



Royal Commission
into Violence, Abuse, Neglect
and Exploitation of People with
Disability
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29 April 2020

Dear Commissioners

Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

I am writing this submission in my capacities as South Australia's Guardian for Children and Young People, and Training Centre Visitor.

The Guardian is appointed to advocate for and promote the rights and best interests of children and young people under the guardianship of the Chief Executive of the Department for Child Protection. The Training Centre Visitor promotes and protects the interests and rights of children and young people on remand or sentenced to detention in the Adelaide Youth Training Centre.

These roles are established under separate Acts, each of which states that particular attention must be paid to the needs and circumstances of children and young people who have a physical, psychological or intellectual disability.¹ In South Australia, it is estimated that between 25-30 per cent of those in care have a disability, and one study of the residents at the Adelaide Youth Training Centre indicated that nine out of ten residents had disability-related needs.

My submission sets out that a lack of data collection, analysis and sharing is likely contributing to the poor planning, resourcing and care services provided by the Department for Child Protection and Department for Human Services (Youth Justice). This is a barrier preventing the best individualised care and support for those children and young people in care and/or youth detention who have a diagnosed or suspected disability. For both these cohorts, the government is the corporate parent and is therefore required by local and international laws to keep them safe from harm, and to make decisions based on their best interests. As you would be aware, this frequently does not happen.

I note that the Royal Commission can only guarantee confidentiality while the Royal Commission exists. This is regrettable, as I believe my submission would be greatly strengthened if I were to provide confidential case studies and examples. It is almost impossible for me to obtain informed consent from the children and young people to whose experiences I would like to refer. Without ongoing, guaranteed

¹ s 26(2)(b) *Children and Young People (Oversight and Advocacy Bodies) Act 2016*; s 14(2)(b)(iii) *Youth Justice Administration Act 2016*.

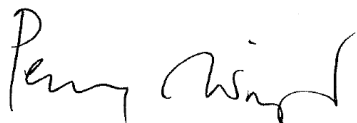
confidentiality, it would be unethical for me to share their stories when there is a risk they could later be identified. Due to the small population and their unique circumstances, using pseudonyms would not suffice.

If the Royal Commission is successful in seeking an amendment to the law to ensure that information can be protected indefinitely, I would be happy to provide an updated submission.

If you require any further information about this feedback, your staff may contact my Senior Policy Officer, Ms Jessica Flynn for this purpose on 8226 8570 or at jessica.flynn@gcyp.sa.gov.au.

As is commonly my practice, it is my intention to publish an edited version of this submission on my office's website. Please contact Ms Flynn by 22 May 2020 if you have any concerns about this.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Penny Wright', written in a cursive style.

Penny Wright

Guardian and Training Centre Visitor

Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

from Penny Wright, Guardian and Training Centre Visitor

April 2020

My submission focusses on the barriers preventing those children and young people under my mandate with a diagnosed or suspected disability from accessing adequate support and fully realising their rights whilst in the care of the state. There is significant overlap between my roles of Guardian and Training Centre Visitor, as children and young people in care account for approximately one third of all admissions to the Training Centre.²

Section 5 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*³ requires that

Each State authority must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the United Nations Convention on the Rights of the Child and any other relevant international human rights instruments affecting children and young people.

Two charters of rights apply, respectively, to those in care and/or youth detention in South Australia. These are the [Charter of Rights for Children and Young People in Care](#), and the [Charter of Rights for Youths Detained in Training Centres](#).

These charters set out core rights, including the right to be treated equally regardless of disability, and to receive additional help if you have special needs. However, structural barriers often prevent children and young people in care and/or youth detention who have a diagnosed or undiagnosed disability from realising those rights as set out in the relevant charters and in associated international human rights instruments to which Australia is a signatory.

Almost all children and young people in care and/or youth detention have experienced trauma, abuse and/or neglect. Therefore, almost no children or young people under my mandate who have a diagnosed or suspected disability experience this in isolation from other complicating factors.

Psychological distress alters cognition, emotions, behaviour, and physical responses. Trauma-related behaviours which are challenging but which do not meet the criteria of a disability, are common amongst this cohort, and because of this, the Department for Child Protection and Department for Human Services (Youth Justice) struggle to adequately care for their complex needs. We are aware of children and young people in the care of the state who are shifted between the health, mental health, and disability care systems due to the inability of the systems to develop a comprehensive, child centred response rather than one that responds to the needs of various systems.

² Training Centre Visitor Annual Report 2018-19, p 9. More information relating to the experience of those in care who are also involved in the youth justice system can be found in the Guardian's report "*A PERFECT STORM? Dual status children and young people in South Australia's child protection and youth justice systems*". Available here <http://www.gcyp.sa.gov.au/report-finds-children-in-care-overrepresented-in-youth-justice/>

³ This Act also establishes the role of the Guardian under section 21. The Training Centre Visitor role is established under section 11 of the *Youth Justice Administration Act 2016*.

There is a lack of data collection and system responsiveness to those in care and/or detention who have or may have a disability.

Data was a theme that consistently arose in the Committee on the Rights of Persons with Disabilities' Concluding Observations on the combined second and third periodic reports of Australia.⁴

The Department for Child Protection and Department for Human Services (Youth Justice) have both been unable to provide accurate and timely information relating to those under their guardianship who have a diagnosed disability. This inability suggests a limited systemic capacity to comprehensively diagnose, let alone provide for, the needs of children and young people in care and/or detention who have a diagnosed or undiagnosed disability. It also limits understanding of factors applicable to specific sub-populations and the ability to respond appropriately to those needs.

This significantly impedes my ability to fully discharge my duties to pay special attention to those with a disability under the two relevant Acts.

Access to data and related information fosters open, accountable, fair, and effective government administration.⁵ Without qualitative and quantitative information and data the public has no effective mechanism to help understand and analyse the performance of the corporate parents of some of our most vulnerable citizens. If I, as a statutory monitor, cannot access such material, how can accountability to the community be guaranteed?

The Department for Child Protection and Department for Human Services (Youth Justice) struggle to cope with children and young people experiencing the complexities associated with trauma, disability, and mental health, despite this being their core business. The rates of diagnosed and suspected disability within these two cohorts means that both the child protection and youth justice systems should operate almost as specialist disability services.

While children and young people are in care and/or youth detention, the relevant government department is their corporate parent and is therefore responsible for ensuring that a child or young person's needs are being met.

The Department for Child Protection and Department for Human Services (Youth Justice) provide care for some of South Australia's most disadvantaged and marginalised children and young people whose interactions with these systems are linked to poorer life outcomes. The added implication of disability exacerbates this vulnerability.

My informed observation is that South Australia's child protection and youth justice systems are ill-equipped to provide the levels of support and specialist care needed by some children and young people with a diagnosed or suspected disability. The Department for Child Protection and Department for Human Services (Youth Justice) need more specialist workers as well as better trained general workers. Staff are frequently not supported to provide the specialist care needed, with staff in residential care and youth detention settings not adequately trained to identify and support children or young people who may need

⁴ CRPD/C/AUS/CO/2-3, 15 October 2019.

⁵ Information and Privacy Commission, Fact Sheet—Open Access Information for Citizens <<https://www.ipc.nsw.gov.au/fact-sheet-open-access-information-citizens>>.

disability assessments. Both systems fail to provide adequate care for some, allowing them to slip through the cracks of overburdened systems.

Aboriginal children and young people

There are very few culturally safe and accessible disability services for Aboriginal children and young people with a disability in the child protection or youth justice systems, exacerbating their existing disadvantages and further marginalising a seriously overrepresented group which may already feel invisible and misunderstood.

Criminalising effects

Disability-related behaviours are often criminalised, and those with a disability are at a higher risk of becoming victims of a crime. In South Australia, it is unclear if the Department for Child Protection and Department for Human Services (Youth Justice) are aware of or are tracking the rate of criminalisation of those with a disability for whom they are corporate parent. At times the Adelaide Youth Training Centre appears to play a warehousing role for those with a disability who have difficult behaviours. It is also unclear what steps are being taken by the Department for Child Protection and Department for Human Services (Youth Justice) to prevent those in their care with a diagnosed or suspected disability from becoming victims of crime.

NDIS related difficulties

There are structural barriers to accessing NDIS services that appear to relate to a lack of resourcing. Children and young people living in residential care do not receive the appropriate wrap around support necessary to meet their needs and operational priorities in the Adelaide Youth Training Centre can prevent residents from accessing NDIS supports. For example, a young person may attend an occupational therapy appointment, but no one is available to give the young person the help or support to ensure follow up exercises are completed.

Timely responses with referrals and NDIS plans for children and young people in care are extremely important. Waiting lists can be 12 months long for non-priority groups, and NDIS plans can take over 12 months to be approved. During this period, the child or young person often has no access to appropriate services and resources.

Inappropriate living environments

The physical environments provided by the Department for Child Protection and/or the Adelaide Youth Training Centre are often not suitable for many children and young people who have a suspected or diagnosed disability and there is little capacity to adapt the environment to meet specific disability-related needs. The child protection system struggles to provide specialised residential disability placements for children and young people with physical, neurological, or developmental disabilities. There is a lack of residential care properties that can accommodate significant physical needs (like access to an overway lifter). The Adelaide Youth Training Centre has design, structural and acoustic barriers for those with a disability. It is unclear how the Centre would manage a young person with a physical disability.