

# Feedback on Safeguarding Taskforce Report

---

## August 2020



251 Morphett Street, Adelaide, SA 5000  
GPO BOX 1146, Adelaide SA 5001  
08 8226 3355 | [commissionercyp@sa.gov.au](mailto:commissionercyp@sa.gov.au)

26 August 2020

**Safeguarding Task Force**

Email: [disability.advocate@sa.gov.au](mailto:disability.advocate@sa.gov.au)

Dear Kelly and David,

Thank you David for attending the recent Statutory Bodies meeting and providing some background and detail on the Recommendations made in the Final Safeguarding Taskforce Report that was released in July. As discussed during that meeting, I am writing to provide some feedback in relation to the Safeguarding Report. In particular, I wish to provide information on the gaps and systems shortfalls that this office has found in relation to children and young people.

The report is an important piece of work as it looks at the shortfalls in the system **and emphasises the need for the Commonwealth and State to work together to cover any gaps instead of just ignoring them.** Minister Michelle Lensink recognised that when all recommendations of the Safeguarding Report were actioned that it will only “begin to close gaps for people living with disability.” This letter will address one of the gaps that was not considered: the gaps in the safeguarding and support of children and young living with disabilities. This is where both the state and the Commonwealth have to do better.

As you are aware, as the Commissioner for Children and Young People, my mandate is to promote the rights, interests and wellbeing of all South Australian children and young people, particularly those groups of children who voices are not often heard. Since commencing this role, I have spoken to thousands of children and young people about what is important to them and their hopes and dreams. Of that group, up to 10% of children involved in specific projects identify as having a disability.

Young people with disability believe it is the government’s responsibility to protect the rights of children and young people. At the same time, they have told us they do not have much faith in the ability of governments and adults to listen to children and young people and value their contributions when they make decisions that affect children and young people. This is despite the government’s promise in the *Children and Young Person (Safety) Act 2017* (the Safety Act) that all children will have the opportunity to enjoy an active lifestyle and to be active citizens who have voice or influence. The Safety Act and the *Disability Inclusion Act (SA) 2018* emphasise that children and young people should be considered a priority group with vulnerabilities, separate to adults, due to their developmental level and capacity (Safeguarding gap 1).

This means that the protections that governments have around children’s rights and safety should be more comprehensive and stronger than the protections that adults

currently have. However, time and time again we see that this is not the case. This begs the question why we often treat children and young people – who are still emotionally, mentally and physically developing – more harshly than adults. Some examples include:

- **Employment vs Education:** Children have no right to appeal to an independent body if they are excluded or expelled from school and can only complain to the body itself. As Minister Vicki Chapman famously stated in her first reading speech in 2005 when introducing a Bill for an Education Ombudsman, this is “like Caesar reviewing Caesar”. However, an adult employee can get three warnings, has a right for due process and procedural fairness to take place and can appeal to an independent body. Excluding children is also a punitive response and research has found that punitive measures simply do not work.
- **Child justice system vs adult justice system:** Children in the justice system have to comply with different obligations compared to adults. While adults in the justice system usually have around 3 conditions, children have to follow, understand and comply with multiple bail conditions, far more than just three. This is despite the research that shows that developmentally it is very hard for children to process multiple instructions.

There is now well-established research that shows early intervention not only results in better short-term educational, work, health and social outcomes, but also long-term outcomes throughout the life of a person. Early intervention also reduces burdens and costs on society with less people ending up in the justice system, health system, public housing system and social security system.

Better outcomes can be established if all levels of government listen to the concerns and advice of children and young people when making laws and policies that affect their lives.

Every child in South Australia has a right under Article 12 of the Convention of the Rights of the Child and Article 7 of the Convention on the Rights of Persons with Disabilities to actively participate in decisions affecting them. This exists at the individual, program, and system levels, to be implemented through practice, process and participatory structures. It’s a right that is extraordinarily important to children and young people. However, these rights are often overtaken by and even subsumed into other rights, such as child safety and protection.

Children with disability are even more excluded than other children and young people from this right. Not because it doesn’t exist, but because we are failing to put it into practice. The state government should be consulting with children and young people with disability to ask them where they believe the gaps currently are in the system and what this group of children need to feel more empowered, safe and supported.

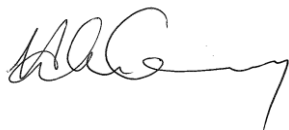
Children and young people living with a disability are the experts in their own lives and they should be given the opportunity and respect to have their views heard and listened to. We have been told by children living with a disability that often things are done to them “for their best interest” and keeping them safe, without asking them what they think they need. By putting children and young people with disability in charge of the decisions that affect them, we will educate ourselves and empower them to demand and receive the systems and services they have a right to.

It appears that one of the reasons behind the lack of protections around children’s rights and protections is the long-held presumption that parents or guardians can adequately advocate and support their children. This assumption appears to be shaping laws and policies. However, we know that many adults in this state are struggling and simply do not have the tools or ability to sufficiently protect, support and advocate for their children.

This letter will detail what I believe are issues for children and young people living with disabilities that may result in them falling through the service system gaps and not being supported in a timely way. These are the gaps that the Safeguarding report has identified as needing to be addressed by the State government in co-operation with the Commonwealth.

If you have any queries or questions please do not hesitate to contact the Principal Advocacy, Policy and Research Officer Monique Bianchi.

Yours sincerely,



**Helen Connolly**

Commissioner for Children and Young People

### **The barriers and costs to get children diagnosed so they can have access to Commonwealth NDIS services in the first place. (Safeguarding gap 14)**

Under the Bilateral Agreement, the State and the Commonwealth health systems should be providing “high level health care”. However, the reality for families and children is that it either costs parents thousands of dollars through the private health system, or families have to wait years through the public health system to get diagnosed.

If families access the public system for their child to get a diagnosis they are often waiting years for their appointment. Only those families that can afford the high costs of accessing private services are able to get a timely diagnosis to ensure children are being properly supported through NDIS.

This office has heard from families and other stakeholders about the struggles they have just to get their child diagnosed in the first place so that they are able to get the support their child needs to ensure they have the opportunity to thrive. This can result in many parents just “giving up”. The ramifications for children, the family and society can be great, including the higher likelihood of their child not being able to complete school and be a productive member of society. Unmet disability-related needs can result in exclusion from school, which can deepen exclusion from friends, family, education, employment and the broader community.

Given South Australia’s aim to “intervene early”, which would provide the best outcomes in relation to children as promised by the State, the SA government should be doing much more to support parents or guardians to get their children diagnosed so they are able to access NDIS. It is hard enough for state authorities that have children in their system to get access to NDIS services with Youth Justice itself recognising that NDIS access requests take “considerable time and resources to complete”.

This is the same for more vulnerable groups of children, including children in care, aboriginal children and children in the youth justice system. In typical child’s lives these issues would have been addressed by their parents, but as most of these children have experienced adverse childhoods, the likelihood that their parents were able to follow through diagnosis and treatment is low. This is demonstrated indirectly by the high proportion of children and young people in care and youth justice that have a higher proportion of learning, developmental and other disabilities.

State institutions, including Youth Justice, now recognise the need for more screening and diagnoses of children with a disability in its systems and the need for resources to do this responsibly. The results of a recent screening project undertaken by Youth Justice show the prevalence of disability-related needs in the Training Centre population is much higher than existing Youth Justice data and processes are presently capable of showing.

### **The assumption that parents and guardians have the knowledge and wherewithal to advocate and support a child with an NDIS plan. (Safeguarding Gaps 6 and 13)**

The Safeguarding Report talks a lot about quality services and the access to these services. However, many parents/carers lack the knowledge or awareness to determine what a quality service is. Parents and guardians need more guidance and support so they are able to find the right service for their children, especially as their lives are likely to be busy and stressful in the first place.

### **No oversight mechanisms for places where children with a disability reside, learn and play, including schools. (Safeguarding Gap 10)**

Although the State government has recognised the gaps in relation to the oversight of adults with disabilities and has resourced an expansion of the Adult Safeguarding Unit, there appears to be no recognition that the same gaps will be occurring for children with disabilities. Resourcing therefore needs to be expanded to places where children with a disability live, learn, play and play.

At this time there is very little oversight that is child focussed. There is little oversight to ensure children with disability are safely accessing public services (not just disability-specific services), including school, sport and community services for children. This includes oversight in relation to the use of restrictive practices or behaviour management, health, wellbeing and medical needs.

This office, for example, has heard from families who have reported that schools are using restrictive practices on their child. This includes physical restraint as well as children being isolated or separated from others. There are other examples, such as children and young people sitting in a respite service just watching DVDs all day or being subject to restrictive practices, including isolation.

**Case study:** *J (age 10) attends a mainstream school and receives support for autism and a physical disability. He is an occasional wheelchair user. J is not always given access to his wheelchair when he needs it. His wheelchair was damaged during a school camp due to incorrect transporting. J has been excluded from his classroom on 3 occasions over the past couple of weeks due to his behaviour, which is often triggered by changes to routine or other students taking his wheelchair or teasing him.*

To fill the gap, there needs to be a fully resourced and independent oversight mechanism similar to the Adult Safeguarding unit where children, families and other actors can make a complaint and be assured that the complaint will be investigated and monitored.



**The oversight mechanisms that are for children presently are either underfunded or non-existent in state institutions where there is a high proportion of children living with disabilities, including in child protection and in the Youth Justice systems. (Similar to what is occurring with the Community Visitor – Safeguarding Gap 12)**

There is some oversight in relation to children and young people in care and in residential units through the creation of a community visitor. However, at this time there are no resources to ensure that oversight can actually happen. As these children are under the protection of the State there is a greater responsibility to ensure that they are protected. We also know that a high number of children in care have some type of disability, impairment and/or trauma, making it even more important that the community visitor be properly resourced to ensure this vulnerable group of children are protected, similar to the Adult Safeguarding Unit.

There is a similar situation in relation to the oversight of the Training Centre. There is now undisputed research undertaken by Youth Justice through their Disability Screening Assessment that nine out of 10 children in the Training Centre were found to be at risk for language disorder and/or below average intellectual functioning. This makes it even more important that the Training Centre Visitor scheme be properly resourced to ensure the rights and interests of this vulnerable group.

However, these schemes do not have the power to oversee and investigate any allegations of abuse that might occur through complaints made by the general public. The Training Centre Visitor, for example, can only investigate matters if referred by the minister which is not the same as what the Adult Safeguarding Unit currently undertakes. These existing powers could simply be extended so that the TCV and CVS can hear and investigate complaints from children and families.

### **An opportunity lost for children and young people? The government's decision to not invest in a Reportable Conduct Scheme.**

This office would also argue that another gap or opportunity lost to ensure oversight and safety for children with disabilities is its decision to not roll out Reportable Conduct Scheme (RCS) at this time to oversee internal investigations of any child abuse or neglect. A RCS was recommended in the Royal Commission for Institutional Child Sexual Abuse as very important for cultural and social change in relation to how government and society treat and respond to any abuse.

This has been seen by the Victorian Commission for Children and Young People since it has implemented its RCS:

*The RCS is the single source of scrutiny. This means, all organisations are guided to ensure that the way they undertake investigations are consistent, both in quality and what they actually do.*

Victoria has found that the way different organisations undertake investigations are inconsistent and may not be child centred or child safe. The RCS ensures that investigations by organisations are at least at a minimum and acceptable standard. It also ensures that key investigations principles are followed, such as ensuring there is procedural fairness, the investigation is child-centred and that the child's voice is heard and the investigation is trauma-informed.

The RCS works **with** the organisation to ensure their investigative processes meet minimum requirements. The Victorian CCYP found there was – and still is – a vast range of how investigations are undertaken. For example, what happens in religious institutions compared to education or early learning compared to small businesses working with children. The RCS has been able to ensure that investigations between vastly different organisations are consistent and child-centred.

These types of investigations also ensure greater openness in an organisation. Historically, an internal investigation is hidden from scrutiny and there is no accountability. This results in no cultural change throughout the organisation. The RCS makes investigations more open and transparent which can ensure that there are cultural changes within organisations.

*It builds capability and captures a lot more people that should be not working with children.*

Instead of just the “pointy end” of cases being captured and those people being excluded from working with children, Victoria has also picked up people that should not be working with children through this oversight. Due to the RCS there has been approximately 1,000 allegations that have been substantiated and referred to WWCC that would not have been otherwise captured. About 50% of those were referred to the police (although the number where the police actually take action is much smaller).

Apart from sexual abuse and grooming, it picks up other behaviours that are not criminal in nature, but could be seen as inappropriate behaviours. These include:

- Inappropriate behaviours that cross professional behaviour – such as adults following children on Facebook or sending photos of private life, etc.
- Bullying behaviours and treating children in a way that would inflict emotional abuse on them;
- Behaviours that could amount to neglect, either emotional or physical.

The Victorian Commission is also able to share information between relevant organisations like the police, teacher organisations and similar organisations. The police can ring RCS to report a person that may not have committed criminal behaviour, but may have done something that still needs to be looked into.