

**SUBMISSION BY
YOUTH ADVOCACY CENTRE INC
TO THE
QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY**

OCTOBER 2012



The Youth Advocacy Centre Inc (YAC) has been operating for over 30 years and offers free, legal services, youth support and family support assistance and services to young people 10 years and over who are in, or are at risk of being in, the youth justice system or the child protection system, and who live in or around Brisbane. It provides support on a limited basis to those under 10 years of age and to young people outside of Brisbane via telephone, website and publications.

All services offered are voluntary and confidential. This means that YAC staff only work with a young person if they want to work with YAC staff and no contact is made with anyone (eg families, teachers, police, other adults) without the young person's permission (unless there is a risk of serious, immediate harm to the young person or someone else).

In any dealings with a young person, YAC is guided by the Convention on the Rights of the Child, in particular:

- the right of young people to be treated equally irrespective of “colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”;
- the right of a young person to have an opinion and to be heard in all matters affecting the young person; and
- the best interests principle to include consideration of the views of the young person.

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The views expressed in this submission are based on YAC staff's experience in working with young people in the child protection and youth justice systems. The submission will address:

- the current Queensland government response to children and families in the child protection system including the appropriateness of the level of, and support for, front line staffing: **in particular, the criminalisation of young people in the care and protection of the state;**
- tertiary child protection interventions, case management, service standards, decision making frameworks and child protection court and tribunal processes: **in particular, specialised courts; young people's involvement in the court process; right to information; enforcement of the Charter of Rights; right of review; and the interface between the youth justice and child protection systems;**
- the transition of children through, and exiting the child protection system: **in particular, the transition to independence process.**

CRIMINALISATION OF YOUNG PEOPLE IN CARE

Maltreated, acting out adolescents are less likely to receive sympathetic attention than younger children and more likely to run away, become homeless, engage in illegal and survival activities which bring them to the attention of the police rather than child protection services. These young people have been described as moving from being 'troubled' to 'troublesome'. This may lead to interventions which criminalise rather than assist them¹.

The criminalisation of young people in care is of great concern to YAC. Young people who have been recognised by the legal system as being at risk of harm, generally have a range of issues in their lives and are particularly vulnerable are removed from their homes and taken into care so that the state is responsible for their care and protection. However, these same young people are often put into residential placements in which they are charged with offences that in a normal family environment would be dealt with inside the family home.

A New South Wales Study² examined the criminal court files of 111 young people and found that there was an overrepresentation of young people who were in out of home care (34%) or 'extremely likely' to be in care in the near future (22.5%). The same study also found that the most common charge brought against a young person in care is that of 'malicious damage to property' (wilful damage) and that the damage was generally of property that belonged to the residential facility or foster home that the young person was residing in. Although the study was conducted in NSW this is a common concern for most Australian jurisdictions, including Queensland.

In Queensland, as in some other jurisdictions, young people in care may be at greater risk of criminalisation for wilful damage and assault as a result of charges being brought by those caring for young people in situations which would usually be dealt with within the family. Police are often called to out of home care facilities to address problems with young people that are behavioural and would be better dealt with within the care facilities themselves as would occur in a family

¹ Family Matters No 89 AIFS (2011) The Link between child maltreatment and adolescent offending

² From Care to Custody: Young Women in Out-of-Home Care in the Criminal Justice System (Katherine McFarlane) 22 Current Issues Crim Just 345 2010

environment. The state prosecutes these vulnerable young people and fails to take into account the underlying issues that exist which are often the very reason these young people were taken into care in the first place. Examples include:

A young person was charged with assault for flicking a carer in a residential care facility with a tea towel.

Another young person was charged with wilful damage caused when the young person banged into the wall which caused a hole. This particular young person attempted to repair the damage caused by puttingty the hole and painting over it. The residential care facility still phoned the local police and the young person was charged.

Sometimes it seems such situations arise when young people are placed in unsuitable accommodation as this is the only option available at the relevant time. There needs to be a continuum of placement options with proper placement matching and appropriately qualified staff or carers in each. If a young person cannot be immediately placed in a suitable placement, then there must be support staff to assist both the young person and the accommodation provider to avoid negative outcomes.

Recommendations:

- Early identification of, and intervention with respect to, problem behaviours to address the behavioural issues;
- Ensure that there is a continuum of care options which allows young people to be placed in the placement most suitable for them and their situation or needs;
- Ensure that all front line Child Safety Services staff and residential care workers have a qualification in social work or behavioural sciences or experience which would equate to this qualification;
- Ensure all workers in the care and protection system, including foster carers, have access to ongoing best practice training, resources, and support to adequately engage with vulnerable and/or traumatised young people and manage difficult behaviours in an appropriate manner;
- Ensure that contacting the police is only used as a last resort and for matters of substance.

SPECIALISED COURTS

The obvious benefit of specialised Children Courts magistrates for both criminal and child protection proceedings was recognised at the time of the introduction of the *Childrens Court Act* in 1992 when the then Minister noted:

Where a specialist Childrens Court magistrate is available in a major centre like Brisbane, preference is to be given to this magistrate hearing the matter. The reason for this preference is that a Childrens Court magistrate has greater specialist knowledge and expertise in the jurisdiction.³

Queensland, the third most populous state in Australia, has one specialist Childrens Court magistrate who is assigned to the Brisbane Childrens Court. This is the least for any other state in mainland Australia and is comparable only to Tasmania. With this exception, Queensland magistrates exercise

³ Queensland *Parliamentary Debates* Legislative Assembly 19 June 1992 p5929

the Childrens Court jurisdiction in association with a number of other jurisdictions including civil, adult criminal and domestic violence.

Section 5(n) of the *Child Protection Act 1999* (the CP Act) specifically refers to avoiding delay in making decisions. A specialised magistracy permits familiarity with the jurisdiction and allows speedy and competent resolution of matters. This avoids lengthy delays caused by courts where magistrate deal with Childrens Court matters on an infrequent often monthly basis.

It is understood that the former Childrens Court Magistrate, Ms Pam Dowse, who is now a magistrate at the Beenleigh Court, may be a specialist magistrate at that court for youth justice and child protection matters. If this is correct, this would be a welcome development but one that should be recognised officially.

Recommendation:

- In courts where there is more than one magistrate, one magistrate should be recognised as, and work as, the specialist Childrens Court magistrate.

YOUNG PEOPLE'S INVOLVEMENT IN COURT PROCESSES

The CP Act makes express and repeated provision regarding the participation of young people in decisions affecting their lives, yet in one of the key decision making forums, this does not apply:

*Section 5E **Obtaining child's views***

(1) When giving a child an opportunity to express their views under this Act—

- (a) language appropriate to the age, maturity and capacity of the child should be used; and*
- (b) communication with the child should be in a way that is appropriate to the child's circumstances; and*
- (c) if the child requires help to express their views, the child should be given help; and*
- (d) the child should be given an appropriate explanation of any decision affecting the child, including a decision about the development of a case plan or the effect of the decision or the case plan; and*
- (e) the child should be given an opportunity, and any help if needed, to respond to any decision affecting the child.*

(2) Nothing in this section requires a child to express a view about a matter.

*(3) **This section does not apply to a court.***

With respect to a court, there is only a general obligation, which is common to all parties, to ensure a young person, understands the proceedings:

106 Court to ensure parties understand proceeding

(1) In a proceeding for a child, the Childrens Court must, as far as practicable, ensure the child's parents and other parties to the proceeding (including the child if present) understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.

The Childrens Court is also responsible for young people charged with offences. Section 72 *Youth Justice Act 1992* states:

*(1) In a proceeding before a court in which a child is charged with an offence, the court must take steps to ensure, as far as practicable, that **the child** and any parent of the child present **has full opportunity to be heard and participate in the proceeding.***

*(2) **Without limiting subsection (1), the court must ensure that the child and parent understand, as far as practicable—***

(a) the nature of the alleged offence, including the matters that must be established before the child can be found guilty; and

(b) the court's procedures; and

(c) the consequences of any order that may be made.

It seems an anomaly that young people in care proceedings would not have similar rights to be heard as they would if appearing for alleged offending behaviour.

The Victorian Law Reform Commission's report into protection applications in the Children's Court of Victoria⁴ makes a recommendation to create a positive obligation on the Court to seek the direct participation of young people in child protection proceedings unless the young person lacks capacity or does not wish to participate.

Currently, South Australia and Tasmania legislation provides a young person with the opportunity to put their views to the Court personally unless the young person lacks capacity.⁵

It is common for children and people with intellectual impairments in other areas of law to be afforded provisions in relation to being heard and to participate.⁶ In YAC's view, the ability for young people to directly address the Court is essential as the young people who are the subjects of Child Protection Order applications are particularly disadvantaged and the adults in their lives may not properly represent their views.

An obligation on the Court to ensure that it hears directly the wishes of a young person who is the subject of a child protection application would be consistent with article 12 of the United Nations Convention on the Rights of the Child and the paramount principle contained in the CP Act, the best interests of the child. The benefit of such practice would provide to young people with capacity would be their empowerment within a child protection system which is prone to paternalism and ensure their voices would be heard.

It would also align with proceedings for review of decisions by Child Safety Services before the Queensland Consumer and Administrative Tribunal:

99U Child's right to express views to tribunal

(1) This section applies if a reviewable decision is about a child and the decision is being reviewed by the tribunal.

(2) Whether or not the child is a party to the review or appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

⁴ Victorian Law Reform Commission, Protection Applications in the Children's Court – Final Report 19 (2010), 332.

⁵ See *Children's Protection Act 1999* (SA) s 48(3); *Children, Young Persons and Their Families Act 1997* (Tas) s 56

⁶ *Evidence Act 1977* s93A; *Queensland Civil and Administrative Tribunal Act 2009* s99.

Recommendation:

- The CP Act be amended to require the Court to provide young people with the requisite capacity the opportunity to give the court their views and wishes on what is happening in their lives and what they would like to happen and for the court to take this into account when reaching a decision on the matter.

RIGHT TO INFORMATION

The CP Act, under sections 83A (b) and (c), requires consultation with a young person about their placement, who will reside, there as well as an opportunity if possible to meet the carer. It is the experience of many clients of YAC placed in residential facilities, that not only are they not provided with the information about the workers and other members who are living in the facility, but their child safety officers are also unaware of the other young people in the placement.

This is important as some young people may know each other and there may be issues between them which may have a bearing on the success of any placement. Shared living is a learnt skill and the wrong mix of young people may jeopardise the placement for all those living there.

Recommendation:

- Child Safety Services must ensure that sections 83A(b) and (c) are fully complied with;

ENFORCEABILITY OF CHARTER OF RIGHTS

Non-compliance with the Charter does not invoke any penalty or obvious redress. It is an established adage that “an unenforceable right is no right at all”. There must be clear penalties for willful or negligent non-compliance with the Charter - including the failure to ensure that young people are aware of it understand it and what it means for them.

Information about the Charter of Rights is required to be provided to each child in care (s74 (4)). However, a significant number of young people subject to a custody and /or guardianship order who attend at YAC appear to be unaware of the Charter. As a result, YAC has concerns as to the effectiveness of processes, techniques and resources adopted by Child Safety Services staff to convey this information.

YAC notes the publication “My Journey in Care”, which is an excellent resource. However it provides generic information only. The usual response when YAC staff enquire with Child Safety Services officers as to the date when clients were advised of the Charter and information regarding it would be:

That would have been happened when they first came into care

or

It would have been done by their previous caseworker.

There does not appear to be a requirement that staff record the date information and/or resource was provided which indicates the low priority this would seem to have.

It is argued that it is the intention of the CP Act that that the Charter will continue to be explained as the child’s ability to understand evolves. It would seem that there is a perception that if the Charter was explained to a child when they entered care – irrespective of when that occurred - that the

provisions of section 74 are satisfied until that child turns eighteen. It should be a requirement that the Charter be revisited as part of the case review process.

Recommendations:

- Section 74 of the CP Act be strengthened to require that young people are regularly reminded about the Charter of Rights and that workers must ensure that the young person understands what it means and they record when they have done this;
- Child Safety Services must produce copies of the Charter in a suite of formats which address differing levels of maturity, understanding and disability: for example, in similar ways to those which other agencies produce in relation to the Convention on the Rights of the Child.

RIGHT OF REVIEW

Reviews of placement whilst legislatively possible are not regularly accessed. Since the amalgamation of the Children Services Tribunal into the Queensland Civil and Administrative Tribunal (QCAT), YAC has had no requests from young to be represented in that jurisdiction. YAC has concerns that young people are not receiving appropriate information about their right of review and/or that they find the QCAT process too daunting.

Some Child Safety Services staff have advised YAC workers that Child Safety Services are not required to forward advice of rights of review regarding change of placement and contact arrangements to children and young people. These Child Safety Officers appear unaware of the statutory requirements to provide and explain these notices. It is assumed that internal systems with Child Safety Services neither generate the notice nor require confirmation that children have been given the appropriate notice.

It is also important that young people know where they can go and with whom they can discuss their choices where they are unhappy with a decision. It should not be for young people to have to try and work out where they can get this advice, particularly as the timelines for lodging applications for review are quite tight.

Recommendations:

- Child Safety Services ensure that young people are advised about decisions and review rights and that these actions are properly recorded;
- When Child Safety Services staff provide this advice, they also provide information to young people about who they can talk to about, and/or get help with an application to review, decisions they are unhappy with.

INTERFACE BETWEEN CHILD SAFETY AND YOUTH JUSTICE SYSTEMS

Police notification to Child Safety Services

Section 392 (3) (c) of the *Police Powers and Responsibilities Act 2000* requires the police to notify the Chief Executive (Child Safety) “promptly” of the commencement of proceedings against a young person. This does not appear to be happening in many cases and failure to do so results in Child Safety Services staff having insufficient information about young people for the court. From the experience of YAC workers, it would seem that Youth Justice Services notify Child Safety Service Centre when they are aware a young person in care is required to attend at court. This can often be the day before, or even the day of, court. Child Safety Services staff appear unaware of the notice

requirement and generally unwilling to raise the non-compliance by the Police with the Police Service.

Awareness of the youth justice system

YAC represents and supports a number of young people involved in the youth justice system who are subject to child safety orders. It is noted that Mr Steven Armitage in his statement to this Commission of Inquiry has noted that 69% of young people in the youth justice system as at June 2011 were known to child protection system.

YAC has concerns about the lack of knowledge and understanding by Child Safety Officers of the Youth Justice system. This lack of knowledge impedes the young person in their interaction with the criminal justice system and can effectively deny them of their ability to exercise their legal rights. An example follows.

Sally was taken to the Police Station by her carer. Prior to her arrival at the police station she was not advised that she was being taken to a police station nor provided with the opportunity to obtain legal advice. She was interviewed by the police about allegations pertaining to serious offences that had occurred last year. Some of her property was detained by the police. At the police station Sally was advised that she could obtain legal advice once she was at the police station, however by that time she was already there and was intimidated by the environment and thought she would “just get on with it”.

YAC is aware of Child Safety Officers who “support” young people at court on youth justice matters but who provide inappropriate or incorrect information because they do not well understand the jurisdiction.

A representative from Child Safety Services attended at a non-metropolitan court as “support” for a young Indigenous male charged with a simple offence that did not attract a penalty of imprisonment. The young person was from another region and was unknown to the worker. This departmental worker advised our client that he would be detained at the detention centre until the next mention of his matter in approximately three weeks as Child Safety had no placement for him.

Understandably the young person was very agitated by the advice that he would be detained and advised his youth justice worker that he intended to leave the court precinct. Fortunately as result of the advice of his youth justice worker to speak to his lawyer from YAC before leaving that young person remained. The young person was allowed to go at large from court which, given the nature of the charge, was the expected outcome.

Young people in care who are in detention

It is the experience of YAC that young people on child protection orders who are detained in the detention system may be visited irregularly, if at all, by Child Safety Services. YAC has long supported the need for a Child Safety Officer in the detention centre to act as liaison point with external service centres as the caseworkers do with the Youth Justice Service Centres.

A 15 year old young client with an intellectual impairment on a long term Guardianship Order was detained in custody. His child safety service centre was approximately 25 km away. After three weeks he had not been visited by anyone from Child Safety Services

although there had been some telephone contact. When speaking with the Team Leader about the matter YAC was advised the young person was required to show greater engagement before he could be assisted with an accommodation option so he could be released. It was unclear how this could be achieved if Child Safety staff did not attend at the detention centre to talk to him.

When concerns were raised that a 14 year old young woman had not been visited in detention, her service centre responded that the caseworker had seen the person before they went into custody and was only required to see the person once a month.

Seventeen year olds in care in prison

Engagement with young people in care who are incarcerated is of particular concern for 17 year olds. As the Commission will be aware Queensland, continues to define 17 year olds as adults for the purposes of the criminal justice system. This cohort is, however, still a child for the purposes of the CP Act. Whilst the youth justice system is complicated and daunting for young people it is least established for people with evolving capacities. The adult criminal justice is not.

Recently YAC acted for 17 year old who had been detained in adult prison. He advised the only contact he had had with Child Safety Services was shortly before his release from prison when Child Safety Services attended to advise his care order was about to expire and that as he was 17 they would not be seeking a further order. The young person further advised he was not legally represented on some court appearances as he did not initially receive Legal Aid.

Recommendations:

- Queensland Police Service and Child Safety Services must ensure that the legislative requirement for “prompt” notification in relation to commencement of criminal proceedings for a young person is adhered to;
- Child Safety Services staff must have sufficient and appropriate knowledge and training about how they can and should properly support young people who come into conflict with the youth justice system, including how to assist them to obtain legal advice;
- Youth Detention Centres must have a Child Safety Officer on staff who can liaise as required with young people’s Child Safety workers;
- For those young people in care and in prison (those aged 17), Child Safety Services must ensure that there is an officer with responsibility to see these young people on a regular basis and liaise as required with their Child Safety workers.

TRANSITION TO INDEPENDENCE

Research suggests that young people who are leaving the State care system are arguably one of the most vulnerable groups in our community with a higher prevalence of “negative life outcomes”.⁷

Statistics reveal that young people are remaining in the family home longer. In 2006 – 2007, the median age of young people first leaving home across Australia was 20.9 years (for males) and 19.8 years for females.⁸ In Queensland, young people who are in care and reach 18 years often transition

⁷ Osborn and Bromfield Young People leaving care: National Child Protection Clearinghouse Research Brief 2007:8

⁸ Family Characteristics and Transitions, Australia, 2006–07 (ABS cat. no. 4442.0)

to independence without adequate resourcing and support and arguably at a far younger age than their normative peers.

Terminology is important. The traditional term is “transition from care”. This implies a focus on just moving young people out of the system. A preferable term is “transition to independence” which implies preparing young people for being able to function in the world across a whole spectrum of life and living skills. This submission will focus on “transition to independence”.

Transition Planning

Research suggests that an integrated and flexible model of service delivery with a set of minimum standards is required to ensure a young person’s transition to independence is successful.⁹ Such a model should **commence by age 15** and incorporate preparation, transition and after care stages that ensure young people actively participate and make decisions in their transition to independence process, have access to an advocate, after care support workers and appropriate community supports and provides real exits to education and training options and stable and appropriate housing options.

Despite what is said to be the process around transition in Queensland, in practice YAC sees a lack of consistency in how transition occurs. It is also YAC’s experience that young people are often unaware of what the processes should be. There are regular reports of young people whose transition planning does not commence until close to their 18th birthday or when they are nearing exiting the State care system which can often make the process rushed and inadequate in exploring individual needs. A number have a plan but are unaware it exists or had no input into preparing it. Poor preparation and engagement with the young people themselves in the process means that some young people actually “transition into homelessness”. As such, the life outcomes for these young people – who have already experienced significant issues in their lives – is seriously compromised.

A young person, 19 years of age contacted YAC as they were having difficulty negotiating with Child Safety around fulfilling their commitments to the young person’s transition to independence plan. The young person was told that it “was too late” as they had now exited the Departments’ care and that those resources had been re- allocated.

Follow up and post care support (that is, after the young person turns 18) is critical. Research has shown that, without sufficient supports young people who are exiting care are more likely to become homeless, have contact with the criminal justice system or be unemployed.

Many young people who transition will transition back to their family of origin. Support and planning is also necessary for young people in relation to these family environments and relationships for the future.

Recommendations:

- Transition to Independence should commence at 15 and be ongoing until the young person reaches 21 (unless the young person does not require it for that length of time) and incorporate preparation, transition and after care stages that ensure young people actively participate and make decisions in their transition to independence process.
- The transition plan should be an ongoing process that is integrated into every young person’s individualised case plan.

⁹ Osborn and Bromfield Young People leaving care: National Child Protection Clearinghouse Research Brief 2007:8

- The transition plan must be flexible as it needs to adapt and change to meet the young person's needs and interests as they develop and mature.
- Linkages with support/community agencies must be incorporated in all stages of the planning and transition process to ensure a young person establishes and maintains community connections/connectedness
- The young person must be given a copy of their transition plan when it commences and further copies of it as it develops over time.
- Young people should be able to access an advocate to assist their effective participation in the transition planning and process where they want it.
- A mentoring system for people and families to be available to advise and support young people, to commence once they turn 17, to further assist their integration into the broader community.

Housing

Many of the young people YAC assists leave care without any long-term accommodation and support and risk being transitioned into homelessness. Numerous studies have highlighted the over representation of young people who are or have been in the child protection system in the homeless youth population.¹⁰

A young person, 16 years of age whose two year order was due to expire had a transition plan in place that provided for a joint action plan through housing and child safety. When the young person's order expired, they were still waiting for a housing option in order to transition to independent accommodation. This young person is currently residing temporarily with friends (has moved four times in the past 6 months) and is still on the housing waitlist

It is YAC's experience that for some young people who are on child protection orders and/or are exiting care, there is a lack of appropriate placement models and options that cater for individual needs. A number of young people therefore transition to Specialist Youth Homelessness Services (SYHS) as this can be their only alternative. Indeed, it is also YAC's experience that child safety workers often refer young people in care to these services due to the lack of accommodation and support options – particularly to "end of the line" young people who may be exhibiting challenging behaviours.

Young people exiting care should also be able to live somewhere which is "home", that is, something which can be longer term and be "their place" to avoid instability and transience which, again, is likely to compromise their ability to achieve positive outcomes over the rest of their lives.

Recommendations:

- The state must give priority to young people who are leaving care for public and social housing;
- Safe and appropriate accommodation must be a key component of transition to independence planning.

¹⁰ National Youth Commission Inquiry into Youth Homelessness (2008) Australia's Homeless Youth