



COMMUNITY LEGAL
WESTERN AUSTRALIA

Protection & Care WA

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January 2020

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Protection and Care Key Messages

1. The number of children being taken into care in WA is rising each year (increase annually of 3% - 8%, a total increase of 24% from 2014 to 2018). Of note is the increasing trend of emotional abuse in substantiated cases.
2. Aboriginal children are significantly over-represented (54% yet make up just 6% of all children in WA).
3. Very little early intervention and prevention services are provided to families whose children go into care (5% of total budget).
4. Very limited legal and advocacy services are provided to families who children are taken into care with approximately 50% receiving no legal service at all.
5. Children suffer harm from being in care especially Aboriginal children who additionally suffer loss to culture.
6. Long term outcomes for children who have been in care is worse than those for children who have not been in care.
7. Even though more children are being taken into care, the incidence of child abuse and number of child deaths remains the same.
8. The current child protection system is failing here in WA and also across Australia.
9. Other jurisdictions have identified this and have acted upon it – NSW and Victoria.
10. Change is desperately needed to the system and an independent review is needed urgently.
11. There is good evidence about what change is needed:
 - Significantly more early intervention and family support
 - Strong Aboriginal centred programs similar to those introduced in NSW
 - All families given access to legal and advocacy services
 - Full engagement and working in partnership with families whose children are in or likely to enter protection and care system, not working adversarial as is the case now
 - Oversight of departmental practices to ensure they are compliant with policy and procedures

1. The number of children in the protection and care system is escalating each year.

From 2014 to 2018 there was an increase of 3% to 8% each year with the total increase over that time of 24%. From 2009 to 2018 the increase is 66%.

Table 1: Number of children on protection and care orders WA

WA

Year	No	Increase from prev year
2009	3337	3%
2010	3432	-5%
2011	3277	7%
2012	3492	22%
2013	4260	5%
2014	4471	8%
2015	4808	3%
2016	4946	4%
2017	5138	8%
2018	5542	
Total increase 2009 -2018		66%

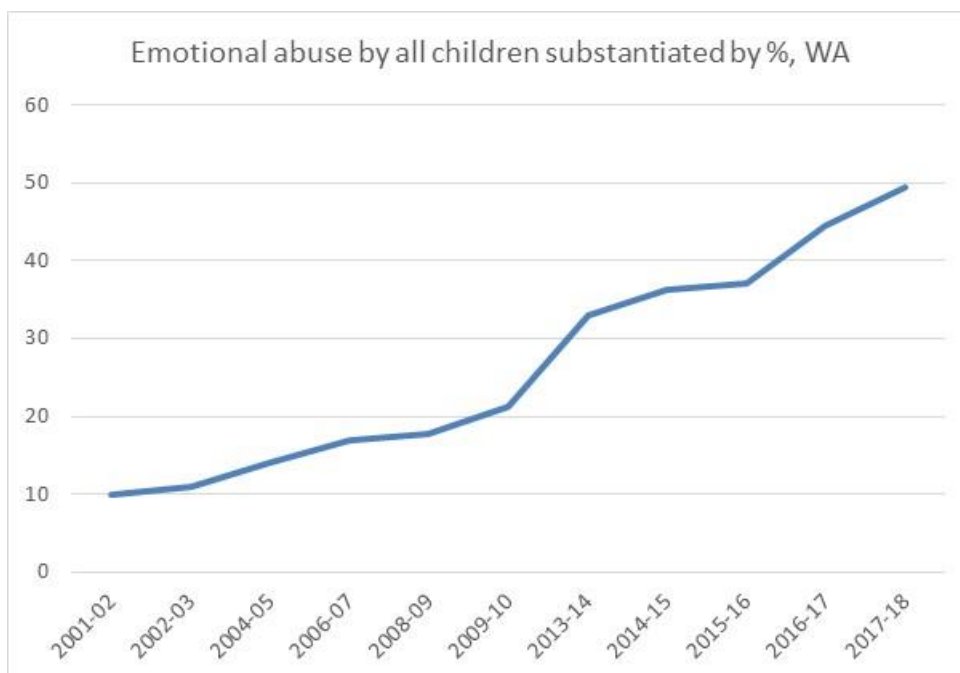
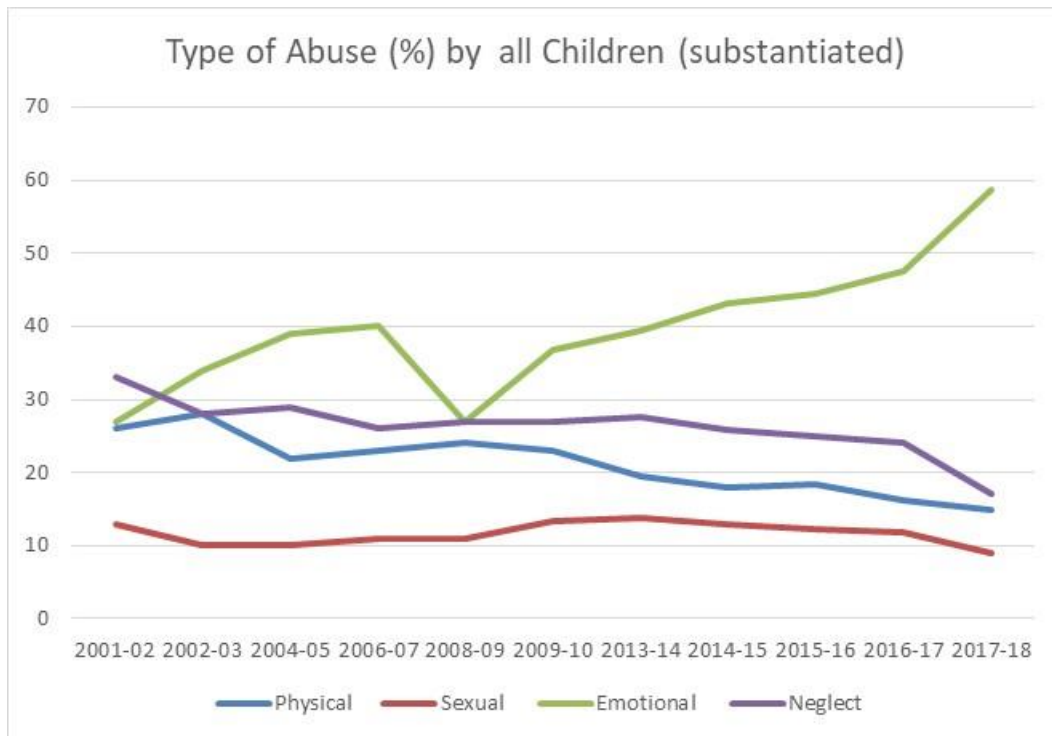
¹

There is an increasing number of children being taken into care for emotional abuse.² Emotional abuse, which includes exposure to domestic violence including invitro and neglect, a failure to provide for a child's essential needs, are by far the main forms of substantiated child maltreatment, rather than physical or sexual abuse. Taken together, emotional abuse and neglect are estimated to be the primary form of maltreatment for about seven in ten investigated children in 2014-15.

Figure 1 shows the trends in type of abuse in selected years from 2000-01 to 2017-18, clearly showing the above mentioned trend.

¹ Australian Bureau of Statistics

² <https://aifs.gov.au/cfca/2016/07/28/emotional-abuse-children-growing-problem-australia>



This issue needs to be explored in balancing the impact on children of being taken into care (refer to later sections) and the level of harm imposed by the emotional abuse.

2. Aboriginal children are significantly over-represented (54% yet make up just 6% of all children in WA).

The number of Indigenous children on protection and care orders is severely overrepresented at 54% of all children in care in 2018 whereas they are only 6% of all children in WA.

Table 2: Children admitted to Out of Home Care by Indigenous Status WA

	2013–14	%	2014–15	%	2015–16	%	2016–17	%	2017–18	%
Indigenous	532	48%	545	52%	539	52%	575	53%	564	50%
Non-Indigenous	507	46%	498	47%	494	48%	507	47%	558	50%
Not stated	61		7		2		1		2	
Total	1,100		1,050		1,035		1,083		1,124	

Source: Australian Institute of Health and Welfare 2019. Data tables: Child protection Australia 2017–18

Table 3: Children on care and protection orders by Indigenous status WA 30 June 2018

Number				Percentage			
Indigenous	Non-Indigenous	Unknown	All children	Indigenous	Non-Indigenous	All children	Rate ratio Indigenous/non-Indigenous
2,992	2,548	2	5,542	54%	4.6	9.3	17.3

Source: Australian Institute of Health and Welfare 2019. Data tables: Child protection Australia 2017–18

Table 4: WA population of children aged 0–17 by age and Indigenous status, as at 31 December 2017

	0–4 yrs		5–9 yrs		10–14 yrs		15–17 yrs		0–17 yrs	
Indigenous	11,322	7%	10,287	6%	10,452	6%	6,027	7%	38,088	6%
Non-Indigenous	161,854	93%	161,534	94%	151,816	94%	84,713	93%	559,917	94%
All children	173,176		171,821		162,268		90,740		598,005	

Source Australian Bureau Of Statistics, Australian Demographic Statistics, Mar 2019

In addition, Children from Very remote areas had the highest rates of substantiations (26.1 per 1,000 children) and were 4 times as likely as children from Major cities (7.0 per 1,000) to be the subject of a substantiation³. This is particularly significant for Western Australia. In 2017–18⁴, of all children who were the subject of substantiated investigations, WA accounted for:

- 36% in remote area
- 25% in very remote.

And, in WA of all children who were the subject of substantiated investigation in 2017–18, 17% came from a remote or very remote area.

³ <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/overview>

⁴ Australian Institute of Health and Welfare 2019. Data tables: Child protection Australia 2017–18. Child Welfare series no. 70. Cat no. CWS 65. Canberra: AIHW.

3. Very little early intervention and prevention services are provided to families whose children go into care (5% of total budget).

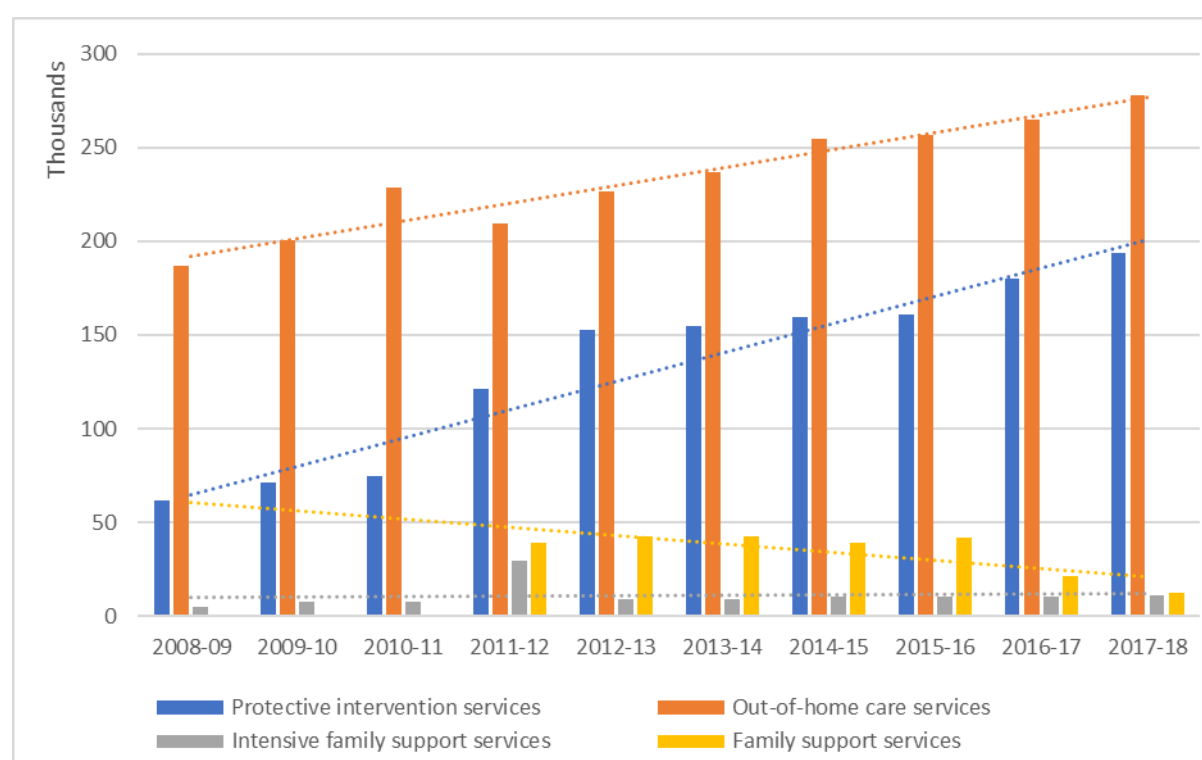
Children being removed from their parents/carers' care should be viewed as the last resort with early intervention and support services put in place to limit the escalation to this point.

This is not happening in WA with the small amount of money spent on intensive and general family support services decreasing from 2011-12 to 2017-18 from 17% to just 5%.

This is an Australian trend. In 2017, State and territory governments currently spent just 17% of total child protection funding on family support services (\$700 million a year) compared with 83% (\$3.5 billion) on child protection statutory interventions and OOHC, including investigations of abuse and neglect and placements.

Children being removed from their parents/carers' care should be viewed as the last resort with early intervention and support services put in place to limit the escalation to this point. However, this isn't happening in WA with the small amount of money spent on family support services decreasing (refer Figure 1) from 2011-12 to 2017-18 and the expenditure on intensive family services remaining stagnant over the same time period.

Figure 1: Expenditure on child protection services WA



The total amount expenditure on family support and intensive family support is very small as a proportion of all expenditure on child protection services (refer Table 5) and is decreasing each year, from 17% in 2011-12 to just 5% in 2017-18.

Table 5: WA State Government real recurrent expenditure on all child protection services as % of total

	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18
Protective intervention services	24%	25%	24%	30%	35%	35%	34%	34%	38%	39%
Out-of-home care services	74%	72%	73%	52%	53%	53%	55%	55%	56%	56%
Intensive family support services	2%	3%	3%	7%	2%	2%	2%	2%	2%	2%
Family support services	na	na	na	10%	10%	10%	9%	9%	5%	3%

Source: Total Real Expenditure Productivity Commission Report on Government Services 2019 (WA Data).

State and territory governments currently spend just 17% of total child protection funding on family support services (\$700 million a year), compared with 83% (\$3.5 billion) on child protection statutory interventions and OOHC, including investigations of abuse and neglect and placements. (See *Social justice in Australia: ending the over-representation of Indigenous children in out-of-home care and returning them to their communities* by Philip Mendes (Monash University) for Gary Craig (ed.) *A Handbook on Social Justice*. Edward Elgar Publishing. In Press, 2017).⁵

4. Very limited legal and advocacy services are provided to families who children are taken into care with approximately 50% receiving no legal service at all.

There is no publicly available data to show how many families are represented in court for protection and care matters and Legal Aid WA (for the past two years) has not included in their annual report a breakdown of the legal assistance provided for Signs of Safety Conferences and Protection and Care so the amount of legal assistance being provide may well be lower than that last recorded in 2016-17.

From 2013-14 to 2016-17, of all children admitted to a Protection and Care Order, grants of aid were provided to 42% to 57% of all families and to 12% to 20% of families at a Signs of Safety Conference (refer Table 5).

The majority of the grants of aid provided are for five hours of legal work mainly used for initial information, advice, representation in the first couple of mentions.

⁵ <https://insightplus.mja.com.au/2017/19/foster-care-is-it-doing-more-harm-than-good/>

Table 6: legal services for care & protection matters WA

Year	Children admitted to C&P orders*	Children on C&P orders*	SOS conf#	% of all admissions	Protection & Care #	% of all admissions
2013–14	908	4,471	181	20%	520	57%
2014–15	1,181	4,808	181	15%	497	42%
2015–16	1,129	4,946	217	19%	508	45%
2016–17	1,169	5,138	137	12%	668	57%

*Australian Institute of Health and Welfare 2019. Data tables: Child protection Australia 2017–18.
#Legal Aid WA Annual Reports

The Victorian State Government and Legal Aid Victoria recognised the lack of legal services in protection and care matters and provided funding to:

- Expand a pilot with selected CLCs to provide child protection legal services on an ongoing basis
- Establish a pilot non-legal advocacy service to provide early help to families who have not yet had to go to court, with a focus on Aboriginal families and parents with intellectual disabilities, supporting them as they navigate the child protection system
- Victorian Aboriginal Legal Service and Djirra to expand their child protection work for Aboriginal families in regional Victoria to have greater access to culturally appropriate legal assistance
- Changes to the child protection grant guidelines to October will also bring some important changes to child protection grant guidelines that will increase legal assistance available to children, young people, parents and carers.

These services are critically needed here in Western Australia if the State Government wishes to address the increasing human, social and financial cost of the rising number of children on protection and care orders and in out of home care and the flow on cost and impacts to other areas including youth homelessness, juvenile offending and family breakdown.

5. Children suffer harm from being in care especially Aboriginal children and loss of culture.

The experience of out-of-home care has been shown to further affect the health and wellbeing of children unable to live with their parents. ⁶ Prof Davis⁷ noted the growing body of literature that demonstrates the myriad of other harms that can be attributed to growing up in OOHC, including poor mental health, poor educational outcomes, substance use problems and homelessness.

⁶ Australian Institute of Health and Welfare 2017. Australia's welfare 2017. Australia's welfare series no. 13. AUS 214. Canberra: AIHW. <https://www.aihw.gov.au/getmedia/e84b6721-7ea0-4688-8eac-59353cfb4452/aihw-australias-welfare-2017-chapter2-5.pdf.aspx>

⁷ <https://www.familyisculture.nsw.gov.au/>

A 2019 Report by the Telethon Kids Institute⁸ looked at the outcomes of young people leaving care in Western Australia, as compared to young people with no child protection contact, and young people with a substantiated maltreatment allegation but no time in care. The findings highlight the high risk of poor outcomes for young people who have been in care, with young people who are Aboriginal, female, born in a more disadvantaged area, or first entered care after the age of 10 are particularly at risk. The team found that young people who had been in care were at high risk of negative outcomes such as mental health disorders, justice involvement, and incomplete education.

Prof Davis⁹ examined evidence that demonstrates that placing a child in OOHC increases his or her risk of being involved in the juvenile justice system. This risk, known as ‘care-criminalisation’, arises from the fact that children are often charged with offences against carers or residential home staff due to conduct that would not be criminalised if they occurred in the child’s home environment. Care criminalisation also results from placement instability, a lack of cultural connection and a lack of secure accommodation for children in custody and seeking bail. The author noted that the failure of the child protection and juvenile justice systems to adequately address the issue of the cross-over of children between OOHC and juvenile justice is extremely concerning, as this issue has intergenerational consequences for the Aboriginal community. This ‘drift’ of children from OOHC into the juvenile justice system is of paramount concern to the Aboriginal community, as Aboriginal children are more likely to be affected by this phenomenon due to their gross over-representation in the OOHC system. Involvement in the juvenile justice system perpetuates a cycle of disadvantage and child removals that must be halted in order to reduce the entry of Aboriginal children into the OOHC system in the longer term.

The Australian Institute of Health and Welfare (AIHW) undertook a study of young people in child protection and under youth justice supervision from 1 July 2014 to 30 June 2018. This found that young people aged 10 to 17 years under youth justice supervision between July 2014 and June 2018 were about **9 times as likely** as the general population of the same age to have received child protection services during this period (50% compared with 6%). Of the young people who had experienced both child protection and youth justice, **81% experienced child protection first**.¹⁰

“More than half of young people in detention (55%) and half of those in community-based supervision (50%) received child protection services. This equates to young people in detention being 10 times as likely and young people in community-based supervision being 9 times as likely as the general population to have received youth justice services. As this is the overlap for a 4-year period among young people aged 10–17, the actual level of interaction between these 2 sectors over time is likely to be higher.

*The younger people were at first supervision, the more likely they were to also have received child protection services during the period (62% of those aged 10 at first supervision, compared with 27% of those aged 17)”.*¹¹

Young Indigenous Australians were **17 times as likely** as their non-Indigenous counterparts to have been in both the child protection system and under youth justice supervision.

⁸ <https://www.telethonkids.org.au/news--events/news-and-events-nav/2019/august/report-young-people-home-care-more-support/>

⁹ <https://www.familyisculture.nsw.gov.au/>

¹⁰ https://www.aihw.gov.au/reports/australias-welfare/youth-justice?mc_cid=a0ff0f1627&mc_eid=f91685727d

¹¹ Ibid

Figure 2.4: Young people who had received child protection services and who had also been under youth justice supervision, by Indigenous status, by state and territory, 1 July 2014–30 June 2018



Notes

1. Variability in the level of overlap for child protection and youth justice among the states and territories may be due to variation in legislation, procedures, policies and practices in each state and territory, relating both to youth justice and to child protection.
2. These data include only those young people who were aged 10–14 at 1 July 2014. This is to ensure that young people in the study were aged between 10 and 17 and therefore eligible for both services for the entire measurement period.

Source: Table S3.

The AIHW found that children in care had lower literacy and numeracy achievement than all students in Australia (13–39% points lower)¹².

Loss of Culture

As stated in the Family is Culture Report¹³ ‘when it is necessary to remove an Aboriginal child from his or her family, it is crucial that the child is given the opportunity to stay connected with their family, community, culture and country...The experiences of the Stolen Generation also provide stark evidence of the horrific damage that is inflicted upon Aboriginal children, families and communities when their familial, cultural and spiritual connections are forcibly severed.

The report also note that the Royal Commission into Institutional Responses to Child Sexual Abuse considered the issue of contact between children in OOHC and birth parents, noting that, where contact was safe for children, it was a significant protective factor as ‘research suggests that children mostly disclose instances of abuse to family and friends, with mothers being the family member children most frequently disclose to’. Further, contact between Aboriginal children in OOHC and their parents (and family more generally), is particularly important as research has shown that Aboriginal care leavers are more likely to return to their birth families than non-Aboriginal care leavers

¹² Australian Institute of Health and Welfare Educational outcomes for children in care: linking 2013 child protection and NAPLAN data

¹³ <https://www.familyisculture.nsw.gov.au/>

The Family is Culture Report¹⁴ raised concerns about the extent to which the department and non-government providers are supporting and promoting important familial and kinship connections for Aboriginal children in care. Not having the opportunity to have contact with extended Aboriginal family, kin and community, damages children's connection to culture and to family.

Another issue identified relates to the imprisonment of birth parents and the lack of casework to facilitate contact between children in OOHC and parents in custody. The Review found that there is no doubt that there are many children in the cohort who are not having contact with their fathers in prison. The review also state that it became apparent that parents' incarceration had an impact on case planning and the parents' ability to work towards restoration.

In a submission to the Review, CREATE Foundation submitted that Aboriginal children and young people have highlighted the need to be placed in homes that maintain their cultural identity. However, it noted that its 2013 National Survey revealed that 35% of Aboriginal and Torres Strait Islander children in NSW 'reported having no one to teach them about their culture'.

Multiple Placements

Out-of-home care placement stability is an important factor that influences children's wellbeing outcomes. Developing secure relationships, including those with non-parent carers, can mitigate or reverse negative outcomes because a 'child who has been subject to trauma and loss requires a deep, meaningful and sustained primary attachment relationship to heal' (McPherson & MacNamara 2014: 224).¹⁵

Multiple placements affect children's attachment to primary caregivers, an important early developmental milestone (e.g., Lieberman 1987; Provence 1989; Fahlberg 1991; Stovall and Dozier 1998). Empirical evidence from other research also suggests that multiple placements lead to problematic outcomes in children, such as externalising behaviour problems (Widom 1991; Kurtz et al 1993; Newton, Litrownik, and Landsverk 2000).¹⁶

As noted by research undertaken by the Australian Institute of Health and Welfare¹⁷, children who move between multiple home-based placements or between home-based and residential care have been linked with negative outcomes in a range of areas, including:

- mental health and wellbeing (Leve et al. 2012; McGrath-Lone et al. 2015; Reilly 2003; Staines 2016)
- educational attainment (Leve et al. 2012; McGrath-Lone et al. 2015; Reilly 2003; Smith & McLean 2013; Staines 2016)
- access to suitable accommodation (Staines 2016)
- employment (Courtney et al. 2001; Reilly 2003; Staines 2016)
- life satisfaction and relational stability (Leve et al. 2012).

The negative outcomes may be severe and include:

¹⁴ Ibid

¹⁵ <https://www.aihw.gov.au/getmedia/e84b6721-7ea0-4688-8eac-59353cfb4452/aihw-australias-welfare-2017-chapter2-5.pdf.aspx>

¹⁶ Wulczyn, F. and Chen, L. (2017). Placement Changes Among Children and Young People in Out-of-Home Care. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care. Research Report Number 8. Sydney. NSW Department of Family and Community Services.

¹⁷ <https://www.aihw.gov.au/getmedia/e84b6721-7ea0-4688-8eac-59353cfb4452/aihw-australias-welfare-2017-chapter2-5.pdf.aspx>

- homelessness (Courtney et al. 2001; Reilly 2003)
- disproportionately high rates of substance abuse (Staines 2016)
- over-representation in youth justice systems (Courtney et al. 2001; Reilly 2003; Staines 2016)
- vulnerability to further abuse and violence (Courtney et al. 2001; Reilly 2003)
- premature death (McGrath-Lone et al. 2015).

Studies have found that continued instability is associated with poor educational, employment, social and psychological outcomes (Johnson et al., 2011), as well as behavioural and emotional problems (Australian Institute of Family Studies, Chapin Hall Center for Children University of Chicago, & NSW Department of Family and Community Services, 2015). Experiencing multiple placements can also affect a young person's capacity to develop and maintain relationships (Johnson et al., 2011).¹⁸

Stability and permanency of placement is an effectiveness- appropriateness indicator under the national child protection services performance indicator framework. 'Stability and permanency of placement' is defined as the proportion of children who had one or two placements during a period of continuous out-of-home care, by length of care (less than 12 months, and 12 months or more).¹⁹ This data is also only for children who were on orders and who exited care during the reporting period. The Report on Government Services (Child Protection) (ROGS) noted that an exit cohort is biased to children who stay a relatively short time in care and thus are more likely to have experienced fewer placements. Table 7 outlines the number of placements for children in care in WA in 2017-18 by number of placements.

Table 7: Children on a care and protection order in WA and exiting out-of-home care during the year by number of placements, by the length of time in out-of-home care (number and %).

	No of Placements												
Time in care	1		2		3		4-5		6-10		11 +		Total
1 -<6 months	91	72%	28	22%	7	6%	1	1%					127 (17%)
6 –<12 months	67	53%	32	25%	16	13%	11	9%	1	1%			127 (17%)
1–<2 years	60	46%	34	26%	21	16%	13	10%	2	2%			130 (17%)
2–<5 years	58	32%	51	28%	32	18%	29	16%	11	6%			181 (24%)
5 years & +	40	22%	42	23%	22	12%	45	24%	30	16%	6	3%	185 (25%)
Total	316	42%	187	25%	98	13%	99	13%	44	6%	6	1%	750

Some of the above data is consistent with research examining the number of placements of children in care. Johnson, Natalier, Liddiard, and Thoresen (2011)²⁰ examined the placement history of 77 young people who had been in OOHC in Victoria and Western Australia, and found that:

¹⁸ <https://aifs.gov.au/cfca/publications/children-care>

¹⁹ <https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/community-services/child-protection/rogs-2019-partf-chapter16.pdf>

²⁰ Johnson, G, Natalier, N, Liddiard, M and Thoresen, S 2011, 'Out in the world with no-one: A qualitative study of the housing pathways of young people who have recently left state out-of-home care' in Philip Mendes, Guy Johnson, Badal Moslehuddin (ed.) Young People Leaving State Out-Of-Home Care: Australian Policy and Practice, Australian Scholarly Publishing, North Melbourne, Australia, pp. 140-168.

- 40% of the sample had experienced between two and five placements
- 14% had experienced between six and 10 placements
- 32% had had more than 11 placements.

In a longitudinal study of children in South Australian alternative care, Delfabbro, Barber, and Cooper (2000) found that:

- 20.5% of children had experienced between one and two placements
- 19.7% had experienced between three and five placements
- 17.5% had between six and nine placements
- 23.5% had been placed at least 10 times previously.

The Victorian audit of children in home-based care noted similar levels of placement instability (Victorian Department of Human Services, 2002).²¹

Multiple placements when coupled with time in care may show an even greater level of instability, however no data could be found analysing these two factors. By inference, it would be assumed that children staying a shorter period in care would have less placements and thus children in with a longer stay in care a higher number of placements, as reported by the ROGS. It could also be assumed that children in relative or family care were less likely to have multiple placements. Wulczyn and Chen²² found that children placed with kin, especially non-Aboriginal kin, were less likely to change placements, when compared to children placed with foster families or children placed in residential care.

However, none of the above assumptions could be verified as no research was found that examined all three variables.

Information about length of time in care and living arrangements for children in care for Western Australia is outlined below.

Table 8: Children discharged from care and protection orders by length of time on an order, WA, 2017–18

<3 months	3–<6 months	6–<12 months	1–<2 years	2–<4 years	4–<8 years	8+ years
3%	4%	8%	19%	45%	10%	11%

²¹ Alexandra Osborn and Leah Bromfield Outcomes for children and young people in care.. NCPC Brief No. 3 — October 2007. <https://aifs.gov.au/cfca/publications/outcomes-children-and-young-people-care>

²² https://www.facs.nsw.gov.au/_data/assets/pdf_file/0009/591669/Research-report-8-Wulczyn,-F.-and-Chen,-L.-Placement-Changes-Among-Children-and-Young-People-in-Out-of-Home-Care.pdf

Table 9: Children on care and protection orders, by living arrangements, WA, 30 June 2018

Parents	245	4%
Foster care	1,823	33%
Relatives/kin	2,065	37%
Residential care	139	3%
Family group homes	148	3%
Independent living	16	0%
Other/unknown	1,106	20%
Total	5,542	100%

Number of case managers

Stability of caseworker has also been suggested as an issue of concern for children in out-of-home care, with almost 35% of children in the CREATE Foundation's study reporting that they had been allocated five or more caseworkers during their time in OOHC (McDowall, 2013). Children in residential care were more likely to report having a greater number of caseworkers (McDowall, 2013). Having continuity provides an opportunity for children to build an effective relationship with their caseworker, and high turnover of caseworkers has been linked to instability and a loss of trust for children (McDowall, 2013).²³

No data about the number of case managers for children in care in Western Australia could be located.

6. Long term outcomes for children who have been in care is worse than those for children who have not been in care.

Life outcomes for young people in WA who have spent time in out-of-home care found they fare far worse than their peers on measures including mental health, health, education, and involvement with the justice system.²⁴ "These young people also experienced higher rates of hospitalisation, especially for injuries, mental health issues, and pregnancy, and other research has shown they are more likely to become homeless."

Many also became involved with the justice system, with 38% receiving a juvenile and/or adult community-based sentence, and 20% receiving a juvenile detention and/or adult imprisonment. The outcomes are worse for young people who have had multiple placements and for Aboriginal young people involved with child protection services.

²³ Wulczyn, F. and Chen, L. (2017). Placement Changes Among Children and Young People in Out-of-Home Care. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care. Research Report Number 8. Sydney. NSW Department of Family and Community Services.

²⁴ <https://www.telethonkids.org.au/news--events/news-and-events-nav/2019/august/report-young-people-home-care-more-support/>

There are also no nationally representative Australian studies assessing the trajectories of young people leaving care. However, a considerable body of research from small-scale qualitative studies and international research indicate that young people who exit care experience significant social and economic marginalisation and including a range of poor educational and health outcomes (McDowall, 2009; 2013; Mendes et al, 2011b; Stein, 2012; Stein & Munro, 2008):

- homelessness and/or housing instability (Crane, Kaur, & Burton, 2013; Flatau, Thielking, MacKenzie, & Steen, 2015; Johnson et al., 2010);
- significantly higher rates of mental illness compared to the general population (Akister, Owens, & Goodyer, 2010; Rahamim & Mendes, 2015);
- unemployment/underemployment (Dixon, 2007; Mendes, 2009);
- substance abuse issues (Cashmore & Paxman, 1996; 2007; Johnson et al., 2010);
- involvement in the youth criminal justice system (Mendes et al., 2014);
- early parenthood (Fairhurst, David, & Corrales, 2016); and
- low educational attainment (Rogers, 2015).²⁵

7. Even though more children are being taken into care, the incidence of child abuse and number of child deaths remains the same.

In a 2012 article in the Lancet²⁶, the authors explored trends in six developed countries in three types of indicators of child maltreatment for children younger than 11 years, since the inception of modern child protection systems in the 1970s. They recorded no consistent evidence for a decrease or increase in all types of indicators of child maltreatment across the six countries or states (Sweden, England, New Zealand, Western Australia, Manitoba [Canada], and the USA) despite several policy initiatives designed to achieve a reduction. The authors also found that “high and rising rates of out-of-home care affect a substantial minority of children, especially those of non-white or Aboriginal origin, despite no policy advocating this option and little evidence for its effectiveness”.

8. The current child protection system is failing here in WA and also across Australia.

9. Other jurisdictions have identified this and have acted upon it – NSW and Victoria.

Recent reviews in NSW and Victoria have highlighted major systemic issues in the care and protection sector.

²⁵ <https://aifs.gov.au/cfca/publications/supporting-young-people-leaving-out-home-care/outcomes-young-people-leaving-care>

²⁶ Child maltreatment: variation in trends and policies in six developed countries. Gilbert R1, Fluke J, O'Donnell M, Gonzalez-Izquierdo A, Brownell M, Gulliver P, Janson S, Sidebotham P. Lancet. 2012 Feb 25;379(9817):758-72. doi: 10.1016/S0140-6736(11)61087-8. Epub 2011 Dec 9.

NSW

Most recently In November 2019, the Family Is Culture report, author Professor Megan Davis, was released. The Report was the result of an Independent Review of 1,144 Aboriginal children and young people who entered care in 2015-16 in NSW. This was commissioned by NSW Government following an earlier review of the protection and care system in 2015, the Tune's Report, that introduced significant changes to how children were taken into care. The Tune's report found that Aboriginal children, already over-represented in the system, were the "fastest growing cohort in out of home care", 7.4% are in out-of-home care, compared with 1% of all children and young people in NSW.

The drivers for both reviews were the significant over-representation of Indigenous children in care (40%), lack of legal access for families, the placement of Aboriginal children with non-Indigenous carers and the escalating numbers of children being removed. The 2015 changes were aimed at keeping Aboriginal families together and contributed to a 35% reduction in Aboriginal children and young people entering care since 2015-16, however the number of Aboriginal children in care was unchanged.

The Family is Culture Report found:

- The system had lost sight of its goal of protecting children
- Newborn Aboriginal children were taken from their mothers in 'flawed' and 'unethical' ways
- Department staff giving false and misleading evidence in Court when arguing against parents' ability to keep custody
- Department staff misinformed the children's court about vitally important information
- Widespread non-compliance with laws and policies by the Department and the broader sector e.g. staff routinely ignored the requirement to consult regularly with Aboriginal families and communities, and routinely chose removal over other, less intrusive, options available
- Willing and available Aboriginal family members were routinely ignored and siblings, including twins, were separated unnecessarily
- Children who did not appear to be at risk of harm were removed from their families
- The location of some young people under the care and protection of the minister was unknown.

Victoria

The following information is drawn from the Victoria Legal Aid's report Child Protection Legal Aid Services Review²⁷.

Increasing numbers in care

The VLA system has been placed under stress, due to the increase in the number of protection applications made by the DHHS to the Court. The growth in demand is being driven by increases in

²⁷Child Protection Legal Aid Services Review Final report, September 2017, Victoria Legal Aid <https://www.legalaid.vic.gov.au/about-us/our-organisation/how-we-are-improving-our-services/child-protection-legal-aid-services-review>

reports to DHHS. In 2014–15, DHHS received 91,586 reports,²⁸ up from 82,056 in 2013–14 and 73,272 in 2012–13²⁹. Of that figure, 14,115 were substantiated, leading to 4,927 applications to the Children’s Court³⁰.

Over representation

There has been a recent sharp increase in the number of children in OOHC in the last two years. The rate of Aboriginal and/or Torres Strait Islander children and young people in OOHC increased from 29.8 to 71.5 per 100,000, with the number of children and young people in OOHC tripling from 552 to 1,511.³¹ There has been an 63% increase for Aboriginal and/or Torres Strait Islander children and young people and 30% for non-Aboriginal and/or Torres Strait Islander children and young people.

Around one in 12 Victorian Aboriginal and/or Torres Strait Islander children is in OOHC, in contrast to the rate of one in 200 non-Aboriginal children.³² In 2014/15, approximately 40% of Victorian Aboriginal and/or Torres Strait Islander children were subject to a reports, investigation or substantiation (and 6.5% of non-Aboriginal children).³³

Aboriginal and Torres Strait Islander children and young people are grossly overrepresented in the system and the legal service response is not meet their needs.

Legal Services³⁴

Child protection is the largest program within the Family, Youth and Children’s Law Program and the third largest within Victoria Legal Aid (VLA) and is growing rapidly. In 2015-16, the Child Protection program accounted for \$21.3m or 14.2% of the VLA budget. It delivered around 4,500 duty lawyer services and 7,712 grants of legal assistance. Demand for services is increasing, with the number of grants of assistance increasing by 20% between 2013-14 and 2015-16.

There are an inadequate number of legal service providers in some regional areas. These areas deal with almost half of all applications to the Children’s Court of Victoria. While almost half of new applications to the Children’s Court are in regional areas, these attract only around 40% of the primary grants of assistance.

The 2012 Cummins Report found that:

- children in rural Victoria are much more likely to be placed in out-of-home care³⁵, and

²⁸ CP Quarterly Measures 2014-15: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/additional-data-selected-child-protection>

²⁹ Productivity Commission, Report on Government Services 2015, Volume f, Chapter 15

³⁰ Children’s Court of Victoria, Annual Report 2014-15, p. 5

³¹ Child Protection Legal Aid Services Review Final report, September 2017, Victoria Legal Aid <https://www.legalaid.vic.gov.au/about-us/our-organisation/how-we-are-improving-our-services/child-protection-legal-aid-services-review>

³² Road Map to Reform. Data as at April 2015

³³ Data from the Report on Government Services 2016, Volume f, Chapter 15, Annual State of Victoria’s Children Report 2013-14, Executive Summary, p.6

³⁴ Ibid

³⁵ Child Protection Legal Aid Services Review Final report, September 2017, Victoria Legal Aid <https://www.legalaid.vic.gov.au/about-us/our-organisation/how-we-are-improving-our-services/child-protection-legal-aid-services-review>

- there is a strong correlation between reports to child protection per-capita and indicators of disadvantage, with more reports in areas experiencing greater disadvantage³⁶.

Social disadvantage has been shown to be geographically concentrated³⁷ and some population groups are consistently overrepresented in data about disadvantage.³⁸ These groups figure highly in the people assisted by VLA's child protection program.

The number of child protection cases conducted by VLA staff has not changed greatly over the last 10 years, despite the dramatic increase in demand. This is mainly due to the internal staff practice capacity remaining largely the same over this period.

Instead the rise in demand has been absorbed by private practitioners, who deliver around 90% of child protection legal services under a grant of legal assistance. This represents a rise from 80% in 2006/07, with the number of cases dealt with by private practitioners increasing from 4,300 to 7,300 in 2016/17.

10. Change is desperately needed to the system and an independent review is needed urgently.

11. There is good evidence about what change is needed:

The Family is Culture Report made 125 recommendations including:

- A triage system to identify women at risk early to help during pregnancy and more prenatal case workers
- A ban on adopting Aboriginal children from the care system due to the "alien nature of adoption to Aboriginal culture, the horrors endured by members of the Stolen Generation and the enduring impact of the trauma and loss of connection to culture caused by forced removals of Aboriginal children".
- Replacing regulatory bodies in favour of an independent Child Protection Commission with greater oversight of court proceedings.
- independent statutory body be set up to conduct care and protection litigation in NSW, headed by specialist magistrates.
- A separate court for Aboriginal children, devised in consultation with Aboriginal childcare and legal agencies.
- Increased financial investment in early intervention support as a long-term investment to prevent more Aboriginal children entering the out-of-home care system.

³⁶ Ibid

³⁷ PHIDU 2010 [<http://phidu.torrens.edu.au/help-and-information/about-our-data/statistical-information>] Atlases of census data since 1999; ABS 2010

³⁸ Victorian Population Bulletin [<http://www.dtpli.vic.gov.au/data-and-research/population/census-2011/victorian-population-bulletin>] This includes, Aborigines and/or Torres Strait Islanders; one parent families; people with non-English speaking backgrounds; the unemployed; and people with a disability.

- Ensuring that financial investment in early intervention support is commensurate with the proportion of Aboriginal children in out-of-home care, with a preference for delivery of early intervention and prevention services by Aboriginal Community Controlled Organisations.
- Far more transparency across the sector including that the Department should record, collect and report data around the consideration of the use of less intrusive options prior to entry-into-care.
- The Department should establish an Aboriginal Quality Assurance Unit to focus on improving casework practice in respect of Aboriginal families” and review its own caseworkers’ “non-compliance with existing restoration policy and guidance”.
- A restoration hotline run by an Aboriginal organisation was needed to provide Aboriginal parents and families “more detailed information about the restoration process” and what they needed to do to get their children back.

Victoria Legal Aid - Actions

Key actions from the Report which has relevance for WA are:

Action 5

Victoria Legal Aid will take steps to improve the continuity of representation of children and young people who have received assistance for a child protection matter and who are later charged with a criminal matter to be heard in the Children’s Court of Victoria.

Action 7

Victoria Legal Aid will pilot an Early Intervention Unit featuring non-legal advocates, where the following are considered a priority:

- cases for which a Protection Application by Notice would ordinarily proceed
- families where one or both primary carers have an intellectual disability
- Aboriginal and Torres Strait Islander families
- Aboriginal Family-led Decision Making Conferences.

Action 9

Victoria Legal Aid will pilot a Health Justice Partnership to provide early advice and legal representation to pregnant women who are or may be the subject of an unborn report.

Action 11

Victoria Legal Aid will provide additional resources to the Victorian Aboriginal Legal Service and Aboriginal Family Violence Prevention and Legal Service to enable them to deal with more child protection matters.

Action 12

Grants of assistance will be made available for the provision of legal advice, assistance and representation for Aboriginal and/or Torres Strait Islander children, young people and parents where a child or young person is placed in out of home care and the issue of parental or sibling contact is in dispute.

Action 18

Victoria Legal Aid will increase the proportion of child protection grants of assistance conducted by staff lawyers to 20% within five years, with a focus on regional needs.

Action 20

Victoria Legal Aid will work with the Magistrates' Court of Victoria and the Children's Court of Victoria to establish regular Children's Court (Family Division) court-user meetings, designed to improve service delivery, at all headquarter courts.

Action 31

Victoria Legal Aid will continue funding Women's Legal Service and Loddon Campaspe Community Legal Centre to provide child protection services and work with community legal centres to identify other geographical areas where CLCs may address unmet need.

Action 32

Victoria Legal Aid will explore alternative funding arrangements for private practitioners in regional areas to increase the number of Child Protection panel firms in areas of unmet need.