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Dear Katherine,

**Young People Connected, Communities Protected**

Thank you for the invitation to provide feedback on the latest version of the Youth Justice State Plan (the Plan). I was pleased to see that the Plan provides a bit more detail around the six themes and the actions that will be taken, and those that are currently being taken, to improve outcomes for children.

I note that although there are some new ways of doing business, many of the actions appear to be business as usual. It is clear that the department has a deep understanding of the group of children in the justice system and their vulnerabilities. I therefore would have hoped that it would have been more aspirational.

This Strategy provides Youth Justice and DHS with an opportunity to align itself with the UN Convention on the Rights of the Child (the UNCRC) and supporting instruments<sup>1</sup>, especially as these standards are being actively used in recent times by both the Ombudsman and Training Centre Visitor, and is therefore shaping Youth Justice policy.

Section 4 of the *Children and Young Person (Safety) Act 2017* and the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* requires all adults to protect children. These include:

- To be safe from harm;
- To do well at all levels of learning and to have skills for life;

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<sup>1</sup> This includes, but is not limited to United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 ("The Beijing Rules"), United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh guidelines), and, the UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (1990), and the UN Guidelines for Action on Children in the Criminal Justice System (1997).

- To enjoy a healthy lifestyle;
- To be active citizens who have a voice and influence.

Unfortunately, this office recognises that these outcomes are not currently adequately met for some children in South Australia. This is mostly due to the dearth of services and investment in children, particularly those who, from an early age, are flagged as high risk for a range of issues related to their physical and mental health, engagement with education, physical and emotional safety and involvement in youth justice.

This means that there are some children being disconnected from their families and the community and ending up in the youth justice system. The importance of early intervention and diversion must therefore be not only recognised but more importantly acted upon. Let's move beyond the siloed view of children and young people as problems and issues, and take an approach that looks at the whole child and the future we want for them.

Please find attached some detailed feedback on this version of the plan.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen Connolly', with a stylized, flowing script.

**Helen Connolly**  
Commissioner for Children and Young People

## *Feedback on the Plan*

### **Lack of a rights based child-centric approach that recognises what children have said**

It is commendable that the strategy recognises that the system must be centred around the wellbeing of each child, using a whole person approach. However, there is no reference to the best interests of the child in line with the objects and guiding principles of the *Youth Justice Administration Act*. There appears to be no reference to the UNCRC and supporting guidelines or the Charter of Rights for Youths Detained in Training Centres. A rights based approach will ensure that children are at the centre of every decision and their wellbeing is protected. One way to measure South Australia's Youth Justice system to international human rights is to use the Criminal Justice Assessment Toolkit developed by the UN Office on Drugs and Crime.<sup>2</sup>

There appears to be a disconnect between what the Plan recognises as important to promote children's wellbeing and the actions you plan to take to promote wellbeing. The following examples highlight this disconnect.

1. Although the commentary recognises the voice of the child and there is a reference to a "case management system", there are no actions on how the child's voice will be heard in the Youth Justice system, in a systemic manner. One way to do this is through a Youth Justice Advisory Board. As you are aware, this office, in partnership with Red Cross facilitated a successful pilot advocacy group that was made up of young people with lived experience of the youth justice system. The practical recommendations made by these young people could and should be easily implemented. Their recommendations will be published in our Youth Justice report.
2. There appears to be no planned "action" responding to the feedback youth justice received from children and young people, during the consultation period, and the Youth Journey Lab. For example, children and young people highlighted the need for greater support to develop independent living skills so they have the tools to advocate for their own needs and deal with conflict when they return to their communities. One innovative method that has been implemented in Queensland is the use of restorative practice when managing incidents. The practice has helped the centre to ensure "a therapeutic, relational approach to managing conflict and challenging behaviour". It is used as part of a "young person's reintegration, which can act as a powerful and positive influence in their rehabilitation".<sup>3</sup>

### **Lack of linkage between the plan, its actions, the laws and the rights framework**

This plan provides an opportunity for South Australia's youth justice system to comply with the rights protecting children, both generally and specifically in relation to those

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<sup>2</sup> Please see <https://resourcecentre.savethechildren.net/library/juvenile-justice-criminal-justice-assessment-toolkit>

<sup>3</sup> This approach and its success was discussed at the recent The Australasian Institute of Judicial Administration (AIJA) Conference in November 2019.

children in detention. It would be of assistance if this plan explicitly linked relevant Legislation and Conventions to some of its actions and outcomes.

It would also be useful if the plan outlined how South Australia is addressing some of the recent Recommendations made by the Committee on the Rights of the Child, including:

- To immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of incarceration of Indigenous people;
- To explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion or to discipline children under supervision;
- To promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators;
- To actively promote non-judicial measures, such as diversion, mediation and counselling for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service;
- In cases where detention is unavoidable, to ensure that children are detained in separate facilities and, for pre-trial detention, to ensure that detention is regularly and judicially reviewed;
- To ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review;
- To provide children in conflict with the law with information about their rights and how to report abuses.

In any event, this office will be monitoring Youth Justice to ensure it is addressing the above concerns.

### **Narrowly focusing on the tertiary system**

Although, the responsibility of Youth Justice is to work with children at the tertiary end of the justice system, there is an opportunity to ensure more connectedness between all stages of the system, from early intervention to what happens after children leave youth justice supervision. Although measures are being taken in this plan, it may be a time to be “brave” and take the lead to create better support for children at every stage of their contact with the youth justice system.

The executive governance group that will monitor progress should also be able to look at solutions that are wider than the tertiary level. It would also be useful to have an independent person on that group who could advocate for the rights of children in the youth justice system.

### **Unknown budget and resources**

There does not appear to be a budget connected to this plan and how it will be actioned, implemented and monitored. This is concerning as this office is aware that some of the programs and initiatives outlined in the action plan are only being given short term funding. For this plan to be successful, the government and DHS should be funding this plan for the whole three-year period. A commitment by the government to fund current programs as well as new initiatives for the entire three years would show that it is

complying with its commitments and outcomes outlined in the Safety Act, the UNCRC and other legislation.

### **Lack of data**

The plan should include current youth justice data to provide a base level so that this plan can be tracked over the next three years. This would identify where current gaps are and outline what will be collected going forward. This data should be made transparent and publicly available. The data collection by Youth Justice in Queensland, for example, breaks these children down by age, type of offence, outcomes, backgrounds and many other factors. This information is publicly available on the Queensland department's website.

Our office also understands that the current C3MS system has the ability to include a lot more fields than it currently houses and this is relatively easy to change. For example, it is concerning that bail conditions are not currently recorded centrally in the Youth Justice database, so there is no real understanding of what bail conditions children may have. From what children and young people have told us, bail conditions are overly onerous and "set them up to fail". Collecting this data would provide the department with evidence to make decisions that will help future outcomes.

### **Implementing a mapping and proper resourcing of services**

I agree that Youth Justice should leverage existing community programs. However, there actually needs to be more programs to support children. There needs to be an audit of all services to ensure that children can access all of the services they require, as well as a mapping of gaps to ensure that more services are created where they are needed. We know there is a dearth of services in all areas of services for children. For example, there are one or two services for children under 15 who are homeless and a shortage of mental health services.

The plan talks about the programs and services that are currently available and leveraging these services. This is worrying as it could imply that the government is not recognising its commitment under the Safety Act, to provide support and resources to achieve the best outcomes for children. Children in youth justice often are the most vulnerable, with adverse experiences and often with pre-existing conditions. There needs to be support for these children and we know there are still gaps.

Mapping current services and gaps is imperative to achieve the Plan's outcomes and the best outcomes for children. Even without formal mapping, there are obvious gaps in current services and how current services are being run. There is a need for:

- **A better education model for children in the Training Centre.** DHS could work with the Department for Education and Youth Justice to develop a model and practices developed and implemented based on Parkville College<sup>4</sup> in Victoria. This include lessons throughout the year. We know that children who enter the youth justice system are often disconnected from schools and it is a perfect

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<sup>4</sup> <http://parkvillecollege.vic.edu.au/>

opportunity for children who enter youth detention to re-engage with education and actually “catch up”. All children want an education and it is incumbent on the government to provide it and not be shackled by school holidays, any learning difficulties, disabilities, trauma and disadvantage that they have experienced.

*“Some of the things I believe should be changed is how many young people leave without an education when they should leave being able to read, understand, becoming more than (than) expected (expected).”*

– Young person with lived experience

- **Improved diversion programs and policies.** To work with SAPOL so they have the tools and services they need to increase diversion sooner. There are successful models in both New Zealand and Wales (UK) that are diverting children away from the tertiary end of the youth justice system. SAPOL already have powers under the *Young Offenders Act 1993* to divert. Resources and effort could be provided for them to do it more often so that diversion is the “default” option. In New Zealand, for example, police have powers to divert children away when they are caught offending through its Alternative Action program<sup>5</sup>. Developed in 2011 Alternative Action allows police to work with the child and their family to decide on a plan to deal with the offending. Most of the responses are restorative in nature and include:

- paying for the damage caused;
- doing community work;
- going to counselling;
- writing an apology letter;
- agreeing to attend school every day;
- doing an assignment about the effects of the offending.

### **Aboriginal Cultural Connection**

Due to the overrepresentation of Aboriginal children in the child justice system, more needs to be done to prevent these children entering the tertiary end of the system. Although I understand that this plan is focused on the tertiary end, it has been acknowledged that more needs to be done earlier to focus actions on prevention and diversion. More should be done to address unconscious bias and underlying racism in all areas connected to youth justice.

### **Not limiting transition to 24-48 hours**

Reconnection with community to reduce reoffending is essential. This office recognises that it also helps to protect community more broadly. However it needs to be recognised that often the reason a child enters into youth justice supervision is because the

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<sup>5</sup> <https://www.taiohitoa.org.nz/our-programmes/alternative-action/>

community and society have often failed in their statutory responsibility, to protect and look after these children in the first place. There is a responsibility to these children that transition support lasts more than 24 to 48 hours after they leave youth justice supervision.

Planning a child's transition back into community should begin the minute they are under youth justice supervision. This office is currently working on a framework to ensure that children and young people are set up to thrive and succeed, rather than fail as they transition back into community. Elements of this framework include individualised treatment and release plans that:

- Are developed **by** (rather than just **for**) the young person themselves in collaboration with family members where possible, professionals who work with them and any other people who can provide information about the young person's strengths and needs.
- Take a **trauma-informed, rehabilitative, therapeutic and holistic** view of the young person and identify their **individual** social, psychological, educational, vocational, medical and physical needs, goals and strengths.
- Are culturally appropriate.
- Involve the family and the community.
- Outline what the young person's **education, healthcare and relationships** will look like during their detention.
- Are monitored **and evaluated regularly** in consultation with the young person, their family, carers or significant others.

This office is happy to discuss this framework with you at a convenient time.