

THE POTENTIAL OF A SPECIALIST INFANT COURT:

Submission in response to the Australian Human Rights Commission's call for submissions:

Youth Justice and Child Wellbeing Reform across Australia.

Submission by Matthew Wilson, 2020 Churchill Fellow in response to question 3:

Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

About Matthew Wilson

With an almost 30 year professional history in the child and family welfare sector Matthew Wilson's professional passion is for evidence-based innovative approaches to the complexity of matters involved in Australian child protection and children's court jurisdictions. In furtherance of this passion, in 2020 Matthew was awarded a Churchill Fellowship to investigate innovative court-based approaches that better meet the complex needs of infants and their families in care and protection jurisdictions throughout the US and UK. A copy of Matthew's Churchill Fellowship report is appended to this submission by way of attachment and is also accessible via:

<https://www.churchilltrust.com.au/project/to-investigate-innovative-court-based-approaches-to-infants-in-care-and-protection-proceedings/>

Matthew holds a Bachelor of Social Work, a Post Graduate Diploma in Child, Adolescent and Family Mental Health, a Post Graduate Diploma in Child and Family Practice Leadership, and a Masters in Addictive Behaviours.

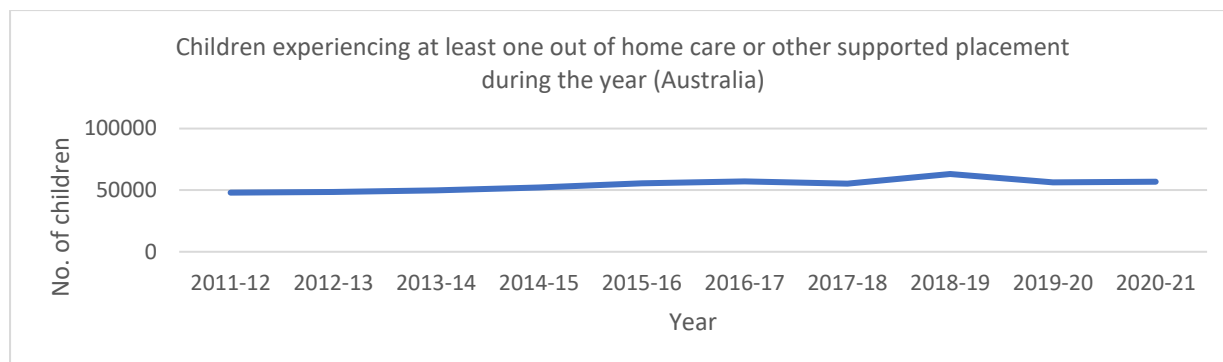
Note: Whereas Matthew is currently employed by the Children's Court of Victoria, the content of this submission reflects Matthew's private research and interest through the Churchill Fellowship and does not reflect any formal or informal position of the Children's Court of Victoria.

Submission

A Worsening Child Protection Crisis

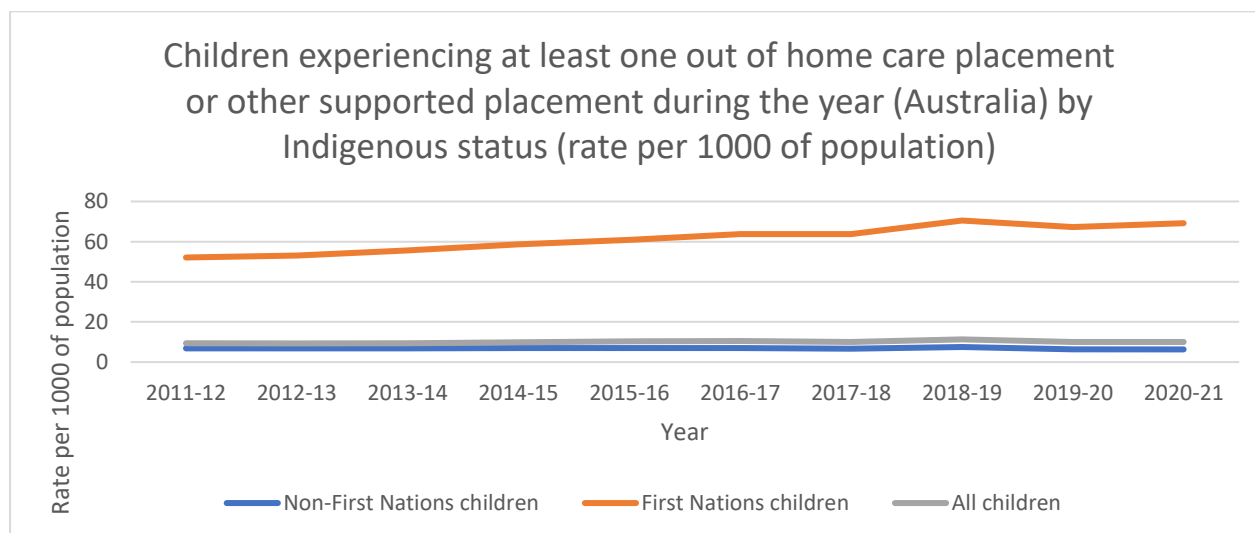
Child protection jurisdictions throughout Australia are perpetually described as being in a state of crisis. Each year sees an incremental rise in the number of Australian children being removed from parental care and entering the out-of-home care system.

Figure 1 – Children experiencing at least one out of home care or other supported placement during the year.¹



First Nations children experience at least one out of home care placement or other supported placement at a significantly higher rate than non-First Nations children. In 2020-21, First Nations children experienced this trauma and disruption at a rate of 69.1 per thousand of population, compared with 10 per thousand of population for non-First Nations children. Over the ten years to 2020-21, this represents a 32.6 per cent increase in this rate for First Nations children, compared with an 18.9 per cent rate increase for non-First Nations children (Figure 2.)

Figure 2 – Rate (per 1000 of population) of children experiencing at least one out of home care placement during the year (Australia) by Indigenous status.²



¹ Australian Government Productivity Commission (2022), *Report on Government Services*, Retrieved from <https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>

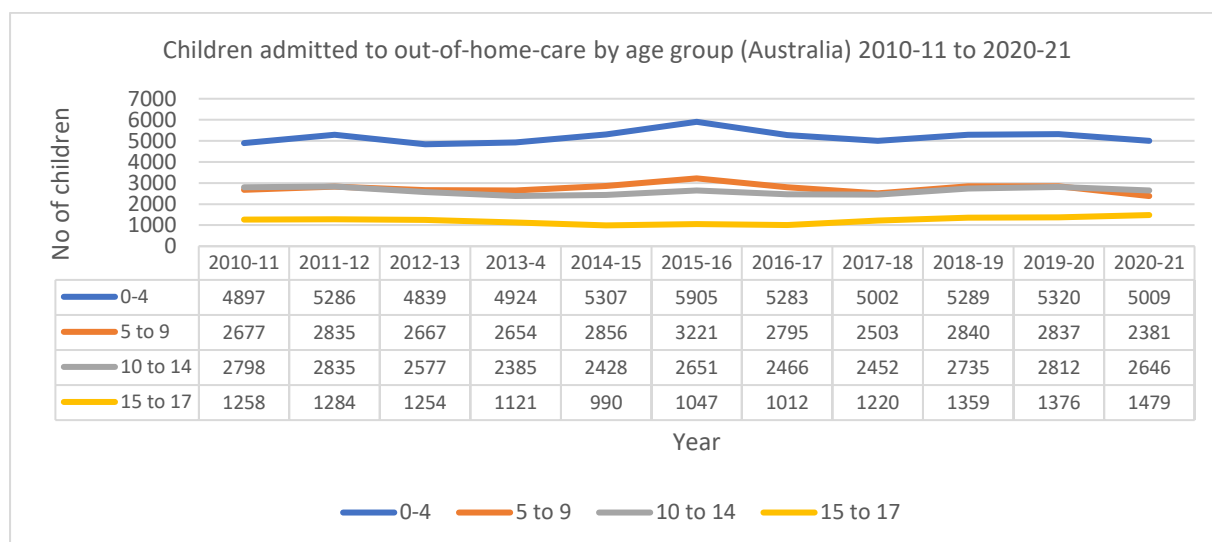
² Ibid

The over-representation of infants and very young children.

The Australian Institute of Health and Welfare (AIHW) reports that nationally, infants and very young children consistently have the highest rate of receiving child protection services, when compared with older children. While First Nations children continue to be over-represented within every age group, First Nations infants and very young children also receive child protection services at a higher rate than First Nations children in all other age groups.

As a corollary to the greater prevalence of infants and young children receiving child protection services, and compounding the plight of this most vulnerable cohort, children aged 0 to 4 years enter out of home care in significantly higher numbers than children or young people in any other age group (Figure 3).³ Again, First Nations infants enter out-of-home care at a greater rate than non-First Nations infants.

Figure 3 - Children admitted to out-of-home-care by age group (Australia) 2010-11 to 2020-21.



At the same time, rates of discharge from out-of-home-care were among the lowest for infants and very young children when compared with children in other age groups.⁴ National and International literature indicates that of all age cohorts entering out of home care, infants experience the longest placement duration⁵ and that where children enter out of home care in infancy, they will, on average, spend more of their childhood in care than children who first enter care at an older age.⁶

³ Australian Institute of Health and Welfare (2022), *Child Protection Australia 2020-21*. Retrieved from <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/about>

⁴ Ibid

⁵ Wulczyn F., Ernst, M. and Fisher, P. (2011) *Who are the Infants in Out-of-Home Care? An Epidemiological and Developmental Snapshot*. Chicago: Chapin Hall, University of Chicago; Zhou, A.Z. and Chilvers, M. (2008) Infants in Australian Out-Of-Home-Care. *British Journal of Social Work*, 2010, 40, 26-43

⁶ Wulczyn F., Ernst, M. and Fisher, P. (2011) *Who are the Infants in Out-of-Home Care? An Epidemiological and Developmental Snapshot*. Chicago: Chapin Hall, University of Chicago

The significance of the over-representation of infants

Infants' entry into out of home care can compound the harms associated with the adverse events responsible for that entry. National and International literature indicates that infants in out-of-home care are more likely to experience developmental delays, adverse physical health, and attachment problems, and are more likely to experience adverse longer term outcomes than other children.⁷ Chief amongst the impact of exposure to adverse childhood experiences in infancy is the deleterious impact on attachment formation and maintenance. 'Attachment' refers to the unique relationship formed between infants and their caregiver/s that is foundational to healthy development. Exposure to traumatic harm and to dysfunction and inconsistency in or prolonged separation from primary attachment relationships, sees infants likely to develop adverse mental health conditions that have lasting negative impacts on psychological and social development across their lifespan.

For First Nations infants and their families, the deleterious impact of involvement in child protection processes, and particularly in relation to entry into out-of-home care is significantly compounded by the reality of intergenerational familial trauma associated with racist Australian policies and practices leading to the Stolen Generations, whereby "*subsequent generations continue to suffer the effects of parents and grandparents having been forcibly removed, institutionalised, denied contact with their Aboriginality.*"⁸ Loss of connection to culture often occurring as a result of removal of First Nations children from parental or familial care sees the loss of a significant protective factor for the overall wellbeing of First Nations children throughout their lifespan.

The significance of the over-representation of infants entering out-of-home care lies in the likely trajectory of adverse outcomes that these most vulnerable children will experience across the range of developmental, social and psychological domains throughout their lifetime unless timely skilled assessment and early intervention targeted at both these children and their familial systems occurs. Critically, assessment and intervention needs to occur on a timeline and in a context that informs decision making by child welfare sector professionals, and by judicial offers in children's court jurisdictions as early and as comprehensively as possible to minimise the compounding effects of the adversity these most vulnerable children face, and to mitigate against the development of intergenerational trauma and dysfunction.

*The legacy of unhealed adverse childhood experiences is seen every day in [Children's Courts], as formerly abused or neglected children are now the abusing or neglecting parent. Fortunately, this multigenerational cycle of trauma and maltreatment can be interrupted with a systemic shift towards "therapeutic jurisprudence," a reframing of the judicial system to promote a more effective approach to altering the trajectory for maltreated children and their families.*⁹

⁷ Wulczyn F., Ernst, M. and Fisher, P. (2011) *Who are the Infants in Out-of-Home Care? An Epidemiological and Developmental Snapshot*. Chicago: Chapin Hall, University of Chicago; Zhou, A.Z. and Chilvers, M. (2008) Infants in Australian Out-Of-Home-Care. *British Journal of Social Work*, 2010, 40, 26-43; Milburn, N.L., Lynch, M. and Jackson, J. (2008) Early Identification of Mental Health Needs for Children in Care: A Therapeutic Assessment Programme for Statutory Clients of Child Protection. *Clinical Child Psychology and Psychiatry* 2008, 13 (1), 31-47

⁸National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia). (1997). *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Sydney: Human Rights and Equal Opportunity Commission, , p154

⁹Florida State University Center for Prevention and Early Intervention (2017). *Florida's Early Childhood Court: Improving outcomes for infants and toddlers in Florida's dependency court*. Florida State University: 2017 , 3

The Potential of Specialist Infant Courts

Specialist Infant Courts (also known as Early Childhood Courts) had their origin in the 1990s in Miami, Florida, and today exist in over one hundred jurisdictions throughout more than thirty-six states in the US. There is no such court in an Australian care and protection jurisdiction.

Embedding infant mental health and early childhood development expertise into solution-focused court processes, Specialist Infant Courts seek to understand and focus remediation attempts on the underlying causes of infants and their families appearing in these specialised dockets. Their focus is on minimising trauma and its impact on child development and infant mental health. They adopt a non-adversarial approach and employ the expertise of multi-disciplinary teams led by a Court-employed 'Community Coordinator' offering individualised, dyadic, evidence-based treatment approaches, to the familial issues and dynamics that have led to their involvement in abuse and neglect proceedings. In Specialist Infant Courts, therapeutic jurisprudence manifests itself in less adversarial court events that sees more genuine engagement amongst parties, ensuring more accurately informed understandings of root problems, and consequently more accurately targeted and effective interventions.

Key Specialist Infant Court Processes and Operations

Assessment

Where a parent and infant are referred to a Specialist Infant Court, an in-depth assessment of the parent, infant and the parent-infant relationship is undertaken by an infant mental health specialist. Parent-infant relationship assessment focusses on the parent's capacity to provide emotional support to the infant, to set limits and to provide structure, and well as the infant's capacity to respond and regulate their emotions and feelings. A second focus of the parent-infant assessment involves an interview with the parent to understand their 'working model' of the child, helping the assessor to understand the parent's behaviour towards the child, and needs identification with respect to this. This assessment forms the basis of treatment modality and service engagement recommendations and is provided to the Specialist Infant Court judicial officer and to the multidisciplinary court team. The assessment and the recommendations that flow from it are updated regularly and communicated to the Court Team as progress towards treatment goals are re-assessed.

The Family Team

The multi-disciplinary Family Team is led by the Community Coordinator and usually meets monthly. The purpose of the Family Team is to review participant progress, provide observations and make recommendations, as well as deliver treatment and case management. The effect of the Court Team is to build a supportive community around the family to drive goal attainment. Composition includes the parent and the alternative caregiver (eg, foster carer), the Community Coordinator, the infant mental health specialist, legal representatives, the child protection practitioner, and other service providers engaged with the family.

Monthly Court appearances

Monthly Specialist Infant Court hearings are the formally listed court event at which progress towards identified parent and infant goals, treatment and other service engagement, barriers and successes are formerly reported to the Court, and where amendments to existing court orders can be made where warranted. The Family Team informs the judicial officer of therapeutic progress, allowing

judicial decision-making that is contemporaneous with emerging need or development. Informed by the concept of therapeutic jurisprudence, Specialist Infant Court hearings are less formal than traditional court events, though all traditional respectful conventions are maintained. The approach is strongly non-adversarial. Conversations occur directly between the parent and the judicial officer, though legal representations may also occur through legal representatives for all parties in attendance. Judicial demeanour is candid and warm, conveying knowledge of and investment in the experience and progress of family members, while clearly maintaining judicial authority through the communication of clear expectations and the making of orders.

Behavioural health interventions

A core component of Specialist Infant Courts is the engagement of participants in a continuum of behavioural health services. This continuum includes a range of interventions, including the Parent-Child Relationship Assessment that occurs upon referral. Trauma interventions and engagement in individual parent treatments (eg for adverse mental health, addiction, etc) also sit within this continuum.

A common behavioural health intervention in Specialist Infant Courts is Child Parent Psychotherapy (CPP). Evidence-based, CPP is a relationship-based intervention “designed to repair the behavioural and mental health problems of infants, toddlers, and pre-schoolers whose most intimate relationships are disrupted by experiences of maltreatment, violence, and other forms of trauma that shatter the child’s trust in the safety of attachments.”¹⁰ Unlike many interventions typically employed in child welfare cases, CPP is dyadic in that sessions are attended jointly by the child *and* the parent or primary attachment figure, and its focus is on healing the infant-parent relationship, while developing parental insight and an evolving understanding of the infant’s needs of their parent as they develop.

Evaluation findings of Specialist Infant Courts include:

- That Specialist Infant Courts achieve permanency for children at higher rates, and in a shorter period of time than control groups;
- That children involved with Specialist Infant Courts exit out-of-home care sooner than children in traditional justice approaches, including findings that involved infants and very young children leave out-of-home care nearly three times faster than comparison samples;
- That children involved with Specialist Infant Courts are five times less likely to re-enter out-of-home care than the control cases in traditional adversarial approaches;
- That Specialist Infant Court involvement sees a reduction in future applications relating to abuse or neglect in participant families;
- That Specialist Infant Courts see improved user experiences of Children’s Court proceedings, with participants reporting feeling more respected and involved compared with traditional approaches, and reporting improved life circumstances, greater understanding of early childhood development, and trauma and attachment as a consequence of their involvement.

¹⁰ Lieberman, A.F., Ippen, C.G., and Van Horn, P. (2015). *Don’t Hit My Mommy! A manual for child-parent psychotherapy with young children exposed to violence and other trauma*. Second Edition, Washington DC, Zero To Three

- That cost-benefit analyses of Specialist Infant Courts determine that 75% of Specialist Infant Court costs are mitigated by out-of-home care cost avoidance alone, and that further cost-benefit is achieved through disrupting life-long, and often intergenerational, patterns of dysfunction and disadvantage.

A more thorough description of evaluation outcomes of Specialist Infant Courts is contained in the attached Fellowship Report by Matthew Wilson.

Conclusions

The value of integrating infant mental health and early childhood development expertise into the court process

There is a clear positive correlation between case planning and judicial decision-making being informed by infant mental health and developmental expertise, and outcomes that are consistent with the best interests of infants and their families. At the very least, where comprehensive assessments of familial needs and strengths occur early in proceedings, infants and families are more likely to be engaged with services and supports required to enhance wellbeing and functioning, leading to earlier stability and permanence for children. Where these assessments and the interventions that flow from them are *coordinated* not only with each other, but also with case planning processes and judicial determinations as they evolve, families are more likely to engage meaningfully with them. Enhanced engagement inevitably leads to improved family functioning and, consequently, higher rates of family reunification.

Specifically, there are clear benefits to children and families from their participation in evidence-based, dyadic interventions such as Child-Parent Psychotherapy (CPP). In Australian child protection jurisdictions, expert understanding of the relationship between infants and their parents, and with alternate caregivers is rarely achieved – and even more rarely achieved on a timeline that allows for necessary interventions with respect to that relationship to be identified and implemented early. When children enter out-of-home care, it is even more rare for dyadic relational *treatment* – that is, expertly observed and guided interactive intervention with both the parent or caregiver *and* the child – to occur in a court context where need and progress can be presented to judicial decision-makers contemporaneously as understanding and relational functioning evolves.

Appropriately targeted early behavioural intervention achieves improved outcomes including lower insecurity, avoidance, anxiety and anger observed in the attachment styles of infants and children, higher levels of parental empathy, enhanced satisfaction in parental relationships, and improvements in behavioural problems, traumatic stress symptom, and mental health diagnostic status.

The efficacy of solution-focussed specialist infant courts in delivering better outcomes for infants, very young children, and their families

Specialist Infant Courts report improve outcomes in terms of earlier and more sustainable permanency outcomes for children. Where reunification is achieved, children spend less time in out-of-home care through these approaches than through traditional adversarial approaches, and they are less likely to experience further abuse or neglect, leading to a significant reduction in future child

protection and children's court involvement. Where reunification is not achieved, children find stable, permanent alternate care arrangements more quickly.

Solution-focussed approaches in care and protection jurisdictions enhance the participation of marginalised and socially-excluded parents and family members, and achieve better outcomes particularly for First Nations families for whom child protection involvement and children's court proceedings can be particularly traumatic and ineffective. Where Specialist Infant Courts achieve superior outcomes to traditional adversarial approaches, they do so consistently regardless of the cultural background of participants. In Australia, where First Nations children, and particularly infants, consistently experience entry into out-of-home care at a far higher rate than non-First Nations children, adopting a solution-focussed approach that is known to be effective for First Nations families would be a significant component of much needed system reform.

The opportunity to contribute to much needed reform of Australian care and protection jurisdictions

Australian child protection systems are frequently described as being in crisis and where our systems fail our very youngest, most vulnerable children and their families, crisis perpetuates itself in an immediate sense, but also intergenerationally. Where we provide early, effective, evidence-based interventions in the lives of infants in care and protection jurisdictions we positively impact on their trajectory across their lifespan. We impact on their current and future engagement with physical and mental health systems, their educational attainment, the likelihood of their future interface with criminal justice systems, and the likelihood of continuing intergenerational cycles of abuse and neglect.

In existing solution-focussed approaches to complex child protection matters before Australian courts, we have a working template of a better, more successful model for First Nations and non-First Nations children and families. An Australian-first Specialist Infant Court would add significantly to much needed reform.