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11 June 2020

Dear Commissioner

Submission for SAPOL's Disability Access and Inclusion Plan 2020-2024

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 (DCP). 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 assessed had disability-related needs. 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 although recently this rate has been increasing.

My submission sets out that many of SAPOL's interactions with children and young people in care are frequently contextualised by DCP's lack of adequate and specialised care and protection which leads to failures in managing difficult disability, mental health, and/or trauma related behaviours. This in turn is reflected in the increasing rates of those in care being detained at the Adelaide Youth Training Centre.

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*.

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/>


My recommendations are that –

1. SAPOL's Disability Inclusion Plan includes scope to address trauma, mental health and other associated co-morbidities.
2. Relevant SAPOL staff are able to access and apply training that sets out the impacts of and behaviours arising from disability, mental health, trauma, abuse, and/or neglect for children and young people.
3. Police give more consideration to disability-related behaviours when exercising their discretion to decide whether to charge a child or young person in care who is suspected or known to have a disability.
4. SAPOL engages with Aboriginal stakeholders and Aboriginal community members in ascertaining the best way to work with Aboriginal children and young people who may have a disability.
5. SAPOL considers impacts of disability during police interviews with children and young people and their capacity to understand bail conditions.

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 26 June 2020 if you have any concerns about this.

Yours sincerely,



Penny Wright

Guardian and Training Centre Visitor

Submission for SAPOL's Disability Access and Inclusion Plan 2020-2024

from Penny Wright, Guardian and Training Centre Visitor

June 2020

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 DCP or DHS YJ are aware of or are tracking the rate of criminalisation of those with a disability for whom they have a corporate parenting role. At times the Adelaide Youth Training Centre appears to become a warehouse for those with a disability who have difficult behaviours. It is also not always evident what steps are being taken by DCP or DHS YJ to prevent those in their care with a diagnosed or suspected disability from becoming victims of crime.

Entry to the youth justice system begins with interactions with police. If police were able to have a greater understanding of the rates and nature of disability frequently experienced by those in care and/or youth detention, access to justice may be increased, as well as the community's confidence in the administration of justice.

Contextualising SAPOL's relationship with children and young people in care and/or detention

While children and young people are in care and/or youth detention, DCP or DHS YJ have a corporate parenting role and are therefore responsible for ensuring that a child or young person's needs are being met.

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

Whilst these issues are outside of the control of SAPOL, police officers are often required to intervene because of these shortcomings, which leads to the criminalisation of those in care. This can help frame the role SAPOL is frequently required to play, that is, managing the behaviours of those children and young people deemed too difficult or unmanageable by other Government agencies.

Complexity – disability is not experienced in isolation

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.

DCP and DHS YJ struggle to cope with children and young people experiencing the complexities associated with trauma, disability, and mental health, despite this being a major aspect of 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.

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, DCP and DHS YJ 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.

Unfortunately, these systems appear often to use the police for behaviour management of some children or young people and this exacerbates the existing vulnerabilities arising from their complex needs. SAPOL commonly appears to focus on behavioural compliance for those children and young people under my mandate. Expecting behavioural compliance presumes that children and young people have the capacity to understand, reflect on, and modify their behaviour, which is not always the case for those with complex trauma and disability-related needs.

I recommend that SAPOL's Disability Inclusion Plan includes scope to address trauma, mental health and other associated co-morbidities.

A characterisation of the experiences those in my mandate have had with SAPOL, and some of the specific disabilities they experience

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. This exacerbates their existing disadvantages and can further marginalise a seriously overrepresented group, reinforcing a sense that they are invisible (or visible only for their negative attributes) and/or misunderstood. Many Aboriginal children and young people in care and/or detention feel that they are targeted by police. It appears that policing is especially prevalent in relation to those with disabilities living in residential care homes outside of the metropolitan area. I recommend that SAPOL increase its practices in improving cultural safety for Aboriginal children and young people, and especially those with disabilities. It is crucial that South Australia's Aboriginal community is consulted on this.

Children and young people in care and/or detention have told my staff that they fear, and mistrust police. Some report that they have experienced physically aggressive arrests, and often have historical family experiences that have reinforced scepticism, frequently feeling not believed as a victim and offender.

Young women have reported that when being detained in police holding cells, they are uncomfortable about being watched, going to the toilet, or asking for help. Very high rates of young women and girls in the care and youth detention systems have experienced physical or sexual abuse which exacerbates these feelings, and this is amplified by any disabilities which may also be present.

According to some staff at the Adelaide Youth Training Centre, language comprehension and communication related disabilities are highly prevalent in the youth detention population.³ These children and young people can be perceived as ‘not listening’ or deliberately disobeying instructions, whereas, due to their disability, they do not have the necessary language processing, comprehension and/or verbal dialogue skills, all of which can result in confusion. Questioning techniques and the gathering of evidence during police interviews need to be adapted to suit the disability needs of individual children and young people.

SAPOL members could also benefit from training in Autism Spectrum Disorder. Many of those detained at the Adelaide Youth Training Centre have diagnosed or suspected Autism Spectrum Disorder, which is often associated with social naivety, impulse control, or difficulty in understanding context and social cues.

Some disabilities give rise to sensory sensitivities to noise, sirens, lights or smells, which can be disastrous. These can all be causal factors for behaviours which may be apprehended as offending. In such a case, the implementation of anxiety reduction strategies would be necessary and valuable.

These factors highlight the important role for the exercise of police discretion when considering whether or not to charge a child or young person with an offence. Such a decision and SAPOL’s response should also recognise that most child or youth offenders were previously or are currently also victims of crime.

I recommend that -

Relevant SAPOL staff are able to access and apply training that sets out the impacts of and behaviours arising from disability, mental health, trauma, abuse, and/or neglect for children and young people.

Police give more consideration to disability-related behaviours when exercising their discretion to decide whether to charge a child or young person in care who is suspected or known to have a disability.

SAPOL engage with Aboriginal stakeholders and Aboriginal community members in ascertaining the best way to work with Aboriginal children and young people who may have a disability.

Impacts of poor police understanding of disability, mental health and trauma related behaviours in children and young people

An example of how police practices can have ongoing adverse impacts on children and young people with a disability is in relation to the common law doctrine of *doli incapax*. Staff in my office are aware of instances where children under the age of 14 with significant disabilities have admitted to offences due to the pressure and authority of police during interview. If the child is ‘diverted’, there is no requirement for the presumption of *doli incapax* to be rebutted. As a result, the child or young person’s capacity to understand

³ Whilst DCP does not publicly report on data relating to those in care with a disability, the Department for Education reports that in 2019, 11% of those in care attending Government schools had a speech and/or language disability.

that their act was 'criminal' as opposed to, say, 'naughty' is never tested, and in any future offending their previous admissions can be used by police to rebut the presumption of *doli incapax*. This draws them deeper into a system where entrenchment of behaviours and entry to the adult corrections system becomes more likely.

Placing children and young people in unsuitable care arrangements, where staff are not equipped or supported to manage their behaviour, leads to a reliance on SAPOL for behaviour management. In this context, it is unfair to criticise SAPOL's response, as their involvement is sometimes a result of failures by the other relevant Departments to address the child or young person's complex and unmet needs. An area for development however, is in the issuing of bail agreements.

Whilst police bail is not a matter my office frequently deals with, we are aware of instances where children and young people (some under the age of 14) are placed on multiple complex bail agreements. It is apparent that a child or young person's capacity to understand and comply with these conditions has not always been considered, which can result in breaches of bail conditions and more time in court and youth detention.

I recommend that SAPOL consider impacts of disability during police interviews with children and young people and their capacity to understand bail conditions.