

17th June 2020

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Re SAPOL Disability Access & Inclusion Plan 2020-2024

As South Australia's Commissioner for Children and Young People, it is my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* to promote and advocate for the rights, interests and wellbeing of all children and young people in South Australia. It is also my role to ensure that State authorities seek to give effect to the rights set out in the United Nations Convention on the Rights of the Child (UNCRC).

Under the UNCRC, children and young people have the right to have their best interests considered (Article 3), to develop healthily and live a full life (Article 6), and to have a say on all issues that affect them and for their views to be taken seriously (Article 12).

Article 23 of the UNCRC recognises that children who have any kind of disability should receive special care and support so that they can live a full and independent life. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) obliges state parties to ensure and promote the realisation of human rights and freedoms, independence and full participation of people with disability, including through the provision of accessible information and other forms of assistance, support services and facilities. This is now embedded in the *Disability Inclusion Act* (2018) which requires all authorities to implement a Disability Access and Inclusion Plan.

Article 13 of the UNCRPD requires state parties to “ensure effective access to justice for persons with disabilities on an equal basis with others” through the provision of “procedural and age-appropriate accommodations” and through “appropriate training for those working in the field of administration of justice, including police and prison staff”.

It is notable that before this Act there already had been a state-wide Disability Justice Plan and SAPOL Disability Inclusion Plan. While this office commends the goals within those plans, it still believes that more needs to be done in relation to

children living with disability who come into contact with the criminal justice system, and the criminalisation of children in care.

This office has heard the following concerns from advocates and caregivers about interactions between SAPOL and children, and the treatment of children living with disability in both the youth justice system and in residential care environments:

- A lack of reasonable adjustments being made for children and young people living with disability, even in cases where there was knowledge of a developmental age of younger than 10 years old or of a child's trauma background.
- The criminalisation of children in residential care through carers managing children's behaviour by calling the police. This office has heard of examples of children being charged with assault for throwing a glass of water.
- Children and young people being separated from their family or carers and interviewed without communication support people.
- Parents who are concerned that without an appropriate understanding of disability, police may misinterpret behaviour that is a manifestation of their child's disability as "difficult", "aggressive" or "criminal" and this may result in punitive responses.

Rather than isolated incidents, these stories appear to indicate more systemic concerns. Without SAPOL and the wider community gaining genuine awareness and understanding of disability, and without adjustments and support to accommodate the complex and diverse individual needs and capabilities of people with disability, justice is largely inaccessible for many children and young people with a disability.

Currently, there is an overrepresentation of children living with disabilities in the youth justice system. Often, these disabilities are not formally diagnosed. Even if they are, our office understands that in some cases, responses in the criminal justice system and in child protection do not change accordingly. Given that SAPOL is often the first point of contact with children, it is important that more is done to reduce this overrepresentation.

A Disability Screening Assessment project undertaken at the Adelaide Youth training Centre in 2019, found that nine out of ten young people under Youth Justice Service supervision were at risk for language disorder and below average for intellectual functioning.ⁱ Similar results were found in Western Australia, where research by the

Telethon Kids Institute found that more than one in three detained children and young people were diagnosed with Fetal Alcohol Syndrome Disorder (FASD). Further, nine out of ten had some form of neuro-disability and were impaired in at least one area of their brain function, including in their memory and attention, language, cognition, information-processing, decision-making and executive function, which includes the ability to plan and to understand consequences.

There is a higher prevalence of disability among already marginalised and vulnerable groups, including children and young people in care and Aboriginal and Torres Strait Islander children and young people. A significant number of “dual status” children and young people – those who live in care and who are involved in the youth justice system – live with disability. As the Office of the Guardian of Children and Young People in South Australia has reported, “living in residential care almost guarantees that a child or young person will have contact with the youth justice system”.ⁱⁱ

The high prevalence of children and young people with disability in the justice system does not occur because these children and young people are inherently criminal, but rather because the system makes their criminalisation more likely. Criminalising the behavior of already vulnerable young people perpetuates a cycle of disadvantage and increases the likely progression from youth justice to the adult criminal justice system.

Failing to identify, understand and respond safely and appropriately to disability can lead to adverse justice outcomes and missed opportunities for early intervention and diversion. A general lack of understanding and high levels of discrimination and stigma compound this cycle, which is further complicated by evidence that many people with disability who interact with the criminal justice system “have themselves been victims of violence [that has] not been responded to appropriately, contributing to a cycle of offending”.ⁱⁱⁱ

Evidence suggests that the first age of contact with the police is a key indicator of ongoing contact with the justice system, and that the earlier the contact the more likely that the contact over a child’s lifetime increases. Exposure to the criminal justice system has been shown to cause harm to children, further traumatising them and limiting their chances of becoming responsible adults. This not only comes at a significant social and financial cost but also impacts on health, wellbeing and life outcomes for individuals and communities.

This cycle is not inevitable. Police play a vital role as first responders. This new plan is an opportunity for SAPOL to reset policies and practices to play a positive and protective role in supporting children and young people with disability to feel safe, to participate, to be heard, to be understood and to access justice.

The following provide some suggestions as to how SAPOL might best recognise, understand and adequately accommodate the needs of children and young people with disability, to support them to feel safe and access justice on an equal basis with other members of the community.

This office understands that SAPOL will need support from other agencies and cannot do this alone. It therefore recommends greater collaboration with the disability sector and DHS to help achieve these goals.

I hope this feedback will inform the development and implementation of your Disability Access and Inclusion Plan in a way that is in line with key international rights instruments, the National Disability Strategy and the SA Disability Justice Plan. If you have any questions or if you would like to discuss anything further, please do not hesitate to contact me.

Yours sincerely,



Helen Connolly

Commissioner for Children and Young People

Recognising children and young people as a priority group in the Plan

This new Plan should align with the Youth Justice Plan and adopt a “child-centred approach” when working with children. This will be necessary to maintain community confidence and to support children and young people to achieve their full potential, whether they are victims of crime, witnesses to crime or accused, charged or convicted of crime.

The *Disability Inclusion Act (2018)* requires Disability Access and Inclusion Plans to address the risks that relate to priority groups living with disability, including children. Although SAPOL’s current Plan does not specifically mention children and young people living with disability, the new Plan should include children and young people as a group that requires a different response.

The new Plan should also fulfil other requirements of Disability Access and Inclusion Plans, including the requirement to explain how the State authority proposes to give effect to the following risks and principles that relate specifically to children with disability, including the child’s inherent right to live life to the full and in dignity, as well as any decision makers using a child centred approach.

National and international research suggests that children differ from adults in their physical and psychological development and that this has implications for their ability to reflect before acting, or comprehend the consequences of a criminal action. This difference constitutes the basis for the recognition of lesser culpability and a separate justice system for children and young people. This evidence is also behind growing calls nationally and internationally to raise the minimum age of criminal responsibility from 10 years old to at least 14. Despite this evidence there appears to be little indication of differential treatment for children and young people – particularly those living with disability – compared to adults.

Including children and young people as a priority group in the Plan will recognise that children and young people differ from adults, particularly in their development and capacity to understand and navigate the justice system. This would enable the development of strategies and responses that take into account the age, developmental age and the specific vulnerabilities of individual children and young people and that make the reasonable adjustments that are necessary to respond to the needs of all children and young people living with disability.

Listening to children and young people with disability

As per Section 9(3)(a) of the *Disability Inclusion Act* (2018), “the views of a child with disability will be listened to, and they should be given developmentally appropriate opportunities to participate in decisions that affect them”. Including these children’s voices will require a “culture change”, not only in SAPOL, but other statutory authorities who do not currently build in children’s voices at all. This provides SAPOL with an opportunity to lead the way.

People with disability, particularly children and young people with disability, are experts in their own lives and should be actively included in all stages of the Plan’s development, implementation and monitoring. As well as being consulted about the barriers to justice, children and young people with disability should be included in the development of solutions and strategies to address these barriers. This would give effect to the principles of the Act and the right of children to be heard and have their views taken seriously in matters that affect them (Article 12 of the UNCRC).

Article 12 is embedded in the South Australian Child Safe Environments Principles of Good Practice. During my consultations with children and young people about what makes a child safe and child friendly organisation, I heard that children and young people are often treated condescendingly, and not taken seriously or treated equally because they are a child.

“They don’t take younger people as seriously as they take adults. Adults don’t understand what we are saying. Our thoughts and ideas are not respected.”

– Female, 11

At the core of creating child safe environments is children and young people feeling like they are believed. First contact between young people and service providers is crucial and strongly influences the young person’s decision to continue a service. At first contact they want to feel safe and welcomed by approachable and caring staff members.

“Respect young people, no abuse of authority, have a diverse range of staff (genders, ages, experiences, ethnicities).” Female, 15

Children and young people would also appreciate some reassurance that they will not be in trouble from adults for speaking out. They want responses that inform them about what will be happening next. They want to be part of the solution, and want kindness and respect and responses that show the organisation understands that an issue might be important to a young person in a different way to the importance the organisation places on the same issue.

“Direct communication of what they plan to do and giving me the option to stop them from doing what they plan on if I see fit if I think it will impact negatively. Also, provide options for what I could do to help with my own mental health even after the issue is dealt with i.e. counselling.” Male, 15-17

Engaging children and young people with disability in the development of this Plan is just one important way in which SAPOL could listen to, better understand, communicate with and support children and young people with disability. Other ways include ensuring that all information, services and processes are accessible, providing communication support and improving accountability through child-friendly feedback mechanisms.

Improving accountability through child-friendly and accessible feedback mechanisms

A key message that came out of the Law Council of Australia’s Justice Project is that training and strategies or guidelines are not effective unless accompanied by accountability mechanisms.^{iv} I note that Action 3.1.1 of the current Plan is to “review information from customer feedback mechanisms”. I would encourage SAPOL to plan to review the feedback mechanisms, particularly to ensure that they are child safe and child friendly.

Children and young people have told me they want organisations to be transparent and demonstrate accountability by ensuring that young people who have voiced their thoughts and opinions are informed about the outcome of their feedback or complaint. In addition, they want to know what capabilities the organisation has to deal with issues properly and completely and with discretion.

“Feedback must be there for everyone – there NEEDS to be actions done afterwards. The company, business or community (e.g. schools) must be ready to take on the

feedback and there MUST be someone to implement change. Responses to feedback must be fast, efficient, reliable and must cater to the needs of whoever needs assistance.” – Female, 16

Finally, SAPOL should monitor and evaluate participation rates of people with disability as victims of crime or witnesses, accused or charged with a crime, and the provision of adjustments and supports to children and young people with disability.

Providing communication support and child-friendly and accessible information and services

SAPOL should be able to provide children and young people with disability who are in touch with the criminal justice system in some way with the access and support they need, in order for them to understand what is being asked of them and what kind of support is available to them. Accessibility is about far more than physical accessibility. Accessible information, communication and processes are equally important in creating physical, cultural and social environments that accommodate the safety and communication needs of people with disability.

All information, services and processes should be clear, child-friendly, age-appropriate, culturally appropriate and appropriate for children and young people who have complex support or communication needs. This includes what happens in a criminal case, to ensure these children understand the court process and orders such as bail conditions.

Our recent *Making Change in Youth Justice* Report developed by children and young people with lived experience of the justice system highlighted that bail conditions currently set children and young people up to fail, rather than succeed.^v Currently, people with disability are less likely to understand bail conditions and therefore they are more likely to breach them. However, if police were to work together with children and young people with disability, to make sure that bail conditions are appropriate for the child, clearly communicated and understood, the conditions are more likely to be complied with.

Incorporating clearer, more accessible and child friendly bail conditions would also be in line with the Disability Inclusion Act’s recognition that all people with disability “have the right to access information in a way that is appropriate for their disability

and cultural background, to enable them to make informed choices” and that “supported decision-making is to be preferred over substitute decision-making”.

The Community Partner Service is promising in providing communication support to people living with disability, particularly to those accused of crime. However it is unknown how well it will continue as it is now a fee for service rather than a free service. Furthermore, the effectiveness of this service depends on the ability of the police to identify a person as having “complex communication needs”. This is concerning because evidence suggests that many police officers, like many other community members and service providers, are ill-equipped to identify disability-related needs. This highlights the importance of more extensive and more regular training for all police employees.

Providing extensive, meaningful and ongoing training for all SAPOL employees

Inadequate training and a failure to identify disability reinforces negative attitudes, stigma, discrimination and misconceptions about people with disability, all of which have very real impacts on the lives of children and young people with disability, particularly in their interactions with police and with the justice system.

In terms of context and purpose, training for all SAPOL employees should:

- be developed and delivered by or in collaboration with people with disabilities, the disability sector and other agencies with disability expertise;
- be regular and ongoing;
- provide practical experiences for police employees to engage with people with disability, particularly children and young people with disability; and
- improve attitudes and responses of staff.

In terms of content, training for all SAPOL employees should go beyond the minimum “awareness” training and cover the following areas:

1. ***Identifying disability, understanding rights and responding appropriately.***
Meaningful awareness training would start with legal requirements and understanding children’s rights. It would enable all SAPOL employees to understand the complexity and diversity of physical and intellectual disability, to be able to recognise the possibility of disability, mental health issues or

complex communication needs and the effect this may have on behaviour and communication, and to be able to respond appropriately without causing further harm by making any relevant support or required adjustments to procedures that are age-appropriate.

2. *Trauma-informed approaches and de-escalation techniques.*

Without an understanding of a child or young person's trauma background, the focus remains on the aggression or "criminal" behaviour rather than on the individual's needs. Trauma-informed approaches recognise that many children and young people have experienced challenges in their lives which negatively affect their ability to process information, interact with others, regulate their emotions and make healthy decisions. Training in trauma-informed practice and de-escalation techniques are central to ensuring that police responses de-escalate rather than escalate situations.

3. *Best practice interviewing techniques.*

Children, particularly those with disability, are less likely to be viewed as credible witnesses or victims and many are reluctant to report crime due to a fear that they will not be believed. However, research shows that the quality of the evidence of a child or of a person with an intellectual disability depends on the skills of the interviewer and the complexity of the questions asked, rather than the child or person's ability to provide accurate information.^{vi vii}

It is promising to see in SAPOL's Annual Reporting on 2018-19 that more SAPOL officers are undertaking specialised training for interviewing vulnerable witnesses. This is in line with recommendations from the State's Disability Justice Plan. This training should be extended to all police employees, particularly those interacting with children on the front line.

Promoting early intervention and improving diversion practices

SAPOL can be instrumental in diversionary programs and early intervention to decrease the number of children living with a disability ending up in the youth justice system. Effective early intervention and diversion responses involve sectors working together to go beyond minimal intervention to actively promoting children's rights and participation and the engagement of parents, carers, families and communities.

South Australia's Youth Justice State Plan 2020-2023 recognises the importance of partnering with SAPOL to improve diversionary practices. However, currently there is a shortage of community supports and services in healthcare, education and housing for children and young people, particularly those aged 8 to 12. While this shortage reduces police referral and diversion options, the *Young Offenders Act 1993* (SA) already provides police with a number of powers to divert and increase opportunities for diversion. Restorative practices like family conferencing are possible but they are not currently used as the default option. SAPOL should actively engage with organisations that support children to access programs so that children could be diverted away from the justice system.

In Wales, the Swansea Bureau Model of Youth Justice seeks to divert children away from the formal youth justice system but also aims to divert them into positive and appropriate interventions and support. In the years following its launch, the number of first time entrants into the justice system have fallen by up to 92 per cent in areas where the model is operating.

Building preventive capacity is possible through greater engagement and collaboration with community-based service providers and agencies. Police can work together with health, education, child protection, social workers to share information and provide the best response that is timely, tailored to the child's needs and designed to help them turn their lives around quickly. One successful pilot program in Victoria involves police building positive relationships with residential care workers and children and young people in residential care environments. This not only builds trust but also provides education for police about children and young people who they might otherwise only see in emergency situations.

ⁱ Government of South Australia, Department of Human Services, *Young People Connected, Communities Protected: South Australia's Youth Justice State Plan, 2020-2023*.

ⁱⁱ South Australian Office of the Guardian for Children and Young People, *A Perfect Storm? Dual Status Children and young people in South Australia's child protection and youth Justice Systems – Report 1*, November 2019 p. 5. Available at <http://www.gcyp.sa.gov.au/wp-content/uploads/2019/12/Dual-Status-CYP-in-SA-A-Perfect-Storm.pdf>.

ⁱⁱⁱ Australian Human Rights Commission, 2014, "Equal before the Law: Towards Disability Justice Strategies", p. 5

^{iv} Law Council of Australia, *The Justice Project Final Report*, Available at <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20-%20Final%20Report%20in%20full.pdf>.

^v Commissioner for Children and Young People South Australia, *Making Change in Youth Justice*, March 2020, Available at <https://www.ccyp.com.au/wp-content/uploads/2020/03/Screen-Youth-Justice-Report-web-version.pdf>.

^{vi} Australian Human Rights Commission, 2014, "Equal before the Law: Towards Disability Justice Strategies", p. 5.

^{vii} Goodman and Bottoms, *Child Victims, Child Witnesses* (New York: Guilford Publications, 1993), 19.