Out-of-Home Care

Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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