified cases of early educational neglect resulting from the family circumstances of cross-over children. Further, an intergenerational contribution to these outcomes was supposed, whereby in some instances the educational needs of parents were poorly met, leading to their own early disengagement, in effect normalising the circumstances of their own children:

*“A lot of the cross-over kids have parents who have mental health issues, and they have psychiatric, psychological, personality disorders. A significant number of issues the parents may have, and as a result of that the children struggle straight away to be able to link in to things as simple as school. They have parents who just can’t get their children to school.” -*

**Participant 74**

At the individual child level, professionals understood that some cross-over children experienced behavioural, emotional, interpersonal and other neurodevelopmental challenges which resulted in educational engagement being highly demanding for both children and mainstream schools, as noted by the following police officer:

*“... half of the kids that we get here are not attending school, and I know it's a big ask for teachers and things, but I think a lot of them do have learning disabilities and things that aren't diagnosed, and that aren't being worked on.” -* **Participant 7**

At the systemic level, participants believed that responses to young people at risk of educational disengagement, and those already experiencing exclusion/disengagement, required strengthening. Few study participants, other than alternative education specialists, spoke in detail about the educational needs or experiences of cross-over children, including factors stemming from the education system which related to their schooling engagement or disengagement. This perhaps reflects a divide between the domain of education and the remainder of service systems which were represented in the study.

**Promoting educational retention among cross-over children.** In some instances, responding to the educational disengagement of cross-over children was held to be the responsibility of Child Protection systems, which some professionals believed inadequately supported children’s educational engagement. This included children placed with family and those in out-of-home care settings. At the same time, one participant with employment experience in residential care settings described the systemic constraints influencing these outcomes:

*“... you’ve got a residential worker who is trying to get four kids off to school and one of them won’t get out of bed. You have got to get the other three to school so you leave them and you come back and you try and negotiate that.” -* **Participant 65**

Strengthening the mainstream education system’s capacity to support young people with neurodevelopmental, behavioural, emotional, mental health and welfare needs was a key discussion point. Alternative educational professionals suggested mainstream education systems, while under “a lot of pressure” and doing their utmost, were under-resourced in terms of frameworks and welfare services to support children with complex needs:

*“It’s not as easy as just saying, ‘Oh, schools don’t suspend any kids’, as much as we might like to see that. The behaviours are still very difficult for the schools to deal with. So then it needs to go back to, okay, well how are schools resourced in this? Do they have enough, sort of, social work support to do this work?” -* **Participant 51**

*“... being a teacher with 27 kids and it’s often the two kids that are causing all the trouble. They don’t have the training, they’re not interested in the background of that young person, they’re just interested in getting through curriculum.”- Participant 65*

Alternative education providers described instances of mainstream schools refusing to enrol cross-over children who had more complex needs. They articulated children’s ongoing need for advocacy and support in this area from Child Protection, out-of-home care providers, and education specialists:

*“Participant 65: There’s so many barriers too for kids, I know kids that identify they want to go back to mainstream but it’s frustrating for us because we have conversations with those schools and they just don’t want them there. There are so many barriers in place for those kids going back... It happens all the time.*

*Participant 67: Yeah it’s not supposed to.” – Focus group 21*

Aside from resourcing, alternative education providers broadly agreed that the improvement of cross-over children’s educational outcomes would necessitate a cultural shift across education systems at a strategic level, wherein children’s educational and welfare needs were both seen as ‘the business’ of the education system:

*“... if you actually empower schools, and give them the tools to do it, it actually makes it possible. And if you even map it to their KPIs, it means they have to do it, and they’ll want to do it, as opposed to what we’re kind of seeing where mainstream schools aren’t equipped. It may not be the best. And then alternative education gets used a crutch.” - Participant 52*

While recognising the need to better support mainstream schools, some professionals also observed that a minority of children require alternative education environments. Alternative education providers recognised that their environments and staffing supported greater flexibility and responsiveness to a variety of children’s needs, including challenges with emotional or behavioural regulation:

*“Probably our biggest barrier is ... the young people coming in and then having something happen where they do shoot up, like it does go from zero to 100 in one second...You do the best you can in the space, and we have two staff at all times in our classrooms and we have a teacher and a welfare worker at all times to aid that support when needed....it’s about regulating the emotions.”- Participant 67*

Yet some professionals also cautioned that the availability of alternative education should not lead mainstream systems to abrogate responsibility for this group. Strategies for strengthening the capacity and quality of the alternative education system were identified. While specialist alternative education providers were praised, services were sometimes described as being at capacity, having waiting lists, and unavailable in some regions. Furthermore, some study participants suggested that the alternative education system could be enhanced by frameworks to support greater consistency and quality in service provision:

*“There aren’t a lot of opportunities for young people with behaviours in relation to education options, particularly for under 12’s. There seems to be a massive gap there where kids can go for up to a year, two years without an education setting because there’s nothing to offer*



*them. And they've got too much time on their hands and the community committing crimes.” - Participant 34*

Finally, study participants including Child Protection professionals, child and adolescent clinicians, and specialist education providers, all observed that many cross-over children continue to ‘fall off the radar’ in regards to education. A range of professionals suggested that this group of children would benefit from greater systemic responsivity at the earlier stages of educational disengagement. The Children’s Court was seen as a key point of accountability to ensuring educational needs were being addressed for this group of children:

*“The majority of them appear to have left school or be in the process of leaving school and one of the great tragedies is many of them aren't followed up and it isn't dealt with early enough because it often starts before puberty and many of them have verbal learning difficulties... I must always go back to the school issue. There doesn't seem to be enough proper input to children when they first start to fail.” - Participant 37*

*“...Courts do wield a whole lot of influence. And they are the hub of those systems, and have the ability to ask questions of people in a way that essentially no other person or system does. And so I think there is a huge need for - and I think this has changed over time, say, by us being here and by just there being a greater awareness amongst Magistrates around asking around educational needs. So there's been a huge improvement.” - Participant 51*

#### 5.4.4 Accessing child-specific programs and therapeutic services

In around a third of focus groups, professionals suggested that cross-over children experienced limited early therapeutic interventions and barriers to accessing therapeutic services and programs. Adolescent family violence, youth homelessness, youth mental health and youth drug and alcohol services were particularly highlighted as lacking, as were specialist therapeutic services with the scope to address trauma-based emotional and behavioural needs of cross-over children. Study participants linked the lack of service availability with children’s increased contact with out-of-home care and Youth Justice services. For instance, a shortfall in adolescent family violence programs limited the capacity for appropriate diversion of this group of children, and insufficient youth homelessness programs meant there was nowhere to which children without family supports could be bailed in the absence of ongoing Child Protection support:

*“... there's a lack of services in the community that are responsive to these young people's needs as well... the system we've got in place at the moment is fundamentally flawed... we've got kids coming through [Child Protection] at high rates, and we don't have the system to also support these young people.” - Participant 53*

**Needing a secure therapeutic facility.** A range of participants, including Magistrates, alternative education providers, lawyers outlined the need for a secure therapeutic facility to meet the needs of cross-over children. A child clinical expert commented on the incapacity of community and hospital-based mental health services to meet the needs of many cross-over children. Further it was identified that other closed settings (e.g. Secure Welfare) are only available for short-term periods, or in the case of Youth Justice custodial settings, are not therapeutic in intent.

*“... we need legislation and in reality a closed treatment facility for those with entrenched drug and behaviour problems. There is no doubt about it... The normal system of hospitals do not cater for them. They go to the Children's Hospital, they come out next day; it doesn't matter if there's been a major overdose, though. Well one case I can certainly say there was such a big overdose and she was out the next day. And there doesn't - there's nowhere to be properly treating these children, they can walk in the front door and out the back in drug matters.” - Participant 37*

*“We need somewhere to send them, but they can't just walk out the door and they're just too young to be able – they're such short-term thinkers. Someone texts them and they're off. They might mean well five minutes ago, but they're off and we need a secure setting for treatment.” – Focus group 24*

Other study participants indicated that in the absence of a secure therapeutic option, remand becomes the default setting for some children who are perceived to need longer-term 'containment':

*“I know the Court's doing a lot to try and reduce the length of time the children are spending on remand but there is a serious gap in both the statutory and also the service capacity to provide that halfway house in a Child Protection context. So you've got Secure Welfare, which is extremely time-limited, urgent, immediate, significant harm to the child and need to be really urgent assessments 21 days max. And then you've got residential units where there's no lawful basis to lock the door or provide really contained treatment.” - Participant 49*

Other participants cautioned against seeing a secure treatment facility as a panacea, suggesting that early intervention and support ought to remain the priority in supporting this group of children, and noting that a therapeutic option would require elements of transitional support:

*“Participant 52: I think it's always better, cheaper, quicker do it at the front end before kids are involved in any of it. Like rather than building another facility that's better, it's like what can we do in the community that's therapeutic, preventative, which is working -*

*Participant 53: Yeah, more resources in the community.” – Focus group 19*

**Engagement in relationally-based services.** Aside from articulating the types of services and programs required, participants argued that it was vital for services responding to cross-over children to be trauma-informed and relationally-based. This recommendation was made in relation to a range of services and systems, including Child Protection and out-of-home care services, Youth Justice, and educational services:

*“Practitioners in this field like to talk of 'safety comes from relationships'. You can put safety plans, you can have all sorts of things in place, but if you don't have that engagement and relationship with a damaged young person, then that safety is going to be tenuous.” - Participant 28*

At the same time, a key barrier to children's service utilisation was a lack of effective engagement, which was seen to hamper assessment processes, access to legal support, and therapeutic interventions for this group of children. Professionals identified many cross-over children as being

notoriously challenging to engage and support, lacking in trust, and easily excluded from service systems due to their challenging presentations, or need for specialist approaches:

*“Difficult to pin down, especially your more acute or high risk adolescent, very difficult to get them to trust workers, to trust the court system, to turn up to appointments, to follow through.” - Participant 28*

*“...they’re quite distrusting as well a lot of them. They’re quite sceptical about ‘what’s the purpose of this assessment?’ And ‘what are you going to use it for? Are you going to use it in court?’” - Participant 34*

One practitioner indicated that a mismatch between the child and worker was often a significant factor impeding engagement:

*“... if they’ve been given a psychologist or, say, [out-of-home care case manager] or something, a service that they don’t want to engage with, they won’t go. But then they’ll go to the service that YJ has referred them to because it’s - they somehow engage with them. And then you’re getting calls, ‘well, why aren’t they going to their [out-of-home care case manager]?’ And then you say to the kid, ‘Why didn’t you go to [the out-of-home care case manager]?’ ‘I don’t like him. I don’t like him’. I said, ‘Well then tell Child Protection you don’t want to engage with them’. ‘No, I’m too embarrassed because they put pressure on me. You tell them’.” - Participant 54*

Professionals also articulated a mismatch between systems and cross-over children. Service funding structures (and consequently programs) are often premised around short-term intervention, at odds with the generally longer-term time frames required to develop relationships with cross-over children required to underpin any therapeutic work. Staff turnover undermined the capacity for relationally-based therapeutic work:

*“... often it's might take you the best part of six or 12 months potentially before you've even established a level of trust that you really need to have, and confidence, so that then you can start to do a few little things. And so I think that notion of continuity of workers, then you've just got to hope you get a good worker I suppose.” - Participant 21*

**Coordinating care teams for cross-over children.** It was acknowledged that many cross-over children were involved with large and diverse teams of professionals, including Child Protection case managers, out-of-home care staff, Youth Justice case managers, lawyers, and other support services including disability, mental health or mentoring staff. Study participants highlighted the designation of responsibility as a key concern in these circumstances:

*“... there are lots of people out there working with these young kids who are not communicating with each other. So there’s not a joint control of management of these kids’ lives, which simply means that these kids are still out at a loose end everywhere, when all these other adults ought to be cooperating.” – Focus group 24*

Similar difficulties were noted in the range of services which work with families of cross-over children:

*"...that's the nature of the way the agency's involved. Often it's for short term things so they've got constantly got different workers. The workers come in and out and then they've got different focuses so that they might say, "Yes, you do need assistance with this, but that isn't my area. I can't help you with that." So they've got different faces, different roles. They come in and out rather than being a constant. So yeah, in a way it's a very hit and miss way of engaging with the family whereas perhaps if there's an agency that could pick them up and say, "Okay we're going to work with you for the next two years and in that time we're going to cover all these things," that's great." - Participant 16*

**Improving rural and regional service access.** Professionals suggested that cross-over children in regional and rural areas were disadvantaged by diminished service access as a result of waiting lists, travel distances, or lack of available services. Parents were also seen to struggle to access services to address their own support needs. Participants noted complexities in regional Child Protection contexts, in which children could either be left in inadequate family circumstances due to a lack of alternative placements, or be at greater risk of removal from family due to lower service availability. Regional and rural out-of-home care placements were more likely to be distant from family, creating challenges for case management, and increasing the risk to which young people may be exposed:

*"It's just crazy, whether they're trying to shut down resi units because of ... a new initiative to get everyone out of residential care, but we've got more and more kids that need beds, and they're shutting down units... We've got kids then placed out of area that we're expected to manage – you know, they're two hours. You can't provide an intensive level of case management when they're two hours away. It's just impossible. You can't respond to them." - Participant 22*

*"... there can be long waiting lists for services and stuff, so automatically disadvantages kids and parents from being able to engage. And that's one of the key things that's often brought up against them, is 'they haven't engaged'." - Participant 2*

Professionals described substantial challenges accessing adolescent-specific services in rural and regional areas, such as adolescent family violence programs, drug and alcohol detox and rehabilitation, youth homelessness services, and mental health services. Major access difficulties were also described in relation to specialist assessments and supports relevant to cross-over children, including colposcopy services, psychological, neuropsychological and disability assessments. Waiting lists of up to six months, and travelling distances of eight hours were required to access certain assessments and programs. One participant suggested that some programs "may as well be on the moon" given the distances children were expected to travel to access them:

*"... for a young person to go to an appointment, to catch public transport, it might take a good half to three quarters of a day, where in metropolitan - that sort of thing's an hour or two out of your day and then you can head off to wherever else you were going". - Participant 19*

Such access barriers were understood to disadvantage rural and regional children, rendering them more likely to experience Child Protection and Youth Justice intervention, and poorer outcomes in these systems. One Child Protection worker commented on the lack of programs “apart from police and Child Protection”, alongside other practitioners who detailed a lack of programs in their regions:

*“We’ve seen a trend in [adolescent family violence] recently here and have reached out to some community agencies identifying that, going ‘where can we refer these families to?’ And, interestingly, all the agencies said, ‘look, we’d love to help but our funding doesn’t cover it; we couldn’t fit it in to our current funding’.” - Participant 2*

*“We’ve got no residential drug and alcohol. We’ve got nowhere to bail them to... If they’re coming out, they’ve got nowhere - parole. Homelessness here is massive.” - Participant 6*

The centralisation in Melbourne of Children’s Court Clinic services, Secure Welfare Services and Youth Justice custodial settings was described as subjecting rural and regional children to increased burden, and isolation as long travel times meant families and any service providers struggled to support them. These service arrangements were most unequal for children, families and services in rural and regional locations:

*“... for Mum and Dad to visit [the child in custody] from here, to get to [the main Youth Justice] and back would take half a day, but it's an eight hour round trip to get to [the second Youth Justice centre]... Why couldn't we have a smaller centre out of the back of [the regional adult prison]? It would then enable workers, families, all far more access to these young people.” - Participant 16*

*“...we don’t have the services readily available to meet the needs. So you might request a Children’s Court Clinic assessment but then it’s such a pain in the arse to even get our kids to attend the Children’s Court or to get someone to come over here to do a Children’s Court [Clinic] assessment. That might take them six months to get them to do that. If they request a neuro psych, we might not be able to book a neuro psych for four months, so we can come back to Court and say, ‘We haven’t been able to. As much as we’ve been trying, we haven’t been able to get that service involved because there’s just not the services here’.” - Participant 22*

Overall, participants depicted a fragmented service system, which at times lacked the types of services necessary to support this group of children and young people.

#### 5.4.5 Impact of broader social influences

Aside from factors relating to the Child Protection, Youth Justice, education and the wider child and family welfare sectors, several broader social influences impacting on cross-over children and their families were identified by participants, including poverty and disadvantage, the broader media and social media.

**Poverty and disadvantage.** Professionals believed that the socio-economic conditions of certain geographic and social communities impeded the possibility of escaping the cycle of disadvantage, and several participants remarked in discussion concerning cross-over children, that “we don’t talk about poverty”:

*“My friend who teaches [at the local primary school] says that the curriculum is incredibly dumbed down to focussing on getting kids eating, managing behavioural issues and just really basic survival stuff ... far more kids are coming to school with no food at all so they’re providing more food for kids, clothing, washing.” - Participant 39*

*“This is going to be another stolen generation of a different kind, one of poverty and disadvantage ...People are living in cars. Now there may be a very good relationship between mother and children living in cars. What’s the state going to do about it? They can’t leave the child living in cars, but do you put a child into foster care and keep the child in foster care because one part of what the community needs to do isn’t talking to what the other part needs to do and providing proper housing for people?” - Participant 37*

Some participants acknowledged that the relative invisibility of poverty in discussion about cross-over children probably stems from the seemingly intractable nature of such issues:

*“Maybe the reason why we don’t talk about it is that if there’s drug and alcohol, mental health issues I think we say ‘We can fix it’. Poverty is a little bit harder to fix or get that immediate resolution because it’s so ingrained and it’s going to take a long time to overcome that issue.” - Participant 41*

**Shifting education and employment opportunities.** Participants also pointed to broader structural changes in education and employment which impact on the circumstances of cross-over children and their families, such as the reduction in availability of post-secondary training opportunities and manual labour, which Magistrates in particular noted had previously provided pathways to desistance and employment:

*“... those unskilled manufacturing type jobs and others are diminishing...so Children’s Court even 10 years ago would have been able to get kids into an apprenticeship and into work as a protective factor. That’s getting harder and harder.” – Focus group 24*

*“...we don’t have a manufacturing business anymore. And so the people that often come in here are people who would generally have been getting labouring jobs or jobs in factories, and they had an income... they had work. Now that’s not available to them.” - Participant 37*

In acknowledging the broader social phenomena influencing child maltreatment and youth offending, participants suggested the need to look beyond systems of Child Protection, Youth Justice and the broader criminal justice system to inclusive community responses for responding to cross-over children:

*“In [this town]... you don’t have the employment places that will take on these troublesome kids like ‘I’ll get you an apprenticeship with my mate’, or ‘I’ll get you into a mechanics for some work experience’. If a kid does really well there they might get a Saturday job and their confidence improves. That’s always the way it’s been in country towns and suburbs, you look after kids who are running a bit astray but everybody’s astray in [this town]... Unless the community is able to step up and to provide assistance to these kids and give them the next step they’re utterly beyond our control.” - Participant 39*

**Digital social connectivity.** In around one third of focus groups, participants discussed the impact of digital social connectivity on cross-over children. In contrast to previous periods, children are able to rapidly initiate and maintain peer connections and networks through social media and digital connectivity, creating new challenges for professionals aiming to protect this group. In relation to offending specifically, social media was understood to generate an audience for children’s criminal acts, to increase their mobility and capacity to abscond, and to enhance vulnerability to sexual and criminal exploitation, and involvement in group based offending:

*“... the kids are connecting with each other so much quicker now. And we don’t know about it... Facebook, everything, Snapchat with all the exploitation, I guess just so much there that we can’t see it’s dangerous. And they’re getting to know each other a lot quicker and sometimes, you know kids, they just don’t care, they’ll make friends with anyone on Facebook. Then they’ve got all these new connections all of a sudden the day after they’ve lost all their old ones and you have to start all over again.” – Participant 35*

*“Some of these kids that we have are on Facebook or on Instagram, have 2000 followers whereas 15 years ago, 10 years ago was not the case. The only way they met would be hanging out in the city ...Whereas now they’ve got different means of contacting and making different connections that not necessarily have been as easy to develop.” – Focus group 20*

*“... it’s like this domino effect ...everything is peer driven and the social media. So they text each other ‘do you want to roll someone?’ Somebody texts somebody ‘we’ll go’.” – Focus group 24*

#### Summary: Averting the pathway to Youth Justice

Early intervention via earlier and more intensive non-statutory family supports, and whole-of-family approaches were recommended to avert the cross-over children’s pathways to Youth Justice. Several participants were critical of the lack of Child Protection intervention with older adolescents experiencing significant family conflict or lack of supervision, and engaging in challenging, high risk-taking or offending behaviour. Strengthened guardianship support, expanded placement options and improvements to residential care were identified as necessary elements for supporting cross-over children in out-of-home care. Strengthening mainstream and alternative education system response to children with trauma, disabilities, and challenging behaviours, and improving access to therapeutic services and environments were also recommended to avert the offending pathway of cross-over children. Broader social influences impacting on children and families were, including poverty, lack of supported education and employment opportunities, and increasing digital social connectivity. The findings emphasise the need for whole-of-government and whole-of-community approaches to preventing the Youth Justice involvement of cross-over children.

#### 5.5 ‘Cross-over kids’ and the Children’s Court

Several topics relating to Children’s Court experiences of cross-over children were raised in focus groups. Participants discussed not only the work of the Children’s Court in relation to this group of children, but also children’s experiences of Court, the experiences of lawyers representing this group of children, and the role of associated Court services.

### 5.5.1 Providing agency accountability and steering

Participants valued the role of the Children's Court in steering both Criminal and Family Division matters, and its function in effecting accountability of government agencies in their roles and responsibilities for cross-over children. Agency accountability in relation to cross-over children's matters was seen as all the more important due to such children's enhanced vulnerability, often absence of consistent parental figures, and the greater number of professionals involved in their lives. As seen in the excerpt below, it was the involvement of professionals which participants viewed as benefiting from coordination and oversight, rather than the children's behaviour:

*"... in this nature of this punitive justice system and all that stuff, the focus is very much on the individual. It's always on the child. When we know there is like a moving [group] of 14 people who are supposed to be also accountable. And so in [the Court], if it does go a bit back on them like, 'Well, where were you?' Because the amount of kids we've heard how it's like, 'Oh, my YJ didn't have this ready. My lawyer didn't have this ready'. They're re-remanded... if the onus does go back on into this room of the decision-making adults, as opposed to the 15-year-old who shouldn't have all the answers, they are a child, I think that actually would be very powerful." – Participant 52*

Several professionals, including lawyers, alternative education providers and Youth Justice professionals, supported actions by the Criminal Division of the Children's Court to hold Child Protection to account for their responsibility to cross-over children with concurrent matters or Orders:

*"I'd probably like to see the Criminal Division employ the practice of expecting, requesting or demanding that Child Protection respond in the Criminal Division more consistently, and I think that would help bring a shift in Child Protection practice to pay more assertive attention to criminal behaviour that they like to leave to Youth Justice." – Participant 28*

*"The Magistrate can say to [Child Protection], 'well, it's totally unacceptable that you haven't arranged this child counselling yet, and why are you reporting to police this child's broken a coffee cup in your care', that kind of thing. I think that would be positive..." – Participant 3*

Conversely, an out-of-home care worker argued that Youth Justice professionals are rarely held to account in relation to their involvement with cross-over children:

*"It's not often [a YJ worker] is put on the stand and said, 'Well, what have you done to supervise this [supervision order] for the past 12 months? Why were you back here getting another [supervision order] for another 12 months?' There's no – you know, they'll do a report and throw it to Court or wherever else, and it will say, yeah, they've complied because they've attended an appointment every other week but...a five minute conversation might be your appointment for that week." – Participant 22*

### 5.5.2 Court referrals to Child Protection

As previously discussed in Section 4.8.1, under Section 349(1) of the *Children Youth and Families Act (2005)* the Court may refer to Child Protection a child appearing before the Criminal Division, where grounds exist for protective intervention. Police and Youth Justice can also make referrals to Child Protection where they assess protective concerns are apparent. Professionals indicated that s.349



referrals are sometimes, though rarely, made by the Court. Child protection professionals indicated that police and Youth Justice more regularly made Child Protection notifications than did the court:

*“I’ve been working for Child Protection nearly 10 years and I’ve done two [Court referrals] in that time... Well we usually though get reports from other people that are involved with those children... like Youth Justice might make a report or the police are probably the most common.” – Focus group 20*

Certainly police and Youth Justice are more likely to be alerted to protective issues at an earlier stage, compared to the Court.

### 5.5.3 Getting the full picture – providing context to understanding children’s circumstances

Aside from providing mechanisms for accountability, participants also suggested that the Criminal Division of the Children’s Court does, and ought to, provide opportunities for professionals to offer some context for understanding children’s behaviour. Professionals argued that Magistrates and police benefit from understanding these contexts, and that children respond better to approaches which demonstrate an informed understanding of their circumstances:

*“I’m bringing assessments and reports to Court that reflect the impact on this young person’s behaviour of their situation, of their background, and of the impact of their life events on their behaviour, and helping the Court to reframe and the police to reframe their understanding of what drives that behaviour. And what I’m finding is that the young people respond, themselves, really well to that. If they get a sense that they’re being listened to a bit but understood a little, and being given a sense that people probably don’t understand the nitty-gritty, but they understand in a broad sense...I’m finding that’s a springboard for young people to feel that there’s some benefit to them and there’s a bit of trust for them to re-engage more positively”. - Participant 28*

Other participants, including lawyers and Youth Justice professionals also argued that children’s sentencing outcomes were influenced by the level of contextual information provided to Magistrates by way of Children’s Court Clinic reports and Youth Justice assessments and reports:

*“If we don’t stand it down for a couple of weeks to do research and find out if there’s [Child Protection] or what level [Child Protection] past, present, whatever, and we don’t give that information to the criminal jurisdiction Magistrate, they have no idea, and they may think, ‘Well, that kid’s not really suitable because they’re just a little shit who grew up, had nothing wrong with them, and all of a sudden they’re a criminal’.” - Participant 54*

At the same time, participants including Child Protection professionals and Koori support staff stated that Magistrates did not always know the full context of a child’s background and current needs, and there were systemic challenges to better-informing the Court. A particular challenge is the low level of Child Protection involvement in Criminal Division proceedings, including in informing sentencing recommendations. Child Protection professionals, including lawyers and workers, each agreed that having a greater level of Child Protection involvement in Criminal Division matters would be of benefit:

*“Magistrates are under a lot of pressure and might not have all the information. For example, because Child Protection’s not there at the table when they’re doing criminal proceedings, if*

*they're ordering engagement with one particular service, it might not be the appropriate service for whatever reason. So maybe for those cross-over kids it is appropriate to have Child Protection there and participating in sentencing or management of proceedings, diversion or whatever it is so that it can be more coordinated."* - **Participant 49**

*"I kind of like the idea of the group conferences but they're not widely used for our clients and what assessment is made or whether they're suitable I'm not sure. And how can [Child Protection] be a part of that assessment? Because if they've got an extensive care team around them they could be supported well through that process but maybe it's just a Youth Justice decision in silo without maybe understanding what care team is involved to help them through that process."* - **Participant 35**

#### 5.5.4 A fragmented approach to cross-over children

Despite outlining its positive aspects, participants suggested that the current approach to cross-over children results in fragmented Court experiences. For those children with concurrent Family and Criminal Division matters, separate Magistrates may hear their different matters, children may have different lawyers appearing for them, and matters may be dispersed across several Court locations. An added layer of fragmentation among cross-over children is the segregation of services, with Child Protection playing a more prominent role in the Family Division, and Youth Justice in the Criminal Division, despite children at times having matters proceeding simultaneously across both Divisions:

*"... it does seem to be a pretty siloed approach. I don't feel like when I'm speaking to a Child Protection practitioner that the Youth Justice worker is in the tent with us and... that they were really familiar with what was going on in the criminal proceedings and really up to date."* - **Participant 49**

*"... some of the goals that services are working towards, there needs to be addressing both the family and the criminal issues. It doesn't work being separate. It disservices the client, and you don't get a good client outcome in the end when you have two different silos working alongside."* - **Participant 53**

Some participants argued that the current system is not truly child-focused, and resembles the approach of the adult criminal jurisdiction. This was particularly emphasised in rural and regional locations, where children's matters are heard in the same location, and by the same Magistrates, as those of adults:

*"... today we're dealing with a family violence matter, next week we'll deal with your criminal law matter, and then your Child Protection matter is listed on another date... these kids can be coming to court on multiple occasions for different things, we're not thinking about them and what their experience is... it's not really how our justice system is set up. But I think for kids in particular that really needs to be how that jurisdiction works rather than just an adaptation of the adult model onto kids."* - **Participant 2**

*"... it's really just the adult court. So there's no difference in the way young people are processed through court on a day. There's really no difference at all other than the word 'children' is added in front of it."* - **Participant 16**

Participants – particularly lawyers and Youth Justice professionals – also noted a degree of inconsistency in Magistrates’ responses to cross-over children across various suburban Court locations, especially in regard to sentencing. This was attributed to the lack of Children’s Court specialisation among some Magistrates, and in some instances, their lack of familiarity with the Child Protection system or Family Division matters, leading some participants to suggest some Magistrates in suburban or regional locations ‘just didn’t understand the basics’:

*“I think some of the Magistrates have a good understanding of the circumstances of these children and why they offend, why they are damaging property or why they’re getting angry in the residential – that’s good particularly at this [metropolitan court] where we’ve got the two Divisions. Not necessarily happening as much out at some of the suburban courts... I would think that if you start a plea by saying your kid is in state care, automatically there should be some sort of sympathy but that’s not necessarily the kind of reaction you get out at some of the suburban courts.” - Participant 45*

*“Unfortunately from the young person’s perspective and from mine, as a practitioner, there are a number of Magistrates who – the Children’s Court is not their primary area of expertise, and they bring that to bear on their decision-making.” - Participant 28*

#### 5.5.5 Needing a holistic, specialised approach

Participants spoke about the need for consistent and holistic approaches to cross-over children’s matters. It was identified that greater consistency would be supported by having the one Magistrate hear a child’s Family and Criminal Division matters, where these proceed simultaneously. Aside from the reasons previously outlined, it was argued that the outcomes of each matter are mutually impacting:

*“... the [Criminal Division] side is aware that there are Child Protection proceedings, but they are dealt with differently... they are still looked at separately. Maybe they shouldn’t be, it should be each of those types of matters are joined in some respect... whatever the outcome being at the Crim side, it’s going to be highly dependent on what’s happening on the Child Protection side, and vice versa.” - Participant 26*

*“There really needs to be that collaboration between or carriage of the case from the family side to the criminal justice side because there’s a lot of information there... It’s always interlinked. So it makes sense that why are we having this separate jurisdictions for these kids? We should have the one case be heard by the same magistrate: family matters, criminal matters dealt in that nutshell.” - Participant 53*

It was also noted that cross-over children may potentially be disadvantaged where they had Criminal and Family Division matters proceeding simultaneously. Proceedings may be delayed in one or both Divisions, due to a lack of information, or waiting for Family Division matters to resolve before criminal matters are finalised, or vice versa in the case of children on remand. The absence of Child Protection involvement in Criminal Division matters, and unallocated Child Protection cases were systemic issues identified as disadvantaging cross-over children, as described by one Youth Justice professional:

*“...I don’t have all the information. And [Child Protection] give you like a skeleton - a very brief summary. So should I refer them there? Are they going to stay there? Are you going to move*

*them? So which school should I look for if you don't know if it's going to stay in [this suburb]? What if it goes to [another suburb]? And when they're not allocated... it's even worse." - Participant 54*

Such circumstances potentially result in longer proceedings, and greater uncertainty for this group of children:

*"[Having Family Division matters on foot] often leads to significant delays in the processing of the criminal matters for kids, which may mean that for instance they're on bail for longer, so there's a higher likelihood of them even just creating or committing a bail-related offence rather than a particular different type of offence. Their absconding behaviour may lead to a breach of bail because of a curfew, where that absconding behaviour was well-entrenched and probably is better understood as a risk issue for that young person, than as a criminal behaviour." - Participant 28*

The docketing system recently implemented in the Family Division of the Children's Court was praised by participants for improving consistency by having a single Magistrate hearing each child's Family Division matter:

*"...having the Magistrate know the history, and also say to the Department, okay we talked about this, this and this last time, let's get this done. And it steers the matter – I'm finding more matters are probably resolving now that they're having such a huge input, and they're a check and balance." - Participant 26*

Some Magistrates and lawyers outlined their informal attempts to deliver a more co-ordinated approach to cross-over children with simultaneous proceedings by requesting that children's Family and Criminal Division matters were heard on the same day, if possible:

*"It does happen informally, I think. It's not too difficult to get the clerks to try to at least list the matters – it might be that they're in different – like that one's in Crim proceedings, one's in the Family Division, but having the Magistrate hear them on the same day, and he's got that fresh in his mind, really does help." - Participant 26*

Cross-over children were suggested to be better served under more holistic Court models, like others currently in operation in the Victorian Children's Court. The Children's Koori Court list and the Marram-Ngala Ganbu Koori Hearing day in the Family Division of the Broadmeadows Children's Court, and the Crossover Court lists in New Zealand's metropolitan Youth Courts were cited as non-adversarial, problem-solving models in which the child and key individuals involved in their lives worked together collaboratively in the Children's Court setting. Potential advantages for cross-over children under such a model were identified, including the ease of generating and monitoring plans and outcomes where professionals were simultaneously present in the room, children being supported by the key adults holding more long-term views about their needs, and potentially reducing the length of Children's proceedings:

*"I think the court should operate at that therapeutic jurisprudence model, and have the round table discussions, like we do in Koori Court: have a more specialist court like we have a*

*problem-solving court... Child Protection worker sitting at the table with the Magistrate, with Youth Justice or Diversion, with Education Initiative or their teacher, you know, whoever, and have that young person feel empowered in that process.” - Participant 53*

### 5.5.6 A specific Cross-over Children’s Court list?

There was overall support for the idea of a specific Cross-over Court List for children with simultaneous matters in the Family and Criminal Divisions of the Court. The likely advantages of such a Court List have been identified in previous Victorian research, including improved coordination of CD and FD matters, and reduction in a child’s number of Court events<sup>189</sup>. Participants in the current study argued that such an approach was more integrated, holistic, and able to support better collaboration between professionals involved in children’s lives:

*“Participant 53: I think we need to adopt the Auckland cross-over court... it should be rolled out like everywhere. Like those problem-solving courts and therapeutic jurisprudence, and also having, I guess, services accountable to a magistrate brings, I guess, another level of, ‘Okay, I’ve got to follow through with what I’m going to say and follow through’... You get a different effect to when you have a magistrate saying, ‘Okay, you said you were going to do this referral’.*

*Participant 54: ‘Come back in a week and tell me’.*

*Participant 53: ‘Come back in a week and tell me exactly what you’ve done to support this young person.’” – Focus group 19*

*“... the notion of what they do in New Zealand, which is to bring everyone involved in this child’s life and to spend time in a multidisciplinary way looking at what is best for this particular child and then having that monitored by the Court, truly is potentially a better outcome. The Court alone can’t do anything, detention I suspect will be not be doing much to address it, but every organisation working in their silos is not working either.” – Focus group 24*

On the other hand, some professionals had reservations about the practical implementation of such an approach, including the difficulty of assuring the one Magistrate consistently heard all matters for the particular child referred to them, (made difficult in regional areas with lower Magistrate numbers), implementing a new model without any associated funding, and the challenges associated with legal practitioners who do not work across both Divisions of the Court:

*“I think the limits of that are not all the practitioners again do both sides of the Court... [Legal Aid] do... a range of them do, a bunch of private [practitioners] do both sides, but I think it’s probably like 50 percent do?” - Participant 26*

*“... with every family violence case you almost always have a Child Protection element and you almost always have a Children’s Court Criminal Division element too, probably less so. We’re beginning to see case management of family violence matters going down that path but the extent of which we’ll be able to do it at this Court in any properly resourced way is extremely*

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<sup>189</sup> Bowles, J. (2015). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness.*

*limited because we didn't get any funding. Still as a theory and a method of case managing you can still do it to some degree." - Participant 39*

### 5.5.7 Court experiences of cross-over children

While this study did not capture children's direct experiences, concerns were raised about the practical experiences of cross-over children in Court. Timeliness of Court proceedings was raised as an issue, both in relation to overall proceedings in both Divisions, and regarding the length of time which cross-over children were spending in Court environments.

**Finalising proceedings.** A range of professionals, particularly those involved in children's day-to-day lives, such as child and family welfare professionals and Child Protection professionals, asserted that the length of time taken to finalise proceedings in both Divisions was disadvantageous to children and generated difficulties for those supporting children. These delays arose for a range of reasons, including awaiting children's outcomes in other Divisions of the Court, adjournments for assessments and other reports to be completed and filed, and adjournments to consolidate children's Criminal Division matters.

Lengthy Court proceedings contributed, it was believed, to cross-over children's sense of instability, loss of information due to worker turnover and changes in circumstances, and challenges completing effective work with children. In relation to Criminal Division proceedings, professionals suggested that children find it difficult to connect the outcomes of Court proceedings with the charges received where significant time had passed in the interim. It was also argued that lengthy delays were frustrating for children with strict bail conditions, they felt disconnected from the Court experience, and created barriers to making and consolidating positive gains:

*"They'll just do adjournment, adjournment, adjournment, and the offence is nine months in the past, and they go, 'Do you remember why you did this on this day?' And, like, no, no idea, because they can't relate consequence to action then because it's so far along... I had a young person who's currently got matters in Court adjourned until July, and his offending is from September last year... he's had a period of incarceration, come out of incarceration, gone into independent living, been living independently that whole time, and then police capture and arrest him for something he was involved in prior to his last incarceration period... So, now he's going back and they're like, 'Oh, this young person is back in court again'. Well, that actually pre-dates his last incarceration period, and now he's involved in this world again of having to go through legal matters and things, or he might go back to prison. He doesn't really understand how we can give a good argument, 'You've been doing this for this amount of time'. He just sees, 'Oh, I'm back in court', and then probably thinks, 'Well, if I'm back in court for one thing, I might as well go offend again'." - Participant 22*

Issues of timeliness in finalising matters were more commonly raised in non-metropolitan areas. In general, professionals saw the lack of timeliness in Court proceedings as a key argument to demonstrate that current systems are not child-centred:

*"Participant 10: I think we really need to get better at responding in the moment when it's happening because kids' lives ... If you think about our system, it's actually not thinking about the age and stage of our children. And even when you read their reports and stuff like that, seven months ago, for a kid that may as well be –*

**Participant 9: It's a lifetime." – Focus group 5**

**Waiting at Court.** Also raised was the amount of time children can be required to spend at Court on the days their matters are heard. Child Protection professionals, lawyers, and child and family welfare professionals described the challenge for this group of children to remain at Court for several hours, an expectation described as “*not child-friendly*”. Cross-over children were often seen to abscond under such circumstances, resulting in delays to proceedings, or further charges of failing to appear:

*“...we have a very high rate of young people who are absconding from Court before their matters are heard, and its not only duplication for Child Protection practitioners who then have to have matters adjourned sine die. They have to come back when a young person's being apprehended on a warrant. Also I think it would be very confusing for the young people themselves who would expect that they'd be coming to Court and their matter would be dealt with very quickly... often the young people would be brought to Court to see their lawyer. That may or may not happen within an hour or two. There might be further negotiations required that could carry a matter over to 3 o'clock and still we have Child Protection practitioners unassisted trying to contain a young person who then is a flight risk and very often goes.” -*

**Participant 50**

**Socialising at Court.** Coming to Court was described as a social outlet for cross-over children, an “*adolescent's social network*” where they would arrange to see and support friends, congregate and meet new peers. Cross-over children's more frequent attendance at Courts was understood to expose them, to a greater degree, to this social environment. Study participants expressed concerns regarding children's exposure to Court environments, particularly at non-specialist Court locations where adult matters are heard:

*“Participant 23: Well, it's a bit of a day out, the Children's Court. Most of the young people kind of tag along and sit in on other people's Court.*

*Participant 22: Yeah, it's pretty full on days. We have Children's Court once a fortnight ... and it's just chaos. Like, it's just people everywhere. There's often fights because people arrange to meet there because they know everyone's going to turn up. It's just crazy.” – Focus group 8*

*“The young people come here, and stand out the front and join together with others and smoke cigarettes and get into little disputes and whatnot. This isn't a child friendly area and the Child Safe Standards, they talk about having that environment that's safe for young children.”- Participant 19*

**Supporting children at Court.** As in previous studies, participants observed that cross-over children are often under-supported by adults in their appearances in the Criminal Division of the Children's Court. The current Victorian protocol between Child Protection and Youth Justice<sup>190</sup> (2016, p.7) states that Child Protection ‘*must consider*’ attending Criminal Division hearings with children involved in Child Protection, and where the child is subject to a Family Reunification Order, Care By Secretary Order or

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<sup>190</sup> Department of Health and Human Services (2016). Protocol between child protection and youth justice. State Government of Victoria: Melbourne.

<http://www.cpmanual.vic.gov.au/sites/default/files/Child%20protection%20and%20youth%20justice%20protocol%20Aug%202016.doc.pdf>

other long term order, that the Child Protection or contracted case manager must attend, *'unless there are good reasons not to'*. The protocol specifies that non-attendance by Child Protection or the contracted case manager is to be decided in consultation with Youth Justice, and may occur, for instance, due to the following reasons (pp.7-8):

- *the young person has a Youth Justice case manager who will attend the hearing*
- *the Youth Justice case manager and/or Youth Justice Court Advice worker has consulted Child Protection and has received adequate, up-to-date advice on child protection's views*
- *a young person appears at the court following an overnight arrest or event on a weekend or public holiday and Child Protection is either not aware of the hearing or is not able to attend - in these cases the Youth Justice court advice worker will check on [the IT system] and where possible consult the young person's Child Protection practitioner or the practitioner's supervisor*
- *there is no reason to believe that the court requires specific advice from Child Protection*
- *it is not likely that the young person will be placed in custody by the court*
- *the young person is legally represented.*

Despite this protocol, a lack of support, or inconsistent support, was identified in relation to supporting children to speak with lawyers, to attend Court, to obtain assessments and attend to Diversion processes, and in provision of information to the Criminal Division of Courts in relation to children's circumstances, including placements:

*"I often see Child Protection clients appearing for their first mention unaccompanied... And more often than not, if they are accompanied, they're accompanied by a residential worker who may just have been given that task on the day. So the lack of planning and consideration is concerning to me, from that point of view."* – **Participant 28**

*"They're on a Child Protection Order and there's not anyone there for them. And how are they supposed to take their cases seriously if the adults that are in their lives aren't taking their cases seriously?"* – **Focus group 24**

Participants were also of the view that many cross-over children experienced confusion concerning Court processes. This was seen in part to be due to the absence of a consistent, accessible adult to help them navigate the experience, and additionally due to dissociation occurring in response to children's Court-related anxiety:

*"... you often say to them, 'How did you go at court?' 'It got adjourned. What does that mean?' They have no idea what that means. They just know that there's a new date. They're not sure why and they don't know how that impacts them, they just know that there is a new date [...] Magistrates do try, they attempt to engage with young people. I have seen a lot of attempts. But it's almost - it's insignificant in that very short period of time that the Magistrate has with a young person, when there's this whole Court process happening around them that they're not involved in."* – **Participant 19**

*"...some of our older kids that have been in the [Youth Justice] system for a long time have never met their lawyers outside of Court. They've never spoken to them and they don't have a full understanding of how many charges, they don't know what's on their rap sheet, they've*



*never seen it. They don't know, they know that they have court dates, they don't know what the Court date is for. I can understand, it's almost like they dissociate through the whole process. They'll be there and they'll be present, they'll be respectful but it's just to get a box ticked to see how they can then move forward from it."* - **Participant 66**

Aside from assessing children as insufficiently supported, professionals outlined the potential criminalising impact of inconsistent guardianship support, particularly for children in residential care, on their Criminal Division proceedings:

*"... [lack of guardian support] presents a barrier then for the Court to feel well-informed to make an appropriate decision around Diversion, for instance. The Court needs to feel that they're informed, and yet a lack of consistent responses from Child Protection with the event of the young person being in the Criminal Division definitely impedes the court's ability to manage those cases better."* - **Participant 28**

*"Magistrates will often in sentencing say, and you've got a supportive family who is here at Court to support you, we're satisfied you don't need [Youth Justice] involvement versus kids that are in resi care or in [Child Protection's] care, don't have that and so there is more reason for [Youth Justice] to be involved."* – **Focus group 22**

The level of guardianship support for cross-over children, particularly those in residential care, was contrasted with what participants understood to be community norms. Participants described significant challenges in attempting to coordinate services for children in this group in the absence of a consistent guardian figure in their lives.

#### 5.5.8 Legal representation of cross-over children

Legal representatives play a key part in the lives of cross-over children and their interfacing with the Children's Court. Challenges faced by lawyers working with this group of children were raised, such as barriers to continuity of representation for cross-over children. Challenges were primarily described in relation to cross-over children who lack a definable and consistent parent figure in their lives; namely, though not exclusively, those in residential care placements. Lawyers reported that *"there seems to be often a bit of chaos about who's bring the child to Court"*, and reported other additional challenges in representing cross-over children:

**"Participant 42:** *Finding them.*

**Participant 47:** *Getting instructions from them... trying to locate him. He should be in the resi unit. No, he's on remand. So, that's not easy.*

**Participant 42:** *Or he's absconded... The Department doesn't tell us if they've changed placements. You think you've got a phone number and you don't. Or you ring up the unit and, 'Well, he hasn't been here for a few days. He might pop in.'*

**Participant 46:** *Or the unit says, 'Our policy is to not wake up the child if they haven't woken up themselves so I'm not going to wake them up so they can speak with you'.*

**Participant 43:** *And even just organising to bring them into Court to speak to a lawyer or bring them into the office. A lot of the workers will say that they're too busy or they don't want to drive out that far or they're having difficulty with the child to bring them in.* – **Focus Group 17**

In addition to lacking guardian support at Court, lawyers indicated it was at times challenging to access information regarding children due to the difficulties accessing the relevant adult(s) in their lives:

*"...we get those kids in the cells and there is nobody here. Sometimes I think we are unduly criticised for our lack of information or lack of being able to present somebody to the courtroom 'Yes, we're here from the Department or we're here from the agency and we can confirm that this is happening.' It's sometimes difficult to be a lawyer in that situation. And why should kids who are in state care be doubly disadvantaged because there's no one at Court for them?"* - **Participant 45**

Conversely, some Child Protection professionals believed that lawyers could do more to reach out to children, highlighting the time pressures faced by all professionals working with this group:

*"... I guess the attempts that the legal reps are actually making to get instructions? A lot of the time it's too hard for them to make the phone call so it's our responsibility to bring the kid to Court."* - **Participant 34**

The second key concern noted was the desirability of continuity of legal representation for cross-over children, both across the Family and Criminal Divisions, and in relation to other matters such as Family Violence matters. Many legal representatives indicated that they do endeavour where possible to act across Divisions for cross-over children. Conflicts of interest and specialisation did however prohibit some lawyers from acting across Divisions:

*"It'd always be our preference, like if we picked up a kid in a child protection matter and then they had crim matters, we'd always - and vice versa - we would always act if we can, if we're not conflicted out, it's just that often they might already have had a private lawyer who's already involved with them, who's doing their child protection matter, and that firm doesn't do crime, so then we're acting in the crim aspect of it."* – **Focus group 22**

#### 5.5.9 Court supports and services

A number of specialist supports and services connected to the Children's Court are accessed by cross-over children.

**Children's Court Clinic.** The work of the Children's Court Clinic was widely respected in relation to the provision of assessments which support the Court's decision-making. Lawyers held these reports to be influential in Magistrates' decision-making and court outcomes:

*"I've had situations where the clinic has recommended a large amount of matters for a Diversion because they've been able to explore all that Child Protection background in their report and then provide those recommendations to the Magistrate, which particularly in regions where they may not have that Child Protection knowledge as well, it can be quite*

*persuasive. Especially because the regional Magistrates do seem to have quite a lot of respect for the Melbourne Children's Court ... and the Clinic.” – Focus group 22*

But there were concerns about the operation of the Children’s Court Clinic and the large distances and lengthy waiting times some children and families experienced, and the length of time which might be taken to complete reports:

*“... there’s been issues with getting [an assessment] in a timely manner. And then they’ve gone, done part of it. So, it’s still getting adjourned and adjourned... And you’re talking about high-risk adolescents, two hours in a car. By the time you got there, so heightened. And the assessments can’t be completed properly, so you’re going back multiple times.”- Participant 9*

It was understood that delays to receiving Children’s Court Clinic assessments were at times due to systemic factors outside the Clinic’s influence. For example, delays where the Clinic received piecemeal information regarding children’s offending from different police stations. Cross-over children were disadvantaged by such delays, for example in Criminal Division matters a child may spend a longer period on bail, and this might cut across having access to potentially advantageous assessments:

*“I think in the past have been correct that we would use the Clinic much more frequently but when its resources had been strangled that was something that you’d have to be saying to a young person, “This might be helpful to you but there’ll be a huge delay, you’ll be on bail. That’s going to be problematic.” - Participant 48*

Professionals suggested that an expanded Children’s Court Clinic with more area-based presence is needed:

*“I think if there was an investment in a Children’s Court clinic not just being based at Melbourne, being more accessible and being able to inform the court in a more expedient way, a bit more area-based, that would be great.” - Participant 28*

**Education Justice Initiative and Education Liaisons.** Education-based initiatives in place at two of the Children’s Court’s participating in this study sought to identify children coming before the Criminal Division of the Children’s Court who would benefit from support to connect to suitable educational options. These initiatives were valued, particularly by Magistrates. Other community-based alternative education providers indicated that with further funding, they would welcome the opportunity to be more of a presence in Children’s Courts:

*“If we have better funding at the school then we could allocate somebody to be there at Children’s Court every Wednesday. Just picking up the kids that we don’t necessarily know about, but just being there in the building and putting it on as something that the kids know they can go to that person. We can help support them, just find their lawyer, where do I line up, families as well.” - Participant 65*

### Summary: Cross-over kids and the Children’s Court

The Children’s Court role in providing accountability and steering in relation to Criminal and Family Division matters was highly regarded. Yet current approaches were seen as fragmented, and lacking collaboration and coordination between Children’s Court Divisions and agencies, resulting in missed

opportunities to better support children. Participants recommended holistic, specialised approaches such as: a dedicated Cross-over Children’s Court List; a ‘one-judge’ approach with Magistrates’ having ongoing carriage of cases and all relating matters; a non-adversarial approach which is holistic and involves the key people in a child’s life; and continuity of legal representation across Divisions where possible. Certain aspects of the Koori Court model were seen to be appropriate for designing a Court model more suited to the needs of cross-over children. The range of support services available at the Children’s Court were seen to be valuable to cross-over children, though participants identified potential benefits to expanding service availability.

Cross-over children were seen to have a high degree of Court contact, and Criminal and Family Division proceedings were observed to require significant time to finalise, resulting in children regular waiting and socialising at Court locations. Legal representation was complicated by challenges locating and contacting cross-over children, having them supported at Court, and obtaining accurate information to support their case. Collaborative practice between Youth Justice and Child Protection for dually-involved children faced ongoing challenges, for instance in relation to role clarification and information-sharing between agencies. A greater level of Child Protection involvement in Criminal Division matters and criminal justice processes was recommended, including greater presence in Court proceedings, enhanced support for children to access lawyers, ensuring more prompt and suitable placement availability for cross-over children remanded in custody, and informing sentencing processes.

## 5.6 Responding to offending behaviour

This section of the report summarises professionals’ discussions of the systemic responses to cross-over children’s offending behaviour, including responses from the out-of-home care sector, police and Youth Justice. It contains focus group findings concerning collaboration between Child Protection and Youth Justice, policing with cross-over children, the state-wide Diversion program, sentencing, and children’s relationships with Youth Justice community and custodial services.

### 5.6.1 Collaborative practice - Child Protection, out-of-home care and Youth Justice

As previously discussed, a Victorian protocol exists between Child Protection and Youth Justice which guides aspects of collaborative practice where children are concurrently involved in both Divisions. This section discusses this and other elements of collaborative practice between Child Protection and Youth Justice services.

**Sharing information and collaborating.** Youth Justice and Child Protection professionals explained that their roles regularly involved collaboration and information-sharing. Other professionals observed instances of highly collaborative practice between the professions:

*“There are instances where the kids who are in care have magnificent crews coordinating activities and giving them a tremendous level of support and weirdly where you might almost say that the legislative obligation, which is that you’re not worse off in the criminal side because you’re on [a Family Division] Order, is achieved and exceeded.” – Participant 48*

While generally collaborative relationships were described, ongoing systemic barriers to information-sharing between the two statutory agencies were highlighted, including a lack of shared IT systems, difficulties in being able to identify children’s allocated worker, the general absence of Child Protection

involvement in Criminal Division Court matters, and circumstances where cross-over children involved with Youth Justice had no allocated Child Protection worker:

*“... the ones that haven’t been allocated to a Child Protection worker that are sitting there, and ‘we know that they’re with us but we currently have no one to allocate it to yet’. But this kid’s on Diversion, it’s not forever. Don’t know what you are going to do with them. Don’t know what I should with them. And you still get, ‘But we haven’t allocated it to a worker yet’. So it’s just sitting here. And I’ve had one that’s nearly a month sitting there. Hasn’t been allocated to a Child Protection worker.” - Participant 54*

*“In terms of the Court, there is no system in terms of how Child Protection and Youth Justice communicate about those children. So whilst there’s a protocol, there’s not a system. The other thing is Youth Justice can’t access our [IT system], so we have a client reporting information system which Youth Justice utilises, Disability Client Services and Child Protection utilise, we can’t see each other’s.” – Focus group 20*

In addition to communication and information-sharing challenges, conflicting case planning directions between the two statutory agencies sometimes existed, as described by the following lawyer:

*“...when you do have the dual kids, is who’s playing what role? ... [Youth Justice] and [Child Protection], usually they do work together and they work together really effectively. But we’ve all had matters where they’re on totally different spaces, and it shouldn’t be that way... I had a [Youth Justice] worker who was advocating for something that was really good for our client, and it would be the circuit breaker. But the [Child Protection] worker wanted something very different, and not being flexible with it... I mean, it was extremely confusing for us, let alone the Magistrate, let alone the client.” Participant 26*

**Tensions around the role of child protection and out-of-home care services.** As raised in previous studies, some professionals suggested that Child Protection and other out-of-home care providers tend to reduce their involvement, “stepping back” from children who become involved with offending and youth justice services. The responsiveness of Child Protection in children’s criminal matters is raised across several parts of this report, including previous sections relating to Court support, and later sections regarding bail, diversion and sentencing. In each instance it is broadly argued that children would benefit from greater responsiveness and involvement of Child Protection in relation to their offending behaviour and criminal justice processes, which was raised by Magistrates, Youth Justice workers and even Child Protection professionals:

*“I often see care teams step away and it almost to me seems to be almost a survival mechanism for the care team. It’s an opportunity to maybe step back and allow another introduction of a service system [...] to try and manage those behaviours where there’s perhaps a sense of frustration, or not a clear plan of how to work through those issues... I’m working to try and combat that, and get people to step forward rather than away when the criminal matters arise, and see that ... potential harm to children and criminal behaviour, offending behaviour, aren’t necessarily two different spheres.” - Participant 28*

At the same time, some out-of-home care case managers observed that they were already

overwhelmed with other matters to attend to, and that responding to offending ought to be the domain of Youth Justice:

*“So, that will be [Youth Justice’s] intensive work in terms of, ‘Why are you offending? What can we do to stop you offending?’ It doesn’t really get done apart from by us, but we’ve got so many other things to deal with, that we shouldn’t also be dealing with reducing criminal behaviours.” - Participant 22*

A key concern with this type of approach is that Youth Justice involvement, beyond diversion, is likely indicative of more persistent or serious offending behaviour. Where responding to offending is not viewed as a key Child Protection and out-of-home care concern, it is arguable that earlier intervention opportunities will be missed. Challenges around defining roles and responsibilities in the broader care teams working with cross-over children’s group were also raised. Akin to previous studies, participants suggested ongoing challenges with coordinating cross-over children’s care and support:

*“[Child Protection will] case contract the care to [a non-government agency], who’s then responsible for the resi unit. So it’s always ‘well, it’s not our fault, it’s their fault’. So you call the resi unit, say ‘where’s the kid? Why didn’t he go to [the Diversion program]?’ ‘Oh well the Child Protection worker was supposed to take them’. You call that person who says, ‘oh the resi unit was supposed to be taking them’. They actually start blaming themselves.” - Participant 22*

One suggestion for improving outcomes for children concurrently involved in both Divisions of the Court was to explore the possibility of having teams of dual-order workers who able to traverse the boundaries between Child Protection and Youth Justice:

*“I’d like to see Child Protection and Youth Justice not just co-located [...] but embedded as a team [...] often, the complex kids have big care teams, lots of players. Effective work I think gets done when you reduce the amount of players. I think there’s some real benefit to having dual order workers who can be at the core, hopefully, through their engagement with the young people, getting better outcomes.” - Participant 28*

While seeing responding to offending behaviour as Youth Justice’s responsibility, many Child Protection professionals were open to a greater level of consultation and collaboration in developing strategies to better support cross-over children.

### 5.6.2 Responding to offending behaviour – conflicts and debates

**Ideological conflict between two perspectives.** As observed in relation to Child Protection and Family Division matters, considerable disagreement was observed between professionals regarding appropriate responses to cross-over children who come to police attention. While professionals agreed that desistance from offending was a desirable outcome, strong and conflicting views were held as to the most appropriate means of effecting it.

Professionals tended to espouse one of two perspectives. The first could be considered a behaviourist approach, proponents of which tended to emphasise the need for sharp boundaries, and predictable and immediate consequences to children’s behaviour, such as offending behaviour or breaches of bail

conditions. The approach appears to be influenced by a behaviourist world view, at the basis of which is a belief that predictable consequences and consistency are the effective means to manage and alter behaviour. Additionally, some professionals argued for more punitive criminal justice consequences based on a belief that the broader community would desire and expect such a response to children's behaviour, and that such approaches had been effective in their own lives:

*"I know as a kid myself if I did something wrong and my parents chastised me, that feeling of having disappointed them was just like awful, but these kids don't have that. So, they come to Court or they go to school or whatever, and school doesn't discipline. They come to Court and Court gives them a Bond, so they're not actually getting any of that consequences for actions type anywhere, and that's kind of what shapes you as a person - actually make a mistake, this has consequences, I learn from those, and then I don't do that. And if I do I know what the consequences are, and they're going to be worse next time." - Participant 8*

The second approach tends to focus on principles which could alternately be understood as trauma-informed, and anti-criminogenic. Advocates of this approach afford primacy to understanding and addressing the drivers of children's offending behaviour, to developing relationships with children, and to avoiding children's contact with the criminal justice system (for instance convictions, being under Youth Justice supervision, or being held in custodial environments), due to its criminogenic impact. Participants from this perspective tended to emphasise the lack of effectiveness of a punitive approach in achieving the intended behaviour change among children, and viewed criminal behaviour as largely reflective of unaddressed welfare needs:

*"Well, the police aren't the band aid for having no support, and essentially sometimes that's..." - Participant 8*

*"... this is the problem with these kids – the community says, 'These kids that keep committing crime, and all the rest of it, just build a bigger prison and put them in there for longer, thanks.' Which is not the solution... all that means is, you're just setting the scene for them as adult criminals and the bigger prisons." - Participant 75*

Unexpectedly, conflict in viewpoints did not strictly mirror professional lines, as demonstrated by the conflicting perspectives held by the following participants:

*"Participant 41: So I think that in terms of trying to get these children to change their behaviours and not to commit further offences I don't know when they leave Court and get sentenced another probation order or another youth supervision order that they genuinely fear the ramifications or the consequences of committing further offences after Court. I think they know that unless they do something severe of significant criminality I think they know deep down that "We're not going to be locked up." and it's hard then to effect change.*

*Participant 39: We know that when we lock these kids up even if it's on remand they're going to come back with a whole new set of skills from kids from [one outer suburb] that they're having contact with and we've seen it. They're emboldened to then do the car-jackings and the getting into houses and stealing the keys, I mean, it's all happening from what they've seen in [Youth Justice custody]." – Focus group 16*

Similarly, the following child and family welfare professionals noted conflict amongst themselves, Youth Justice, and police about appropriate responses to children's behaviour:

*"Participant 23: It's difficult, though. Like, for breach of bail, Youth Justice won't support it. They'll say it's not criminal, like if it's curfew related. So, police can put the application in, but if Youth Justice don't support the application, it's pretty unlikely they're going to have success within a Court..."*

*Participant 24: I guess it's really hard to get all the services on the same page... So, for example, Youth Justice and the police will have two different arguments." – Focus group 8*

While many professionals tended to hold one of these two perspectives, some found themselves internally conflicted between both approaches, as described by the following case manager:

*"It's so subjective, isn't it? The Magistrate just sort of makes a decision based on what mood he's in that day, and how the young person is responding to them. So, he'd often get the young person smirking in Court, and he'll be like, 'Well, you're not taking this seriously, so I'll hand out a more severe punishment', or whatever it might be... in my eyes, sort of, there's a part of my brain that says a more punitive approach is the only way that we're going to get to a point where they respect the criminal justice system, but then that sort of counteracts what we're actually trying to do, which is that healing work and that therapeutic work." -*

*Participant 22*

Conflicting views regarding appropriate prevention and responses to offending among cross-over children are reflected in several areas, for instance regarding placement of a child on remand versus secure welfare, responses to challenging behaviour in residential care, and responses to adolescent-perpetrated family violence.

**Alleging that children need a stricter approach.** While seemingly held only by a minority of study participants, some professionals believed that cross-over children's desistance from offending required stricter and/or more punitive criminal justice responses. These views were primarily expressed by, or observed among *some* police members and prosecutors, out-of-home care providers and Magistrates. These participants judged some criminal justice responses and sanctions as 'too soft', and believed they were unlikely to be effective for this group of children if not implemented with strong boundaries:

*"[Cross-over children] come from very hostile environments... and I just really struggle to think that a mamby-pamby sort of approach would have, it would be like giving them five police cautions. Its absolute water off a duck's back... you could try the Diversion but you've got to pick your mark. It's got to be very strict boundaries for them. Because they don't understand anything but strict boundaries." - Participant 1*

Others believed that some cross-over children paid no heed to any criminal justice consequences other than custodial sanctions:

*"Participant 31: kids can [...] do so many crimes and still not get put in [Youth Justice] or whatever, they just get away with it. It feels that that's what's happening ...*



**Participant 32:** *No, good point 'cause the Children Court focus is obviously on rehabilitation, not on punishment so – which is great and kids deserve second chances but it's second, third, fourth fifth chances and unfortunately ...” – Focus group 11*

Professionals holding these views believed that a lack of significant or punitive consequences resulted in children's lack of respect for, and fear of, criminal justice sanctions, a fear which they believed to be necessary for prosocial behaviour:

**Participant 32:** *.... the kids get to know that [...] they talk amongst themselves, 'oh yeah, I got in trouble four or five times before anything even happened', you know what I mean? ... to them it's I got away with it... which breeds that whole lack of respect and you know fear of authority and all that sort of stuff.*

**Participant 31:** *They can just go out and do what they want because they know they're going to get away with whatever they do.” – Focus group 11*

Some professionals were concerned with what they perceived as children's unconcerned or disrespectful attitudes towards the criminal justice system. Yet in multiple instances, another person involved in the focus group challenged these perceptions:

**Participant 31:** *I'm not talking about the first offence and the second offence, I'm talking about kids who offend 10 times or more you know –*

**Participant 29:** *But ultimately as you grow –*

**Participant 31:** *- these kids are still getting away with –*

**Participant 29:** *It's not that they're being getting away with it – again it's the underlying issue.*

**Participant 31:** *That's the way they see it.” – Focus group 11*

*“First time offenders generally get a [Good Behaviour] Bond or something like that, which is, often kids will leave court laughing - oh, I only got two months, or six months, and 'ha ha ha I've done all these things. And then next time it's a Bond'... I've had them laughing as they leave the court.” - Participant 8*

**Intervening early in the offending pathway.** While disagreeing on its nature, participants were unanimous in arguing that there needed to be some response to offending and challenging behaviour among children involved with Child Protection services. Police, Youth Justice, lawyers, clinicians and Magistrates each spoke of the importance of intervening with cross-over children early in the offending pathway.

Early therapeutic intervention with children, alongside strategies aiming to avoid their criminalisation were supported. Some participants were concerned that strategies circumventing criminal justice responses for children, in the absence of therapeutic or supportive interventions (e.g. use of cautions or Good Behaviour Bonds, and *doli incapax* findings), resulted in missed opportunities for early intervention, risking further entrenchment of children's offending behaviour, and criminal attitudes. For example, a child and family clinician argued in relation to *doli incapax* findings with this group children:

*"I'm not suggesting that it would be good to be found guilty of the crime, but somehow there needs to be a follow up for that child because [they] wouldn't be in this situation if there weren't needs. So that's a real lack." - Participant 37*

Frustrations of families, lawyers and child and family welfare agencies were described as a result of the inability to access earlier interventions for children with challenging or early offending behaviours:

*"... quite often when I act for parents of children who are going down that path and they've been charged ... they're on bail or they've been summons, the parents are saying, 'We're tearing out hair out. We can't do anything. The Department's not doing anything'. And I've heard myself say on many occasions, 'Well, I hate to say it but they're probably going to not get the services they need until they end up in custody'. And I guess that's saying that those services should be available much earlier in the piece. I've been saying it for 33 years, it just never seems to happen that there's enough services on the front end rather than the back end." - Participant 42*

*"Most of these kids will get a series of police warnings and stuff like that somewhere between the ages of 10 and 12, when they're first coming in and they'll get good behaviour bonds and stuff, and that's where most of the intervention stops for them. And I think maybe what we need to be doing is saying, 'Okay well if you do get a police warning, if you get a police caution... it's a bit like domestic violence'. If the police turn up, you automatically get a referral to an agency for support. Maybe that's when we should be starting to engage with them when they're still doing minor crime, when they haven't actually got a physical record. ...They're not as jaded and cynical." - Participant 16*

Aside from direct interventions with cross-over children, one Youth Justice professional recommended Youth Justice secondary consultation to care teams as another early intervention strategy:

*"...[It's] come about through me spreading the word essentially around other service providers, particularly child protection teams in the area, and out-of-home care providers, and suggesting to them that I'm also available as a secondary consult around the young people that they're managing, even prior to them being charged, if they anticipated it – see that that's a likely event in the near future, to try and assist them to consider how they can respond in a way that may perhaps steer the young person away from police attention in the first place." - Participant 28*

**Disagreeing on the Court's role.** In addition to disparities concerning appropriate responses to cross-over children, professionals also disagreed on the expected roles and duties of various professionals and bodies, including the Children's Court and Child Protection services, with respect to children's offending and Criminal Division involvement. Participants held divergent views about the degree to which the Court ought to adopt a welfare role, for example in relation to facilitating or directing service access, mandating attendance at therapeutic services as part of Criminal Division Orders, and monitoring children's progress:

*“Participant 41: And also the knowledge that someone’s going to check in on you so therefore you’ve got to stay on that path because someone’s actually going to be finding out what you’ve been doing.*

*Participant 40: You want [Magistrates] to become social workers do you?” – Focus group 16*

Some child welfare practitioners espoused the view that they should be able to draw on their expertise to manage the care and support of children, and believed that frustrations directed at Child Protection services were more indicative of government service funding issues:

*“The Magistrates are Magistrates. They’re experts in law, they’re not experts in trauma or welfare, and they try to make themselves be experts and make comments on this... ‘oh this is not what’s best for you’, or ‘this is what’s best for you’, when it actually isn’t.” – Focus group 20*

In the context of limited budget, one participant explained that attempts by the Court to direct the care of one child in out-of-home care would likely impact on the care of other children:

*“[Child Protection] share the frustrations of the Court about sometimes the lack of options in services and supports that are available... But sometimes the Court is expressing that frustration in a way that’s not productive and it’s an issue for government and services... it’s a wicked problem and the Court can’t solve the broader problem by looking at each individual case. So we have situations where the Court is contemplating ordering a particular outcome for that child without necessarily appreciating that that has an impact on their capacity to provide services to all of the other children in the system.” - Participant 49*

### 5.6.3 Policing with cross-over children

Complex relationships were described between police, cross-over children and the other systems with which this group of children come into contact. Additionally, several complex police functions were noted to be carried out in the context of challenging relational dynamics between police and cross-over children.

**‘Day-to-day’ police involvement with cross-over children.** Police were noted to play a key role and experience high levels of contact with many cross-over children, both in relation to children’s child protection/welfare needs, and in relation to their harmful or offending behaviours. Such contact arises due to parental involvement in criminal justice proceedings, Child Protection involvement, the child’s own victimisation and/or offending behaviour, the child’s association with other high-risk adolescents, through community policing such as contact with Protective Service Officers patrolling public transport sites, through civil action such as Intervention Orders, and through the issuing of warrants in response to children absconding from care.

Cross-over children appear to be disproportionately visible to, and in contact with, police compared to their same-aged peers. They were alternately described as being *“known to police”*, having *“developed a police profile”*, and being *“identifiable”*. Much police contact with cross-over children is generally under problematic circumstances, typically when children have been in a heightened emotional state, engaging in challenging or offending behaviours, absconding from care, or in the company of others known to police for their criminal behaviour.

An additional layer of complexity in this police contact is that it may simultaneously relate to children's civil infringements, criminal offending and protective needs (such as their victimisation, or warrants for children to return to placement when absconding). Several examples were given of police attempting to act both protectively, and as agents of social control with a single child. Police themselves described their unique role with cross-over children, which required balancing the interests of children with other victims and the broader community:

*"... a lawyer will look at the case and know the kid's background and know that they haven't had a family structure and all that kind of stuff, whereas [police] go to the incident and see the victim who is just distraught and who has all these implications and things. So they don't see that whole connected picture, and we sort of have to represent to the victim and be that connect I guess and support them, but also we have a duty to the Court as well and have to be reasonable, and in a way we do want the best outcome for the child as well, but we have to balance that with the victim."* - **Participant 8**

**'It's difficult on the kids as much as it is for us' – dynamics between police and cross-over children.** Professionals described a dynamic sometimes existing between police and cross-over children, particularly those in residential care, in which each harboured a negative bias towards the other. The combination of high levels of contact and these challenging relational dynamics was understood to generate complex interactions between police and cross-over children. On the one hand, some participants suggested that some police held negatively prejudicial views, or frustration towards children. For instance, some Child Protection and Youth Justice professionals indicated that a child's family name and reputation could sometimes proceed them in their police interactions, particularly in circumstances of intergenerational criminal justice system involvement:

*"... services and individuals within services who stick around come across the same families over generations, and some young people don't get the chance to be seen as an individual within that, and the burden of their family name and the previous behaviour of siblings or parents comes with them. That happens with the processing of young people by police at the early stage, if they've got a known offending parent or older sibling, I think it's borne out that it's far more likely they'll be hit with the book."* - **Participant 28**

Some participants believed police held more negative attitudes towards children in residential care, compared to children in other placement settings. It was suggested that police may "need to be better educated about the difficulties kids in state care have". Participants observed that children in residential care appear to have been "written off" by police, and observed this group to receive more strict bail conditions, and less care or interest, compared to children with parental support:

*"I've had a couple of Children's Court clients who've done some fairly minor offences, like a shop theft, but they've come into Court with their parents. The Sergeants have been absolutely lovely, explaining the process, talking to the kids and the parents about what's going on. But the resi care kids you just see the police just writing them off and, 'oh, it's another resi care kid'. Not taking the same level of care and taking the same level of interest with them."* - **Participant 3**

Conversely, others suggested that cross-over children had often, at quite a young age, also developed negative attitudes towards police. Negative family attitudes towards police were described as being transferred between generations; children were perceived as growing up “*seeing the police as bad*”, or “*being brought up to hate police*”, and subsequently anticipating hostile and punitive responses from police. Such attitudes were understood to be compounded by children’s experience of police involvement at times of forced separation from their parents, for example through parental arrest and incarceration, or children’s removal by statutory Child Protection intervention:

*“... those kids grow up seeing [police] as bad – or are going to remove them from their family - so as soon as you’ve got that aspect as well, that we’ve already ended their own family dynamic... it’s not until they’re a lot older that generally they have a realisation that ‘oh Mum’s drunk again and I really don’t want to be in this environment’. It’s that, ‘I’m in a loving, caring relationship, my Mum loves me, my Mum loves me, you’re taking her away from me’ and then you’ve got to deal with that whole trust again with them from a different area where they’re getting told that ‘police are just out to get ya’.... so it makes it difficult, and it’s difficult on the kids as much as it is for us” - Participant 30*

Study participants were polarised in their views; some believing that the prejudice and negative attitudes lay within the children, others believed it was grounded in police responses. Despite these challenges, police in all regions suggested that they aimed to have a positive impact with the children with whom they came into contact. Positive policing examples with cross-over children were also observed by other professionals, including Child Protection practitioners:

*“... the Youth Liaison or Youth Resource Officers from some police stations are useful too, when they’re going out to particular resi units and trying to build a rapport with these kids. I guess they de-demonise the police generally [...] they’re approachable and they’re people and they try and engage the kids and develop some kind of rapport and relationship which can be helpful” – Focus group 20*

**Police collaboration with other agencies.** In addition to a high degree of contact with cross-over children, police members and prosecutors indicated that their work with cross-over children involved substantial contact with other agencies, particularly Child Protection. Other professionals described increasingly working alongside police in care teams, and police in rural areas were portrayed to have particularly close relationships with Child Protection. Challenges in relation to police collaboration with other agencies related to role definition and information-sharing. Police were broadly of the view that information-sharing supported them to better protect both children and the broader community, by improving their understanding of children’s circumstances:

*“Is a kid having these issue because they’ve been removed from the home? Is a kid having those issues because they’ve got caught up with the wrong crowd? Do they have mental health issues? Police don’t have the resources to be able to go out and make these determinations... whereas [if] we get more stakeholders and more information-sharing processes we can reach out to other services that have got that speciality.” - Participant 29*

The above professional noted that Memorandums of Understanding had supported improved information sharing between police and other agencies. Police and other professionals also described

stakeholder concerns that information shared with police regarding cross-over children could potentially be used to the child's detriment (i.e. to charge them with offending or breaching behaviour). Typically, police and other professionals described that such information would be withheld:

*"... there's certain bits that [Child Protection] worry about sharing with the police because they think that [police] will use that to lock them up." - Participant 30*

*"... police involved in care team meetings, their role should be defined differently because if they're there to look after the child's best interests, is that racking up a lot of charges? And a lot of our Crim kids, most of the information about the breaches of bail or whatever it be, come from these care team meetings, so that's really difficult." - Participant 26*

The following participant described instances of out-of-home care workers reporting children's offending behaviour in residential care settings, but subsequently refusing to provide evidence to police:

*"A child might be charged a number of times with assaults and things, but the worker won't make a statement. They're reporting it because they have to as per their policy, but they don't want to proceed with the complaint as such... but needs to tick the box that they're required to say that they've reported it...So, we're sort of stuck with this matter before the Court and the kid's had to go through the whole process and everything, and it could probably be sorted out before it gets to that point." - Participant 7*

In terms of roles and approaches, police often described complex working relationships with Child Protection and out-of-home care providers, in which the approach taken to individual cross-over children was negotiated between agencies. For example, police attending call-outs to residential care homes needed to work with service providers to determine the optimum approach in each instance:

*"[Police] have to literally rock up and say, 'what is your policy here? We need to know right from now before it gets down the track for us'." - Participant 7*

Challenging negotiations were also described between police and Child Protection in relation to simultaneous Family Division (Child Protection) and Intervention Order proceedings:

*"...it becomes this Catch-22 because [police] try to rely on what [Child Protection] is saying because they're more involved with the family. And then [Child Protection] turn around and say, 'well we want to see what police are going to do with this particular Intervention Order' and then they don't do anything. So then [everybody's] stuck in Court where we're getting multiple adjournments and you're going 'well who's doing what and how are we helping this child?'" - Participant 30*

Police in the Australian context have substantial involvement in the lives of cross-over children, in a role which is both complex and multifaceted. These roles rely on interagency collaboration, which is supported by information-sharing protocols, but may be complicated at times by a lack of clear processes for responding to cross-over children's needs, and police dual roles as prosecutors and protectors of this group of children.

#### 5.6.4 Diverting children: the Children's Court Youth Diversion Service (CCYD)

The CCYD is a state-wide service delivered by Youth Justice (under the Department of Justice and Regulation) initiated in 2017 in the Children's Court of Victoria. It is directed at children with minimal criminal history, who have acknowledged responsibility for unlawful behaviour to the Court, and who would be unlikely to receive a supervised order if convicted. Diversion aims to support children to address the underlying causes of offending through targeted short-term interventions and, if successfully completed, results in charges being dismissed.

**Support for the CCYD.** Although newly-implemented at the time of the study, there was overwhelming support for the CCYD from police, Youth Justice, Child Protection, clinical specialists, and legal representatives. Police were observed to strongly support the potential within the Diversion scheme to intervene early and therapeutically with children's offending, before behaviours and attitudes were entrenched:

*"[Police] feel more comfortable approving a Diversion [...] because [they know they] can make some really strict conditions and can require that they attend school 80 percent of the time, and that they engage in these services, and do all these things that will actually hopefully assist them than actually just 'be of good behaviour'." - Participant 7*

In two of the regions surveyed as part of the study, police members and prosecutors had already initiated and promoted formal or informal pre-sentence diversionary options prior to the implementation of the state-wide diversion program. Police saw a need to intervene earlier with children's offending behaviours, as they identified a lack of effectiveness of non-interventionist approaches such as multiple cautions or Good Behaviour Bonds. For police, it was important that intensive and structured therapeutic supports were being implemented as part of a Diversion, particularly in relation to more serious offending. Both police and Youth Justice Diversion coordinators identified the need for greater clarity around the types of offences for which Diversion would be considered, and the role of police in recommending or vetoing Diversion:

*"What we should be considering as Diversion? There's not really any guidance in the Act, because we're still yet to determine all of that. And also about the prosecution role in the Diversion process as well, which is quite different from the adult Diversion, and whether if we say no if the Magistrate can... whether [police] get veto power in relation to it... that's something that needs to be clarified." - Participant 7*

Magistrates were similarly supportive of Diversion, and seen by lawyers and Youth Justice professionals to be supportive of utilising diversion to ensure an early and therapeutic response to children's underlying needs:

*"The perception I'm getting from Magistrates – at least at this early stage, is that they're approaching some Diversion matters where they might have previously looked at a [Good Behaviour] Bond, and they're looking at it almost as a Bond with some supervision and monitoring and support" - Participant 28*

Child and family welfare practitioners similarly reported positive outcomes from diversionary programs for the children in their care:

*"I think the youth Diversion programs do work if the young person's willing to be supported by people and unpack why the offending did happen and just to give them that support instead of just putting a label on them as, you've committed a crime." – Focus group 20*

*"... quite often they're just required to attend their care team meetings or just to do what we require of them, there's nothing additional. So keep on the straight and narrow for three to six months, nothing extra that they need to do. But with the support of the Diversion officer and that seems to be working, we've had some pretty good outcomes." - Participant 34*

**Suggesting a specialised Diversion.** As noted by the practitioner above, for some cross-over children with already large care teams, the emphasis of a Diversion may differ. Another participant agreed, and questioned the utility of Diversion for this group:

*"... there is a risk that they are over-serviced. Because a lot of the questions they need to ask I think are overly personal and you don't really necessarily need a Diversion plan that points out things that you already – I think sometimes they need to again relook at it through the prism of a kid being in state care and do I need to have all these extra services? Because really I've smashed a window because I was angry because I have a crappy family background?" - Participant 45*

An education professional similarly noted their less intensive role with those cross-over children who already had large care teams:

*"...even though the need is perhaps higher, often, because of the entrenched nature of the issues, our role might be lesser in a way ... because the kid doesn't need an 11<sup>th</sup> person trying to do things on their behalf... it's more of a behind-the-scenes role in some of these cases, compared to kids who have no [Child Protection] involvement and perhaps no other service system involvement." - Participant 51*

Multiple participants saw scope for expanding the current Diversion scheme, including lawyers, and Youth Justice professionals. Expansion could entail having longer periods to implement diversion interventions, having intensive diversion options available, and the possibility of issuing multiple diversions if recommended and agreed to between police and Youth Justice:

*"... there's some benefit to us potentially of evolving into a space where we have an intensive Diversion team who work with those kids that we identify ... this needs a bit more work if we're going to really successfully try and put something in place that doesn't just help them divert on these offences... The real focus should be 'this is the chance that stops them coming back'... And there's a need to be able to have an escalated response to the young people that need that, and a more intensive response. And I think a dual order worker would potentially go a long way to helping that." - Participant 28*



Implementing diversionary processes in relation to adolescent family violence matters was also discussed as an option potentially helpful for cross-over children. The following participant believed police would be open to exploring such options, but needed to be satisfied that “*there is an appropriate program for families*” in order to pursue such avenues:

*“....say the police want to bring an Application against some kid because there's some incident at home, it would be good if you had an alternative process that could kick in ... making an [Intervention Order] is not an effective response... So if you had a therapeutic response that kicked in then, that could be supervised by the Court, sort of like a quasi-Diversion, would be a really good thing.” – Focus group 22*

Professionals also raised concerns around the operation of the current Diversion scheme in relation to dual-order cross-over children (i.e. those with concurrent matters or orders in Criminal and Family Divisions of the Children’s Court). A case was made by some professionals that specialised Diversion practices could better suit certain cross-over children populations, particularly those in out-of-home care, and especially residential care settings. For instance, multiple practitioners highlighted the potential utility of care-team supported restorative justice options with this group. It was also suggested that cross-over children may benefit from having specialist dual-order workers to supervise their matters. In line with the holistic approaches recommended for the Court, it was argued that more tailored, strategic approaches may better harness early intervention opportunities afforded by the diversion scheme for some cross-over children:

*“I’d love to see a specialised program for Diversion for children residential and out-of-home care, because often the issues are so different, and these children are so damaged ... to choose an example, often writing a letter of apology is a condition of a diversion and for a kid in resi care. That’s something that without support and assistance would be something that perhaps they would find very difficult to do, because there’s so many issues. And just the Court saying, ‘well, say sorry for what you’ve done’, without knowing the context, often you’ll have multiple children in residential care charged for fighting with each other... But even things like Group Conferencing, mediations, more therapeutic involvement at an early stage either as Diversion is something that the Court could assist with.” - Participant 28*

Some participants similarly held concerns regarding the capacity to support long-term change through Diversion processes. Due to an absence of monitoring or follow up within these processes, study participants were unsure about long-term impact:

*“...where are the resources to see how these children are going and whether or not we’re still keeping in touch with them to make sure that those positive changes that they’ve made during that short period of time endure so they stay at school, the continue to pursue the hobby that they found in the last six to eight weeks? How do we monitor that and implement that so that it’s not just for a short period of time that we get a good outcome but it’s really about making sustained change in this child’s life?” - Participant 41*

### 5.6.5 Bail and remand decision-making

While the issue of bail was only raised in around a quarter of the study's consultations, some participants perceived in their work that children in out-of-home care, particularly residential care, were more likely to be remanded compared to their peers residing at home:

*"What I saw in the bail justice space was that for the same type of offence, anecdotally, just off my head, for the same type of offence a young person in out-of-home care was less likely to receive bail or summons than a young person in care for the same type of offence. That first entry into a custodial setting is a real key moment, and it sets in chain an increased likelihood of further remands, and quite a number of those do come from out of court settings from bail justices." - Participant 28*

**Feeling frustrated and confused about bail.** Both Child Protection and Youth Justice professionals spoke about children feeling, at times, frustrated by their bail conditions, and that they were "set up to fail" with the result that they might not adhere to bail conditions. Child Protection professionals and others spoke about the complexity of bail conditions for children:

*"I see a lot of young people with bail conditions that are quite difficult to adhere to, and impede on their social mobility, not being able to access particular train stations or shopping centres, or exclusions put in place on bail conditions for young people that further compound their sense of being pushed to the side and forgotten a bit, and dealt with harshly. And there's a reactiveness too, to that, that I can understand. There's a lack of regard for bail in those circumstances or for conditions from a lot of young people because they perceive, I think, that it doesn't take into account their individual circumstances and it's setting them up to fail." - Participant 28*

*"Participant 9: I've worked with some young people who've had like 10 different bail orders for 10 different matters... And with all different conditions.*

*Participant 10: ... and these kids that have got limited education ... they're not going to understand the expectations that's placed on them. And they know the basics, but they've got to get confused because we are." - Focus group 5*

**Breaching bail conditions.** Both Youth Justice and Child Protection professionals were concerned about responses to breaches of bail conditions among children in residential care settings. As discussed previously, professionals suggested that cross-over children encountered higher levels of surveillance with regards to their bail conditions from both police and residential out-of-home care providers:

*"...police would have a list of children that they would go out and check to see if they were at their residential placements, and if they weren't, they'd obviously look to find them. I think in discussions with police that I've had, and I can understand where they're coming from, their rationale around that was, when these young people are not at home, 60 percent of crimes increase in this area, et cetera, et cetera, and they're trying to police the community as well as these young people. But I think that that's a really punitive response and not helpful at all." - Focus group 20*

Child protection and Youth Justice professionals discussed the impact of repeatedly remanding cross-over children overnight for breaches of bail conditions, particularly in increasing their exposure to offending peer networks:

*"... kids who would be on bail, they may be absconding, not doing anything, but because they're not at placement, they're breaching conditions and then straightaway be breached, put before a bail justice, remanded overnight, and then brought back to Court. That cycle would continue weekly when police could have a very different response and not send them straight to the Court system. I guess what we would always think about is the impact putting someone in remand would have because that's where they gain their networks. I think we push that message quite strongly but I don't think the police, or even the bail justice service, really appreciated the impact that had on longer term outcomes for kids as well." - Focus group 20*

Conversely, one out-of-home care case Manager believed that strong and consistent responses to breaches of bail conditions were more suitable for this group of children:

*"The legal system is really difficult as well, in regards to if you've got a young person on bail and they breach it. So, effectively, if you breach your bail, this is what will happen, but that may not happen. Do you know what I mean? It's inconsistent, what the outcomes are for that, so that's really hard and sort of doesn't teach them any kind of lesson or what to expect either." – Participant 24*

Beyond these disagreements, both Child Protection and Youth Justice professionals were concerned about the role of bail justices in relation to remanding cross-over children after hours, and regarded this practice as effectively having "volunteers making some significant decisions with really limited training":

*"I'd love to see no bail justices... I just don't think it's a consistent [response], and it doesn't match what happens in Court... That aspect of the system is really just not keeping pace with the rest of it. Natural justice goes out the window in those settings. You get kids having their priors discussed before they're hearing what's the new charge. Its Kangaroo Court type stuff." - Participant 28*

**Child Protection and bail.** While not raised in many focus groups, both lawyers and Youth Justice professionals perceived that Child Protection professionals at times take a 'back seat' in relation to cross-over children who are remanded, and noted that children sometimes spend longer on remand due to delays in Departmental capacity to respond with potential placements and other evidence to the Court:

*"... the After-Hours Child Protection service will step back if they hear that there's a kid who's subject to bail or a kid who's been charged with an offence, they'll step back and wait for a [After Hours Bail] response, and 'we'll look at placement for the kid', or 'we'll do an assessment', or 'we'll send out a team if they don't get remanded'." - Participant 28*

*"...when kids are in resi care, especially if the offending happens in the residential unit, it's like pulling teeth trying to get anyone from Child Protection to come to court to give evidence*

*about where the child's going to live... they come to the Court and say, 'well we can't tell you where the placement will be but we will get them someplace to be if the Magistrate bails them'... they end up spending extra nights in custody waiting for either a worker to come down to Court to give evidence, or for the Department to actually come up with a placement."*  
– **Focus group 22**

**Secure welfare vs remand decision-making.** As discussed in the case file audit findings (Section 4.3.3), during initial stages of Family Division proceedings, the Court has the capacity to place a child in Secure Welfare, a time-limited secure care facility for children who display at-risk behaviours towards themselves. Placement in Secure Welfare away from Court is at Child Protection's discretion, a process noted by lawyers and Magistrates to possibly produce "an inequity" for children with protective issues who may benefit from external advocacy to avoid remand placement:

*"...you get a kid who's on a first [Protective Application] and the Court has control over placement of Secure Welfare and you'll go before [the Magistrate] and say, 'The offending is much more a manifestation of protective issues'. And he'll urge them to agree that that would be the appropriate outcome and achieve that twin resolution. But if you have a child who is on an Order where that determination is in the Department's care then you don't have the Court with the capacity to insist that that's the result."- **Participant 48***

Child and family welfare practitioners indicated that decision-making around the use of Secure Welfare and remand was challenging, particularly in relation to young children, and usually carried out in collaboration with others (e.g. Youth Justice, police):

*"**Participant 9:** It's advocated really a lot by solicitors and Youth Justice around Child Protection who view secure welfare as a substitute to remand.*

***Participant 10:** And it's not supposed to be. Like, the bottom line is, it's not supposed to be. But then I have to really consider, weigh up all the options. It's a really thoughtful, case by case basis. So, it's sometimes I'm like, 'you know what, no. If this person needs to be placed on remand, then that's what needs to happen' and that's a decision I need to make. Because it's also around how we can get some support in for the young person.*

***Participant 9:** But it's also about the significance of their offending. Like, sometimes working with the teams I work with, when a young person's remanded I'll come over to Court and I'll advocate on the client's behalf of Child Protection ... it's a real moral dilemma – because the offending can be quite significant... And if it's the first time a young person's been remanded especially, it's the secure welfare remand debate...is there an alternative?" – **Focus group 5***

Others stated that decision-making around the use of bail and Secure Welfare presents another circumstance where a holistic Court model would be advantageous to cross-over children:

*"If they're on temporary orders you have to get the Child Protection Orders placing them in that secure facility. So it's helpful to be able to run both the Bail Application and Secure Welfare application together if you can, and I have had cases where the Magistrate's been willing to do that, and it works." – **Focus group 22***

### 5.6.6 Sentencing cross-over children

**Sentencing considerations.** Judicial Officers in the Children’s Court sentence children on the basis of principles outlined in s. 362(1) of the *Children Youth and Families Act* (Vic) 2005, which direct Judicial Officers to give regard to:

- (a) *the need to strengthen and preserve the relationship between the child and the child's family; and*
- (b) *the desirability of allowing the child to live at home; and*
- (c) *the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and*
- (d) *the need to minimise the stigma to the child resulting from a court determination; and*
- (e) *the suitability of the sentence to the child; and*
- (f) *if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and*
- (g) *the need to protect the community, or any person, from the violent or other wrongful acts of the child—*
- (h) *if appropriate, the need to deter the child from committing offences in remand centres, youth residential centres or youth justice centres.*

Section 362(2) of the Act also makes explicit reference to cross-over children, wherein it states that:

*In passing sentence on a child who has appeared before the Family Division or who is or has been the subject of an order of the Family Division (including a therapeutic treatment order), the Court must not impose a sentence more severe than it would have imposed had the child not so appeared or been the subject of such an order.*

It is arguable that the first three of these principles ((a)-(c)) are less robust in supporting the need for stability among children in foster and residential care, compared to children still residing with their families. As one participant stated, the Act “presupposes, in a sense, is a child living with parents at home”, with the result that “so many of those considerations are meaningless for [cross-over] kids”. Children in foster and residential care most often have disrupted family relationships, do not reside with their families, and (particularly in the case of residential care) are likely to have experienced educational disruption and exclusion. The principles presumably direct Judicial Officers to consider these areas as protective factors supporting children’s stability, wellbeing, and desistance from offending. However there are no clear guidelines for how stability and protective factors are understood for children in foster and residential care placements:

*“...hearing the pleas from the lawyers... They’ll take you through it, ‘Well, that’s not applying because’... The lawyer’s ability to put those things from that section acting for kids in residential care is entirely different from lawyers putting those things before a court when they’ve got kids living with parents. And yet the crime can be the same, a lot of the issues can possibly be the same.” – Focus group 24*

**Taking a therapeutic approach to sentencing.** Participants supported supporting holistic, problem-solving approaches, which harnessed Children’s Court sentences for therapeutic intent. Consistent with broader views and the principles in the CYFA legislation, study participants saw little purpose in

punishing cross-over children, but rather viewed court decisions as an opportunity to support a prosocial trajectory for this cohort by responding to children's underlying challenges:

*"... it's about not being punitive for that particular group because they're used to punitive. They're used to consequences being 'you've done this wrong'. The approach that we often take is sitting down and saying... 'what did we do [wrong] in that situation'? What did we do? And having an understanding of where that young person is coming from and trauma-informed practice." - Participant 65*

*"... when you're dealing with three burglaries, three thefts or three cars and three unlicensed drivings – that's just what's come to the police attention. And that's just the tip of their problems... you need almost a sort of – I hate the word too, but it's like a multi-faceted approach to these kids, because you cannot just say, 'do you understand? Let's get some victim empathy going here'." - Participant 74*

This view was broadly supported by most police and police prosecutors, although they acknowledged the community's need to see that these children were provided with appropriate and intensive supports to facilitate desistance:

*"... the only way that you can really try to reach out to them is through rehabilitative services, and that's the issue where I think it falls down a lot and what other work that I've been trying to look at recently is it's not – there's no point reaching out and saying you'll get this, this, this and this [punishment] without looking at that underlying issue" - Participant 29*

In one focus group, reflecting back on issues discussed in Section 5.6.2, participants expressed divergent views. Some argued that children were given too many opportunities in the Criminal Division, and believed that receiving a custodial sentence, or fearing a custodial sentence, would force children to engage with therapeutic supports. Others asserted that custody in itself was criminogenic, and would likely exacerbate offending behaviour:

*"Participant 31: Why can't you give them a choice, either do the program or they go to jail?*

*Participant 29: Because in the end when you put them in jail you're just putting them in another position where they're going to be around all the same offenders that we just talked about, and we don't want them there. And they're going to come out and they're going to do hard crime..." – Focus group 11*

While generally supporting a therapeutic approach to sentencing, some child and family welfare practitioners observed that Youth Justice Order conditions could at times overwhelm cross-over children, and having input from the child's care team was essential for recommendations about Youth Justice Orders:

*"Participant 35: The expectations on the community-based orders from Youth Justice, sometimes they put a lot of conditions and a lot of different things that the kids have to do. It can sometimes get really overwhelming for certain kids to say they have to do this program, that program, they have to see a drug and alcohol worker once a week, Youth Justice worker*

once a week, this one once a week. Sometimes it can get too much and I think that needs to be taken into consideration.

**Participant 34:** *They can get really overwhelmed and then they just go ‘screw this’ and they’re off and that’s because they just can’t, it’s too much.” - Focus Group 13*

**Magistrate views on Court options and outcomes.** Some Magistrates expressed frustration about the capacity they had to support desistance and more positive outcomes for cross-over children, particularly those more entrenched in the Youth Justice system. These Magistrates were not confident that the current therapeutic and placement options available in the community could sufficiently support desistance, and were left feeling they were unable “to do anything useful”:

*“It is very frustrating for us to see this sort of cycle kids who are not at home with the family who are in residential units and occasionally, of course, in custody, and try to formulate things which are going to make a difference to them when really what the options are are not going to achieve much in the way of rehabilitation [...] it’s a very frustrating thing for all of us who are doing our best to make the legislation work in the way that it’s supposed to. And in the end we are having to do things like send kids back to the same resi unit because there are no reasonable options and where the same problems are just going to continue.” – Focus group 24*

*“...you can give kids a chance by putting them on Youth Supervision Orders or whatever but at the end of the day you say to yourself ‘Is it going to make any difference? Probably not’. And maybe we get a jaundiced view because of course we get the prior history and they’ve been on heaps of Youth [Supervision Orders] and the little buggers are still offending and the offending is escalating.” – Participant 40*

A range of support services need to be available, including generalist mental health services, drug and alcohol services, other specialist therapeutic services, and education services. One Magistrate explained it was far easier when these services were present at Court. On the other hand it was noted that many agencies delivering therapeutic supports preferred to work with children in a voluntary capacity, rather than being Court-ordered:

*“I wouldn’t mind seeing more support by somewhere like Headspace, you know, youth-focused psychological counselling and support rather than saying ‘Go and work with Youth Justice’, which is going to be cobbling together a group of support services. Perhaps have Headspace in Court assisting, assessing, referring to the Children’s Court Clinic, building a body of knowledge about this child so that they can be properly mapped ... I just don’t feel like we have a lot of expertise supporting these kids in Court and I don’t feel like we have a lot of tools at our disposal.” - Participant 39*

**Areas for legislative change.** Several potential legislative changes were raised, including:

- **Increased powers to direct children to therapeutic options.** Both Magistrates and lawyers supported Judicial Officers having legislative authority to direct cross-over children to more

therapeutic options, echoing recommendations of previous Victorian studies<sup>191</sup>. Suggestions included the capacity to use secure care (e.g. Secure Welfare) instead of remand settings for some children in Criminal Division proceedings, and to make therapeutic orders in relation to offending, beyond what is available in current Therapeutic Treatment Orders for children charged with sexual offending. The general sentiment was the need for regimes which were “not a penalty, but a support”:

*“...I wouldn’t mind the ability to put a child in Secure Welfare as an alternative to remand or a therapeutic placement instead of remand. That would be a good legislative change to have.” – Focus group 24*

- **Family division involvement as a sentencing consideration.** A second area for potential amendment raised by lawyers and Magistrates was the consideration of a child’s Family Division involvement and its impact as sentencing considerations in the Criminal Division. As previously discussed, current matters to which Magistrates are to give attention are often irrelevant to cross-over children, including giving consideration to maintaining links with the family. It is also not possible under current legislation for Magistrates to consider as part of sentencing the impacts of systemic factors, such as placement with offending peers, on children’s offending. It was suggested that there may be ways to introduce the consideration of Family Division involvement, and its impact, as a specific sentencing consideration:

*“... it may be like a specific sentencing consideration, to add in that they must consider whether Child Protection has been involved with the family, any impact that has had all the child before sentencing. You’d make that a mandatory sentencing consideration in the Act, like they do for [Disability].” – Focus group 22*

- **Statutory definition of disability.** Child Protection, out-of-home care and legal professionals, suggested that the statutory definition of disability and intellectual disability under the *Disability Act (2006)* are ill-suited to capturing the needs of this group of children<sup>192</sup>. Challenges meeting statutory definitions were believed to create barriers to a child accessing services which might alter their situation. One practitioner indicated that they “constantly have brick walls in terms of the kid’s eligibility and access to services.”
- **Family Violence legislation.** Family Violence legislation does not accurately or adequately capture problems encountered by cross-over children, especially in a context of unequal and/or abusive relationships, which is the experience of many children with their caregivers. Given the extent to which Family Violence legal processes effect the removal of cross-over children from home, their entry to out-of-home care, and the impost of criminal charges, the overlap between the three matter types (Children’s Court Child Protection, Family Violence, and Criminal Division matters) and the utility of current Family Violence approaches for cross-over children bear future research and policy development. The usefulness of implementing

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<sup>191</sup> See e.g. recommendation for Youth Therapeutic Orders in Bowles, J. (2015). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, pp. 40-41.

<sup>192</sup> See Disability Act (2006) for legislative definitions

[http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/0B82C05270E27961CA25717000216104/\\$FILE/06-023a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/0B82C05270E27961CA25717000216104/$FILE/06-023a.pdf)



targeted diversionary options with respect to family violence was raised for consideration.

- **Age of criminal responsibility.** Several participants believed the low age of criminal responsibility in Victoria (10 years) is problematic. Whilst this impacts on all children with formal police contact, it is children with Child Protection involvement who are disproportionately among those with early criminal justice system contact. The age of criminal responsibility has thus a stronger bearing on this group of children, compared to the overall cohort of children charged with offending behaviour.

**Involving Child Protection in the Criminal Division.** Whilst comments just reported endorse Court ordered and accessed therapeutic sentencing options, other study participants cautioned that this approach could create further fragmentation around planning and support for cross-over children. Participants commented that they were wary about intervention with cross-over children without care team consultation, as this might cause a “double-up because there might be a support plan in place that Child Protection has or a certain Order” (Participant 53). A coordinated approach involving Child Protection was suggested to ensure child developmental approaches are adopted, to avoid service duplication and conflicting case plans, and any further fragmentation of service delivery:

*“Participant 35: And probably realistic outcomes, more realistic in terms of what can be achieved for a young person in residential care who has got a history of A, B, C and D.*

*Interviewer: And for their child would there be any advantage?*

*Participant 35: More realistic I think and more accepting.*

*Participant 36: They could also see from that that they couldn't really bounce one worker off the other worker, that it was consistent between both departments as well.” – Focus group 13*

**Koori Court.** Koori Youth Courts were praised for their non-adversarial, collaborative practice when Koori children appeared in the Criminal Division. The holistic nature of the supports offered, and the personal engagement of Magistrates with children as part of this approach was seen as well-suited to the cross-over children group:

*“I think the [Koori] Court does do very well with the wellbeing of the young people. Probably every case that I've seen it's been about making sure that they're getting a holistic support, and filling in any gaps that are there. I've never really seen a kid come in and leave without those sort of things being explored...the Children's Court respond well and handle all cases pretty well in making sure the wellbeing of the children are a priority.” - Participant 38*

The capacity through Koori Court to enhance the child's cultural connections was identified as particularly valuable:

*“.. the kids that get the support through Koori Court, and get that cultural connection are a lot better for it because we can put ongoing supports through our other stakeholders and community organisations that come into Koori Court; and often they can be a very good support for the young person, and just offer something that may not necessarily be offered just through mainstream, and might not be identified as an issue.” - Participant 38*

*The role of Koori Court officers.* The role of Koori Children’s Court workers and non-government Koori Support workers was greatly valued by the Children’s Court. One recommendation across the study regions was that the role of the Koori Court Worker be extended, to both enable support for children and families in the Family Division of the Children’s Court, as well as ongoing follow up in the Criminal Division “just to check in on the kids and see how they’re going”:

*“We noticed this back about six years ago, and I actually took this to the Koori Court state conference about Koori Court officers working in the Family Division. Because you get here and there would be a family there; ‘What are you doing?’ ‘Child protection’. ‘Who’s here to support you?’ ‘Nobody’. And we all know the issues between [Child Protection] and the families. And no one was there to advocate for them or to inform them - it’s a minefield.”*

**Participant 5**

*“I think that would be pretty beneficial for both the Court, you know, having a better background and better relationship with the young person; but then also the young person having a relationship with the Koori Court Officer, and the Koori Courts and the Children’s Court in general.”* - **Participant 38**

*Avoiding Koori Court: The role of Elders, pleading guilty, and timeliness.* The role of Elders in Koori Court was highly valued; some participants noting that children responded well to Elders giving them “a good telling off”, while others noted more innovative outcomes from this model:

*“I’ve seen some pretty good results from Koori Court, different sort of punishments handed out as well, more trying to encourage people to build on their skills as opposed to being really punitive with them.”* - **Participant 22**

On the other hand, some participants believed that wanting to avoid Elders is a key reason some children declined to go to Koori Court. At times, some participants suggested that a gentler approach from Elders might be beneficial for cross-over children, in particular:

*“The Elders take a very active role in Koori Court, and sometimes they can be quite voiceful I suppose, and they can let the child know in no uncertain terms that what they’ve done is unacceptable and what not... But I think with kids... from Child Protection, it’s about finding a little bit more of a balance. So letting them know what they’ve done isn’t acceptable; but also coming in with a bit of a kinder hand as well, and being understanding, a bit empathetic about where they’ve come from, and sort of just be a bit more caring and nurturing with the young person. I find that’s really the best way to deal with those sort of young people; if it comes out too negative then they sort of do shut off.”* - **Participant 38**

*“The biggest reason I believe, why children don’t want to come to Koori court is because of the Elders; ... the Elders are quite strong. They don’t leave very many rocks unturned, they’re very thorough and they’re very straightforward.”* - **Participant 6**

While strongly valued, Koori Court was identified as a time-intensive model, both for Magistrates and children. Others argued that this was another reason why some children may avoid Koori Court, wanting quicker finalisation of their matters:

*“Koori Court I think probably works well. You know it’s small numbers but, you know, sitting around with the young people engaging them a lot more would be better, but we don’t have the time.” - Participant 75*

While areas for improvement were identified, the holistic, relational model adopted in Koori Court was supported as appropriate for cross-over children, in addition to providing greater cultural safety for Koori children. Several aspects of the Koori Court model could be usefully adopted in generating a cross-over Children’s Court list and model.

### 5.6.7 Youth Justice Services

**The recent Youth Justice context.** In discussing Youth Justice services, it was argued that recent offending trends in Victorian youth did not reflect long-term state-wide trends. While the number of children appearing before the Criminal Division of the Children’s Court has declined significantly over recent years, one participant noted, *“the offending that we’re seeing is so much more serious”* (Focus group 24). Study participants did not believe the more serious and violent offending being observed amongst some young offenders was necessarily committed by cross-over children, but rather:

*“... you’re getting a number of people who have never been in trouble before, who have no Department involvement, who come ostensibly from a pretty good family ...they may be lured by the gang mentality or by the lure of some money that some other people might be providing to them if they commit certain style of offences and take certain stolen goods. Car, jewellery – they’re the sort of things that have been prevalent recently in the last couple of years. They may not be cross-over kids, those very serious ones.” - Participant 75*

**Youth Justice custody.** Youth Justice custody was raised in about half of the focus group consultations, with professionals concerned that children expanded their criminal peer networks in custodial settings. This was particularly the case for more vulnerable children (e.g. younger cross-over children, or those with intellectual disabilities) who needed more of a containment response which focused on their protective needs:

*“Whilst they’re in there, they’re making connections. So they’ll network and they’re fantastic at networking, even though they’re not meant to have that interaction, they’re fantastic at finding out who is 500 metres down in a different unit and what connection they have, and what older brother or sibling they have that they can connect to. So once they are outside, it goes back to Facebook, they’ll make that connection, to create opportunity to make money, to make crime, so they have a little bit of something.” – Focus group 20*

Custodial sanctions and remand were believed to be unlikely deterrents for this group of children. Custody in fact might be viewed by children as more desirable than community placements. Time spent in custody was seen to further reinforce criminal identity development in this group of children:

*“Participant 75: There’s also less at stake for them... some of them prefer [Youth Justice custody] so there’s not as much at stake because it’s a question of which institution they’ll be in and resis are, in effect, institutions... So they don’t have as much incentive.*

**Participant 76:** Not so long ago I had a boy who has just turned 13 who was offending at Court wanting to go to [Youth Justice custody] because he didn't want to go back to his resi. That was a choice he was making." – **Focus Group 24**

**Participant 22:** They all sort of act the tough guy when they're out in community but then they often will break down into a really childish mode when they go into custody, and cry, and want to self-harm and talk about killing themselves, and not that that's a positive effect, but it's had some sort of impact on them, that they're able to sit there and assess their lives a little bit. It doesn't stop reoffending though.

**Participant 24:** Generally speaking, when they come out, then they use that – like, you know, they're heroes among their peers and that kind of thing... So, obviously lots of the time it doesn't have much of a long lasting effect." – **Focus group 8**

**Youth Justice case management and supervision.** The role and work of Youth Justice professionals was rarely alluded to, but when pressed, participants held largely positive appraisals of Youth Justice case management services:

"... the probation systems are good. Youth Justice, hallelujah. Hallelujah, they try." - **Participant 37**

"I've seen some incredible outcomes happen from a really invested case manager through YJ where they may have gone above and beyond to look at the young person's history, and take into account family factors and dynamics outside of their offending and work around that to try and create a bigger outcome for the young person beyond just supervising them." - **Participant 66**

There was considerable discussion about the nature of relationships between children and Youth Justice workers. Some regional participants believed children lacked respect for community Youth Justice professionals, whom they believed were too lax, whilst other metropolitan participants observed strong working relationships between children and some Youth Justice workers. These differing responses are perhaps reflective of slight differences in professional ideologies between metropolitan and regional locations, where the conflict between ideas about approaches to children's offending were more apparent among regional professionals:

"[Youth] justice, I think they do a good job but it is short-term and kids don't really respect I think [Youth] Justice. It's just kind of 'Yeah, we'll go for a few meetings if we have to'." - **Participant 39**

**Participant 22:** They literally have no respect for the YJ – the YJ worker is a thing that they do, but it's not receiving supervision around how to not criminally offend, because their appointments are – sometimes they're like a 10 minute phone call.

**Participant 24:** And I guess the YJ system is difficult as well, because it is – so, obviously, they need to attend appointments, but they can be quite lax with the kids. So, you know, they'll be like, 'I'm not coming today', so they'll count a five minute phone conversation as their appointment and things like that. There's not much accountability." - **Focus group 8**

**Children's different relationships with Child Protection and Youth Justice.** Broadly speaking, professionals tended to believe that cross-over children engaged better with Youth Justice than Child Protection. This was attributed, both by Child Protection and other professionals, to the different roles of the two agencies. For criminal justice consequences were believed to enhance children's compliance with Youth Justice, and while unwanted protective intervention was believed to reduce children's engagement with Child Protection services:

*"I think making them subject to community orders can be effective at times... sometimes we might have great difficulty engaging a kid or seeing a kid but yet they're compliant with their Youth Justice Order because of the repercussions for them. For us there's little repercussions for them on [Child Protection] orders, we can do little with them... The consequences in the Youth Justice system is far more reaching for them." - Participant 34*

*"...just being involved with Child Protection reminds them that their parents maybe didn't want them, and so they're less likely to engage with us. It's like Youth Justice have an easier job from that perspective." – Focus group 22*

There were differences in the personalities of professionals working in each agency, and the agency cultures:

*"Child protection, they're going to save the children from being abused by their horrible parents, versus Youth Justice, get that kids make mistakes and want to help them in the longer run. I feel like you just get different personalities doing different jobs. YJ workers I think have - I don't know if they have a lesser file load, but because they're only working with the child. It's probably a bit easier than having to work with a whole family... I don't actually think that the kids think about the consequences of not complying." - Focus group 22*

And, some Youth Justice workers when describing challenges in engaging cross-over children, expressed concern about children becoming overly attached to Youth Justice workers:

*"... they see YJ whether it's YJ case management or YJ diversion, "You're just another government worker. I don't trust you." They've been so burnt by Child Protection, it is very hard to get them to engage. And when they do, that is why we have concerns about taking on Child Protection in Diversion because we're only for a short period of time. And then they think, 'Well, you're going to promise me. So you're going to leave me'. And then because your YJ is typically more hands-on, they become attached to YJ. And Child Protection only comes in when there's a crisis or when they're going to remove them. So everything Child Protection is bad in their eyes. And either they hate you because you're Department, or they get too attached to you and then when you say, 'Look, mate, I can't do this because I can't because of Child Protection,' then they end up hating you because, 'You just listen to them. You don't care about me'. So that is the problem we have also with cross-over kids." – Participant 54*

### **Summary: Responding to offending behaviour**

While it was agreed that consequences to children's offending and challenging behaviours are necessary, tensions were evident in professionals' recommended responses. Some argued for strict behaviourist approaches, and others were more concerned with adopting non-criminalising

therapeutic responses. Yet there was consensus that failure to intervene early and therapeutically with children exhibiting early challenging or offending behaviours (often before 13 years), was potentially neglectful from a systemic perspective. Participants also disagreed on the Court's role in terms of directing, coordinating or being the site of delivery of therapeutic interventions. Specific challenges arise in relation to policing with cross-over children, particularly the complexity of responding to this group as both victims and perpetrators of a range of abusive and/or offending behaviours.

The new state-wide Diversion program was praised in its approach which prioritises identifying and addressing children's underlying welfare needs, while impressing upon them the seriousness of offending behaviour which brings harm to others and the community. Yet aspects of this program could be better-tailored to provide a more targeted response to cross-over children, such as allowing more intensive or longer-term diversionary options, and having Youth Justice secondary consultation to care teams with a view to preventing further Youth Justice involvement among children in out-of-home care .

Therapeutic and holistic approaches to sentencing were also recommended, which aim to address the drivers of children's offending. Yet Magistrates and others were sometimes disheartened with the placement options and therapeutic services available to cross-over children. Participants reported broadly positive relationships between children and Youth Justice professionals, however they held concerns about children's opportunities for expanding pro-criminal networks and identities in Youth Justice custodial environments.

## 6. Integrated discussion

This study set out to examine the extent to which children and young people before the Criminal Division of the Victorian Children's Court were also clients of the statutory Child Protection system, and to better understand the characteristics of this group. It also aimed to understand the factors which contribute to the entry of these children into the criminal justice system, and the factors which keep some cross-over children entrenched in these systems.

Throughout 2016-17, detailed case file analyses were undertaken of 300 children coming before the Criminal Division of three of Victoria's Children's Courts, two metropolitan and one regional in location. Findings of the analyses are presented in Chapter 4. In 2017, 25 interviews and focus groups were undertaken with 82 key stakeholders including Judicial Officers, Child Protection and Youth Justice professionals, lawyers, police and police prosecutors, child and family welfare professionals, specialist child and family welfare mental health clinicians, and alternative education specialists. Key stakeholder consultation findings are presented in Section 5. Findings of case file analyses largely paralleled those of key stakeholder consultations, highlighting the depth of practice wisdom among child and family welfare, legal, educational, and criminal justice professional participants.

Both data sources emphasised children's dual nature as both victims and offenders, a complexity not easily navigated by the many service systems which they encounter. The study highlighted systems limitations in acknowledging and responding to children's victimisation, vis-à-vis their offending. This imbalance in readiness to frame and intervene with children as perpetrators requiring control, rather than victims requiring support, was also observed in broader systemic responses to this group. Marked latitude, for instance, was observed in the willingness to permit children's exposure to, and victimisation by, family violence and physical abuse spanning significant periods. Such maltreatment was at times minimised through the use of terminology such as 'inappropriate discipline' or 'cultural hidings', while children's subsequent perpetration of similar behaviours was observed to promptly be criminalised and punished. Such systemic responses raise questions regarding children's capacity to integrate a stance of 'victim empathy' where the denial, dismissing, or disregarding of their own victimisation may have been systemically reinforced.

The findings also drew attention to diversity in the characteristics and outcomes of cross-over children. This integrated discussion first sets out what the study has uncovered, and assesses how these findings resonate with the available literature concerning cross-over children. Secondly, it comments on the study's case file analysis research method. Finally, it considers possible implications of the study findings.

### 6.1 Proportion of cross-over children in the Criminal Division of the Children's Court

This study defined cross-over children as those with current or prior statutory Child Protection involvement who came before the Criminal Division of the Children's Court. Across the Court locations examined, 22% of the children before the Criminal Division were current or historical statutory Child Protection clients, and 12% had concurrent involvement (Orders or matters) across the Family and Criminal Divisions. These figures are somewhat lower than the 36% of Victorian children and young people in custody (remand/sentenced) in 2016-17 reported to have had current or previous statutory

Child Protection involvement<sup>193</sup>, reflecting the greater use of remand and custodial sentences with cross-over children.

There was a substantially higher proportion of cross-over children coming before the regional Court compared to the metropolitan Children's Courts. For instance in the regional Court, the proportion of children before the Criminal Division with current or prior statutory Child Protection involvement (36%), was twice that of the metropolitan Courts (17%). Similarly the proportion of children with concurrent involvement in both Divisions of the regional Court was significantly higher than that of the metropolitan Courts (19% vs 11%). These findings cannot be considered reflective of all regional areas, however they highlight the need to consider region-specific preventative and responsive strategies.

The incapacity to capture extra-jurisdictional Child Protection involvement is a limitation of the current study. However this is a common limitation of many Australian studies of cross-over children which typically examine children in a single state or territory owing to jurisdictional boundaries in data systems. Such methodology is likely to underestimate the extent of Child Protection involvement. Children with case file evidence of interstate Child Protection involvement in the current study (5.3% of the sample) were *twice as likely* to have been sentenced to Victorian Youth Justice custody (38%) compared to children without evidence of extra-jurisdictional child protection involvement (19%). These findings demonstrate the need for accurate national data sets to gain clarity about the number and trajectory of cross-over children who have previously received child protection services interstate.

## 6.2 Characteristics of cross-over children and their families

### 6.2.1 Histories of poverty and cumulative adversity

Both case file and key stakeholder data suggested that cross-over children typically come from a background of socio-economic disadvantage and poverty, to parents who faced challenges which at times compromised their capacity to protect and support their children. Socioeconomic disadvantage was repeatedly discussed by key stakeholders, and though perceptible, was not readily quantified from case files. Associations between poverty and child maltreatment are well-established in the literature base<sup>194</sup>, and a recent local study found that socio-economic disadvantage predicted greater likelihood of receiving convictions in multivariate analyses of children substantiated for maltreatment in South Australia<sup>195</sup>.

Overall, cross-over children in the current study were characterised as having “*a rough go from day dot*”, experiencing significant harm, instability and loss, throughout their childhood. Family violence exposure, alongside household substance abuse, criminal justice system involvement, and mental health problems were commonplace, each affecting between 50% and 73% of children. These figures are somewhat higher than those reported in previous studies of cross-over children, particularly in

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<sup>193</sup>The Youth Parole Board of Victoria. (2017). Youth Parole Board Annual Report 2016-17. Melbourne: State Government of Victoria. <https://www.justice.vic.gov.au/home/justice+system/youth+justice/youth+parole+board+annual+report>

<sup>194</sup> For an overview of the literature see Drake, B., & Jonson-Reid, M. (2013). Poverty and Child Maltreatment. In J. Korbin & R. Krugman (Eds.), *Handbook of Child Maltreatment* (pp. 131-148). Dordrecht: Springer.

<sup>195</sup> Malvaso, C. G., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.



relation to parental mental health concerns<sup>196</sup>, though figures have varied between studies depending on the particular definition of cross-over children adopted. Likewise neglect, physical and emotional abuse each affected between 54% and 67% of children in the current study, while 21% of children had sexually abusive experiences. These figures, while concerning, are perhaps anticipated given the nature of the cohort, and the study's findings demonstrated the cumulative nature of adversity to which cross-over children are habitually exposed. The prevalence of physical abuse, sexual abuse and neglect in this study sample was similar to that reported in the above-mentioned South Australian study, though the current study's sample had a higher prevalence of emotional abuse compared to the South Australian study cohort (54% vs 24%).

### 6.2.2 Parental death

A key study finding was the high proportion of cross-over children with one or more deceased parents (20% in this sample). The traumatic nature of these deaths was noted in around half of the identified cases (e.g. homicides, motor vehicle accidents, suicides or overdoses). The proportion of cross-over children experiencing parental death in the current study was higher than that reported in the 2015 NSW custodial Youth Justice population (13%)<sup>197</sup>, and similar to the proportion of children in out-of-home care in one NSW Criminal Court who experienced the death of a significant person (e.g. parents or siblings) (16%)<sup>198</sup>. Importantly, parental death after the age of 10 in the current study was significantly predictive of a greater volume of offending among cross-over children, after accounting for age. Regression analyses indicated that parental death was also associated with double the odds of substance misuse, and nearly triple the odds of 'hard' drug use among cross-over children.

Previous research has also documented increased incidence of new-onset substance abuse and dependence among parentally-bereaved youth in the US, particularly among those aged 13 years or older at parental death<sup>199</sup>. Additionally, the researchers found that development of substance abuse problems in parentally-bereaved children was more common among children with a history of behavioural disorders, mood disorders, and post-traumatic stress disorder. Similarly in the current sample, both parental death and mental health diagnosis remained significantly predictive of substance misuse, even after controlling for age and challenging behaviours.

### 6.2.3 Gender differences

The proportion of females in the cross-over children's sample (31%) was higher than the percentage of females coming before the Criminal Division of the Victorian Children's Court in 2017-18 (25.3%)<sup>200</sup>.

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<sup>196</sup> One Los Angeles study reported the following prevalence levels – parental substance abuse (72%), parental mental illness (24%), parental criminal behaviour (36%), family violence exposure (33%) (see Herz, D., Ryan, J. P., & Bilchick, S. C. (2010). Challenges facing crossover youth: An examination of Juvenile-Justice decision making and recidivism. *Family Court Review*, 48(2), 305-321). Another study from Arizona reported the following prevalence levels – parental substance abuse (28%), parental mental illness (31%), parental incarceration (55%), family violence exposure (70%) (Halemba, G. J., Siegel, G., Lord, R. D., & Zawacki, S. (2004). Arizona dual jurisdiction study: Final report. Pittsburg, PA: National Center for Juvenile Justice).

<sup>197</sup> Justice Health and Forensic Mental Health Network (2017). 2015 Young People in Custody Health Survey: Full Report. Sydney: Justice Health and Forensic Mental Health Network.

<http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>

<sup>198</sup> McFarlane, K. (2018). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>199</sup> Hamdan, S., Melhem, N. M., Porta, G., Song, M. S., & Brent, D. A. (2013). Alcohol and substance abuse in parentally bereaved youth. *The Journal of Clinical Psychiatry*, 74(8), 828-833.

<sup>200</sup> Figures provided by the Children's Court of Victoria.

This is consistent with national data, which indicate that females under youth justice supervision between 1 July 2013 and 30 June 2017 were 1.5 times more likely than males to have been involved with child protection during that four year period<sup>201</sup>. No gender differences were identified in the current sample in relation to neglect, physical abuse, or exposure to challenging family circumstances. Yet compared to males, females in the current study were more likely to have had emotionally and sexually abusive experiences, and also evidenced higher levels of contact with Secure Welfare and police SOCIT services. Gender differences were also observed in cross-over children's co-occurring challenges: females had significantly higher prevalence of self-harm, suicidal ideation and attempts, absconding, and risk of sexual exploitation. Conversely, males evidenced significantly greater prevalence of neurodevelopmental and intellectual disabilities, challenging behaviours, and school exclusion. Despite similar levels of substance abuse, females had less contact with alcohol and other drug services. Selected gender differences were also observed in relation to offending. While males and females had similar average ages of first police charge, females had fewer recorded charges, and were less likely to have been charged with offences against the person, motor vehicle thefts, and road safety offences. Findings from the current study suggest certain differences in the pathways to Youth Justice among cross-over male and female children, warranting further investigation and potentially differential responses.

#### 6.2.4 Indigeneity

Concerns regarding the over-representation of Indigenous children across child protection and youth justice systems have been highlighted in several recent reports and inquiries<sup>202</sup>. While a substantial proportion of children in the current study were of unknown Indigenous status, at least 18% of the overall sample were Indigenous. This figure should be interpreted with caution due to the sampling approach which intentionally sampled a region with a high Indigenous population. Yet the over-representation of Indigenous children in cross-over cohorts was repeatedly raised by key stakeholders in the current study, and has also been previously documented.

For instance national data indicate that between 2013 and 2017, Indigenous children were 17 times more likely than non-Indigenous children to be involved with both the child protection and youth justice systems<sup>203</sup>. In this same period, 10.3% of Victorian Indigenous children involved with Child Protection came under Youth Justice supervision, compared to 4.5% of non-Indigenous children. Likewise a longitudinal study of Child Protection-involved children in South Australia identified Indigeneity as a significant predictor of receiving a conviction in multivariate analyses which controlled for gender, socioeconomic disadvantage, a range of maltreatment indicators (maltreatment types, multi-type

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<sup>201</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW.

<sup>202</sup> See e.g. The Youth Parole Board of Victoria. (2017). Youth Parole Board Annual Report 2016-17. Melbourne: State Government of Victoria. See also Ogloff, J., & Armytage, P. (2017). *Meeting needs and reducing reoffending - Youth justice review and strategy*. Melbourne: State Government; Commonwealth Government. (2017). Royal Commission into the Protection and Detention of Children in the Northern Territory Final Report. Barton, ACT: Commonwealth Government.

<sup>203</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW. See also McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

maltreatment, maltreatment recurrence and persistence), age at first substantiation, and out-of-home care placement<sup>204</sup>.

Given this significant over-representation, it is problematic that Indigenous status was not more clearly discernible by information provided to the Children's Court. In many instances, Indigenous children were only identified from their stated engagement in reports with a known Aboriginal agency, service or program. Similar challenges have been previously noted in the out-of-home care sector, brought about by service reluctance to 'ask the question', young people's cultural confusion, denial or uncertainty, and problematic relationships between agencies and Indigenous people, for instance<sup>205</sup>.

In the current study, no differences between Indigenous and non-Indigenous children were identified across many of the variables examined (e.g. abuse and neglect, bereavement, intellectual and neurodevelopmental disability, mental health, school exclusion, and out-of-home care placement). However, relative to non-indigenous children, Indigenous children in this sample had a greater prevalence of family violence exposure, household substance abuse, and household criminal justice system involvement, and were younger at their first Child Protection substantiation. Differences were also identified in relation to offending, with Indigenous children being younger at their first police charge, and having a greater number of charges on average. Finally, the proportion of Indigenous children who had used 'hard' drugs such as ice, heroin and inhalants, was somewhat higher than that seen among non-indigenous children, though this difference only approached statistical significance.

#### 6.2.5 Educational exclusion and disengagement

While elevated rates of school exclusion and disengagement are typical among youth justice populations, both the case file analyses and key stakeholder consultations added substantial detail about cross-over children's educational experiences. Only 17% of the cross-over children in the current study were engaged in education or training, and 36% had a history of educational exclusion, which for around 8% of children commenced from primary school. School exclusion was more common among children with neurodevelopmental disabilities and mental health challenges. Difficulties were sometimes described by key stakeholders in enrolling cross-over children in school, a finding supported by case file evidence. These education-related findings echo those of a 2013 Victorian qualitative study, in which former cross-over children regularly described experiences of school transience and bullying, and one third reported specific learning difficulties<sup>206</sup>. Four of the 15 young people interviewed in that study described school exclusion commencing from primary school, and half recalled receiving specific classroom supports in primary school. This study's findings support the need to attend to the educational experiences of children with neurodevelopmental, behavioural and mental health difficulties. Given that just over one quarter of the sample were not notified to Child Protection before 10 years of age, strengthening supports through other universal services seems a necessary component of a broader strategy for responding to cross-over children.

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<sup>204</sup> Malvaso, C.G., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.

<sup>205</sup> Baidawi, S., Mendes, P., & Saunders, B. (2017). The complexities of cultural support planning for Indigenous children in and leaving out-of-home care: the views of service providers in Victoria, Australia. *Child and Family Social Work*, 22(2), 731-740.

<sup>206</sup> Mendes, P., Snow, P., & Baidawi, S. (2013). Young people transitioning from out-of-home care in Victoria: Strengthening support services for dual clients of Child Protection and Youth Justice – Phase Two report. Melbourne: Monash University.

### 6.2.6 Cumulative co-occurring challenges

Complexity in the co-occurring challenges seen among cross-over children, including neurodevelopmental and intellectual disabilities, mental health, substance abuse and behavioural challenges are reflective of youth justice samples more broadly<sup>207</sup>. The current study demonstrated the cumulative nature of cross-over children's co-occurring challenges, and positive correlations between multi-type maltreatment and various poor outcomes, including self-harm/suicidal ideation, trauma and attachment-related disorders, challenging behaviours, and 'hard' drug use. The proportion of cross-over children presenting with intellectual disabilities or borderline intellectual functioning (24%) was notably high, approximating that of the Victorian Youth Justice custodial population (26%)<sup>208</sup>. Regional variations were also observed, for instance 26% of cross-over children coming before the regional Children's Court had an intellectual disability, compared to 14% of cross-over children before the metropolitan Courts. While intellectual disability was largely diagnosed prior to Criminal Division involvement, for 30% of children diagnosis occurred after their first police charge. Beyond intellectual functioning, the presence of any neurodisability among children the sample (particularly among males), was also substantial. In the current study, intellectual disability was associated with a significantly younger age of first police charge, a finding which accords with previous research demonstrating an association between cognitive disability and a younger age of first police contact among 2,731 adults who had served time in New South Wales prisons<sup>209</sup>. The researchers found an even younger age of first police charge among those with both (comorbid) cognitive impairments and mental health disorders.

## 6.3 Factors relating to criminal justice system entry and entrenchment

This study confirms previous observations of the convergence of individual, environmental, and systemic factors associated with cross-over children's entry and entrenchment in the criminal justice system<sup>210</sup>.

### 6.3.1 Exposure to cumulative harm

The findings suggest a need for earlier and more intensive support to this group of children and families. While 43% of children had first been notified to Child Protection in their first two years, the study sample was fairly evenly divided between children who had been first substantiated before age 10 (52%), and those whose first substantiation was at 10 years or older (48%). Cumulative harm was apparent from the level of maltreatment recurrence (mean=7.7 notifications), multi-type maltreatment, and children's cumulative adversity scores. Children's exposure to further maltreatment (including physical, emotional, sexual abuse and neglect) in out-of-home care placements was also a concern.

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<sup>207</sup> See e.g. Kinner, S.A., Degenhardt, L., Coffey, C., Sawyer, S., Hears, S. & Patton, G. (2014). Complex health needs in the youth justice system: A survey of community-based and custodial offenders. *Journal of Adolescent Health, 54*, 521-526; Kenny, D. T. and P. K. Nelson (2008). Young offenders on community orders: Health, welfare and criminogenic needs. Sydney: Sydney University Press; See also Justice Health and Forensic Mental Health Network (2017). 2015 Young People in Custody Health Survey: Full Report. Sydney: Justice Health and Forensic Mental Health Network.

<sup>208</sup> The Youth Parole Board of Victoria. (2017). Youth Parole Board Annual Report 2016-17. Melbourne: State Government of Victoria.

<sup>209</sup> Baldry, E., Clarence, M., Dowse, L., & Trollor, J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system. *Journal of Policy and Practice in Intellectual Disabilities, 10*(3), 222-229.

<sup>210</sup> Mendes, P., Baidawi, S., & Snow, P. (2014). Transitioning from out-of-home care in Victoria: Strengthening support services for dual clients of child protection and youth justice. *Australian Social Work, 67*(1), 6-23.

Multi-type maltreatment in this group of children was associated with several adverse outcomes including self-harm, suicidal ideation/attempts, trauma and attachment-related disorders, challenging behaviour and 'hard' drug use. Many of these maltreatment-related outcomes were in turn associated with criminal justice system involvement, including earlier, more voluminous, and more violent offending. The findings also demonstrated that cross-over children with the poorest criminal justice outcomes were typically those notified to Child Protection earlier in life.

Findings related to early life substantiations and cumulative harm are in accord with recent South Australian longitudinal research, which found cross-over children evidenced greater maltreatment recurrence (substantiations), and maltreatment persistence (notifications/substantiations both prior to and after 12 years) compared to children solely involved with child protection services<sup>211</sup>. This same study also reported that child protection-involved youth with crime convictions had a significantly younger age of first substantiation compared to those with no convictions<sup>212</sup>. While the need for early life support is emphasised, one quarter of children in the current study were not notified to Victorian Child Protection services prior to their 10<sup>th</sup> birthday. This indicates that solely relying on early life Child Protection responses to disrupt these trajectories will not be effective for all cross-over children.

### 6.3.2 Insufficient late childhood and adolescent support

Early Child Protection intervention, where it occurred, was based around children's protective needs. Intervention typically consisted of short-term kinship care or parental supervision orders. Before age 10, 70% of cross-over children had never been placed in care, and OHC placements from late childhood onwards commonly occurred in the context of parental incapacity (e.g. due to parental substance abuse), ongoing maltreatment, parental relinquishment due to inability to manage the child's emotional and behavioural needs, and parent-child conflict. Reflecting these contexts, placement in OHC was more common among cross-over children with an intellectual disability, with other neurodevelopmental/neurological conditions, with any mental health diagnosis, and with specific mental health diagnoses related to mood disorders, trauma and attachment-related disorders and/or behavioural disorders.

The limited child protective intervention with adolescents was a key concern raised by study participants, and manifested in three ways. First, Child Protection services were seen as reluctant to intervene with children displaying risk-taking and challenging behaviours from late childhood onwards. Second, where intervention occurred, it predominantly resulted in residential care placement, which was seen to commonly inflate, rather than diminish children's existing criminogenic risks. Third, the closure or withdrawal of supports to adolescents approaching age 18 due to statutory limitations was also problematic. From a systems perspective, comparatively little enthusiasm was evident for intervening protectively in relation to children's self-harming and risk-taking behaviours in later childhood and early adolescence, compared to the willingness to implement criminal justice interventions when children's behaviours impact on the broader community. Prior cross-over children's research from the US has raised similar concerns about the limited child welfare intervention with children displaying behavioural challenges from late childhood onwards (either arising from intellectual

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<sup>211</sup> Malvaso, C. G., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.

<sup>212</sup> Ibid.

disability, neurodevelopmental disorders, and/or trauma and attachment-related conditions)<sup>213</sup>. Yet as the author of that study pointed out (p.169), “*child welfare remains the only resource for many vulnerable families struggling with behavioral [sic] issues*”, meaning it is incumbent on these systems to minimise progression to the criminal justice system of children facing behavioural and emotional regulation challenges.

Concerns regarding insufficient support also extend to children’s educational experiences. Like other cross-over children’s research<sup>214</sup>, the current study identified significant and early educational disruption relating to children’s family welfare, disability, emotional, mental and behavioural health challenges. At least 8% of children had experienced educational exclusion from primary school, yet responses to early educational challenges in this group were generally insufficient, or lacked integration with an overall plan to encourage school engagement. Cross-over children’s education was also generally discussed at less depth by key stakeholders compared to other domains such as Child Protection, Youth Justice or mental health. This again perhaps reflects lower integration of the education sector among those ‘at the table’ for cross-over children. Similarly, little research has specifically investigated early educational experiences and pathways of cross-over children, a surprising oversight in light of the substantial associations between educational disengagement, youth offending and recidivism. Recent US research identified that heightened educational risk was predictive of recidivism among cross-over children<sup>215</sup>. Likewise, an earlier 2010 report from the US Centre for Juvenile Justice reform identified that cross-over children’s schooling needs can easily “*go continually unaddressed*” as they “*float from system to system*”, and that poorly-managed schools may both incite and respond more punitively to children’s behavioural challenges<sup>216</sup>; that study (p.15) also noted that child welfare and youth justice agencies were not designed to provide or monitor education and academic performance, yet if these agencies are acting *in loco parentis* as substitute parents for this group, they become responsible for managing access to schooling. The authors emphasised the importance of early education, including quality educational services and support services, and genuine interagency collaboration supported by within agency and cross-agency leadership.

### 6.3.3 Early onset of criminal justice involvement

Key stakeholders described early onset of police involvement and rapid escalation of offending among some cross-over children. Case file data revealed that 41% of children were aged under 14 years at their first police charge, and 23% were sentenced prior to their 14<sup>th</sup> birthday. The current study also found that the peak age of initial police charges among cross-over children before the regional Court was 10 to 12 years, substantially younger than that observed among children before the metropolitan Courts (14 years). This was partly reflective of the higher proportion of Indigenous children, and

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<sup>213</sup> Ryan, J. P. (2012). Substitute care in child welfare and the risk of arrest: Does the reason for placement matter? *Child Maltreatment*, 17(2), 164-171.

<sup>214</sup> See e.g. Mendes, P., Snow, P., & Baidawi, S. (2013). *Young people transitioning from out of home care in Victoria: Strengthening support services for dual clients of Child Protection and Youth Justice - Phase Two Report*. Melbourne: Monash University. See also Herz, D., Ryan, J. P., & Bilchick, S. C. (2010). Challenges facing crossover youth: An examination of juvenile-justice decision making and recidivism. *Family Court Review*, 48(2), 305-321; Taylor, C. (2006). *Young people in care and criminal behaviour*. London: Jessica Kingsley Publishers.

<sup>215</sup> Lee, S. Y., & Villagrana, M. (2015). Differences in risk and protective factors between crossover and non-crossover youth in juvenile justice. *Children and Youth Services Review*, 58, 18-27.

<sup>216</sup> Leone, P., & Weinberg, L. (2010). *Addressing the unmet educational needs of children and youth in the juvenile justice and child welfare systems*. Washington, DC: Centre for Juvenile Justice Reform, Georgetown University.

children with an intellectual disability coming before the regional Court, groups which both had a significantly younger age of first police charge.

Cross-over children in the current study appeared around three times more likely to be first sentenced under the age of 14 compared to other Victorian children<sup>217</sup>. Prior studies also indicate a younger average age of initial criminal justice system involvement among cross-over children. For instance, national data from 1 July 2013 to 30 June 2017 show that among children aged 10 years at their first youth justice supervision, 68% were involved child protection systems during that same four year period, compared to 22.8% of those under youth justice supervision at age 17<sup>218</sup>. Likewise, a 2008-10 cross-sectional study of 160 children before the Criminal Court in NSW found those in out-of-home care were on significantly younger (on average by 9 months) compared to children in the non-care group<sup>219</sup>.

In the current study, a younger age of first police charge was associated with greater and cumulative maltreatment and adversity, including greater prevalence of neglect, exposure to household family violence, substance abuse and criminal justice system involvement, earlier Child Protection notifications and substantiations, and out-of-home care placement. Earlier first police charges were also associated with having cumulative co-occurring challenges, particularly intellectual disability, mental health, and behavioural challenges. These findings are in accord with those of a recent US study of 64,000 young offenders which found greater cumulative adverse childhood experiences among youth with an early onset of offending, even after accounting for various individual, familial, and personal history factors<sup>220</sup>. The earlier age of initial police involvement among cross-over children is important given its association with greater likelihood progression to the adult criminal justice system<sup>221</sup>.

### 6.3.5 Neglect

The current study found neglect to be a significant predictor of younger age of first police charge among cross-over children. A lack of supervision was observed among children who began offending while unsupervised outside the home, sometimes late into the night and with older youth and adults. Cases were seen whereby children missing for significant periods (e.g. a week or more) were not notified by parents or kinship caregivers to police. Some children's early offending related to 'crimes of necessity' (e.g. shoplifting) while running away from home to escape conflict, neglectful, or abusive circumstances. Further, neglect was often observed to be related to family conflict; 40% of cross-over children had been relinquished or kicked out of home, and even more were threatened with relinquishment or being kicked out. These findings are also in accord with previous Australian and US research which

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<sup>217</sup> Sentencing Advisory Council (2016). Reoffending by children and young people in Victoria. Melbourne: Sentencing Advisory Council.

<sup>218</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW.

<sup>219</sup> McFarlane, K. (2017). Care criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>220</sup> Baglivio, M.T., Wolff, K.T., Piquero, A.R. & Epps, N. (2015). The relationship between adverse childhood experiences (ACE) and juvenile offending trajectories in a juvenile offender sample. *Journal of Criminal Justice*, 43, 229-241.

<sup>221</sup> Chen, S., Matruggio, T., Weatherburn, D., & Hua, J. (2005). The transition from juvenile to adult criminal careers. *Crime and Justice Bulletin NSW, Contemporary Issues in Crime and Justice No. 86*. Sydney: Bureau of Crime Statistics and Research.

determined that neglect<sup>222</sup>, particularly ongoing neglect<sup>223</sup>, is a significant predictor of offending and recidivism among cross-over children.

Researchers from the US have proposed that neglect allegations during adolescence differ from those of younger children, and include acts of caregiver commission (for instance locking or kicking the child out of the home), as well as omission (e.g. supervisory neglect)<sup>224</sup>. Importantly, prior research has only considered neglect substantiated by child welfare agencies. Yet in the current study several instances of adolescent neglect were identified which were not assessed as meeting legislative thresholds of significant harm required for Child Protection intervention. This was more common among children deemed to have capacity to 'self-protect'. Such responses arguably introduce a level of systems neglect<sup>225</sup>, whereby adolescents in concerning circumstances (e.g. those who face significant family conflict, and display risk-taking behaviour including running away from home, moderate to severe substance misuse, challenging or early offending behaviour) may not receive an intensive response until their behaviour attracts serious Youth Justice sanctions.

#### 6.3.4 More violent and voluminous offending

Though prior studies have already noted the frequency with which cross-over children are charged with property offences (particularly criminal damage charges among children in residential care)<sup>226</sup>, the current study also found that most cross-over children had been charged with an offence against the person (86%). These figures are higher than those observed in the broader population of children before the Criminal Division of the Court. For instance, the Victorian Sentencing Advisory Council reported that among children sentenced in 2008-09, 20-35% had property/deception offences, and only 26% had offences against the person<sup>227</sup>. This finding is consistent with previous research linking physical abuse, multi-type maltreatment, and increased maltreatment severity with increased likelihood of perpetration of youth violence<sup>228</sup>.

Aside from the prevalence of violent offending, a subset of cross-over children were also observed to have a large volume of current and historical police charges. Key stakeholders referred to a 'rapid escalation' of offending seen among some cross-over children. Even among the study's cross-sectional sample, (around 20% of whom were aged under 15 years), half of the children were observed to have more than 26 current and prior charges. Cross-over children's volume of charges is proportionately higher than other Victorian children charged with offences. For instance, data from the Victorian Crime Statistics Agency (CSA) identified a small group of young offenders (1.6% of all children charged with

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<sup>222</sup> Malvaso, C.G., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.

<sup>223</sup> Ryan, J. P., Williams, A. B., & Courtney, M. E. (2013). Adolescent neglect, juvenile delinquency and the risk of recidivism. *Journal of Youth and Adolescence*, 42(3), 454-465.

<sup>224</sup> Ibid.

<sup>225</sup> Described by others, e.g. Cashmore, J. (2011). The link between child maltreatment and adolescent offending. *Family Matters*, 89, 31-41; McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>226</sup> Victoria Legal Aid. (2017). Care not Custody: A new approach to keep kids in residential care out of the criminal justice system. Melbourne: Victoria Legal Aid.

<sup>227</sup> The proportion of Victorian children sentenced with justice procedures offences and breaches of bail are also typically much lower (5-10%).

<sup>228</sup> Maas, C., Herrenkohl, T. I., & Sousa, C. (2008). Review of research on child maltreatment and violence in youth. *Trauma, Violence, & Abuse*, 9(1), 56-67.



offences born between 1996-1998) who were younger at their first police charge (mean age of 12), and whose volume of offending accounted for 24% of all alleged youth offences over an 8 year period<sup>229</sup>. On average this group of 'high' offenders had 77 offences recorded (compared to an average of 2-24 charges among children in the other offending trajectories).

Despite their relatively young age, 22% of children in the current study's cross-over sample had been charged with 77 offences or more. Children first charged between 10-12 years (21% of the current study sample) had an average number of 79 charges at their index CD matter, meaning that cross-over children are at least 13 times more likely to be classified in this 'high' offending group. Interestingly, the 'high' offending group identified in the CSA study were less likely to have violent charges, and more likely to have property-related charges. Conversely, cross-over children in the current study sample whose first police charge occurred prior to age 14 were significantly more likely to have a violent charge (offence against the person). Future research with longitudinal data relating to cross-over children may seek to further investigate this issue.

Cross-over children's deeper entrenchment in the criminal justice system also likely reflects their greater propensity to be charged with more violent and voluminous offending, resulting in their receipt of higher sentencing outcomes compared to other children before the Court (that is, a lower likelihood of being discharged, dismissed, diverted or fined, and greater likelihood of receiving a custodial sentence).

#### 6.3.6 Criminalisation of behavioural regulation challenges

Among cross-over children in the current study, early police charges were regularly acquired as a result of emotional and behavioural regulation challenges, for example perpetration of adolescent family violence in the home, and similar behaviours in residential care. These same challenges also contributed to children's school exclusion and poor peer relationships. While previous studies have often highlighted residential care-based charges among cross-over children<sup>230</sup>, the current study identified that such charges increased with cumulative time in residential care.

There was substantial overlap in the characteristics of children with challenging behaviours, adolescent family violence, and evidence of residential care-based charges (Table 4). Professionals attributed these outcomes to a combination of trauma, attachment, behavioural, and mental health challenges (most commonly behavioural disorders and trauma or attachment-related disorders) and disability (both intellectual disability and other neurodisability). There was also overlap between these challenges and substance misuse for some children, however substance misuse tended to be preceded by emotional and behavioural regulation challenges. For younger children, behavioural challenges underpinning these early offending contexts had little to do with antisocial peers; rather, emotional and behavioural regulation challenges had been present from early childhood, and the child simply grew up.

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<sup>229</sup> Sutherland, P., & Millstead, M. (2016). *Patterns of recorded offending behaviour amongst young Victorian offenders*. Melbourne: Victorian Crime Statistics Agency.

<sup>230</sup> See e.g. McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*. See also Shaw, J. (2016). Policy, practice and perceptions: Exploring the criminalisation of children's home residents in England. *Youth Justice*, 16(2), 147-161; Victoria Legal Aid. (2017). *Care not Custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne: Victoria Legal Aid; Hayden, C. (2010). Offending behaviour in care: is children's residential care a criminogenic environment? *Child & Family Social Work*, 15, 461-472.

Table 3. Characteristics of cross-over children associated with behavioural challenges, adolescent family violence incidents and residential care-based charges

	Behavioural challenges	Adolescent family violence	Residential care-based charges
Male gender	***		
Learning/communication disorder	*		+
Intellectual disability	*		*
Other neurodevelopmental/ neurological disorders <sup>1</sup>	***	**	*
Any mental health disorder	**	**	***
Mood disorder	*		*
Trauma/attachment-related disorder	*	*	*
ADD/ADHD	***	*	***
Behavioural disorder	***	***	*
'Emerging' personality disorder			*
Substance misuse	*		+
'Hard' drug use	*		***
Challenging behaviours	N/A	***	**

\* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$  + $p = .06$ . 1. 'Other' neurological and neurodevelopmental conditions include foetal alcohol spectrum disorder, autism spectrum disorder, Tourette syndrome, acquired brain injury, organic acquired memory disorder, and epilepsy.

These findings are in accord with Moffitt's developmental taxonomy theory, which describes subgroups of justice system-involved youth, including a small group of serious 'life-course persistent' offenders. This 'persistent' subgroup are understood to possess particular neuropsychological characteristics (e.g. in relation to executive function, attention, or aggression), influenced by a myriad of genetic, pre-birth and early life factors including poor prenatal nutrition, prenatal substance exposure, and deficits in post-birth stimulation or affection. When their particular needs are met with limited responsiveness, for instance in households facing significant adversity and parenting challenges, this group of children are understood to '*slowly and insidiously*' develop more entrenched behavioural challenges<sup>231</sup>.

There are a number of points constituting a vicious cycle with regard to this group of children. First, they are disproportionately located in families facing significant disadvantage, and where antisocial behaviours (e.g. use of violence) are present. Second, by virtue of their needs, such children and adolescents may be more demanding to care for, leading to more negative responses from caregivers and others (e.g. teachers), which further deny them the relational environments which could best ameliorate the challenges they face. This group are understood to differ from the larger cohort of 'adolescent-limited offenders', who engage in antisocial behaviour during adolescence only. Data arising in the current study, including findings relating to earlier onset, greater prevalence of violent offending, and greater volume of offending, suggest that the 'life-course persistent' offending profile is likely over-represented among cross-over children compared to the overall group of youth offenders.

<sup>231</sup> Moffitt, T. (2008). Adolescent-limited and life-course persistent antisocial behaviour: A developmental taxonomy. *Psychological Review*, 100(4), 674-701. See also Piquero, A. (2008). Taking stock of developmental trajectories of criminal activity over the life course. In: A. Liberman, ed., *The Long View of Crime: A Synthesis of Longitudinal Research*, 1st ed. New York: Springer-Verlag, pp. 23- 78.

The case file data indicate that in many instances neither parents nor residential care providers had the capacity to respond consistently and effectively to children's behavioural regulation challenges. This is supported by the observation that around 40% of children had been relinquished by a caregiver, often in relation to these concerns. Mental health services were unlikely to respond to these emotional and behavioural needs, but rather regarded them as related to disability and/or underlying trauma. In the absence of a more coordinated and supportive system for responding to behavioural regulation challenges in this group, caregivers (including parents, kinship and foster carers, and residential care providers) are left with no options outside of relinquishment or criminal justice responses.

A question repeatedly raised throughout the study was whether the criminal justice system is best-placed to respond to challenging behaviours, particularly for children under-supported in relation to disability, mental health, and trauma and attachment-related needs. In any case, the principle of *doli incapax* presumes that children aged under 14 years are incapable of having a 'guilty mind', unless demonstrated otherwise, potentially limiting criminal justice system intervention with the children at highest risk of poor criminal justice outcomes (i.e. those first charged at a young age). Even where young children are involved with Youth Justice, this system has no statutory ability to influence various welfare-related conditions which may contribute to recidivism (e.g. lack of adult supervision, ongoing maltreatment, placement with offending peers). This substantially strengthens the argument that coordinated responses alongside other sectors (e.g. child welfare, mental health, and disability) are vital for disrupting the trajectory of cross-over children. Examples were identified from both case files and key stakeholder consultations whereby mental health or (more commonly) disability services had intervened with cross-over children to provide an effective response (e.g. placement and/or intensive support), resulting in reduced charges to the child.

### 6.3.7 Substance misuse

The recorded prevalence of substance misuse among children in the current study (73%) is somewhat lower than that reported among the Victorian Youth Justice custodial population (87%)<sup>232</sup>, though higher than the reported level of substance use among a sample of 79 young people in OHC coming before a NSW youth Criminal Court (51%)<sup>233</sup>. In the current study, substance misuse was associated with several Child Protection-related factors (for instance being on a current Family Division Order, placement in residential care), mental and behavioural health factors (having any mental health diagnosis, having a mood, psychotic, personality, or behavioural disorder diagnosis), and absconding. A significant relationship was observed between children's exposure to cumulative adversity and their likelihood of substance misuse, and particularly 'hard' drug use.

Findings supported the understanding that substance misuse in this group of children is often a self-medication strategy for coping with acutely painful and challenging internal and external experiences, as reported in prior qualitative studies of cross-over children<sup>234</sup>. The relationship identified between substance abuse and cumulative adversity also echoes a previous US study of more than 17,000

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<sup>232</sup> The Youth Parole Board of Victoria. (2017). *Youth Parole Board Annual Report 2016-17*. Retrieved from Melbourne: The Youth Parole Board of Victoria.

<sup>233</sup> McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>234</sup> Baidawi, S., Mendes, P., & Snow, P. (2014). 'Setting them up to fail' - Systems responses to dual order Child Protection and Youth Justice clients. *Alternative Law Journal*, 39(1), 31-35.

individuals (the ACE study) which found that the odds of illicit drug use increased more than 4.5 times for people exposed to four or more adverse childhood experiences, a group which would include 78% of the cross-over children in the current study<sup>235</sup>. Severe levels of substance abuse, including use of ice, chroming and severe alcohol use were sometimes evident among the cross-over children's sample, and accessing alcohol and other drug detox and rehabilitation services for this group often presented a challenge, particularly due to waiting times and difficulties remaining in the service once admitted. Additionally, significantly lower levels of alcohol and other drug service access were seen among females in the sample.

Substance misuse, in turn, was associated with increased prevalence of all offence types, with the exception of property offences. Substance misuse was also more common among children with early offending (that is, those with charges before 14 years), and those with more voluminous offending. Four key relationships between substance misuse and offending were evident from case file data and stakeholder consultations: children offending in the context of drug and alcohol-related disinhibition; children being charged with drug-related offences; children offending to repay drug debts, often to older youth and adults; and children becoming involved in sexually exploitative relationships to access substances, through which they became exposed to, and involved in crime. These observations extend those of earlier Victorian research which identified disinhibition-related offending, and offending to fund substance use as two pathways linking substance misuse and cross-over children's criminal charges<sup>236</sup>.

#### 6.3.8 Offending networks

As with other children, relationships with offending peers were important to understanding some cross-over children's youth justice system entrenchment. Offending peers were encountered through school networks, in residential care, youth justice settings, while children were homeless, or running away from home and care, and sometimes through extended family and romantic relationships. Numerous relationships were observed between the children in the study sample, including sibling and extended family relationships, co-clients in residential care, co-offenders and romantic partner or ex-partner relationships; in several instances children were ordered not to associate with one or more other children in the sample.

While an adolescent desire for peer-group belonging is age-normative, this was understood to be intensified among cross-over children, owing to a lack of secure adult attachments, and their experiences of physical and emotional disconnection from family, a sense of 'home', and schooling. Some cross-over children were seen to reclaim a sense of family and community through peer networks, where belonging is founded on shared histories, and cemented via collective experiences of offending and criminal justice system involvement. These findings align with those of a recent US study which found cross-over children to be more socially isolated and to have greater delinquent peer associations

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<sup>235</sup> Anda, R. F., Felitti, V. J., Bremner, J. D., Walker, J. D., Whitfield, C., Perry, B. D., Dube, S. R., & Giles, W. H. (2006). The enduring effects of abuse and related adverse experiences in childhood - A convergence of evidence from neurobiology and epidemiology. *European Archives of Psychiatry and Clinical Neuroscience*, 256, 174-186. The authors largely included the same adversity-related factors as the current study (e.g. childhood emotional, physical, sexual abuse, household family violence, household substance abuse, household mental illness, household incarceration, parental separation or divorce).

<sup>236</sup> Baidawi, S., Mendes, P., & Snow, P. (2014). 'Setting them up to fail' - Systems responses to dual order Child Protection and Youth Justice clients. *Alternative Law Journal*, 39(1), 31-35.

compared to children solely involved with youth justice<sup>237</sup>. The authors of that particular study also suggested that the need for belonging was another potential driver for substance misuse in this cohort.

Cross-over children's youth, impressionability, desire for connection, belonging and adult approval were also seen to render them highly vulnerable to exploitation by older youth and adults. While the phenomena of sexual exploitation is acknowledged among at-risk youth, cross-over children's criminal exploitation by adults as identified in the current study is less apparent from previous research. Criminal exploitation by adults was also noted in the current study as an initial pathway by which some children became involved in offending, and warrants further investigation in this cohort.

### 6.3.9 Systemic disadvantage

A question arising when considering the over-representation of Child Protection-involved children in Youth Justice systems is the extent to which this over-representation reflects pre-existing vulnerability or 'risk', versus a result of systemic influences. This question is particularly important in the case of children placed in residential care, who are at the greatest risk of youth justice involvement, yet who also tend to bear the most historical adversity and resulting complexity.

The study's findings suggest that children with Child Protection involvement are disadvantaged at several stages of criminal justice system contact. Systemic disadvantage in this context can be understood as cross-over children's disproportionate exposure to criminogenic environments and the criminal justice system, compared to peers residing with family or a responsive guardian, coupled with a lack of Youth Justice system responsiveness to the unique needs of this group. Systemic disadvantage is identifiable across at least seven stages of cross-over children's trajectories:

- First, placement in residential care often exposes children to offending peers during a period of particular vulnerability surrounding peer acceptance. While criminal behaviour may also have occurred in children's homes, exposure to criminal behaviour in out-of-home care is systemically introduced. Children's vulnerability upon entering residential care was also heightened by a sense of anger, grief, disappointment or rejection, conditions likely to heighten emotional and behavioural challenges, and the need for peer acceptance.
- Second, as highlighted by several prior studies<sup>238</sup>, children's challenging behaviour within residential care is easily criminalised, particularly in the absence of a policy directive which supports consistency, a recommended approach, or oversight of responses in these settings.
- Third, this group of children are apparently regularly unsupported by a caring, consistent parental figure in their criminal justice system interactions, including those with lawyers, police and Courts. Aside from a lack of emotional care, lack of guardian support places children at greater risk of making decisions not in their best interest. Further, a lack of support by a caring guardian gives the impression – even if justified – of a child presenting with higher risk, potentially engendering more intensive criminal justice system responses (e.g. being

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<sup>237</sup> Lee, S. Y., & Villagrana, M. (2015). Differences in risk and protective factors between crossover and non-crossover youth in juvenile justice. *Children and Youth Services Review*, 58, 18-27.

<sup>238</sup> See e.g. Gough, D., & Hayden, C. (Eds.). (2010). *Implementing Restorative Justice in Residential Care*. Bristol: Policy Press. See also Taylor, C. (2006). *Young people in care and criminal behaviour*. London: Jessica Kingsley Publishers; Victoria Legal Aid. (2017). *Care not Custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne: Victoria legal Aid.

remanded or viewed as requiring youth justice supervision). This may amount at times to the use of the criminal justice system as a welfare response. This accords with previous US-based research identifying that child welfare-involvement resulted in youth receiving harsher youth justice dispositions after controlling for a range of factors including age, race, and the nature of offences<sup>239</sup>. As discussed in previous research<sup>240</sup>, Youth Justice involvement was observed at times, to generate a reduction in formal or informal child welfare support. This is contrary to what would be expected of a ‘good enough’ parent, that is, to increase rather than decrease support to a child involved with the criminal justice system.

- Fourth, the available evidence suggests that some cross-over children spend greater periods in custody due to challenges around identifying suitable community placements. A lack of suitable placements was observed in the current study, and prior studies<sup>241</sup>, for children in out-of-home care, as well as those remaining at home but whose family circumstances raise concerns for Youth Justice. Further, children discharged from out-of-home care face elevated risks of homelessness, potentially delaying release from custody, and also increasing their risk of reoffending<sup>242</sup>.
- Fifth, in accord with previous studies<sup>243</sup>, some cross-over children in out-of-home care, particularly those in residential care, appear to be subject to greater surveillance of criminal justice orders (bail etc.). This greater surveillance arises by virtue of police being alert to these higher-risk environments, and the policy requirement that Child Protection – rightly or wrongly – share information regarding offending or breaches with Youth Justice.
- Sixth, cross-over children also face systemic disadvantage in a criminal justice system in which positive outcomes are predicated on capacity to engage effectively with a variety of adults, including Magistrates, lawyers, Youth Justice professionals, police and other professionals delivering therapeutic and assessment services. Engagement capacities required for effectively negotiating current systems are disrupted and undermined both by cross-over children’s experiences of maltreatment, as well as their sequelae, for instance challenges with attachment disorders, emotional regulation, and language and communication. This is further compounded for children with disabilities and those lacking a supportive parental figure.
- Finally, despite a long-standing awareness of the greater vulnerability of this group to Youth Justice involvement, current systems lack any differential response to offending and Youth Justice involvement amongst cross-over children. A level of systemic thoughtlessness to this group of children exists, in that current criminal justice responses are better-suited to children residing with family, and those connected to a supportive adult. This systemic thoughtlessness contrasts with some international jurisdictions, including New Zealand<sup>244</sup> and certain US

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<sup>239</sup> Ryan, J. P., Herz, D., Hernandez, P. M., & Marshall, J. M. (2007). Maltreatment and delinquency: Investigating child welfare bias in juvenile justice processing. *Children and Youth Services Review*, 29, 1035-1050.

<sup>240</sup> See, e.g. Mendes, P., Baidawi, S., & Snow, P. (2014). Transitioning from out-of-home care in Victoria: Strengthening support services for dual clients of child protection and youth justice. *Australian Social Work*, 67(1), 6-23.

<sup>241</sup> See e.g. Cashmore, J. (2011). The link between child maltreatment and adolescent offending. *Family Matters*, 89, 31-41.

<sup>242</sup> See e.g. Stewart, A. & Hurren, E. (2017). Child maltreatment, homelessness and youth offending. *Child, Family, Communities Australia*. <https://aifs.gov.au/cfca/2017/10/04/child-maltreatment-homelessness-and-youth-offending>

<sup>243</sup> McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.

<sup>244</sup> See e.g. discussion of New Zealand’s Cross-over Children’s Court List in Bowles, J. (2015). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, pp. 58-59. See also Centre for Juvenile Justice Reform (2015). *The Crossover Youth Practice Model (CYPM): An Abbreviated Guide*. Washington, D.C.: Centre for Juvenile Justice Reform, Georgetown University.

jurisdictions, where specific strategies have been implemented with a view to improving cross-over children's experiences and outcomes.

The identification of systemic contributions to the over-representation of children from statutory Child Protection backgrounds in the criminal justice system does not deny the pre-existing vulnerability of this group. Rather, the evidence suggests that the risk of criminal justice involvement among this group of children is inadvertently compounded by systemic responses, which enhance, rather than diminish, the likelihood of further criminal justice system contact. These observations are in agreement with previous research which demonstrated that the YLS/CMI, a key youth justice risk assessment instrument, had poor predictive ability in a sample of cross-over children in the US. Reoffending observed among cross-over children in that study was higher than would have been predicted by their assessed risk levels<sup>245</sup>. This led the authors to suggest that traditional risk-assessment instruments which focus, for instance, on individual, familial, educational, and peer risk factors, are unable to account for systemic influences which may increase risk of reoffending, including a lack of adult support and advocacy, placement with offending peers, and the need to maintain antisocial or aggressive attitudes and behaviours in order to cope in unsafe living environments.

## 6.4 Reflections on the methodological approach

The mixed-methods approach adopted in the current study was valuable in its capacity to draw upon detailed person-level information, aggregate quantitative data, and qualitative key stakeholder findings.

### 6.4.1 Quantifying maltreatment

The challenge of quantifying child abuse and neglect is immense, and no perfect method exists. Previous research relating to cross-over children has often utilised Child Protection notifications and substantiations as indicators of child maltreatment<sup>246</sup>. Such approaches have been useful and necessary to conduct longitudinal examinations of the links between Child Protection and Youth Justice involvement. Conversely, the current study examined Child Protection notifications, substantiations and other assessments and reports to record children's exposure to abuse and neglect. This method, while time consuming, generated a different picture of children's maltreatment experiences than would have been gathered by reliance on Child Protection notifications and substantiations alone.

Children in the current study tended to be substantiated in relation to significant risk of physical harm, and emotional/psychological harm, reflecting Victorian trends; this is a markedly different pattern of substantiations to those observed in other Australian jurisdictions. For instance, 70% of Victorian child welfare substantiations in 2016-17 were primarily related to risk of emotional/psychological harm, compared to 24-46% in other Australian jurisdictions. Conversely, also in 2016-17, 3.5% of Victorian substantiations were primarily in relation to neglect, compared to between 28-43% in other Australian jurisdictions<sup>247</sup>. Notwithstanding the possibility of regional variation, the differences observed between Victorian and other Australian figures are unlikely to be solely reflective of differences in the actual

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<sup>245</sup> Onifade, E., Barnes, A., Campbell, C., Anderson, V., Petersen, J., & Davidson, W. (2014). Juvenile offenders and experiences of neglect: The validity of the YLS/CMI with dual-status youth. *Children and Youth Services Review*, 46, 112-119.

<sup>246</sup> See, e.g. Malvaso, C. G., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46. See also Stewart, A., Dennison, S., & Waterson, E. (2002). Pathways from child maltreatment to juvenile offending. *Trends & Issues in Crime and Criminal Justice*(241), 1-6; Stewart, A., Livingstone, M., & Dennison, S. (2008). Transitions and turning points: Examining the links between child maltreatment and juvenile offending. *Child Abuse & Neglect*, 32, 51-66.

<sup>247</sup> AIHW (2018). Child Protection 2016-17 (supplementary Table S9). Canberra: AIHW.

nature of maltreatment and risk experienced by children. Rather, they most likely reflect jurisdictional differences in child welfare legislation, processes and practices.

Furthermore, it was identified that Child Protection substantiations were not always observed to be an accurate indicator of child maltreatment in the Victorian context, as they may substantiate a *significant risk of harm*, rather than *actual maltreatment*. For instance, *significant risk of physical harm* may be substantiated in relation to adolescent risk-taking behaviour (e.g. substantial substance abuse in relation to which parents are unable or unwilling to provide boundaries), and therefore may not always be indicative of actual *physical abuse*, per se. Similarly, as discussed previously risk of sexual harm may be substantiated in relation to a child being in the company of a registered sex offender, which may not be indicative of actual sexual abuse. As a result of these factors, reliance on Child Protection substantiations as an indicator of maltreatment arguably presents issues relating to validity. For such reasons, the current study required these to be supplemented with case file descriptions detailing actual harms to which children were exposed.

#### 6.4.2 Study limitations

While this study covered substantial thematic ‘ground’ in relation to cross-over children, it is not without limitations. Firstly, the approach did not include the voices and perspectives of children and young people, though these have been highlighted by previous Victorian and international studies<sup>248</sup>. Second, given that this group of children were born between 10 and 20 years ago their trajectories, in part, relate to previous socio-economic and social welfare conditions and responses, rather than impacts of recent policy and practice amendments (e.g. relating to child protection, mental health, family violence, or youth justice). Other limitations primarily concern restrictions in the data obtainable from case files, for instance:

- As with any research utilising secondary mining and analysis of clinical data, study findings are limited by the validity and reliability of information recorded in case files<sup>249</sup>; as such findings concerning characteristics of cross-over children and their families have consistently been presented in terms of minimum prevalence levels;
- The incapacity to capture extra-jurisdictional Child Protection involvement is already noted as a limitation of the current study;
- Data relating to placement stability (e.g. number of placements, longevity of placements) were unable to be obtained from case files. Previous US research has demonstrated significant links between out-of-home care placement instability and offending among young males particularly<sup>250</sup>;
- Data relating to adolescent family violence were only captured manually from case files, limiting the capacity to draw more formalised conclusions in this area. Future research may seek to link Child Protection, offending, and family violence intervention order data to better

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<sup>248</sup> See e.g. Mendes, P., Snow, P., & Baidawi, S. (2013). *Young people transitioning from out of home care in Victoria: Strengthening support services for dual clients of Child Protection and Youth Justice - Phase Two Report*. Melbourne: Monash University. See also Taylor, C. (2006). *Young people in care and criminal behaviour*. London: Jessica Kingsley Publishers.

<sup>249</sup> Epstein, I. (2010). *Clinical Data-Mining: Integrating Practice and Research*. New York: Oxford University Press.

<sup>250</sup> Ryan, J. P., & Testa, M. F. (2005). Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability. *Children and Youth Services Review*, 27(3), 227-249. See also Cusick, G., Courtney, M. E., Havlicek, J., & Hess, N. (2010). *Crime during transition to adulthood: How youth fare as they leave out-of-home care*. Washington, D.C.: National Institute of Justice.



understand the role of adolescent family violence in precipitating cross-over children's entry into the out-of-home care and Youth Justice systems;

- Data relating to Secure Welfare Services involvement were primarily available in relation to Court-directed interim accommodation placements, as opposed to that directed by Child Protection services. Further investigations into the use of secure care with cross-over children should endeavour to access more complete data in this area.

Resource constraints also prevented a more detailed examination of cross-over children subgroups. Future analyses may aim to examine the trajectories of subgroups of children in greater detail, particularly those of young females, Indigenous young people, young people with intellectual disabilities, seriously and persistently offending cross-over children, and cross-over children from rural and regional areas.

Finally, while the study approach permitted the examination of factors leading to offending, it did not improve understanding of the factors supporting desistance among cross-over children. Several examples were seen in which enhanced placement stability and suitability, and relational connectedness (including to community and culture, and via positive family and romantic relationships) appeared to be instrumental in promoting desistance. These factors may warrant exploration in future research regarding cross-over children's desistance from offending.

## 6.5 Study implications

The study's findings suggest a range of strategies may be necessary for preventing, diverting and responding to cross-over children's criminal justice system involvement.

- **Prevention: The need for improved family support.** The study's key implication is the importance of strengthening early support and, where warranted, statutory intervention with children and families. This is particularly the case for children involved in early offending, who tend to experience the greatest early life adversity, and the poorest justice-related outcomes. Support and intervention are needed in relation to preventing maltreatment (particularly neglect) and other harms, responding to educational needs, trauma, mental and behavioural health challenges, and disability. Strengthening service system responses (e.g. child and family welfare, education, disability, and child mental and behavioural health services) prior to the age of 10 years is necessary in order to avert the trajectory cross-over children most at-risk of poor outcomes. Early support requires ensuring the appropriate provisions not only for children, but also for their families. Systemic failure to support the most vulnerable and marginalised parents and families undoubtedly has a disproportionate impact on this group of children.

Early support with children entails both early life support for those known to Child Protection in the first years of life (including protective intervention where necessary), and ongoing support throughout childhood, particularly for children at risk of marginalisation and parental relinquishment. The concerns often requiring attention in these cases are not necessarily those of greatest priority for Child Protection services, but rather relate to the impact of child neglect and cumulative non-lethal harm, as well as entrenched parent-adolescent conflict.

Adequate provision of specialist child and adolescent disability/neurodisability, behavioural health, and mental health programs and services is necessary, including culturally-appropriate programs and services for Indigenous and culturally and linguistically diverse children and families. Improved support for adolescent-parent conflict, including managing risk-taking behaviour, would also be of likely benefit for reducing parental relinquishment among this group. Aside from welfare and clinical services, strategies to improve the social inclusion of at-risk children would be beneficial. This includes more coordinated educational support for children whose circumstances or challenges increase their risk of school exclusion.

- **Diversion: Reconsider responses to early offending.** As a result of their over-representation among those with early police involvement, responses to early offending disproportionately impact on cross-over children, particularly Indigenous children, who are further over-represented among younger cross-over children. Rates of early offending are ramped up by the minimum age of criminal responsibility which, at 10 years old Australia-wide, is below that recommended under the United Nations' Conventions on the Rights of the Child. This draws censure from Amnesty International, the Law Council of Australia, and the Royal Commission into the Protection and Detention of Children in the Northern Territory<sup>251</sup>.

Criminalisation of young children arguably diverts responsibility and resources from social welfare and other support responses, and stigmatises an already vulnerable group of children. The criminal justice system, through the application of the principle of *doli incapax*, as well as graduated responses to children's offending, has limited capacity to intensively support 'early offending' children.

The study also raises the need to examine current responses to two early offending contexts for cross-over children: adolescent family violence, and residential care-based offending. In these contexts conduct regarded as challenging behaviour in a younger child begins to attract criminal justice consequences. Consistent, collaborative and therapeutic responses which enhance children's emotional and relational skills and connectedness are recommended, based on the study findings. The implementation of a state-wide protocol for responding to residential care-based offending, and targeted diversionary schemes to support children (and families) who come before the justice system through these pathways are recommended by this study and previous reports<sup>252</sup>. There are precedents for the introduction of targeted responses in residential care (e.g. protocols, restorative justice processes) in other jurisdictions<sup>253</sup>.

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<sup>251</sup> Law Council of Australia. 2017. Australia's draft report to the Committee on the Convention on the Rights of the Child. Canberra: Law Council of Australia.

<sup>252</sup> See e.g. Mendes, P., Snow, P., & Baidawi, S. (2014). *Good practice in reducing the over-representation of care leavers in the youth justice system*. Melbourne: Monash University; Savvas, E., & Jeronimus, A. (2017). Troubled teens: Adolescent family violence requires a unique legal and service system response. *Law Institute Journal, April*, 40-43.

<sup>253</sup> See e.g. NSW Ombudsman. (2016). *Joint protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system*. Sydney: NSW Ombudsman. See also Gough, D., & Hayden, C. (Eds.). (2010). *Implementing Restorative Justice in Residential Care*. Bristol: Policy Press.

- **Responses: Develop differential youth justice responses for cross-over children.** This study, like previous Victorian research<sup>254</sup>, found a lack of differential justice system response to Child Protection-involved children. This is inconsistent with efforts to enhance justice system responsiveness to other over-represented groups of children and young people, including Indigenous children, and those with intellectual disabilities. Key stakeholders emphasised the need for holistic responses for the group of children concurrently involved in both Divisions of the Court. Several differential responses were suggested including: a cross-over children's Court List<sup>255</sup> for children concurrently involved in the Family and Criminal Divisions, increased involvement of Child Protection in the Criminal Division of the Children's Court, expanding Diversion options (varying levels of intensity and duration), delivering Youth Justice secondary consultation to residential care environments or care teams, and having dedicated cross-over children's workers.

The importance of better-supporting cross-over children is strengthened by this study's findings that this group of children are overall younger, more violent, and more persistently offending youth. The complexity of their support needs reinforces the necessity of a whole-of-government response to averting the care to custody trajectory. Ultimately, for those children at the nexus of child protection and criminal justice systems, it remains for the adults in their lives to generate responses to children's needs and deeds which will most greatly benefit this group of children and the broader community, now and into the future.

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<sup>254</sup> Mendes, P., Snow, P. & Baidawi, S. (2014). *Good practice in reducing the over-representation of care leavers in the youth justice system*. Melbourne: Monash University.

<sup>255</sup> The Crossover Children's Court List in the New Zealand Youth Courts provides a precedent for this model, and the recommendation for such a list has arisen in previous Victorian research, see Bowles, J. (2015). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, p. 59, 61.

## References

- Anda, R.F., Felitti, V.J., Bremner, J.D., Walker, J.D., Whitfield, C., Perry, B.D., Dube, S.R., & Giles, W.H. (2006). The enduring effects of abuse and related adverse experiences in childhood - A convergence of evidence from neurobiology and epidemiology. *European Archives of Psychiatry and Clinical Neuroscience*, 256, 174-186.
- Australian Institute of Health and Welfare (AIHW). (2017). Child Protection Australia 2015-16. Canberra: AIHW.
- AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW.
- Baglivio, M.T., Wolff, K.T., Piquero, A.R. & Epps, N. (2015). The relationship between adverse childhood experiences (ACE) and juvenile offending trajectories in a juvenile offender sample. *Journal of Criminal Justice*, 43, 229-241.
- Baidawi, S., Mendes, P., & Snow, P. (2014). 'Setting them up to fail' - Systems responses to dual order Child Protection and Youth Justice clients. *Alternative Law Journal*, 39(1), 31-35.
- Baidawi, S., Mendes, P., & Saunders, B. (2017). The complexities of cultural support planning for Indigenous children in and leaving out-of-home care: the views of service providers in Victoria, Australia. *Child and Family Social Work*, 22(2), 731-740.
- Bala, N., Finlay, J., DeFilippis, R. & Hunter, K. (2015). Child Welfare Adolescents & the Youth Justice System: Failing to Respond Effectively to Cross-over Youth. *Canadian Criminal Law Review*, 19(1), 129-151.
- Baldry, E., Clarence, M., Dowse, L. & Trollor, J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system. *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229.
- Bowles, J. (2015). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness*.  
[www.churchilltrust.com.au/media/fellows/Bowles\\_J\\_2014\\_Treatment\\_for\\_young\\_people\\_suffering\\_substance\\_abuse\\_and\\_mental\\_illness.pdf](http://www.churchilltrust.com.au/media/fellows/Bowles_J_2014_Treatment_for_young_people_suffering_substance_abuse_and_mental_illness.pdf)
- Cashmore, J. (2011). The link between child maltreatment and adolescent offending. *Family Matters*, 89, 31-41.
- Centre for Juvenile Justice Reform (2015). *The Crossover Youth Practice Model (CYPM): An Abbreviated Guide*. Washington, D.C.: Centre for Juvenile Justice Reform, Georgetown University. <http://cjjr.georgetown.edu/wp-content/uploads/2015/09/CYPM-Abbreviated-Guide.pdf>
- Chen, S., Matruglio, T., Weatherburn, D. & Hua, J. (2005). The transition from juvenile to adult criminal careers. *Crime and Justice Bulletin NSW, Contemporary Issues in Crime and Justice No. 86*. Sydney: Bureau of Crime Statistics and Research. *Children, Youth and Families Act 2005* (Vic) (Austl.).
- Commonwealth Government. (2017). Royal Commission into the Protection and Detention of Children in the Northern Territory Final Report. Barton, ACT: Commonwealth Government.
- Cusick, G., Courtney, M. E., Havlicek, J. & Hess, N. (2010). *Crime during transition to adulthood: How youth fare as they leave out-of-home care*. Washington, D.C.: National Institute of Justice.
- Department of Health and Human Services (2016). Protocol between child protection and youth justice. Melbourne: State Government of Victoria.  
<http://www.cpmanual.vic.gov.au/sites/default/files/Child%20protection%20and%20youth%20justice%20protocol%20Aug%202016.doc.pdf>
- Department of Health and Human Services (2017). Child protection orders. <https://services.dhhs.vic.gov.au/child-protection-orders>.
- Disability Act 2006* (Vic) (Austl.).
- Drake, B. & Jonson-Reid, M. (2013). Poverty and Child Maltreatment. In J. Korbin & R. Krugman (Eds.), *Handbook of Child Maltreatment* (pp. 131-148). Dordrecht: Springer.
- Epstein, I. (2010). *Clinical Data-Mining: Integrating Practice and Research*. New York: Oxford University Press.
- Gough, D. & Hayden, C. (Eds.). (2010). *Implementing Restorative Justice in Residential Care*. Bristol: Policy Press.

- Halemba, G.J., Siegel, G., Lord, R.D. & Zawacki, S. (2004). Arizona dual jurisdiction study: Final report. Pittsburg, PA: National Center for Juvenile Justice.
- Hamdan, S., Melhem, N.M., Porta, G., Song, M.S. & Brent, D.A. (2013). Alcohol and substance abuse in parentally bereaved youth. *The Journal of Clinical Psychiatry*, 74(8), 828-833.
- Hayden, C. (2010). Offending behaviour in care: is children's residential care a criminogenic environment? *Child & Family Social Work*, 15, 461-472.
- Herz, D., Ryan, J.P., & Bilchick, S. C. (2010). Challenges facing crossover youth: An examination of Juvenile-Justice decision making and recidivism. *Family Court Review*, 48(2), 305-321.
- Justice Health and Forensic Mental Health Network (2017). 2015 Young People in Custody Health Survey: Full Report. Sydney: Justice Health and Forensic Mental Health Network.  
<http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>
- Kenny, D.T. & Nelson, P. K. (2008). Young offenders on community orders: Health, welfare and criminogenic needs. Sydney: Sydney University Press.
- Kinner, S.A., Degenhardt, L., Coffey, C., Sawyer, S., Hearps, S. & Patton, G. (2014). Complex health needs in the youth justice system: A survey of community-based and custodial offenders. *Journal of Adolescent Health*, 54, 521-526.
- Law Council of Australia. 2017. Australia's draft report to the Committee on the Convention on the Rights of the Child. Canberra: Law Council of Australia.
- Lee, S.Y. & Villagrana, M. (2015). Differences in risk and protective factors between crossover and non-crossover youth in juvenile justice. *Children and Youth Services Review*, 58, 18-27.
- Leone, P. & Weinberg, L. (2010). *Addressing the unmet educational needs of children and youth in the juvenile justice and child welfare systems*. Washington, DC: Centre for Juvenile Justice Reform, Georgetown University.
- Lynch, M., Buckman, J., & Krenske, L. (2003). Youth Justice: Criminal Trajectories. *Trends & Issues in Crime and Criminal Justice* (265), 1-6. Tarolla, S. M., Wagner, E. F., Rabinowitz, J., & Tubman, J. G. (2002). Understanding and treating juvenile offenders: A review of current knowledge and future directions. *Aggression and Violent Behavior*, 7, 125-143.
- Maas, C., Herrenkohl, T.I. & Sousa, C. (2008). Review of research on child maltreatment and violence in youth. *Trauma, Violence, & Abuse*, 9(1), 56-67.
- Malvaso, C.G., Delfabbro, P. & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.
- McFarlane, K. (2018). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology*, 51(3), 412-433.
- Mendes, P., Johnson, G., & Moslehuddin, B. (2011). *Young people leaving state out-of-home care: Australian policy and practice*. Melbourne: Australian Scholarly Publishing Press.
- Mendes, P., Snow, P., & Baidawi, S. (2013). *Young people transitioning from out of home care in Victoria: Strengthening support services for dual clients of Child Protection and Youth Justice - Phase Two Report*. Melbourne: Monash University.
- Mendes, P., Snow, P. & Baidawi, S. (2014). *Good practice in reducing the over-representation of care leavers in the youth justice system*. Melbourne: Monash University.
- Mendes, P., Baidawi, S. & Snow, P. (2014). Transitioning from out-of-home care in Victoria: Strengthening support services for dual clients of child protection and youth justice. *Australian Social Work*, 67(1), 6-23.
- Moffitt, T. (2008). Adolescent-limited and life-course persistent antisocial behaviour: A developmental taxonomy. *Psychological Review*, 100(4), 674-701.
- New South Wales General Purpose Standing Committee No 2. (2017). Child Protection. Sydney: NSW Parliament.
- New South Wales Ombudsman. (2016). *Joint protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system*. Sydney: NSW Ombudsman.

- Ogloff, J. & Armytage, P. (2017). *Meeting Needs and Reducing Reoffending - Youth Justice Review and Strategy*. Melbourne: Victorian Government.
- Onifade, E., Barnes, A., Campbell, C., Anderson, V., Petersen, J. & Davidson, W. (2014). Juvenile offenders and experiences of neglect: The validity of the YLS/CMI with dual-status youth. *Children and Youth Services Review*, 46, 112-119.
- Piquero, A. (2008). Taking stock of developmental trajectories of criminal activity over the life course. In: A. Liberman, ed., *The Long View of Crime: A Synthesis of Longitudinal Research*, 1st ed. New York: Springer-Verlag, pp. 23-78.
- Ryan, J.P. & Testa, M.F. (2005). Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability. *Children and Youth Services Review*, 27(3), 227-249.
- Ryan, J.P., Herz, D., Hernandez, P.M. & Marshall, J.M. (2007). Maltreatment and delinquency: Investigating child welfare bias in juvenile justice processing. *Children and Youth Services Review*, 29, 1035-1050.
- Ryan, J.P. (2012). Substitute care in child welfare and the risk of arrest: Does the reason for placement matter? *Child Maltreatment*, 17(2), 164-171.
- Ryan, J.P., Williams, A.B. & Courtney, M.E. (2013). Adolescent neglect, juvenile delinquency and the risk of recidivism. *Journal of Youth and Adolescence*, 42(3), 454-465.
- Savvas, E. & Jeronimus, A. (2017). Troubled teens: Adolescent family violence requires a unique legal and service system response. *Law Institute Journal*, April, 40-43.
- Shaw, J. (2016). Policy, practice and perceptions: Exploring the criminalisation of children's home residents in England. *Youth Justice*, 16(2), 147-161.
- Stanley, E. (2017). From care to custody: Trajectories of children in post-war New Zealand. *Youth Justice*, 17(1), 57-72.
- Steering Committee for the Review of Government Service Provision (2017). *Report on Government Services 2017*. Canberra: Productivity Commission.
- Stewart, A., Dennison, S. & Waterson, E. (2002). Pathways from child maltreatment to juvenile offending. *Trends & Issues in Crime and Criminal Justice*, 241, 1-6.
- Stewart, A., Livingstone, M., & Dennison, S. (2008). Transitions and turning points: Examining the links between child maltreatment and juvenile offending. *Child Abuse & Neglect*, 32, 51-66.
- Stewart, A. & Hurren, E. (2017). Child maltreatment, homelessness and youth offending. *Child, Family, Communities Australia*. <https://aifs.gov.au/cfca/2017/10/04/child-maltreatment-homelessness-and-youth-offending>
- Sutherland, P. & Millstead, M. (2016). *Patterns of recorded offending behaviour amongst young Victorian offenders*. Melbourne: Victorian Crime Statistics Agency.
- Taylor, C. (2006). *Young people in care and criminal behaviour*. London: Jessica Kingsley Publishers.
- The Youth Parole Board of Victoria (2017). *Youth Parole Board Annual Report 2016-17*. Melbourne: State Government of Victoria. <https://www.justice.vic.gov.au/home/justice+system/youth+justice/youth+parole+board+annual+report>
- Victoria Legal Aid (2017). *Care not Custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne: Victoria Legal Aid.
- Victorian Sentencing Advisory Council (2016). *Reoffending by Children and Young People in Victoria*. Melbourne: Sentencing Advisory Council.
- Victorian Sentencing Advisory Council (2018). Sentencing outcomes in the Children's Court <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-childrens-court>
- Victoria State Government (2017). Adolescent Family Violence. <https://services.dhhs.vic.gov.au/adolescent-family-violence>
- World Health Organisation and International Society for Prevention of Child Abuse and Neglect (IPSCAN) (2006). Preventing child maltreatment: a guide to taking action and generating evidence. Geneva: World Health Organisation. [http://www.who.int/violence\\_injury\\_prevention/publications/violence/child\\_maltreatment/en/](http://www.who.int/violence_injury_prevention/publications/violence/child_maltreatment/en/)

## Appendix 1: Victorian Family Division Orders<sup>256</sup>

**Interim accommodation order (IAO):** A protection application has been issued and the Court has decided an interim order is needed to keep the child safe until it determines the application. This order is about where the child must live until the next court date. It will usually include conditions.

**Undertaking (UTK):** The Court has decided that a child is in need of protection and that future risks can be sufficiently managed by the parent and child with community support. The undertaking may include conditions. The Department of Health and Human Services does not stay involved when an undertaking is made.

**Family preservation order (FPO):** The Court has decided that a child is in need of protection and can safely stay in their parents' care while the protective concerns are being addressed. The child will live with one or both parents with no change to parental responsibility for the child. The department has to supervise the child. The objective is to help the family to make changes needed to keep the child safe at home so the family can stay together permanently. This order will usually include conditions.

**Family reunification order (FRO):** The Court has decided that a child is in need of protection and cannot safely stay in their parents' care while the protective concerns are being addressed. This order grants parental responsibility for the child to the Secretary of the Department of Health and Human Services (the department), with the limitation that parents' agreement is needed about major long-term issues. It will usually include conditions. The child will stay in out of home care and the objective is for the child to be reunified with their parent/s once this has happened, and within 12 months, or up to 24 months where permanent reunification is likely by then.

**Care by Secretary order (CBSO):** The Court has decided that family reunification will not be achieved in a timely way for the child, or the child has been in out of home care for 24 months and still cannot safely return to their parents' care. Under this order, the Secretary of the Department of Health and Human Services (the department) has parental responsibility for the child, to the exclusion of all others, for two years. This means the department is responsible for the child's care and wellbeing and for all decisions concerning them. Usually, the objective is to find a permanent or long-term carer for the child, preferably with extended family, or if not, with another family as soon as possible. In exceptional circumstances, the objective may still be family reunification.

**Long-term care order (LTCO):** The Court has decided the child is in need of long-term care and there is a suitable carer available to raise the child. Under this order the Secretary of the Department of Health and Human Services (the department), has parental responsibility for the child, to the exclusion of all others, until the child's 18th birthday. This means the department is responsible for supporting the child's carer to look after the child until they grow up, and for all decisions concerning the child.

**Permanent care order (PCO):** The Court has found proposed permanent carers suitable to have parental responsibility for the child to the exclusion of all others, including the Secretary of the Department of Health and Human Services. Under this order the carers are the permanent care parents of the child, and have all the duties, powers, responsibilities and authority that parents have in relation to the child until the child's 18th birthday. The order will usually include conditions.

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<sup>256</sup> Information obtained from <https://services.dhhs.vic.gov.au/child-protection-orders>, viewed 17<sup>th</sup> May 2018.

## Appendix 2: Logistic regression analyses of substance abuse and parental death

### Substance misuse – Logistic regression

Variable	B	S.E.	Wald	Exp(B)	p	95% CI for Exp(B)	
						Lower	Upper
Current age	.219	.087	6.311	1.244	<b>.012</b>	1.049	1.476
Parental death	.708	.329	4.627	2.030	<b>.031</b>	1.065	3.869
Challenging behaviours	.576	.319	3.264	1.780	.071	0.952	3.325
Mental health diagnosis	1.473	.296	24.799	4.364	<b>.000</b>	2.444	7.793
Constant	-5.509	1.489	13.691	0.004	.000		

### Hard drug use (ice, other amphetamines, heroin, inhalants) – Logistic regression

Variable	B	S.E.	Wald	Exp(B)	p	95% CI for Exp(B)	
						Lower	Upper
Current age	.169	.089	3.604	1.184	<b>.058</b>	.995	1.409
Parental death	1.076	.431	6.216	2.932	<b>.013</b>	1.259	6.829
Challenging behaviours	.446	.315	2.001	1.562	.157	.842	2.898
Mental health diagnosis	1.281	.293	19.085	3.602	<b>.000</b>	2.027	6.400
Constant	-2.917	1.474	3.918	.054	.048		



### Appendix 3: Logistic regression analysis of residential care-based charges

Variable	B	S.E.	Wald	Exp(B)	p	95% CI for Exp(B)	
						Lower	Upper
Current age	-.331	.130	6.452	.718	.011	.556	.927
Cumulative time in residential care (<6m, 6<18m, 18m+)	.729	.263	7.676	2.073	.006	1.238	3.473
Constant	3.875	1.989	3.793	48.168	.051		

## Appendix 4: Factors associated with offending outcomes

### First charge under 14 years – Logistic regression

Variable	Reference category	Indicator	Exp(B)	Wald	p	95% CI for Exp(B)	
						Lower	Upper
Neglect	No	Yes	2.234	3.947	<b>.047</b>	1.011	4.938
Cumulative maltreatment types	(0-4)		1.141	.742	.389	.846	1.539
Family violence	No	Yes	1.180	.191	.662	.562	2.476
Familial substance abuse	No	Yes	1.728	2.003	.157	.810	3.687
Familial criminal justice system involvement	No	Yes	1.307	.753	.386	.714	2.393
Age of first notification	Nil		.999	.050	.823	.993	1.006
Age of first substantiation	Nil		1.005	2.591	.107	.999	1.010
Cumulative co-occurring challenges	(0-9)		.876	3.188	.074	.757	1.013

### Total number of charges – Linear regression

Variable	B	SE(B)	$\beta$	t	p
Age	11.470	1.959	.329	5.856	<b>.000</b>
Male gender	20.043	6.681	.168	3.000	<b>.003</b>
Neglect	2.800	6.094	.023	.459	.646
Parental death >10 years	26.332	11.024	.121	2.389	<b>.018</b>
First police charge <14 years	46.512	6.257	.418	7.433	<b>.000</b>
School exclusion	4.450	6.215	.039	.716	.475
Neurodevelopmental/neurological disorder (excluding intellectual disability)	1.416	6.668	.013	.212	.832
Mental health diagnosis	.405	6.880	.004	.059	.953
Trauma and attachment-related disorder	4.829	7.601	.035	.635	.526
Behavioural Disorder	8.768	7.959	.065	1.102	.272
Substance misuse	20.334	6.689	.164	3.040	<b>.003</b>
Challenging behaviours	7.963	6.956	.064	1.145	.253
Residential care > 18 months	15.433	7.280	.117	2.120	<b>.035</b>

### Offences against the person – Logistic regression

Variable	Reference category	Indicator	Exp(B)	Wald	<i>p</i>	95% CI for Exp(B)	
						Lower	Upper
Gender	Female	Male	2.407	4.694	<b>.030</b>	1.087	5.327
Age at first charge	Nil		.605	12.601	<b>.000</b>	.458	.798
Substance misuse	No	Yes	1.510	.753	.385	.595	3.832
Hard drug use	No	Yes	2.805	3.568	.059	.962	8.180
Challenging behaviours	No	Yes	1.468	.698	.403	.597	3.608
Cumulative co-occurring challenges	(0-9)		1.006	.002	.965	.774	1.307