JOINT PROTOCOL TO REDUCE THE CONTACT OF YOUNG PEOPLE IN RESIDENTIAL OUT-OF-HOME CARE WITH THE CRIMINAL JUSTICE SYSTEM

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- Impact Youth Services
- Family and Community Services
- St Saviours
- Uniting Care Burnside
- Marist Youth Care
- NSW Police Force, The Hills Local Area Command
- NSW Police Force, Mt Druitt Local Area Command
- NSW Police Force, Blacktown Local Area Command
- NSW Police Force, Quakers Hill Local Area Command
- Legal Aid NSW

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1. PURPOSE

This Protocol applies to young people under 18 years of age living in residential out-of-home care\(^1\) (OOHC) in NSW. The implementation of this Protocol will be supported by Annexure A: Procedures for residential OOHC services, and Annexure B: Policing responses to incidents in residential OOHC services.

The Protocol aims to:

i. Reduce the frequency of police involvement in responding to behaviour by young people\(^2\) living in residential services, which would be better managed solely within the service.

ii. Promote the principle that criminal charges will not be pursued against a young person if there is an alternative and appropriate means of dealing with the matter.

iii. Promote the safety, welfare and wellbeing of young people living in residential services, by improving relationships, communication and information sharing both at a corporate level and between local police and residential services.

iv. Facilitate a shared commitment by police and residential services to a collaborative early intervention approach.

v. Enhance police efforts to divert young people from the criminal justice system by improving the information residential services provide police about the circumstances of the young person to inform the exercise of their discretion.

vi. Ensure that appropriate responses are provided to young people living in residential services who are victims.

The Protocol (and procedures) emphasise the importance of flexibility and proportionality in determining the most appropriate response to a young person’s behaviour on a case by case basis. The procedures for residential staff stress that contact with police should only be made when the circumstances warrant it.

While the central purpose of the Protocol is to reduce unnecessary police contact with young people, it is equally important that residential service staff respond to the needs of any victim(s). In this regard, the Protocol also emphasises the importance of ensuring residential services promptly contact police when necessary – especially when there are immediate safety risks which require a police response. When police are called in these circumstances they will attend the service and take appropriate action to secure the safety of any alleged victim(s), the involved young person and service staff.

The Protocol makes clear that serious incidents fall outside its scope. Such incidents generally warrant a sensitive and comprehensive response from a number of agencies.

1.1. Guiding Principles

This Protocol is underpinned by the following guiding principles:

i. Young people living in residential services have a range of complex needs arising from their traumatic backgrounds of abuse and neglect.

ii. These young people may exhibit a wide range of behaviours associated with their experiences of trauma and neglect. These behaviours are best managed using trauma-informed approaches consistent with principles of therapeutic care.\(^3\)

iii. A multiagency commitment is necessary to divert young people in residential services from unnecessary contact with the criminal justice system.

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\(^1\) OOHC is one of a range of services provided to children who are in need of care and protection. This can include a variety of care arrangements other than with their parents, such as foster care, placements with relatives or kin, and residential care.

\(^2\) In this Protocol ‘young person’ means any person under the age of 18 who resides in a residential OOHC service. Generally children in residential services are at least 12 years of age, however younger children are sometimes also placed in residential care.

\(^3\) The NSW Therapeutic Care Steering Committee leads a joint ACWA and FACS project to establish a common understanding of the definition of best practice in therapeutic care, with the goal of developing an accepted Framework for Therapeutic Care in NSW that will be used in planning and funding. The Steering Committee includes a range of government departments, residential care services, clinical practitioners and academic experts in therapeutic care and has agreed on the following definition of Therapeutic Care: Therapeutic care for a child or young person in statutory care is a planned, evidence-based, intensive and team approach to the complex impacts of abuse, neglect and separation from families and significant others. It seeks to provide positive, safe and healing relationships and experiences to address attachment and developmental needs.
iv. Police should be called as a last resort in response to incidents arising from challenging behaviours by young people in residential services unless it is to prevent a significant breach of the peace.4

v. Services should always call police to respond to incidents involving young people where there is a safety risk. For example, services have discretion not to call police for minor offences where no one is hurt and the victim wants no police action; or for minor breaches of house rules.

vi. Young people living in residential services have the same rights as other young people to seek assistance from police. Residential service staff will provide appropriate support and assistance to young people who choose to report an incident to police.

vii. The arrest and detention of a young person should only be used as a last resort.

2. BACKGROUND

It is well established that for a variety of reasons, young people living in residential services are at increased risk of coming into contact with police and other parts of the criminal justice system.5

In NSW, less than 3% of young people in OOHC live in residential care – about 480 young people.6 However, these young people have typically experienced numerous placement breakdowns and often present with multiple, complex needs. The placement of these young people in residential care aims to provide a safe and supportive environment in which to address the combined impacts of abuse, neglect and separation from family.

In 2008, the link between OOHC and contact with the criminal justice system was highlighted by the Special Commission of Inquiry into Child Protection Services in NSW, which observed that significant proportions of juvenile detainees had a history of being placed in care.7 In its 2011 issues paper, The Drift from Care to Crime, 8 Legal Aid NSW identified a growing trend towards the criminalisation of young people living in OOHC. According to the Children’s Legal Service, a large number of their ‘high service user’ clients have a history of being in OOHC, with a significant proportion of these having lived in residential services.

In NSW, residential care is primarily provided by accredited non-government OOHC agencies funded by the Department of Family and Community Services (FACS). Specialist Homelessness Services (SHS) also provide care and accommodation for young people with backgrounds of trauma and/or neglect. It is anticipated that this Protocol will be extended to SHS in future.

The NSW Police Force (NSWPF) has responsibilities under the Young Offenders Act 1997 (YOA) to divert young people from the criminal justice system. The NSWPF Youth Strategy also promotes the use of collaborative approaches to policing young people. The NSW Police Force Corporate Plan 2012-2016 explicitly endorses prevention and early intervention strategies for young offenders and has set a target of diverting at least 58% of young offenders from court.

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4 A breach of the peace occurs when harm is done or likely to be done to a person or to property when a person is present. It includes, for example, a situation where a person is in fear of being assaulted. Police are empowered to arrest a person they reasonably believe will commit or cause a breach of the peace. There must be some level of violence, threatened or actual, in order to justify an arrest for breach of the peace. [R v Howell (1982) QB 416] This allows police to take action to prevent serious injury or damage to property. However, a person arrested in relation to a breach of the peace will not be charged unless they commit a statutory offence.


7 Special Commission of Inquiry into Child Protection Services in NSW, Report of the Special Commission of Inquiry into Child Protection Services in NSW, 2008. The Commission reported that between 2003 and 2006, 28% of male and 39% of female juvenile detainees had a history of OOHC.

8 Legal Aid NSW, The Drift from Care to Crime: A Legal Aid NSW Issues Paper, October 2011.
2.1. Trauma and Challenging Behaviour

Many young people in OOHC have experienced ‘complex trauma’ – exposure to multiple and ongoing interpersonal trauma such as abuse, neglect or emotional or physical deprivation. The impact of past experiences of trauma often surface for young people in a range of disruptive and difficult behaviours harmful to themselves and/or others. These behaviours are often referred to as ‘challenging behaviours’. Challenging behaviours can involve risk taking, poor impulse control, resistance to boundaries (for example being absent from care without permission) and in some situations, can escalate into violent and/or criminal behaviour.

While some challenging behaviour exhibited by young people in residential services may meet the threshold of criminal behaviour, the same behaviour occurring in family homes would likely be managed without the involvement of police. Challenging behaviours need to be managed in the residential care environment in a way that not only supports the young person who is exhibiting the behaviours but also ensures the safety of all residents and workers. Residential services have a duty to ensure the safety of their staff and the young people in their care. Police are also responsible for taking action to ensure community and individual safety.

A ‘trauma informed’ approach recognises the presence of trauma symptoms; and acknowledges the role of trauma in patterns of behaviour and aims to support young people to manage their emotions and regulate their behaviour. A key responsibility for those involved in providing care to this group of young people is to provide planned, positive and supportive strategies to assist them to work towards more positive patterns of behaviour, and where possible, to avoid more punitive approaches. Individual Behaviour Support Plans (BSPs) can be useful in identifying strategies to assist carers and young people to manage behaviour.

A trauma informed approach also seeks to protect young residents in residential services from further trauma caused by conflict with, or victimisation from, other young people living at the service. It is important that ‘client mix’ is a key consideration in the placement of young people and that the needs and views of any victim are always taken into consideration when responding to incidents at residential service.

2.2. Interagency Collaboration

Young people with complex and multiple needs are likely to require the combined support of a number of different services and agencies. The parties to this Protocol share a commitment to working collaboratively on early intervention and prevention strategies which support vulnerable young people, enhance their wellbeing and assist them to develop positive behaviour patterns which are less likely to bring them into contact with the criminal justice system.

It is widely acknowledged that collaborative interagency approaches which facilitate integrated responses to vulnerable young people are preferable to dealing with incidents in isolation. This kind of collaborative case management should ideally lead to improved service delivery by reducing duplication and clarifying roles and responsibilities. It can also enhance the opportunity for creative solutions. Incidents in residential services can present opportunities for collaborative problem solving and trigger revision of current strategies and/or involvement of additional partner agencies in the support for the young person.

3. ROLES AND RESPONSIBILITIES

3.1. Joint Responsibilities

While each agency has a specific role to play in implementing the Protocol, all parties endorse the Guiding Principles (above) and agree to:

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10 Other examples of challenging behaviour include stress intolerance; alcohol and other substance abuse; self-harming; behaviours; social isolation and limited capacity to form relationships with peers and/or adults; sexually inappropriate behaviour; anti-social behaviours, including aggression and or violence towards people, and in some instances, criminal behaviour. (Source: Out-of-home Care Service Model – Residential Care, April 2007.)
i. Act within the spirit of the Protocol when responding to incidents involving young people living in residential services.
ii. Implement procedures for residential services and police to ensure the safe, appropriate and proportionate response to individual incidents at residential services (i.e. consistent with Annexures A and B).
iii. Ensure systems are in place to facilitate the implementation and evaluation of the Protocol, including appropriate record keeping.
iv. Liaise and share information with other parties to the Protocol (and where appropriate, with other prescribed bodies such as schools, health providers and other support services).
v. Promote the safety, welfare and wellbeing of young people in accordance with the provisions of Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998.
vi. Develop, implement and promote the delivery of appropriate training and guidance about the Protocol and related policies.

3.2. Family and Community Services

As the government agency with the lead role for ensuring the safety, welfare and wellbeing of children and young people in NSW, FACS has an overriding interest in the promotion of interagency practices which minimise the involvement of young people in the criminal justice system. As the funding body for OOH, FACS is responsible for promoting good practice in providing services to vulnerable young people assisted by residential services through its ongoing management of service contracts and related performance monitoring.

FACS will promote the effective implementation of the Protocol to residential services through existing governance mechanisms such as interagency meetings within each District. FACS will develop resources and work with peak bodies to encourage local implementation of these protocols as part of their annual planning, including information sessions and practice forums to promote provider requirements. In this regard, FACS will work with peak bodies and the residential OOH sector to identify and promote examples of best practice in relation to behaviour management in individual residences and local processes between residential services and police.12

The Children’s Guardian is responsible for the accreditation of designated agencies in accordance with the NSW Child Safe Standards for Permanent Care.13 Designated agencies are required to meet the requirements of their accreditation and funding obligations outlined in the Out-of-home Care Contracted Care Program Guidelines and the Out-of-home Care Service Model: Residential Care (the Residential Care Service Model). A key feature of the Residential Care Service Model is that residential service staff need to have an understanding that the behaviour of young people often has its basis in past traumatic experiences and that this should be taken into account when responding to the behaviour to avoid inadvertently adding further trauma. It also suggests that when responding to crisis situations, residential care agencies should have clear guidelines around the involvement of the police with an understanding that attempts should be made to minimise police involvement where possible.

To support the implementation of the Protocol, FACS will review the existing behaviour management/support policy in collaboration with NSW Health, the Office of the Children’s Guardian (OCG) and non-government agencies. FACS, in partnership with ACWA, is also developing a Therapeutic OOH Framework to support agencies to embed trauma theory, child brain development and attachment theory in service delivery, aiming to improve the wellbeing and outcomes for young people in OOH whilst also supporting carers, staff members and significant others caring for the young people (see also Annexure A).

3.3. Residential out-of-home care services

As day-to-day care givers, residential service staff are uniquely placed to know about the history, relationships and current situation of young people residing at their service. They are frequently called upon to decide

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12 See also Section 5: Training and identification of best practice.
13 The Office of the Children’s Guardian has reflected the principles of this Protocol in its revised standards released in November 2015.
whether to contact police in response to incidents and should be provided with the necessary support and
guidance to make these decisions in often difficult and demanding circumstances. To effectively implement
this Protocol, it is acknowledged that residential service staff require appropriate training and guidance to
appropriately manage challenging behaviour. This includes training about the effective use of strategies in
behaviour support plans, and to more easily identify situations which require a call for police assistance.

The Residential Care Service Model provides guidance to services about appropriate procedures for the
management of crisis situations and advises services to have in place ‘clear guidelines around the involvement
of the police in response to crisis situations, with the understanding that attempts should be made to
minimise police involvement, wherever possible’. This Protocol will assist services to meet this objective.

To implement this Protocol, residential services will nominate an appropriate senior residential staff member
(e.g. service coordinator or manager) as the ‘liaison officer’ to regularly liaise with local police. The liaison
officer is also responsible for ensuring information is provided to police following an incident involving
police attendance at the service according to the Procedures for residential OOHC services (Annexure A).

3.4. NSW Police Force

A key aim of the Protocol is to provide practical guidance for police in implementing their existing legislative
responsibilities in the context of dealing with young people in residential OOHC.

The NSW Police Force (NSWPF) recognises the benefits of early intervention and prevention to divert young
people from the criminal justice system.

Each Local Area Command’s Crime Management Unit (CMU) is the ‘hub’ for community information and
plays a significant role in local crime prevention strategies. The CMU within each Local Area Command will
be responsible for Protocol case management, including engagement with local residential services,
information sharing and recording. In addition to the Crime Manager and Crime Coordinator, CMUs typically
also include the various liaison roles within the command such as the Domestic Violence Liaison Officer
(DVLO) and Youth Liaison Officer (YLO), and unsworn officers such as the Aboriginal Community Liaison
Officer and Multicultural Community Liaison Officer. The Crime Coordinator will have responsibility for
liaison with residential services within the local area command.

Police usually attend residential services in response to calls from staff members, young people or other
members of the community, such as neighbours. Some behaviour, such as ‘boundary testing’ behaviour of
young people, may reflect normal teenage behaviour and should generally be managed without police
assistance where there is little risk of harm to the young person or any other person. However, where criminal
or other behaviour that could lead to a breach of the peace occurs, police involvement is necessary. Frontline
police will often subsequently consult with the YLO in relation to incidents they attend which involve young
people. Better engagement between the CMU and residential services will allow frontline police to gain a
better understanding of a young person’s circumstances and ideally will lead to a more informed response.

When responding to incidents at residential services, police will consider information provided by staff
members, victims and witnesses, and have regard to relevant legislation, Standard Operating Procedures, and
their own judgement in applying the Protocol. The Young Offenders Act makes clear that criminal charges
should not be pursued against a young person if there is an appropriate alternative for dealing with the
matter. For appropriate offences which are not dealt with by warning or caution, police in consultation with
the Specialist Youth Officer will consider whether the young person is entitled to be dealt with via a Youth
Justice Conference.

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14 Where a young person exhibits challenging behaviour that exceeds what is normally expected to be managed by the carer, a
Behaviour Support Plan may be required. These are prepared by a psychologist or other skilled professional in behaviour management
of young people who display challenging behaviour.

15 Out-of-home Care Service Model – Residential Care, NSW Department of Community Services, April 2007, p.9.

16 The DVLO and YLO roles are sworn officers. A primary aspect of their role is stakeholder engagement. However, these officers do
not generally attend incidents.

17 Young Offenders Act, 1997, s.7(c).

18 Young Offenders Act, 1997, s.37.
Local CMUs will ensure frontline police officers are provided with appropriate training and guidance to ensure consistent implementation of this Protocol. (Annexure B provides an outline of Police responsibilities in implementing the Protocol.)

The NSW Police Force Domestic and Family Violence SOPS advise frontline police about responding to personal and domestic violence offences in accordance with the Crimes (Domestic and Personal) Violence Act and other relevant legislation. The SOPS make clear that although the YOA ‘does not apply to stalking, intimidation and breach AVO’ offences, the YOA may be applied to other domestic violence offences.¹⁹

A statutory review of the Crimes (Domestic and Personal) Violence Act is currently underway and will consider the definition of ‘domestic relationship’. A number of submissions to the review have argued that certain relationships – including those involving young people living in residential services – should no longer fall within the category of ‘domestic relationship’ unless the requisite dynamic of coercion and abuse in the relevant relationship exists. This Protocol will be amended to keep pace with the legislative review and any related legislative change.

4. GOVERNANCE

A state-wide interagency governance structure underpinned by local arrangements will be established to ensure the consistent and effective implementation of the Protocol and will provide clear pathways for resolution of any systemic issues.

4.1. State-wide Steering Committee

The implementation of the Protocol will be overseen by a steering committee – chaired by FACS – that is comprised of representatives of the following agencies:

- NSW Police Force
- Family and Community Services
- Department of Justice
- Office of the Children’s Guardian
- Association of Children’s Welfare Agencies
- AbSec
- Youth Action
- Legal Aid NSW
- Aboriginal Legal Service
- Residential service provider representative(s)

The State-wide Steering Committee (SSC) from time to time will invite other agencies and experts to participate in its deliberations on discrete issues. In this regard, it is noted that the Ombudsman’s office will have observer status on the committee and the Advocate for Children and Young People will provide advice and feedback to the committee in relation to the engagement of young people in relation to issues being considered by the committee.

The functions of the SSC include:

i. Identifying the type of data residential OOHC services and police will need to systematically collect, and report on, to inform the effective implementation and evaluation of the Protocol.

ii. Developing a communication and promotion strategy to support the implementation of the Protocol.

iii. Ensuring that local arrangements are in place to guide the implementation of the Protocol (these should not be prescribed by the committee and wherever possible, should seek to utilise existing suitable mechanisms).

iv. Monitoring the initial rollout of the Protocol and related procedures, and identifying the need for any other processes or related tools to be developed to support this process.

v. Identifying and addressing any systemic issues associated with the Protocol’s implementation.
vi. Developing a strategy for identifying and promoting good practice in implementing the Protocol, including effective strategies used by services to manage challenging behaviour and households more generally.

vii. Providing regular feedback to local police and services in relevant locations to inform the ongoing rollout of the Protocol.

viii. Overseeing provision of training to support the Protocol’s implementation, including providing specific information relevant to supporting Aboriginal young people20 and young people with disability.

ix. Developing an evaluation strategy, including identifying key benchmark data and outcome measures.

The SSC will initially establish two working groups to provide advice to the committee on priority issues associated with the initial rollout of the Protocol including data collection, training and evaluation; as well as how best to involve young people21 in the ongoing implementation and evaluation of the Protocol.

4.2. Internal agency governance

Signatory government agencies – the NSWPF and FACS – will identify suitable internal governance processes to facilitate consistent implementation of the Protocol across each agency. Residential services will also need to ensure consistent implementation of the Protocol occurs across their organisation.

Agencies will assign responsibility for implementation of the Protocol to a suitably senior officer.

4.3. Local level arrangements

Local police, local FACS representatives and frontline residential services will determine the nature and frequency of liaison necessary to meet the objectives of the Protocol. Where appropriate, existing local governance structures will be utilised.

At a local level, residential services and local area commands will agree on the practical arrangements and information required to implement the Protocol, such as:

- relevant parties e.g. ‘X’ Local Area Command and ‘Y’ Residential Service
- designated liaison officer for each party and contact details e.g. service manager and crime coordinator (or other member of the CMU)
- other local agencies/organisations (for example, Juvenile Justice) that should participate in meetings associated with the Protocol’s implementation
- governance processes e.g. frequency of liaison, location of meetings, secretariat support for meetings, and local dispute resolution/escalation and processes for reporting outcomes.

Residential services vary according to governance structures, size and geographic distribution. Some of the larger service providers will have individual frontline services across a number of local area commands. Accordingly, it will be a matter for each provider to determine the best way to ensure that arrangements are in place with the corresponding local area command to ensure consistent implementation of the Protocol across its service outlets.

20 The NSW Police Force Aboriginal Strategic Direction 2012-2017 (ASD), requires police commands with significant Aboriginal populations to work with local Aboriginal agencies – including providers of residential and/or other OOHC – to prevent contact between Aboriginal young people and police and promote the diversion of Aboriginal youth from the criminal justice system through initiatives such as the Cautioning Aboriginal Young People (CAYP) protocol and the Protected Admissions Scheme (PAS). In implementing the ASD, police will have regard to the application of this Protocol in locations where Aboriginal residential OOHC services exist.

21 This working group will provide an avenue for the Office of the Advocate for Children and Young People, CREATE Foundation and Youth Action and other stakeholders to advise the SSC about how best to engage young people in decision making about the Protocol’s implementation and evaluation.
4.4. Dispute resolution
Open and honest communication will be maintained between parties to the Protocol. Parties should aim to resolve any disputes about procedures or actions in relation to this Protocol at the local level as soon as possible. Local level resolution includes escalation of unresolved issues to the local area commander (or region commander where relevant), district director and/or residential service chief executive officer (or equivalent).

As needed, local level disputes about how best to resolve systemic issues can be escalated to the SSC when attempts to resolve the issue locally have been unsuccessful. The SSC will not be involved in resolving concerns about the performance of individual services or police commands.

5. TRAINING AND IDENTIFICATION OF BEST PRACTICE
Initially, the relevant working group will provide advice to the SSC about the nature and delivery method of training on the implementation of the Protocol and any related subject areas.

A range of training methods will be considered within and across agencies. Training will be informed by a process which seeks to identify good practice across organisations in relation to their management of residences, behaviour management of young people, and the relationship between residences and local police. The training will also address the type of data and key outcomes measures that will be used to inform the Protocol’s ongoing implementation and evaluation.

6. EVALUATION AND MONITORING
Initially, the relevant working group will provide advice to the SSC on developing a strategy for evaluating the Protocol’s implementation and the necessary data collection and reporting processes to support the evaluation process.

The process for collecting data should not be onerous and should be consistent with the type of records that should already be made by police and residential services in responding to incidents. A critical component of evaluation and monitoring will involve assessing not only the contact between residential services and police, but also the systems and processes residential services have in place to monitor and guide their ongoing collaborative work with police; and how services manage challenging behaviour and incidents more generally.

7. TERM AND REVIEW OF PROTOCOL
The Protocol will be reviewed on an annual basis and a comprehensive review will be conducted every three years.

8. SIGNATORIES
The following parties agree to the terms and guiding principles of this Protocol:
- NSW Police Force
- Family and Community Services
- Association of Children’s Welfare Agencies
- AbSec

The following agencies support the principles of this Protocol:
- Legal Aid NSW
- Department of Justice
- Youth Action
- YFoundations
- NCOSs
- CREATE Foundation
- Office of the Children’s Guardian
9. RELATED LEGISLATION AND GUIDELINES

- Young Offenders Act 1997
- Children Young People (Care and Protection) Act 1998
- NSW Child Safe Standards for Permanent Care, Office of the Children’s Guardian, 2015
- NSW Police Force Youth Strategy 2013 – 2017
- Protected Admissions Scheme (Information Sheet)
- Out-of-home Care Contracted Care Program Guidelines
- Out-of-home Care Service Model: Residential Care
- The report of the NSW Therapeutic Care Steering Committee (when available)
- Charter of Victims Rights, Part 2, Division 2, Victims Rights and Support Act 2013
- NSW Police Force Aboriginal Strategic Direction 2012 -2017

10. ANNEXURES
A. Procedures for residential OOHC services.
B. Policing responses to incidents in residential OOHC services.