

Submission: Queensland Productivity Commission Inquiry: *Imprisonment and Recidivism*

Executive summary

This submission addresses particular aspects of the Terms of Reference, as follows:

- evidence about the causal factors underlying trends in the rate of imprisonment;
- the factors driving **Aboriginal and Torres Strait Islander** imprisonment and recidivism and options to improve matters;
- the factors driving the imprisonment and recidivism of **women** and options to improve matters;
- factors affecting **youth offending** and corresponding imprisonment rates and options to improve matters;
- measures of prisoner recidivism rates, trends in recidivism and causes of these trends;
- the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime;
- the effectiveness of programs and services in Australia and overseas to reduce the number of people in and returning to prisons, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners; and
- barriers to potential improvements and how these barriers could be lowered.

It seeks to highlight a key issue that has affected thousands of people involved with the criminal justice system – the process and outcomes by which children **in out-of-home-care (OOHC)** become involved with the criminal justice system.

Of particular concern and relevance to the current Inquiry are three separate but connected cohorts:

- Prisoners with direct childhood experience of OOHC;
- Prisoners with familial/intergenerational experience of OOHC; and
- Prisoners whose own child/ren have experience of OOHC

Successive governments have acknowledged that the adverse childhood experiences can have a long-lasting and devastating impact. This is reflected in the Australian Parliament's succession of national apologies which specifically recognised the harm done to people by the OOHC system: see for example, the 2008 *Apology to the Stolen Generations*¹, the 2009

¹ 'Apology to Australia's Indigenous Peoples' (Commonwealth Parliamentary Debates 13 February 2008).

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*Apology to the Forgotten Australians*² and the recent 2018 *National Apology to Victims and Survivors of Institutional Child Abuse*³. As the apologies acknowledged, for many people, placement in the OOHC system exposed them to abuse and institutional neglect, which in turn led to a criminal record, increased the chances of poverty, unemployment and substance abuse, and added to the likelihood of future incarceration.⁴

A series of Government Inquiries, including the 1991 *Royal Commission into Aboriginal Deaths in Custody*⁵, the 1997 *Bringing them Home Report*⁶ and the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs *Involvement of Indigenous juveniles and young adults in the criminal justice system*⁷ have identified the relationship between OOHC and the increased likelihood, for Aboriginal and Torres Strait Islander people, of involvement with the criminal justice system. Similar findings have been made in respect of the OOHC population more generally.⁸

The overlap between the OOHC and criminal justice systems, and particularly that brought about through the process of care-criminalisation,⁹ has been recognised as a matter of national concern. Recommendations designed to disrupt the care-to-prison pipeline have recently been made by significant law reform bodies such as the *Royal Commission into the Protection and Detention of Children in the Northern Territory* (2017)¹⁰, the Law Council of

² 'Apology to the Forgotten Australians' (Commonwealth Parliamentary Debates, 16 November 2009).

³ National Apology to Victims and Survivors of Institutional Child Sexual Abuse (22nd October 2018). <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fvotes%2F24afa1ea-4171-4a9b-a806-ad388220b4b0%2F0010;query=Id%3A%22chamber%2Fvotes%2F24afa1ea-4171-4a9b-a806-ad388220b4b0%2F0000%22>

⁴ Weatherburn, D., (2014) *Arresting Incarceration—Pathways out of Indigenous Imprisonment*. Aboriginal Studies Press 86–7.

⁵ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) 52.

⁶ Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) 164.

⁷ See for e.g., the Public Hearing, Thursday, 24 June 2010

<http://www.aph.gov.au/binaries/hansard/reps/commttee/r13210.pdf> and Roundtable, 28 Jan 2011, see pg 15-16; 26-27; 35-37

<http://www.aph.gov.au/binaries/house/committee/atsia/sentencing/hearings/28%20january%202011.pdf>

⁸ See for example, the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission (1997). *Seen and Heard: Priority for Children in the Legal Process: Report of the National Inquiry into Children and the Legal Process*, Report No 84. Sydney Australia; and the series inquiries conducted by the Community Affairs References Committee *Inquiry into Out of Home Care* (2015)

[https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care;Protecting_Vulnerable_Children:_A_national_challenge:_Second_Report_on_the_inquiry_into_children_in_institutional_or_out-of-home_care_\(2005\);Forgotten_Australian:_A_report_on_Australians_who_experienced_institutional_or_out-of-home_care_as_children_\(2004\);and_Lost_Innocents_and_Forgotten_Australian_Revisited:_report_on_progress_with_the_implementation_of_the_recommendations_of_the_Lost_Innocents_and_Forgotten_Australian_Reports_\(2009\).](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care;Protecting_Vulnerable_Children:_A_national_challenge:_Second_Report_on_the_inquiry_into_children_in_institutional_or_out-of-home_care_(2005);Forgotten_Australian:_A_report_on_Australians_who_experienced_institutional_or_out-of-home_care_as_children_(2004);and_Lost_Innocents_and_Forgotten_Australian_Revisited:_report_on_progress_with_the_implementation_of_the_recommendations_of_the_Lost_Innocents_and_Forgotten_Australian_Reports_(2009).)

⁹ McFarlane, K. (2017) 'Care-criminalisation: the involvement of children in out-of-home care in the NSW criminal justice system'. *The Australian and New Zealand Journal of Criminology*. August 8, 2017 DOI:

<https://doi.org/10.1177/0004865817723954>

¹⁰ The *Royal Commission into the Protection and Detention of Children in the Northern Territory* Final Report Pt 3B Recommendation 41.5: The Northern Territory Government develop compatibility between the child protection and youth justice data systems for the efficient exchange of information: 'Dr Katherine McFarlane, a

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Australia¹¹ and the Queensland Family and Child Commission (2018)¹², among others. As the Australian Law Reform Commission stated, the 'links between these systems is so strong that child removal into out-of-home-care and juvenile detention could be considered as key drivers of adult incarceration.'¹³ Acknowledging 'the recognised links between out-of-home care, juvenile justice and adult incarceration', particularly for Aboriginal and Torres Strait Islander people, the ALRC recommended that the Commonwealth Government 'establish a national inquiry into child protection laws and processes.'¹⁴

Despite specific recommendations intended to address the care-crime pipeline however, correctional departments across Australia have failed to comply with the recommendations. There is a lack of programs, crime-prevention resources and recidivism tools that identify or provide for OOHC as a distinct criminogenic risk factor or as a measure of vulnerability.¹⁵ Given the evidence that people with care-experience are significantly over-represented in the criminal justice system, this equates to an abrogation of agencies' responsibilities and an unnecessary impediment to government directions to reduce recidivism and address the factors leading to nationwide increases in the prisoner population.

Greater understanding of both the immediate and long-term consequences of care-related involvement in the criminal justice system is urgently required. This is particularly the case given successive governments' stated commitment to reducing recidivism and the factors that lead to offending behaviour. As the 1989 Human Rights Commission (Burdekin Inquiry) reported:

What is of deep concern is the connection between those children who are brought in because they are in need of care and protection in the traditional

Senior Lecturer at Charles Sturt University, told the Commission that there is a general lack of understanding about the connection between care and the criminal justice system across Australia, and that research on out of home care status in the criminal justice system is particularly lacking'.
<https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-3B.pdf>

¹¹ The Law Council of Australia (2018) *The Justice Project*. Children and Young People
[https://www.lawcouncil.asn.au/files/web-](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf)

[pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf)

¹² Queensland Family & Child Commission (2018) *The criminalisation of children living in out-of-home care in Queensland*

<https://www.qfcc.qld.gov.au/sites/default/files/The%20criminalisation%20of%20children%20living%20in%20out%20of%20home%20care%20in%20Queensland.pdf>

¹³ The Australian Law Reform Commission (ALRC) (2018) *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* at 485 <https://www.alrc.gov.au/publications/crossover-out-home-care-detention>

¹⁴ The Australian Law Reform Commission (ALRC) (2018) *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Recommendation 15.1:*

<https://www.alrc.gov.au/publications/crossover-out-home-care-detention>

¹⁵McFarlane, K. (2017) 'Improving data collection to better support children in out-of-home-care at risk of offending, *Child Family Community Australia* <https://aifs.gov.au/cfca/2017/10/18/improving-data-collection-better-support-children-out-home-care-risk-offending>

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sense and who commit offences. In 1981 a departmental report found that a great majority of those children were likely to offend more than once. **In that time there was a 160% higher probability that children who had been committed to the care of the department would reoffend than those who had not.**¹⁶

It is to be expected that such a statistic would lead to a desire amongst correctional bodies to know more about the factors that give rise to such an extraordinary recidivism rate. Regrettably, it appears that to date, this has not been the case.

A brief CV is attached to this submission for your consideration. I would be pleased to discuss any aspect of this submission with you at your convenience.

Yours sincerely

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¹⁶ The Human Rights Commission. *Report of the National Inquiry into Youth Homelessness (The Burdekin Inquiry)* (1989) see Chapter 10 'Children in the care of the State' at 10.16 p112

Submission to the Queensland Productivity Commission Inquiry:

Imprisonment and Recidivism

Involvement in the juvenile justice system

While people who have been looked-after (the 'care experienced') comprise less than 1% of the NSW population, they are significantly over-represented in the criminal justice system. For e.g., approximately one in 10 young people involved with the NSW criminal justice system have been in OOH¹⁷. Similar over-representation rates have been reported nationally.¹⁸ Children in care are disproportionately represented before the NSW Children's Court; disproportionately represented in juvenile detention; are younger at entry to the justice system; and move more quickly to harsher sanctions than children without care experience.¹⁹

The child welfare system consistently produces poor outcomes for children in care,²⁰ such that the United Nations has expressed serious concerns at "widespread reports of inadequacies and abuse" within Australia's care system, and drawn particular attention to the inappropriate placements of children, inadequate screening, training, support and assessment of (particularly) Indigenous carers; placement of Indigenous children outside their communities and the mental health issues "exacerbated by (or caused in) care"²¹.

My doctoral research revealed that children in care appeared before the Children's Court on criminal charges at disproportionate rates compared to children who were not in care. Almost half of the sample (49.5%) had been, or were currently in care. The care cohort had a

¹⁷ <http://www.bocsar.nsw.gov.au/Documents/CJB/Report-2016-Can-child-protection-data-improve-the-prediction-of-reoffending-in-young-persons-cjb188.pdf>

¹⁸ <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554443>

¹⁹ McFarlane, K. (2017) 'Care-criminalisation: the involvement of children in out-of-home care in the NSW criminal justice system'. *The Australian and New Zealand Journal of Criminology*. August 8, 2017 DOI: <https://doi.org/10.1177/0004865817723954>

²⁰ McFarlane, K., (2017) 'The faulty child welfare system is the real issue behind our youth justice crisis' *The Conversation*, 13 February 2017 <https://theconversation.com/the-faulty-child-welfare-system-is-the-real-issue-behind-our-youth-justice-crisis-72217>

McFarlane, K., (2016) 'NSW Bail laws mean well but are landing homeless kids in prison' *The Conversation*, 16 December 2016 <https://theconversation.com/nsw-bail-laws-mean-well-but-are-landing-homeless-kids-in-prison-68490>

McFarlane, K., (2016) 'The single biggest reform to child welfare is a re-run of decade-old promises' *The Conversation*, 18 November 2016 <https://theconversation.com/the-single-biggest-reform-to-child-welfare-is-a-re-run-of-decade-old-promises-68822>

McFarlane, K., (2016) 'Nothing to see here: the abuse and neglect of children in care is a century-old story' *The Conversation*, 15 November 2016 <https://theconversation.com/nothing-to-see-here-the-abuse-and-neglect-of-children-in-care-is-a-century-old-story-in-australia-68743>

McFarlane, K., (peer review of) Cashmore, J. and Libesman, T. (2016) 'FactCheck Q&A: are Indigenous children ten times more likely to be living in out-of-home care?' *The Conversation* 22 February 2016 <https://theconversation.com/factcheck-ganda-are-indigenous-children-ten-times-more-likely-to-be-living-in-out-of-home-care-54825>

²¹ http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf

different and negative experience of the justice system, entering it at a significantly younger age and being more likely to experience custodial remand, than children who had not been in care.

While both cohorts shared many of the risk factors common to young offenders appearing before the Children's Court, the care cohort experienced significant additional disadvantage within the care environment (termed 'care-criminalisation'), such that living arrangements designed to protect them from harm instead created the environment for offending. I found that children in care were more likely to be remanded for bail breaches and spend longer in custody than their non-care peers – in part because when these children behave badly, they are more likely to have the police called to monitor and regulate their behaviour. In contrast, similar behaviour occurring in a middle-class suburban home would be unlikely to attract police attention. I also found that many offences arose purely because of the care environment and often resulted after a child had experienced care-specific trauma or abuse, such as sexual exploitation. I concluded that the NSW child welfare system is inexorably linked to the manufacturing of delinquency and children's involvement in the criminal justice system. Indigenous children are particularly over-represented in both the care and justice systems²² and bear the impact of intergenerational removal and trauma from past welfare policies as well as the consequences of inadequacies of present policies and practices.

Progression to the adult criminal justice system

Statistics present a rudimentary analysis of the numbers and issues affecting care-experienced adult prisoners. According to the *2015 Network Patient Survey* (p24), approx 14% of NSW prisoners were placed into care before the age of 16 years, with significantly more women (23.9%) than men having this background. Another 14% of respondents said their parents had been placed in care themselves before the age of 16 years (p25) and some 18% of prisoners' children have experience of the care system (p30).²³

Yet despite their significant over-representation within the correctional system, and research that has established that a history of being raised outside the family unit is a key predictor of anti-social behaviour across someone's lifespan,²⁴ the care-experienced cohort remains largely invisible within international prison populations.

²² In June 2013, there were 18,300 NSW children in care: approximately one third of whom were Indigenous.

²³ The *Network Patient Survey* reported that over 3.6% of prisoners' children were living with a foster family or had been adopted. Another 13.3% were living with a relative other than a parent, and 1.5% were living on the streets, in an institution or in juvenile detention. It is likely that many of these children were living in some form of OOHC.

²⁴ Jaffee, Moffitt, Caspi and Taylor (2003) *Child Development*, 74(1), 109-126

Differences between care-experienced and other prisoners

What little we know about this cohort is drawn from research conducted in Scotland, England, Wales, New Zealand, Canada and the USA. For example, the Scottish Prison Service²⁵ has identified discrepancies between prisoners with OOHC experience and other inmates in terms of offending rates, patterns of drug and alcohol use and mental health characteristics. Compared to other prisoners, the care-experienced cohort had:

- higher rates of drug, alcohol and nicotine dependency and illegal drug use in custody;
- poorer mental health;
- poorer numeracy and literacy skills;
- greater likelihood of both pre and post-custodial homelessness; and
- were more likely to have witnessed parental or carer violence.

In Scotland, prisoners with care experience also had significantly different criminal histories. For example, they were more likely to have:

- both carried and to have injured someone with a knife;
- received a custodial sentence as a result of breaching a community sentence; and
- to have been incarcerated on multiple occasions both on remand/under sentence.

The limited research undertaken in NSW has also identified significant differences between Indigenous prisoners with OOHC experience and the general Indigenous prison population. For example, Indigenous prisoners removed from their families as children:

- experienced significantly worse outcomes with regard to mental health;
- were significantly more likely to have been gaoled more than five times;
- were significantly more likely to have been victims of child sexual assault; and
- were significantly more likely to have attempted suicide²⁶

than Indigenous prisoners who had not been removed.

Research has also established that:

- Prisoners with care-experience are disproportionately represented amongst NSW inmates with complex support needs; and
- are significantly more likely to have earlier and more police contacts than those with no care-experience.

²⁵ Carnie, J., and Broderick, R. (2012) *Prisoners who have been in Care as 'Looked After Children*. 13th Survey Bulletin. Scottish Prison Service Strategy Unit. Scotland; Carnie, J., Broderick, R., and McCoard, S. (2014a) *Key themes from the 14th series of the Prisoner Survey*. Scottish Prison Service Research, Strategy and Innovation Unit. Scotland; Carnie, J., Broderick, R., and McCoard, S. (2014b) *Prisoners who have been in Care as 'Looked After Children 2013*. Scottish Prison Service Research, Strategy and Innovation Unit. Scotland.

²⁶ Egger, S., and Butler, T. (2000) 'The Long-Term Factors Associated with Removal from Parents Amongst Indigenous Prisoners in NSW'. *Australian and New Zealand Journal of Public Health*. vol 24, no 4.

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The intergenerational impact of placement in out-of-home care

Twenty years ago the NSW Parliament published its ground-breaking report into *Children of Imprisoned Parents*.²⁷ The long-term impacts on children affected by parental imprisonment remain of critical concern for a number of community and law reform organisations.²⁸

An emerging issue involves the negative outcomes for many children who are placed into the care of the state when their parents are unable to provide appropriate care.

Research indicates that many children of prisoners become enmeshed in the justice system once they enter care, with devastating long-term consequences including imprisonment, homelessness, disrupted education etc. This is a transgenerational cycle: many of the parents in prison were themselves looked after, so too were their grandparents. Many of the children taken into care following parental imprisonment will follow this same path, with young women in care likely to become pregnant and then have their child removed while they themselves are still in the care system. This risk is exacerbated if the young woman is involved in the justice system while in care. Research also indicates that for many women, the removal of their child precipitates their incarceration, rather than the incarceration leading to child removal, as is often assumed. It is the intergenerational intersection of these systems that has the most significant and negative impact on children of prisoners.

Lack of statistical data and programs

Despite an increasing recognition that the accelerated pathways from care to the criminal justice system requires further investigation, research and action, there is a lack of programs, crime-prevention resources and recidivism tools that identify or provide for care as a distinct criminogenic risk factor or as a measure of vulnerability.²⁹ For example, police services do not routinely record OOHC status at the time of arrest, nor have justice departments

²⁷ Children of Imprisoned Parents Report (1997)

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5517/Compiled%20Report.pdf> The Government response is also significant and can be accessed at

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/GovernmentResponse/5517/Government%20Response%20March%201998.pdf>

²⁸ See Quilty, S. 'The Magnitude of Experience of Parental Incarceration in Australia' [online]. *Psychiatry, Psychology and Law*, Vol. 12. No. 1 June 2005:256-257. See too the position statement *Keeping Women out of Prison* for more information on the views of a number of organisations about what is needed to assist children of prisoners <https://sydneycommunityfoundation.org.au/whats-on/news/keeping-women-out-prison-position-statement-launched> The position statement was launched at the visit to NSW of the UK's Baroness Corston, author of *The Corston Report 2007*, who was invited to present about her findings and the resulting changes to the UK justice system. The position statement was updated recently at a fundraiser / awareness raiser for SHINE (formerly the Children of Prisoners Support Group) which was held at the NSW Parliament https://sydneycommunityfoundation.org.au/sites/default/files/public/KeepingWomenOutOfPrison_PositionPaperUpdate_2017_SydneyCommunityFoundation.pdf

²⁹McFarlane, K. (2017) 'Improving data collection to better support children in out-of-home-care at risk of offending, *Child Family Community Australia* <https://aifs.gov.au/cfca/2017/10/18/improving-data-collection-better-support-children-out-home-care-risk-offending>

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conducted research or implemented crime prevention programs that specifically target the OOHC population.

Despite specific examination of the care-crime pipeline evident in numerous inquiries conducted in various jurisdictions across Australia, correctional departments have invariably failed to comply with the recommendations. In NSW for example, the NSW Parliament's 2001 *Select Committee on the Increase in Prisoner Population*, an inquiry which closely mirrored the terms of reference set down by the Queensland Productivity Commission's current review, recommended that:

the Department of Corrective Services undertake a research project to focus on the needs of former State wards³⁰ and care leavers in the prison system. The research project should identify the numbers of former State wards and care leavers in the prison system.³¹

This was not undertaken. It was only in 2015 that the NSW corrections system incorporated OOHC status into intake procedures at detention. My colleagues at Charles Sturt University and I are currently working to analyse two years of this data, which has to date yet to be analysed or publicly reported upon.

This lack of agency interest in the issues affecting prisoners with OOHC experience is particularly concerning given successive governments' stated commitment to reducing recidivism and the factors that lead to offending behaviour. In 1989, the Human Rights Commission (Burdekin Inquiry) reported:

What is of deep concern is the connection between those children who are brought in because they are in need of care and protection in the traditional sense and who commit offences. In 1981 a departmental report found that a great majority of those children were likely to offend more than once. **In that time there was a 160% higher probability that children who had been committed to the care of the department would reoffend than those who had not.**³²

It could be assumed that this statistic would engender some interest amongst corrections and youth justice departments. It has not. There remain no specific programs or plans targeting the OOHC cohort in prison, notwithstanding the international research, outlined earlier in this submission, which has identified that people with OOHC experience may have

³⁰ 'State wards' was then the terminology in use. It equates to 'careleaver', 'care-experienced' or OOHC, as is more commonly used today.

³¹ NSW Parliament, *Select Committee on the Increase in Prisoner Population* (2001) Recommendation 1: at pxviii. See too p25-26

³² The Human Rights Commission. *Report of the National Inquiry into Youth Homelessness (The Burdekin Inquiry)* (1989) see Chapter 10 'Children in the care of the State' at 10.16 p112

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different needs and risks compared to non-OOHC prisoners, and research that has established that a history of being raised outside the family unit is a key predictor of anti-social behaviour across someone's lifespan.³³

Recommendations

This Inquiry presents an opportunity for QLDCS to collect information on the OOHC status of prisoners in correctional facilities, to conduct research to aid in better understanding the needs of the cohort, and to tailor appropriately designed and effective programs to strengthen family and community ties and to reduce recidivism. There is considerable scope for OOHC-focused research and programs within the Queensland Corrective Services' current strategies and plans if, like NSW, the agency maintains that families are 'an important source of support for inmates while in prison and a motivating force to desist from reoffending'.³⁴

It is however, vitally important that programs are not launched without understanding the specific factors impacting on prisoners with OOHC-experience and their families. While generic programs may in fact work, there is also a high risk of iatrogenic outcomes and, without a baseline understanding, the ability to comprehend why programs either succeed or fail, is limited.³⁵

The collection of information on OOHC status could also be required at key entry points that could identify opportunities to understand how vulnerable children in need become offenders. For example, while the Australian Government has focused attention on child protection and OOHC policy through the *National Framework for Protecting Australia's Children (2009–2020)*⁷ and the *National Standards for Out of Home Care*³⁶ to 'deliver consistency and drive improvements in the quality of care' provided to children in OOHC, there is scope for greater analysis of the intersection between OOHC and crime.

Collection of OOHC status, in turn, would allow for strategies and programs to be put in place to break the care-crime nexus. Accurate and wide-sweeping demographic data is important in order to determine the criminogenic risks posed to children by OOHC systems designed to protect and provide for them. For example, the collection and collation of jurisdictional custodial data would permit national analysis that would, with the input of the Australian Bureau of Statistics and the Australian Institute of Criminology, inform national standards, policies and programs. Data collection should also include information regarding those involved in the OOHC and protection system in order to inform program development and

³³ Jaffee, Moffitt, Caspi and Taylor (2003) *Child Development*, 74(1), 109-126

³⁴ NSW Corrective Services Draft *Family Strategy* (2018).

³⁵ McCord, J. (2003) 'Cures That Harm: Unanticipated Outcomes of Crime Prevention Programs' in *The Annals of the American Academy of Political and Social Sciences* 587(1); 16-30.

³⁶ Department of Families, Housing, Community Services and Indigenous Affairs. (2011). *National Standards for Out-of-home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020*.

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policy, to alert authorities to their over-representation, and to understand their particular needs in custody.

Comprehending the factors that lead to children in OOHC becoming caught up in the justice system will assist agencies to adapt their practices to respond to children's needs. A better understanding of their experiences of arrest, bail and sentencing will assist to identify effective programs, build community support, ensure children's and communities' safety and address many of the issues set out in this current Inquiry's Terms of Reference.

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DR KATH McFARLANE - CV

CURRENT ROLE:

Senior Lecturer, Centre for Law and Justice, Charles Sturt University, NSW Australia

PREVIOUS ROLES:

- 2017-18 Acting Director, Centre for Law and Justice, Charles Sturt University
2011-15 Chief of Staff, NSW Government (Planning & Infrastructure, Attorney General and Justice, Family & Community Services)
2009 Executive Officer, NSW Children's Court
2006-09 Executive Officer, NSW Sentencing Council
2003-06 Policy Officer, Legislation Policy Division, NSW Attorney General's Department
2005 NSW Parenting & Research Centre, Department of Community Services
2000-03 Policy Adviser, NSW Parliament
1997-2000 Official Visitor, NSW Corrective Services (Ministerial Appointment)

THESIS:

McFarlane, K. (2015). *Care-criminalisation: The involvement of children in out of home care in the NSW criminal justice system*. (Doctor of Philosophy), University of New South Wales, Sydney.

RESEARCH BOOKS & MONOGRAPHS:

Butler, A. & **McFarlane, K.** (2009) *Public Confidence in the NSW Criminal Justice System*. NSW Sentencing Council. Sydney NSW

Beckett, S. Fernandez, L. & **McFarlane K.** (2009) *Provisional Sentencing for Children*. NSW Sentencing Council. Sydney NSW

McFarlane, K. & Poletti, P. (2007) *Judicial Perceptions of Fines as a sentencing option: A survey of NSW magistrates*. NSW Sentencing Council, Sydney NSW

SELECTED JOURNAL ARTICLES:

McFarlane, K., Colvin, E, McGrath, A., and Gerard, A. (2018) 'Just another policy document? Will the NSW Joint Protocol end the criminalization of children in Out-Of-Home-Care?' *The Alternative Law Journal* (in press)

Gerard, A., McGrath, A, Colvin, E., and **McFarlane, K.** (2018) 'I'm not getting out of bed! The criminalisation of young people in Out-Of-Home-Care'. *Australian and New Zealand Journal of Criminology* <http://journals.sagepub.com/doi/full/10.1177/0004865818778739>

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