

# Six Month Snapshot of the South Australian Dual Involved Project

Children and young people in South Australia's  
child protection and youth justice systems

September 2021



**Guardian**  
for Children and  
Young People



**Training  
Centre**  
Visitor

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The Hon. Rachel Sanderson, MP  
Minister for Child Protection  
1 King William Street,  
ADELAIDE SA 5001

Dear Minister

As Guardian and Training Centre Visitor, I am pleased to present to you my interim report, *Six Month Snapshot of the South Australian Dual Involved Project: children and young people in South Australia's child protection and youth justice systems.*

This report provides an initial summary of the experiences and advocacy needs of children and young people in the child protection and youth justice systems in South Australia and explores how the residential care system has contributed to their criminalisation, either directly, or indirectly.

The final report of the SADI Project will be released early next year.

Yours sincerely

A handwritten signature in black ink that reads "Penny Wright".

Penny Wright

**Guardian for Children and Young People and Training Centre Visitor**

20 September 2021

### *A caution*

This report contains some case examples and sensitive information that may be distressing to some readers.

If that is the case for you, we encourage you to seek support from family, friends and community or contact a service like Kids Help Line on 1800 551 800 or Lifeline on 13 11 14.

# Table of Contents

<b>Preface</b> .....	<b>1</b>
<b>Voices</b> .....	<b>2</b>
<b>1. Introduction</b> .....	<b>3</b>
WHY THIS INTERIM REPORT? .....	3
PROJECT AIMS AND IMPLEMENTATION .....	4
TRAINING CENTRE VISITOR AND GUARDIAN .....	4
SENIOR ADVOCATE, DUAL INVOLVED .....	5
WHO ARE THE 'DUAL INVOLVED'? .....	5
DETENTION RATES OF THE DUAL INVOLVED .....	8
PRELIMINARY LEARNING FROM THE PROJECT .....	10
<b>2. Dual involved characteristics</b> .....	<b>11</b>
<i>TRAUMA AND SPECIAL VULNERABILITY</i> .....	12
<i>CHILDREN AND YOUNG PEOPLE WITH DISABILITIES</i> .....	13
<i>ABORIGINAL CHILDREN AND YOUNG PEOPLE</i> .....	14
<i>GIRLS AND YOUNG WOMEN</i> .....	15
<i>THE VERY YOUNG (10 TO UNDER 14 YEARS)</i> .....	16
<b>3. Circumstances and experiences</b> .....	<b>17</b>
<i>EDUCATION</i> .....	17
<i>RESIDENTIAL CARE</i> .....	19
<i>RESIDENT VIEWS - THE DETENTION AND RESIDENTIAL CARE ENVIRONMENTS</i> .....	21
<b>4. Systemic issues</b> .....	<b>23</b>
RESIDENTIAL CARE AS A CRIMINALISING ENVIRONMENT .....	23
EXPOSURE TO PEERS WITH DIFFICULT BEHAVIOURS .....	25
POOR TRANSITIONS AND UNNECESSARY PERIODS OF DETENTION .....	26

## Notes

### *Terminology*

Reflecting community preference, the term Aboriginal as used in this report is inclusive of both Aboriginal and Torres Strait Islander people.

### *Anonymity*

We have taken careful steps to protect the privacy of the dual involved children and young people who have participated in the SADI Project.

Names used in the case studies are pseudonyms and they have been simplified to minimise the risk of individual identification.

References to the opinions of advocates, support workers and service providers have also been generalised.

### *Acronyms*

ALRM – Aboriginal Legal Rights Movement

DCP – Department for Child Protection

DHS YJ – Department for Human Services Youth Justice

GCYP – Guardian for Children and Young People

KTYJC – Kurlana Tapa Youth Justice Centre

OGCYP – Office of the Guardian for Children and Young People

SADI – South Australian Dual Involved

SAPOL – South Australian Police

TCV – Training Centre Visitor

TCVU – Training Centre Visitor Unit

## Preface

I have never forgotten one of my first meetings in the Adelaide Youth Training Centre. A thoughtful, intelligent young woman of 15 told me how, within months of entering her first ever residential care placement, she had found herself with a *'criminal record'* and locked up.

In trying to help me to understand how this had happened, she explained, *'it [the residential care unit] was so different to what I'd known, with 'kids running amok' and '...no introduction – just, here you go – this is your new house – thank you very much'*. She told me it had been *'quite scary'* to see the set-up when she first arrived: doors locked, the kitchen locked, barely furnished common spaces, with just one TV in the lounge room and a dining room table. She told me, *'I learnt really fast to fit in or I wouldn't survive'*.

Her description of the process of 'fitting in' was entirely – and wretchedly – plausible: *'there is a lot of peer pressure, especially when you first come – you've got to do what they're doing - then after a while you don't realise what you're doing is wrong – you're so used to it – it's like a routine – once you keep doing it you get used to it - then you become part of the peer pressure – even if you don't want to – it's a bad circle...'*

By late 2020, it was increasingly clear to my staff and I that the plight of dual involved children and young people in South Australia needs urgent attention. Just as elsewhere in Australia, there are far more of these young people getting into trouble with the law than there should be, given their tiny numbers – especially those who live in residential care.

Thus the SADI Project was born, developed out of considerable advocacy expertise and passion in our office for the situation of these children and young people. This is a short-term initiative, using time-limited resources, to 'hear their voices' and shine a light on what needs to change to offer them different lives and opportunities.

Although this is an interim report, it is already clear that more detailed work is needed. Many factors intersect to bring these children and young people into detention time and time again. It is happening right now, every day. These children and young people were removed from their original families for their own protection. They need us all to do better to offer them a full and bright future and there is a compelling case for a 'deeper dive' into their circumstances than our project can offer.

We believe there is a case for independent analysis of the court, youth justice, child protection and other service providers' files relating to dual involved children and young people over the last decade. A comprehensive file review is needed to properly understand how current policies and practices in various sectors are contributing to the damaging and life-limiting criminalisation of those who live in the care of the State. And what needs to change.

**Penny Wright**

# Voices

*...some care houses you'd walk in, they used to be old houses. You couldn't even feel that it could be someone's house. It's like, "This is a government house," just straight away.*

*It's just not, it's not a home. It's not home. ...it's a real pretty house, like as in it's a real good house. It's real pretty, brand new but it's not home, not my home.*

*I know a hundred per cent I would not be here right now if it wasn't for resi, like if it wasn't for DCP putting me in resi care. I say that with confidence too. I know a hundred per cent wouldn't, would not be here.*

*Like they're all different carers all the time so it's hard to kind of trust people as well as like get along with them.*

*... they're just brought into like a, like a criminal life 'cause the, the kids around them are doing - like they're going out at night, stealing, going into cars and whatnot and that's, that's how it all started for me.*

*Like, oh, they've [dual involved children and young people] been through more shit and it's just they do more shit, like illegally. We all understand, you know - well, obviously we all understand what it's like to be in here, you know.*

*That's, that's - well, I honestly reckon if I didn't get put in care when I was younger I wouldn't have known what crime was. Yeah, I, I would have been a normal person.*

*I don't know, shit, worse than living at home and it's meant to improve it when you're in care like, you know. Didn't happen.*

*..... no one ever says, "Do you want to go to school?" 'cause they just think, "Oh, he's, he just wants to go out and do crime," 'cause that's all they know about me when they read on the folders that and they think, "Oh, yeah, he's a bad kid. He doesn't need nothing. We can just let him, let him do his thing," you know. I don't know. I don't feel safe for my future. I feel like I'm in a road that's just going to go downhill every day.*

*I can't read and write properly. Like I used to be the best reader and the best writer when I was at home with my mum but now I can't read or write, can't tell the time on the clock, don't even know my times table, not even my five or my tens. Yeah, that's the exact reason why I don't want to go to school. I just feel dumb, you know. Everyone else is in there flashing out all their work and I'm just sitting there. Like I'm still on the first question. That's why I just don't go to school.*

*Oh, when I first got out of here last time I struggled with wanting to come back, which I'm assuming will happen after this... It's just 'cause I struggled being out of here...*

*'Cause eventually you are out there in the house like where you're all by yourself and eventually it just gets too much ... and you don't want to return to return to your, the house so you end up doing a little crime and come back in here [KTY]C.*



# 1. Introduction

## Why this interim report?

This interim report begins to describe the circumstances of dual involved children and young people in South Australia's youth justice detention and child protection systems. It draws on research and data, together with discussions with dual involved children and young people living in residential care, and service providers, during the first six months of the SADI Project. A full report will be provided in early 2022.

This report responds to the complex nature of the lives of the 51 dual involved children and young people identified during our study period – and the urgency demanded by their circumstances.

Drawing particularly upon the stories and situations of 16 children and young people who participated in individual interviews, our work indicates that the policy and practice bearing upon this complex group is often unfocussed, uncoordinated, out of date, or simply absent.

What does exist appears to promote compliance or narrowly understood risk mitigation or management rather than addressing a complex individual's needs and best interests. It is foreseeable that residential care, particularly congregate care, effectively channels some young people into the youth justice system.

Our overwhelmed and fatigued child protection system does not appear to do what it properly should do. While most staff undeniably do their best, system limitations mean that the dual involved often fall through the gaps, and into detention. Aboriginal children and young people, and those with physical, psychological or intellectual disabilities are grossly overrepresented within this group.

Fortunately, we are aware that some constructive intra-government work is underway this year, including in the context of the Youth Justice State Plan. It may be that our Final Report is able to report some real progress.

To date, insufficient data has been collected, consolidated, analysed and made available about dual involved children and young people and the systems that influence their lives.

This interim report highlights emerging themes and issues by emphasising the voices of the young people who have had direct input into our Project. We provide a snapshot of some of their common characteristics, experiences and circumstances and discuss a few of the systems factors that contribute to criminalisation within the State's residential care system.

Using the resources we have available, the SADI Project seeks to shine some light on their world.

## Project aims and implementation

The link between adverse childhood experiences and youth offending is well established and there is a developing evidence base about pathways from child protection to youth justice. However, little has been drawn together and released about South Australia's own dual involved young people. We know work is underway to address some of these issues as part of commitments set in South Australia's Youth Justice State Plan 2020-2023 and await access to relevant material that can inform the final SADI Project report.

Interstate research has shown that residential care can promote or accelerate youth justice involvement. This is a particular concern for South Australia, given our greater reliance on residential care than any other Australian state or territory.

The SADI Project was initiated to describe and analyse the overrepresentation in detention of children and young people from residential care placements by interviewing dual involved children and young people at KTYJC or elsewhere and to provide them with personal advocacy, when required.

We have wanted to better comprehend the characteristics of this vulnerable cohort, their understanding about why they are in detention, and whether and how residential care environments have created or influenced their offending behaviour.

The goal of the Project is to identify systemic factors that may cause or exacerbate youth justice involvement and help to change them.

## Training Centre Visitor and Guardian

The Training Centre Visitor (TCV) promotes and protects the rights and best interests of children and young people sentenced or remanded to detention in the Kurlana Tapa Youth Justice Centre (KTYJC).<sup>1</sup> The Guardian for Children and Young People (Guardian) promotes and protects the rights and best interests of children and young people under the guardianship of the Chief Executive of the Department for Child Protection.<sup>2</sup>

Penny Wright holds the TCV and GCYP positions concurrently, both operating from the Office of the Guardian for Children and Young People (OGCYP). The SADI Project traverses the two mandates, uniquely providing consistent, specialist advocacy for children and young people under orders across both the child protection and youth justice systems.

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<sup>1</sup> in accordance with functions and powers assigned by s 14 of the *Youth Justice Administration Act 2016*.

<sup>2</sup> with functions and powers established by s 26 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

Dual involved children and young people were a focus of the 2019 Guardian/TCV report *A PERFECT STORM? Dual involved children and young people in South Australia's child protection and youth justice systems*.<sup>3</sup> This argued that the overrepresentation of children and young people in care entering the youth justice system does not occur because they are inherently criminal, but because the system in which they are placed makes their criminalisation more likely.

Research demonstrates that inadequate planning, policy, procedure, and communication across government and non-government systems can steer those in care into youth justice systems. Opportunities are missed to intervene and provide therapeutic support. Behaviour of children and young people who have experienced significant trauma, abuse and/or neglect is too often treated as 'criminal' rather than indicating dysfunction or distress. Dealt with by the police and youth justice system, they are usually released back into the same state-managed residential environment associated with their criminal charges. This cycle reflects a child protection system that struggles to undertake its core function – keeping them safe.

## Senior Advocate, Dual Involved

The Project is associated with the creation of the (temporary) SADI Senior Advocate role in 2021, which benefitted from the specialist skills and understanding of staff member, Conrad Morris, who has experience in both child protection and youth justice systems. His expertise has been backed up by OGCYP policy, advocacy, communications, and administrative support.

Conrad visited KTYJC as part of the TCV Visiting Program to establish or extend relationships with dual involved detainees. He also contacted them in their residential care accommodation or other community settings. He advocated for individuals in relation to their "care, treatment and control" while in the KTYJC and their rights and best interests when in the community, often dealing with poor coordination and transition between systems. When necessary, Conrad also met with services and families, including intensive engagement with lawyers, and mental health, health, courts, disability, education, residential care, child protection and youth justice systems.

## Who are the 'dual Involved'?

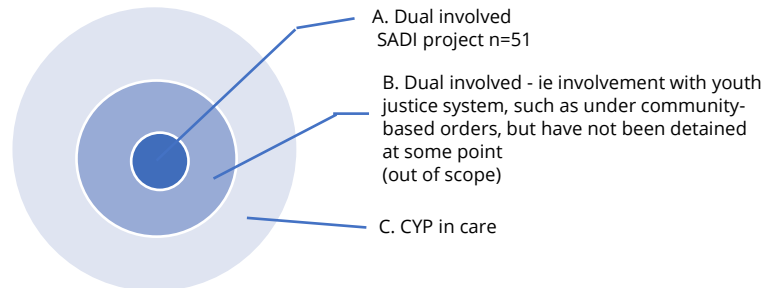
Generally, children and young people 'in care' under the guardianship of the Chief Executive of the Department for Child Protection are described as 'dual involved' once they engage with the youth justice system. However, the SADI Project has a narrower scope; for Project purposes, 'dual involved' means a child or young person 'in care', who is living in residential care and has been, or is likely to be, placed in detention pursuant to an order under the *Young Offenders Act 1993*.

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<sup>3</sup> Available at <https://www.gcyp.sa.gov.au/wp-content/uploads/2019/12/Dual-Status-CYP-in-SA-A-Perfect-Storm.pdf>

Children and young people living in family-based care and those who may be under community based youth justice orders but who have not been detained in KTYJC at some time, are not within the scope of the SADI Project.

### *Visualising the dual involved for SADI Project purposes (not in proportion)*



### *A note on data collected as part of the SADI Project*

Project data was drawn from daily KTYJC population lists, supplemented by some DCP placement and disability data. KTYJC only uses male and female gender data categories. Our data includes at least one detainee who, during our reporting period, began to identify alternatively to the gender classification they identified with, and were assigned, at the time of their detention.

There were instances where detainees were, in fact, in care but this was not identified in daily population reporting. There also were instances in which detainees were placed on child protection orders while in detention. There may therefore be some minor data inconsistencies.

### ***Definitions - non-family-based care, residential care and congregate care***

At 30 June 2021 a total of 4,636 children and young people were in care, 655 of whom resided in 'non-family-based care'. Fifty of these lived in Independent Living placements, while 605 lived in DCP or NGO-run residential care<sup>4</sup> (a small number of whom were on Placement and Support Packages). Most children and young people in care live in foster or kinship family-based placements.

**Residential care** is a non-family-based placement<sup>5</sup> most often characterised by multiple, often unrelated, children and young people living in houses or congregate care units staffed by youth workers. This sector housed 13.0 per cent of the total care population at 30 June 2021 (605 individuals).

We use the term **congregate care** in this report to distinguish forms of residential care that accommodate residents in an institutional like facility which does not provide a homelike environment and has the capacity to house more than four individual children and young people. Three units met this description during the SADI study period. Our work affirms that large congregate care units amplify the disadvantages associated with the residential care setting, including increasing the likelihood of engagement with the youth justice system.

### ***The views of dual involved children and young people***

Sixteen dual involved children and young people were interviewed for the SADI Project at KTYJC and in the community between May and September 2021. The interviews were conducted in a semi-structured format and addressed themes identified through previous OGCYP work, background research and engagement with various stakeholders.

Interviews did not occur during regular TCVU visits to the KTYJC as these visits have a more responsive and relationship-building purpose. However, visits were an opportunity to establish agreements with detainees to participate (or not) at a time to be arranged. Only those able to provide informed consent were interviewed and individual interviewers responded to individual sensitivities or concerns, with questions asked in an age, developmental, and/or individually appropriate manner.

The views of service provider staff were also considered. The SADI Advocate met with over 30 staff from government and non-government service providers to seek their perspectives on dual involved children and young people. The Guardian and Training Centre Visitor also introduced the Project to the Chief Executive of the Department for Child Protection and other DCP Executives. We will offer them a briefing on our findings to date in the next project phase.

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<sup>4</sup> Department for Child Protection Reporting and statistics  
<https://www.childprotection.sa.gov.au/department/reporting-and-statistics>

<sup>5</sup> Other non-family-based care types include Placement and Support Packages (a temporary type of non-family-based care), or Supported Independent Living Services (those in care over the age of 16 living in independent or supported accommodation).

## Is this 'Systems Abuse'?

During the Project we observed or heard about the hard and dedicated work of many social workers, youth workers and others within the child protection and youth justice systems. Appreciating the perseverance, care and compassion of many, the Project has revealed systemic issues that impede the capacity of front-line workers to do their jobs in a child's best interests rather than what is convenient or manageable for the system/s they are working in. Placing systemic interests before those of children and young people is a basis for systems abuse.

Raised in the 2019 report *A PERFECT STORM? Dual involved children and young people in South Australia's child protection and youth justice systems*,<sup>6</sup> systems abuse is a concept seen to be relevant when *preventable harm is done to children and young people in the context of policies and programs intended to provide care or protection*. It undermines their welfare, development and/or security through individual actions or arises through the lack, or non-application of, suitable policies, practices or procedures within systems or institutions.<sup>7</sup>

As discussed in research, systems abuse occurs through practices such as exposure to peers with difficult behaviours, inadequate staff training, institutional reliance on unsuitable or inexperienced and casual workers, poor placement decisions and poor interagency relationships.<sup>8</sup> It is also evident in the way institutions respond to children, who display behaviour which may have served as a survival strategy in previous placements but which is deemed unacceptable or 'challenging' in a care setting.<sup>9</sup> Previous OGCYP work, suggests that systems abuse is prevalent in the lives of dual involved children and young people.

## Detention rates of the dual involved

Children and young people in care only account for about one per cent of the state's overall child population yet comprise almost a third of those in detention (This disproportion is reinforced by the fact that detainees must be aged at least 10, the minimum age of criminal responsibility).

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<sup>6</sup> Available at <https://www.gcyp.sa.gov.au/wp-content/uploads/2019/12/Dual-Status-CYP-in-SA-A-Perfect-Storm.pdf>

<sup>7</sup> McFarlane, Katherine 'Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system' *Thesis, School of Law UNSW* 2015 p 91 referring to Gil, E. (1982) 'Institutional Abuse of Children in Out-of-Home Care' *Child & Youth Services*, 4:1-2, 7-13 and Cashmore., J., Dolby, R., and Brennan, D. (1994) *Systems Abuse - Problems and Solutions*. NSW Child Protection Council. Sydney Australia.

<sup>8</sup> Ibid p 91.

<sup>9</sup> Ibid p 91 referring to Pollack, D., Eisenberg, K., and Sundarsingh, A. (2012) 'Foster care as a Mitigating Circumstance in Criminal proceedings' *Temple Political & Civil Rights Law Review* 22:1 43-65.

Despite a decline in the overall number of children and young people in detention, the numbers of dual involved have remained about the same, thereby increasing this group as a *proportion* of KTYJC detainees. The accompanying chart shows how this proportion has increased in terms of number of individuals admitted, as separate admissions, and as a proportion of the average daily population.

*Proportion of dual involved children and young people detained at KTYJC over time (DHS data)*

	Individuals admitted	Separate admissions	Average daily population
2017-18	23.4%	31%	24.3%
2018-19	31.1%	33.8%	27.1%
2019-20	28.3%	39.4%	33.1%
Percentage increase/decrease since 2017/18	20.9% increase	27% increase	37.9% increase

*Dual involved population data - KTYJC*

This data was captured from KTYJC daily population lists and supplementary DCP data from 1 February until 31 July 2021. During this period, 51 individual dual involved children and young people were detained at KTYJC on 124 separate occasions. Of those,

- 47 lived in non-family-based care (mostly residential care placements) (92.1 per cent)
- 17 were female (33.3 per cent), 34 were male (66.6 per cent)
- 21 were Aboriginal (41.1 per cent)
- 14 were under the age of 14 years (27.4 per cent), and
- 21 had a diagnosed disability (41.1 per cent).

The proportion of those who are Aboriginal is consistent with the broader South Australian trend of a *decreasing* incarceration rate. The proportion of dual involved girls follows the trend of an *increasing* rate of girls being detained. The proportion aged under 14 years is of particular concern and is significantly higher than the proportion of *all* 10–13-year-olds detained during 2019-20 (27.4 per cent and 10.6 per cent respectively).

## Preliminary learning from the Project

A high proportion of care-involved children and young people in detention came from residential care placements, usually large congregate care units. Residential care, particularly congregate care, appears to be causing or more likely to cause 'criminal' (or offending) behaviour.

Learning from the Project work to date suggests that policies and practices affecting dual involved children and young people can be uncoordinated, out of date, ignored, or simply not exist. Implementation can privilege compliance or narrowly understood risk mitigation rather than the best interests of an individual child, effectively channelling some into the youth justice system. Drawing on what dual involved children and young people told us, as well as involvement in ongoing advocacy, we conclude at this stage that –

- children and young people in residential care are at far greater risk of criminalisation
- lack of suitable options and poor placement decisions increase this risk
- residential care often exposes children and young people to peers with difficult behaviours
- systemic problems mean that detainees can be held on remand longer than they should
- interagency relationships are strained and lack clarity about relative responsibilities; and
- transitions from the youth detention back into the child protection system can be poorly planned and result unnecessarily extended periods of detention.

We interviewed 16 of the 51 dual involved detainees incarcerated in the study period. Most felt let down or neglected when in residential care, at times attributing this to frontline DCP staff. Our experience is that children and young people often direct criticism at the staff with whom they interact, whereas underlying or systemic issues over which the staff have no control may be the real cause. They may be as much prey to circumstances as are the children and young people. For one young person at least,

*their staff is the best people I've ever seen.*

Some residents said they prefer youth justice detention to residential care placement, creating a perverse incentive to breach bail conditions or re-offend.

Our preliminary findings indicate a failure to meet many of the rights expressed in the *Charter for Children and Young People in Care* and to keep them safe from harm, contrary to requirements of the *Children and Young People (Safety) Act 2017*.

This interim report addresses several issues that the full report (2022) will complement with coverage of dual involved factors such as –

- going missing from care
- availability and use of mental health services and support for misuse of drugs and alcohol
- the court experience
- breaching bail



- use of the Adelaide City Watch House and other adult facilities to detain children
- young people's views and anxieties about their futures and ageing out of care
- contact and interaction with social workers, and
- family and positive peer relationships

## 2. Dual involved characteristics

South Australian dual involved children and young people may display certain characteristics–

- their experience of trauma often creates a special vulnerability
- Aboriginal children and young people are overrepresented
- girls are overrepresented compared to all justice-involved children and young people
- there is a high rate of disability
- some children and young people are aware they have a disability but not sure what it is and how it impacts on their behaviour, and
- children and young people in care enter the youth justice system and receive their first criminal charges earlier than those not in care.

Australian research shows that children and young people with child protection backgrounds are younger when they first have contact with the criminal justice system and more likely to have an intellectual disability compared to those without a care background.<sup>10</sup> Younger involvement is associated with an increased risk of behaviours becoming entrenched (and likely progression to the adult justice system).<sup>11</sup> Residential care is often a criminalising environment,<sup>12</sup> with acquisition of criminal charges increasing with cumulative time spent in residential care.<sup>13</sup>

Such findings resonate with the views and experiences of SADI Project interviewees. Our work reinforces the sense that systems find it difficult to provide care and support to children and young people in care who display high levels of complexity. This “complexity” may compound the impact of trauma, abuse and neglect, mental health issues, disability,

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<sup>10</sup> AIHW (2018). Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017. Canberra: AIHW; Baidawi, S. and Sheehan, R. (2019). 'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems. Report to the Criminology Research Advisory Council. Canberra: *Australian Institute of Criminology*, p 220, referring to Baldry, E., Clarence, M., Dowse, L., & Trollor, J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system. *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229.

<sup>11</sup> Chen, S., Matruggio, T., Weatherburn, D., & Hua, J. (2005). 'The transition from juvenile to adult criminal careers'. Crime and Justice Bulletin NSW, *Contemporary Issues in Crime and Justice* No. 86. Sydney: Bureau of Crime Statistics and Research. <<https://www.bocsar.nsw.gov.au/Documents/CJB/cjb86.pdf>>

<sup>12</sup> See eg Mcfarlane; Victorian Sentencing Council 'Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court, June 2019; See also Victoria Legal Aid. (2017). *Care not Custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne: Victoria Legal Aid; Hayden, C. (2010). Offending behaviour in care: is children's residential care a criminogenic environment? *Child & Family Social Work*, 15, 461-472.

<sup>13</sup> Baidawi and Sheehan, p 225.

Aboriginal status, and the experience of child removal, domestic and family violence, and other characteristics associated with poor life outcomes.<sup>14</sup> The complex needs of many in residential care are affected adversely by poor systemic policies, practices or decision-making and inadequate service responses that may, in turn, increase the likelihood of contact with the youth justice system.

Young people involved in the Project displayed a camaraderie drawing from shared experiences of the stresses of living in the child protection and youth justice systems.

*Like, oh, they've [dual involved children and young people] been through more shit and it's just they do more shit, like illegally. We all understand, you know - well, obviously we all understand what it's like to be in here, you know.*

### *Trauma and special vulnerability*

Psychological distress can alter cognition, emotions, behaviour and physical responses and thereby influence offending.<sup>15</sup> Trauma-related misbehaviour is common in residential care and youth detention, with both environments likely to increase exposure to such behaviour.<sup>16</sup> Although some dual involved children and young people begin offending before coming into care, for most this occurs once they are in the care system. One of our interviewees asserted strongly that they would not be an offender if they had remained with family: "No. No, I wouldn't be doing any of that shit, wouldn't be doing crime."

Exposure to adverse childhood experiences like domestic and family violence, drug and/or alcohol misuse, poor mental health or the death of a significant person are common,<sup>17</sup> often exacerbated by poverty and social exclusion. Some blamed the child protection system itself for their trauma.

*No, no one can earn my trust, bro. DCP burnt my trust out a long time ago when they f\*\*\*ed me and my family. You know, they got between me and my mum.*

Some retain family relationships and run away to be reunited, which may breach bail conditions if they are away from placement out of curfew hours. Especially for those who experience placement instability, feelings of disconnection and alienation are common.

*I don't even got a home 'cause your care house is not your home. That's just somewhere where they want you to stay and I don't stay there. So they're most probably going to say it to me when I go to court too 'cause they're going to say, "Oh, you need to stay in this house," and I'm just like, "Well, no, I'm not," but I tell them I do or I will so I get out. But when I get out I'm going to my mum's.*

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<sup>14</sup> Malvaso C, Delfabbro P, Day A, 'Adverse childhood experiences in a South Australian sample of young people in detention', *Australian and New Zealand Journal of Criminology* 0(0) 1-21 2018 pp 2-3.

<sup>15</sup> Malvaso C, Delfabbro P, Day A, p 16.

<sup>16</sup> McFarlane, p 165.

<sup>17</sup> Malvaso C, Delfabbro P, Day A, p 17.

*It's just not, it's not a home. It's not home. ...it's a real pretty house, like as in it's a real good house. It's real pretty, brand new but it's not home, not my home. I don't like it.*

## *Children and young people with disabilities*

DHS cannot provide detailed or regular data describing those in the youth justice system who have disabilities<sup>18</sup> although some recent work has broadened our understanding of the characteristics of those in detention.<sup>19</sup> Understanding may not extend to the young people themselves, with one dual involved young person about to age out of the child protection system saying: *"Yeah, I'm pretty sure I have [been diagnosed with a disability]. I don't know. Yeah, I, I've got a couple of them but they don't tell me. It's all in documents. I'm not allowed to have that document so I don't know."*

While about 30 per cent of those in care are eligible to receive NDIS services,<sup>20</sup> trauma related behaviours are not themselves a basis for access. Underreporting of disability therefore is likely, with some children and young people moving between the child protection, health and disability systems without their needs being identified and met. The SADI Advocate has worked with several dual involved children and young people who do not appear to have had relevant assessments despite being almost eighteen and about to 'age out' of care.

Of the 51 dual involved children and young people detained during our reporting period, 21 (41.1 per cent) had a diagnosed disability, of whom only 11 (52.3 per cent) had an NDIS plan.<sup>21</sup> Boys had a higher disability diagnosis rate at 47.0 per cent, with girls at 29.4 per cent. We suspect that the rate of diagnosed disability is low, particularly for dual involved girls. Six of the dual involved aged between 11-13 years had a diagnosed disability. This particularly vulnerable group accounted for 20 admissions to the KTYJC during the reporting period, averaging 3.3 admissions each.

Consistent with international research,<sup>22</sup> the disability rate is likely to be higher than reported. A DHS study released in 2020 found that nine out of ten of those assessed at the KTYJC (including dual involved) had a disability or disability related need.<sup>23</sup> The SADI Advocate's view

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<sup>18</sup> South Australian Government Hansard, House of Assembly, Hon VA Chapman, 12 February 2019, p 4521.

<sup>19</sup> For more information, refer to the Kurlana Tapa Disability Screening Assessment project conducted by the Youth Justice Assessment and Intervention Services (YJAIS) team and partners during March and April 2019. The project aimed to identify the prevalence of disability-related needs to inform both YJAIS service development, and strategic planning for the Youth Justice Services division of the Department for Human Services (DHS). Available here: <[https://dhs.sa.gov.au/\\_\\_data/assets/pdf\\_file/0003/93927/Disability-Screening-Assessment-Project-Report-2020.pdf](https://dhs.sa.gov.au/__data/assets/pdf_file/0003/93927/Disability-Screening-Assessment-Project-Report-2020.pdf)>.

<sup>20</sup> South Australian Government Hansard, Hon R Sanderson, Estimates Committee B, Thursday 25 July 2019, p 150.

<sup>21</sup> Two girls who have a diagnosed disability do not qualify for NDIS supports.

<sup>22</sup> It is likely that many more young people have an undiagnosed disability, due to poor assessment tools and systemic screening of all young people involved with youth justice. For more, refer to p 157, Armytage, P and Professor Ogloff, J, AM *Youth Justice review and Strategy, meeting needs and reducing offending*, Part 1 – July 2017.

<sup>23</sup> Department of Human Services, *Disability Screening Assessment Project Report: Identification of Populations Needs at the Adelaide Youth Training Centre (Kurlana Tapa)*, May 2020.

is that neurodevelopmental impairment is a characteristic of many dual involved detainees, noting positively that Foetal Alcohol Spectrum Disorder assessments were taking place.

We have failed to protect children and young people from foreseeable and preventable harm by not ensuring access to full early assessments, diagnoses and interventions that could minimise or mitigate youth justice involvement. Compounded by challenges associated with participation in criminal justice processes, failure to identify physical, neurological, or developmental disabilities, among others, effectively contributes to criminalisation.

Inadequate understanding of the dual involved population means that DCP, DHS and other agencies have reduced capacity to identify the needs of individuals and track trends, plan, and provide necessary specialist support. As a result, the Guardian/TCV has reduced capacity to consider and support the circumstances and needs of children and young people with physical, psychological or intellectual disabilities.<sup>24</sup>

### *Aboriginal children and young people*

Of all those receiving 'youth justice services', Aboriginal children and young people are the most likely to have experienced child protection intervention or out of home care.<sup>25</sup> In 2019-20, 36.7 per cent of those in care were Aboriginal as were, on an average day, 51.8 per cent of those detained at KTYJC.<sup>26</sup>

Of the 51 dual involved children and young people detained during our reporting period, 21 (41.1 per cent) were Aboriginal, of whom -

- 18 had non-family-based care placements (85.7 per cent)
- five (23.8 per cent) were aged under 14 (all living in non-family-based care placements)
- seven were female (41.1 per cent of the dual involved girls)
- nine (42.8 per cent) had a diagnosed disability (four with NDIS plan applications in progress and five with NDIS plans in place).

Overrepresentation in out of home care is well documented and getting worse,<sup>27</sup> reflecting the extremely disadvantaged and inequitable position of Aboriginal people within Australian

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<sup>24</sup>s 26(2)(b) *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and s 14(2)(b)(iii) *Youth Justice Administration Act 2016*.

<sup>25</sup> AIHW (2018). *Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017*. Canberra: AIHW.

<sup>26</sup> Office of the Guardian for Children and Young People, *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021*.

<sup>27</sup> Family Matters Report 2018 'Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia' p 5. <<https://www.familymatters.org.au/wp-content/uploads/2018/11/Family-Matters-Report-2018.pdf>> see also Report on Government Services 2019, Chapter 17A; Cunneen C, 'Institutional Racism and (In)Justice: Australia in the 21<sup>st</sup> Century' (2019) 1(1) *Decolonization of Criminology and Justice* 37; and TCV Annual Report 2018.

society<sup>28</sup> due to factors such as the ongoing effects of colonisation, the stolen generations, systemic racism and high poverty rates.<sup>29</sup> Intergenerational trauma<sup>30</sup> also has an impact.<sup>31</sup>

We have confirmed that a high proportion of Aboriginal children and young people detained at the KTYJC came from non-family-based care, especially in the 10–13-year-old cohort, including from regional locations. Aboriginal girls and young women are highly over-represented amongst the dual involved,<sup>32</sup> sharing with their male peers the impact of potential disconnection from family, community, and culture. They expressed shame about this at times.

Inaccuracies relating to Aboriginal identity occur in both the youth justice and child protection systems, with potential adverse personal impacts and overall under-reporting of Aboriginal status.<sup>33</sup> DCP's extensive work in scoping family for placements for some Aboriginal dual involved children and young people is acknowledged.<sup>34</sup>

### *Girls and young women*<sup>35</sup>

There is a clear connection between childhood maltreatment and subsequent youth justice detention for girls and young women.<sup>36</sup> We noted that dual involved girls were often the majority, and sometimes, *all* of the girls in detention. During the reporting period (1 February – 31 July 2021) seventeen dual involved girls were detained at KTYJC, of whom -

- seven (41.1 per cent) were Aboriginal
- five (29.4 per cent) had an identified disability (we suspect this is an underestimation)
- 88.2 per cent were from non-family-based care (but who made up 94.7 per cent of total admissions for girls in care over that period)
- 29.4 per cent were aged between 10 and 13 years

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<sup>28</sup> Victorian Sentencing Council p 43 referring to Koori Justice Unit, Department of Justice, Victorian Aboriginal Justice Agreement Phase 3 (2013) 10 (note 1). See also Cheryl Axleby, 'Indigenous Youth Incarceration: Ending the Injustice' (indigenousx.com.au, 2018) Indigenousx <<https://indigenousx.com.au/indigenous-youth-incarceration-ending-the-injustice/#.XADE7YT5i70>> at 13 May 2019.

<sup>29</sup> Ibid. p 43 referring to *the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* (2017), vol. 1, 166–180; Harry Blagg et al., *Systemic Racism as a Factor in the Over-Representation of Aboriginal People in the Victorian Criminal Justice System* (2005).

<sup>30</sup> Australian Human Rights Commission, *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Report, 1997).

<sup>31</sup> Ibid.

<sup>32</sup> See also TCV, *Visiting Program and Review of Records: Adelaide Youth Training Centre, Term 4 2018* pp 7-8.

<sup>33</sup> McFarlane, p 122. We note that it is 30 years since the Royal Commission into Aboriginal Deaths in Custody emphasised the need to properly record Aboriginal criminal justice involvement

<sup>34</sup> OGCYP staff have previously identified occasions of misreporting of Aboriginal status, with potential harm resulting should a child or young person subsequently learn that they are not Aboriginal or that insufficient documentation is available to have their Aboriginality recognised upon leaving care. This can lead to cultural confusion, a lack of identity and poor sense of belonging.

<sup>35</sup> The TCV's Semester 1 2021 Law and Justice Intern, Esther Richards contributed to this section.

<sup>36</sup> Cashmore above n 16, 1; Catia Malvaso, Paul Delfrabbro & Andrew Day, 'Adverse childhood experiences in South Australian sample of young people in detention' (2019) 52(3) *Australia & New Zealand Journal of Criminology* 418.

Detention rates for Aboriginal girls and young women are higher than those experienced by their non-Aboriginal peers.<sup>37</sup> They are the most likely to be dual involved and have begun offending early.<sup>38</sup> Those with child protection backgrounds face additional systemic barriers, and structural and historical racism and trauma adversely affects their communities.<sup>39</sup>

Given overrepresentation within child protection and subsequent participation in the “continuum from care to criminalisation”, Aboriginal girls are at greater risk of being criminalised than their non-Aboriginal peers<sup>40</sup> and may experience additional trauma if removed from their family and distanced from culture and country.<sup>41</sup>

### *The very young (10 to under 14 years)*

One dual involved child who had entered the youth justice system at 10 years of age described their sense of getting older, telling the SADI Advocate: *“I only got one baby teeth left.”*

Fourteen dual involved children and young people under the age of 14 years were detained between February and July 2021; four were 11, four were 12 and six were 13. No dual involved 10-year-olds were detained during our study period. Five individuals in this cohort are Aboriginal and six of the 11-13-year-olds have a diagnosed disability. The proportion aged under 14 in the study cohort (27.4 per cent) is significantly higher than the proportion of all individual 10–13-year-olds (from all backgrounds) detained at the KTYJC during 2019-20 (10.6 per cent).

Children and young people in care enter the youth justice system and receive their first criminal charges earlier than those not in care, especially those from residential care. First contact may involve a police caution but also can lead to a charge with no diversionary options utilised. One dual involved young person spoke about their earliest interactions with police –

*At first I was nine and they put me on a curfew. But they couldn't lock me up so they are waiting until I turned ten. As soon as I turned ten that's when I breached my curfew and that. That's when they locked me up.*

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<sup>37</sup> Aboriginal and non-Aboriginal females in the youth justice system had the highest quantity of adverse childhood experiences (ACEs) in comparison to Aboriginal and non-Aboriginal men (38.1%/36% vs 21.3% vs 14.6%) Malvaso, Delfrabbro & Day above n 67.

<sup>38</sup> Ibid 30 [3.10]; Armytage, ‘Youth Justice: Review and Strategy: Meeting needs and reducing offending Part 1’ (Research Paper, Department of Health and Human Services, Parliament of Victoria, 2017) p 173.

<sup>39</sup> Kathomi Gatwiri, Lynne McPherson, Natalie Parmenter, Nadine Cameron and Darlene Rotumah, ‘Indigenous Children and Young People in Residential Care: A Systematic Scoping Review’ (2019) *Trauma, Violence & Abuse* 4.

<sup>40</sup> Ibid 40.

<sup>41</sup> Leticia Funston, Sigrid Herring and ACMAG, ‘When Will the Stolen Generations End? A Qualitative Critical Explorations of Contemporary ‘Child Protection’ Practices in Aboriginal and Torres Strait Islander Communities’ (2016) 7(1) *Sexual Abuse in Australia and New Zealand* 55.

### 3. Circumstances and experiences

Dual involved children and young people are a vulnerable and complex group. Despite being placed under child protection and youth justice orders and with significant services involved in their lives, they still frequently fall through the gaps. Residential care is associated with an increased likelihood of contact with the youth justice system; contributing factors include poor resident placement matching and instability in their placements.

#### Education

Schooling and training are provided through the Youth Education Centre (YEC)<sup>42</sup> at the KTYJC (usually described by our interviewees as a positive experience). The picture from residential care is less clear and the only available, comprehensive data about school attendance and achievement is in relation to government schools.<sup>43</sup>

*"I'm hopefully going to pass my year 11 in here. [In the community] I was trying to go to school. The only time I was going to school was on home-D 'cause if I didn't I was going to get locked up."*

School attendance can be positive and stabilising but is often disturbed by placement moves and periods in youth justice detention. Exclusion rates and disengagement from education are high for the dual involved.<sup>44</sup> While we do not know some important information such as the overall number participating under education plans, we are aware that enrolment in Flexible Learning Options or through the Flexicentre<sup>45</sup> (where attendance may constitute a few hours per week) is common.

Some dual involved children and young people are disengaged from any type of education, with Victorian research showing that the dual involved are rarely stably engaged. This resonates with what we heard from interviewees -

*Nuh, nuh, I haven't gone to school for a bit. ...that stopped about, I think that stopped when I was at [congregate residential care unit] and then I stopped going to school and they, took me to [the school] and they tried to get me enrolled to a school but no schools would take me I think, I think, I think, but don't quote me on that 'cause I, I don't quite remember.*

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<sup>42</sup>See discussion in Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (now known as the Kurlana Tapa Youth Justice Centre). <https://www.gcyp.sa.gov.au/wordpress/wp-content/uploads/2020/07/TCVU-inspection-report-2020-web.pdf>

<sup>43</sup> No comparable information is available from the Independent or Catholic school systems, making the situation of children in care enrolled in those systems opaque. Catholic Education SA is currently establishing protocols with DCP to share data for those in care and has indicated to the OGCYP that this will allow them to provide education data for future reporting, however the COVID-19 pandemic has impacted the implementation of this work.

<sup>44</sup> See *Children and Young People in State Care in South Australian Government Schools 2010-2020* (OGCYP, Aug.21). Absence rates probably increased in Semester 1 2020 due to the emerging impact of the COVID-19 pandemic.

<sup>45</sup> The Flexicentre provides educational and vocational based programs, designed to re-engage young people between the ages of 15 and 18 years. <<http://yec.sa.edu.au/pages/flexicentre.html>>.

*I got to go [to school at the Youth Education Centre] today. Do you know how long it's been since I've gone to school? It's nearly been a year. I need to learn. I was doing maths today. I'm doing year 8 maths 'cause I haven't gone to school in a bloody year. I didn't go barely last year.*

*So I go to FLO [Flexible Learning Options] but no one ever says, "Do you want to go to school?" 'cause they just think, "Oh, he's, he just wants to go out and do crime," 'cause that's all they know about me when they read on the folders that and they think, "Oh, yeah, he's a bad kid. He doesn't need nothing. We can just let him, let him do his thing," you know. I don't know. I don't feel safe for my future. I feel like I'm in a road that's just going to go downhill every day.*

Absenteeism may contribute to getting behind educationally.<sup>46</sup> One of our interviewees said that, even though enrolled, they had never entered the school grounds.

*They know I don't go to school. They know I will not attend school so I don't know why they even, I don't know why they keep trying to say, "Oh, we've got in schooling place." I don't know why they keep doing it because they know I'm not going to attend school. It's been like, what, six years. The last time I went to school I was at [location] and I did like eight days of year - no, I did 11 days of year 8, that's it, last time I went to school.*

*I can't read and write properly. Like I used to be the best reader and the best writer when I was at home with my mum but now I can't read or write, can't tell the time on the clock, don't even know my times table, not even my five or my tens. Yeah, that's the exact reason why I don't want to go to school. I just feel dumb, you know. Everyone else is in there flashing out all their work and I'm just sitting there. Like I'm still on the first question. That's why I just don't go to school.*

## **The City Watch House**

Individual interviews with dual involved children and young people brought to light that almost all had at some point been held in custody in the City Watch House. It is alarming that they regularly are being detained in an adult facility, potentially exposing those with significant trauma backgrounds to unnecessary stress and risk. Core human rights instruments make clear that minors should only be detained for the shortest time possible, and only as a last resort, and that they must be held separately from adults.

One young person told us that they had been held at the City Watch House *"Like f\*\*\*\*\* 40 times at least. They all know my name."*

While our interviewees did not report sharing a cell or space with adults, some said they were in direct view of adults, including when using the toilet, a practice that can exacerbate trauma and undermines their inherent right to dignity. When asked to describe being in the watch house, one young person said –

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<sup>46</sup> See rates of absence and attendance from p 15, Office of the Guardian for Children and Young People, *Children and Young People in State Care in South Australian Government Schools 2010-2020*, August 2021.



*It's weird, man. Like you can, the old men, ...you can see them, you know, and they just look at you and you're just like sh\*t\*\*\* yourself. They never clean it. It's so dirty in there. ... They can see when you piss – yuck.*

Another, who said they had been in the Watch House “about 16 times”, said –

*Old men stare at you through the thing when you're going toilet. ... No, it looks feral. It's feral. ... Glass windows and then it has a bed, a toilet, a sink and you can't even hide yourself when you go toilet. ... Us kids go on the same floor as them [adults].*

These findings were emerging at the time of writing this interim report and will be explored further in the final SADI Project report. It is now apparent that, although semi naked searches have effectively been phased out at KTYJC since the introduction of ion scanners,<sup>47</sup> every child or young person going through the Adelaide City Watch House is required to undergo a 'strip search', every time, as a matter of course. It should be noted that neither the Guardian nor TCV have a mandate to provide oversight of the situation of children and young people in police custodial facilities.

## *Residential care*

Child protection should provide safe, protective, and stabilising environments for children who have been removed from their birth families yet research and our experience demonstrate that residential care is more associated with youth justice engagement than other care options.<sup>48</sup> At their first admission to KTYJC, 92.1 per cent of dual involved children and young people had current placements in non-family-based care during the SADI Project study period,<sup>49</sup> with residential care accounting for most of these. There are currently over 200 residential care dwellings housing between one and nine children and young people across South Australia.

The Office of the Guardian has long advocated for the closure of large congregate care units that can house up to 12 children or young people.<sup>50</sup> Years of monitoring have demonstrated that large-scale congregate care units undermine resident wellbeing. Associated problems include assaults and bullying, exposure to drugs and alcohol, predation by older people in the community and peers, restrictive practices (locking doors, limiting use of the kitchen) and exposure to the criminal justice system, including as a behaviour management tool. These

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<sup>47</sup> For more information, refer to the Training Centre Visitor's 2019-20 Annual Report, available here <<https://gcyp.sa.gov.au/news/reports/>>.

<sup>48</sup> McFarlane, p 41 referring to Foucault, M. (1977) 'Discipline and Punish: The Birth of the Prison'. *Allen Lane*. London UK.

<sup>49</sup> Many dual involved children and young people had multiple admissions to KTYJC, and information relating to their placement status was only provided for their first admission.

<sup>50</sup> We class residential care units as 'congregate' if they house more than 4 residents.

factors may exacerbate trauma and induce residents to flee from placement and generate missing person reports (MPRs) that lead to police involvement.

Despite assurances over the past several years that occupation levels in congregate care units will be 'capped', three operated at high occupation levels during the study period and at least one housed nine residents, although there were rarely that many 'at home', with some listed as missing persons due to being 'Away from Placement' (AFP) or in detention at the KTYJC.

It is acknowledged that DCP is working hard to phase out these large facilities for once and for all, and the evidence coming out of the SADI project confirms previous advocacy that this cannot happen too quickly.

One of our young interviewees told us that they felt unsafe when placed in residential care after their family-based placement broke down –

*I just felt abandoned, I guess, felt lonely and like, like I didn't have no one. Like I said like they're, the workers, they don't treat you how they treat their own children so it's hard to kind of feel like a child if you're in that, you know, 'cause it, yeah, it's nothing a normal child would go through, an average child anyway.*

## The Sanctuary model

In 2020 the government announced introduction of the Sanctuary model of therapeutic, trauma-informed care across all DCP residential care homes.<sup>51</sup> This model recognises the impact of trauma on both carers and children and young people, and that it may result from lived experience and ongoing or cumulative factors, like racism and poverty.<sup>52</sup>

The Sanctuary model's impact is said to be measurable, with claimed results including improved communication and morale among staff, fewer incidents of client to staff violence and reduced staff turnover. The model asserts that residents will exhibit fewer trauma symptoms, enhanced social skills, improved judgment and decision-making, healthier relationships, and an increased ability to maintain their safety, and that of others. DCP states that the model promotes emotional development, growth and maturity by creating a sense of safety, consistency and predictability through the care provided.<sup>53</sup> The model acknowledges the unique experiences of Aboriginal people and aligns with the Aboriginal and Torres Strait Islander Placement Principle.<sup>54</sup>

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<sup>51</sup> See the full media release here: <<https://www.childprotection.sa.gov.au/news/dcp-news/better-supporting-children-and-young-people-in-residential-care>>.

<sup>52</sup> See <https://www.mackillopinstitute.org.au/programs/sanctuary/>

<sup>53</sup> This information was obtained from DCP's Intranet in a communication titled 'Update on the sanctuary Model'. OGCYP staff were unable to ascertain the date of this communication.

<sup>54</sup> The Aboriginal and Torres Strait Islander Placement Principle aims to maintain connection with families, communities, cultures and country and ensure community participation in decisions about their children's care and protection. The ATSICPP centres on five elements: prevention, partnership, participation, placement and connection. For more information, refer to the SNAICC website <https://www.snaicc.org.au/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation/>

The introduction of the Sanctuary model is a welcome initiative, but its successful implementation will be dependent on a robust residential care system characterised by -

- enough properly trained and supported staff
- access to sufficient and adequate metropolitan and regional properties
- alignment with the Aboriginal and Torres Strait Islander Placement Principle
- appropriate care and opportunities for residents with disabilities
- better processes to minimise the movement of residents at short notice, without adequate planning, and potentially against the advice of social workers, carers and the wishes of the children and young people themselves.

It remains to be seen if the Sanctuary model can ameliorate the effects of decisions that lead to residents living in environments where they do not feel safe and are exposed to further trauma.<sup>55</sup>

### *Resident views - the detention and residential care environments*

Our interviewees did not describe residential care as safe and nurturing, reflecting views shared with OGCYP staff over many years.<sup>56</sup> Most identified deficiencies, with many resigned to a likely future return to custody. Yet some explicitly said that they *preferred* to be detained at the KTYJC because they feel safer there or because detention provided a break from boredom and cycles of offending, at times creating a perverse incentive to breach bail conditions or reoffend.

*Oh, when I first got out of here last time I struggled with wanting to come back, which I'm assuming will happen after this... It's just 'cause I struggled being out of here...*

*'Cause eventually you are out there in the house like where you're all by yourself and eventually it just gets too much ... and you don't want to return to return to your, the house so you end up doing a little crime and come back in here [KTYJC].*

For some, KTYJC's structure and clear rules contributed to their preference for detention over sometimes more chaotic residential care -

*Oh, yeah, I need a routine. In here I could tell you the routine right now. I need that routine. I need a strict structure. Like, in here [KTYJC], I know I get woken up at exactly 7.30, not 7.31, not 7.35, not*

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<sup>55</sup> Poor placement matching and lack of safety are two of the primary concerns raised in the GCYP's advocacy matters. More information can be found in the GCYP's Annual Reports here: <https://gcyp.sa.gov.au/news/reports/>.

<sup>56</sup> See <https://gcyp.sa.gov.au/2020/02/11/what-does-being-safe-mean-in-residential-care/> (February 2020); <https://gcyp.sa.gov.au/2018/12/10/safety-in-residential-care/> (December 2018) noted that "Residents often feel unsafe in residential care. Bullying and harassment are common. Adolescents report that they are frequently worried by the threat of sexual harassment and assault. Older residents say that the impact of witnessing violence, self-harm and the abuse of fellow-residents, leaves them stressed and feeling unsafe.". In relation to the Nyland Royal Commission recommendations see <https://gcyp.sa.gov.au/2016/09/26/a-quality-care-environment-residential-care/>

6.40. I get woken up at 7.30. [In residential care,] if I ask to be woken up at 9 I'm getting woken up at 10.30.

The comparison could be stark -

*I've got everything [in KTYJC] that I wish I had on the outside, like-- I, I think that shows something, that, that the DCP workers aren't doing f\*\*\* all. Some of them are actually not doing nothing. I've had social workers that haven't talked to me for like six months. That's my social, that's my guardian too, or is supposed to be my guardian anyway. Yeah.*

One young person was particularly insightful about their personal situation -

*... this place is so much better than the outside, and besides all the, all the gaol side of things, like prison, juvie side of things, this place is so much better than being on the outside in those houses 'cause you're by yourself. You're stressing out all the time. You're stuck on the drugs 'cause you got nothing else to do. You're always out f\*\*\*\*\*g doing crime, 'cause that's all you know. There's not, no proper support to get you back to school and all that stuff. Like it's just, it's, it's really hard. 'Cause once you're in, once you're stuck in that, that cycle it's, it's really hard to get out.*

### *The positive role of KTYJC staff*

Ironically, some dual involved children and young people do not see detention at KTYJC as a deterrent to offending, saying that they feel safer there and are 'heard' by staff. Boredom and a lack of apparent boundaries in residential care contrasted with the situation in detention. When asked about their comment that "*I'd rather be in here [KTYJC] than that DCP placement*", one young person went on to explain that -

*You have to do stuff in here, you know. You have to listen to the staff or you'll be locked down and they actually do listen to you in here, you know.... it's a good thing not having structure on the outside but like in the DCP homes you don't have no structure.*

Interviewees often commented positively about the efforts of KTYJC staff -

*The workers here actually care about some of us and, yeah, I don't know. Is it the routine? I go to school every day. I got people telling me to actually get out of bed so I can get education and, yeah, that, I - it's not really, it's not particularly the reason but it's not, it's not something that I - I don't hate it here that's for sure. I'll be honest, you know, I don't actually hate it here and that's the sad part about it 'cause this is a youth justice centre, supposed to be learning not to come back but I keep coming back.*

*...some of the workers [in KTYJC] are killer. I mean, you got actual decent people that come in here on a OT [over time shift]. They don't even have to and they come in 'cause they don't want to see us cracking up in our room 'cause we were on lockdown. ...I don't know, yeah, it just shows that they care, I guess. Like it doesn't even have to be something big but that shows, you know, when they come in on a weekend - they could be with their family but they come in and do an OT shift where they don't even, yeah, have to. It's good. I don't see the workers in DCP doing that, only see workers getting fired, leaving the system, you know. Yeah. I'm, like I can't really go out and do crime in here. I've got a routine.*

## 4. Systemic issues

This section points to a systemic inability to respond well to the complex needs of dual involved children and young people, with two main themes discussed in this interim report.

- A 'criminalising' residential care environment leads to or exacerbates involvement in the youth justice system and offending, including through -
  - poor placement decisions
  - inappropriate exposure to peers with difficult or offending behaviours, and
  - deficits in residential care staff competencies, training and support.
- In some (often resource related) contexts, poorly developed or actioned interagency arrangements undermine effective service provision and coordination, noting that -
  - while many services are closely involved in their lives, dual involved children and young people still fall through systemic gaps too often
  - the care system too often is unprepared for the individual release from the KTYJC (or court) which may result in extended extra periods of detention, and inadequate service planning and coordination.

Such systemic features occur despite the hard work and perseverance of many dedicated staff in the child protection and youth justice systems.

Those in care often have complex needs that intensify once they encounter the youth detention system and become dual involved. Child protection and youth justice organisational cultures and practices should emphasise effective communication and information sharing.

Poor outcomes for most dual involved children and young people are entirely foreseeable.

### Residential care as a criminalising environment

Some dual involved children and young people told us bluntly that residential care was the conduit through which they entered the youth justice system.

*I know a hundred per cent I would not be here right now if it wasn't for resi, like if it wasn't for DCP putting me in resi care. I say that with confidence too. I know a hundred per cent wouldn't, would not be here.*

Many incident reports reviewed by the OGCYP illustrate how the residential care system facilitates contact with police and the youth justice system, not least because police are often called to deal with resident behaviour. Triggers for calling police can differ between units, between properties and between staff on shifts. Even if written procedures assert that behavioural problems must not be dealt with by the police, staff may feel they have no other choice in a care system under duress.

Calling police to respond to (at times low level) behavioural or property related incidents contrasts with how such matters would be managed for a child or young person in any other 'home' setting.

*...I walked out, walked outside, left the f\*\*\*\*\*g building and they started following me and calling the cops. I got tackled nanga<sup>57</sup> in the middle of a bush.*

Almost every interviewee had been charged with damaging residential care property or had received charges of assault against residential care staff. One concerning example was described in this exchange between a young person and the SADI Advocate –

Q: *In the house that you're at, at the moment, is there any assault charges on carers or property damage?*

A: *I think so. I'm like sure, yeah, there's a couple of assaults actually on the carers but I don't know why they charged that as assault. I didn't even assault but they count it as it because I was chucking water over the carers with a hose, just mucking around having fun, you know, but they took it too far.*

Q: *So you were splashing water over your carer and you got charged for assault?*

A: *Yeah.*

Q: *What did you do more than that?*

A: *I'll tell you, literally I was just f\*\*\*\*\*g hosing them down with the hose and I got charged for assault 'cause they told me stop. I didn't stop.*

Q: *Because you were squirting someone with water?*

A: *Yeah.*

Assault charges are serious and may characterise a child or young person as dangerous or violent, attracting a record and undermining their future opportunities. What would pass for relatively innocuous, if annoying, behaviour in most family homes was escalated to police intervention.

Residents reported being taunted or intimidated while in a congregate residential care unit.

*I had workers abusing me, talking to me like a piece of shit on their shoe, laughing at me through the windows when I'm angry, like, like aggravating me to the point where I'm going to smash a window...*

Such allegations are not uncommon and, while we do not suggest that poor staff behaviour is a feature of all residential care settings, the system should anticipate that relationship clashes will occur and deploy a properly qualified and supported workforce.

One young person said they felt so unsafe that they 'snipped' their home detention monitoring device to escape a property, despite knowing that this would breach their conditions and return them to detention. They described being allowed to leave even though staff knew that their curfew and release conditions would be breached -

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<sup>57</sup> 'Nanga' is a slang term widely used by Aboriginal people in South Australia. Nanga is used to show pity, for example, 'oh nanga' – 'poor thing'.

*The night I snipped my home-D, I only snipped 'cause I felt like I was going to get flogged that night-- By two of the workers. ...it was like five minutes before my curfew .... They just buzzed me out. I just pointed at the door and they just, boom, buzzed me out. ...Yeah, I couldn't even just walk out. They willingly let me out.*

It is hard to avoid the conclusion that that congregate residential care is unable to provide safe and supportive environments that actively seek to minimise contact with the youth justice system.

## Exposure to peers with difficult behaviours

Exposure in residential care to peers with difficult or challenging behaviours featured heavily in the experiences of SADI Project interviewees. They spoke of exposure to drugs and offending and the introduction of new residents as features of their common environment. One reflected that their offending was influenced by their peers "99 per cent of the time." Most said that their offending began after placement in residential care: "*when I met the other kids [at the congregate care unit] ... That's my first ever time in trouble.*" Another moved into a unit with someone they described as "*...gangster and stuff. So that influenced me a lot. Like he would - I remember we would just always steal from the Foodland around the corner. Like we were good mates, best mates, you know.*"

Some understood their role in perpetuating the cycle of criminalisation -

*That's mainly me influencing them, I guess. But before I started doing crime - yeah, do you know [name redacted]? Yeah, she used to influence me a lot when I was younger when I lived at [congregate care unit] with her...*

*Like we, the other kids that were there were like, "Come with us, bro," you know. I had no one so I was like, "Yeah, f\*\*\* it," you know. I had no one saying, "No, don't do that."*

*All those older boys moved out and then that was just us girls that were left there and us girls just took over from what they left us to do and then, boom, find myself here six years later doing exactly what those boys were doing, and possibly more, 'cause I've done some pretty f\*\*\*\*d up shit in my life, or in the last six, seven years... I don't know, my life turned to shit, turned into a criminal, in and out of here [KTY]C all the time.*

One young person contrasted their life before and after entering residential care -

*Yeah, so like we, before we, when I used to stay with my mum and dad didn't used to steal and shit, didn't used to get locked up, just used to stay at home, go to school and that, and that's - when I got taken away that's when I just started smoking, starting breaking into people houses and that shit, stealing. [I learnt that] from all the other boys, like all the older boys and that shit.*

Another alluded to a lack of guidance in residential care, describing "hundreds" of workers coming and going but said that only three made them feel safe and cared for.

*How I was when I first came in, ... they're just brought into like a, like a criminal life 'cause the, the kids around them are doing - like they're going out at night, stealing, going into cars and whatnot and that's, that's how it all started for me.*

Interviewees tended not to see their residence as a home and could spend large periods missing, increasing contact with police. 'Survival' offending often ensues, at times strongly peer influenced.

*We was running away from them [the carers] 'cause they thought - no, they called the cops on us and was saying that they was influencing me and they got in trouble 'cause I was like - however old I was, 12, 13, and they were like 16, 17, like all older boys, ...*

As previously discussed in OGCYP Annual Reports and publications, the issue of exposure to peers with difficult or challenging behaviours is exacerbated by poor matching of residents in residential care, despite known attributes of children or young people indicating they should not be housed together. Limited vacancies and a shortage of alternative, more suitable placements necessitate pragmatic and short-term decision making - with longer term consequences. Some young people accommodate and conform with existing cultures in order to find acceptance and 'fit in'. Alternatively, clashes occur:

*It was okay for a week then this other chick moved in. She had some really, she - her mental health was not the best and so she had the like intellectual ability of an eight year old. She was 14. That turned our house upside down. She started saying - she'd like piss me off - like, "Oh, I wish your parents just kept on beating you. I wish they killed you. You're a murderer. You should go to gaol," or some shit, "for attacking your dad," and so, obviously, if you're a normal person, that upsets you, and so then I'd get angry. I'd punch holes in my walls. I punched two holes in my walls. That's the first night I got arrested. ... I punched one hole in the wall. They said, "Hey, don't do that." I was like, "Yeah, you can watch me do the next one," so I punched the next one. It was just two little fist holes, and then they're like, "Right, we're calling the cops." The cops came in, "Get on the ground."*

## Poor transitions and unnecessary periods of detention

Systemic problems such as DCP's failure to provide a suitable address for bail or release keep some children and young people in detention unnecessarily. 'Kelly's' story demonstrates how a lack of placement can extend a dual involved young person's time in detention.

### **Case study - Delayed release from KTYJC due to lack of DCP placements**

The SADI Advocate received a referral on a Friday about Kelly who, despite being granted release the previous day, was still in KTYJC detention as DCP had not provided an address that could be approved for electronic monitoring. The court remanded her in custody to give DCP more time to find a suitable address. Youth Justice staff were concerned that this denial of release occurred after DCP had already been unable to identify a suitable placement for a month.



Kelly also phoned the SADI Advocate on the Friday,<sup>58</sup> distressed at being held past her release date –

*"I was approved to get out yesterday and DCP didn't have a placement for me...I know they have emergency placements they just don't like to use them."*

*"It's not fair, I have done everything right to get out of this place early, and DCP can't even do their job..."*

As the day grew later, the SADI Advocate was unable to contact the young person's DCP social worker and ultimately contacted a more senior member of DCP staff, as Kelly became increasingly distressed. After several further phone calls, the SADI Advocate was advised that Kelly would be contacted and advised that she would be released on the following Monday.

The SADI Advocate received another call from Kelly on the following Monday, saying that she was still detained. She had been told that, although there was a placement for her, there were no youth workers available to staff the house and DCP social workers were being considered to undertake this role. Kelly continued to call the SADI Advocate on the Monday and, later in the day, experienced a "massive meltdown" associated with the situation and the stress related to receiving little information about her overdue release.

Additional systemic problems then caused a further delay in Kelly's release, due to DHS YJ recommending home detention and DCP's needing to provide, and staff, a suitable property in order to secure approval. Another placement, identified by DCP on the Monday afternoon, also became unavailable.

Kelly was finally released on the Tuesday afternoon. She had been deprived of her liberty for five additional days, because DCP could not provide her with a safe and appropriate placement. She experienced considerable distress for reasons that were outside her control. It subsequently became clear to the SADI Advocate that information breakdowns between DCP and DHS YJ had further delayed her release.

Detainees who have been serving a sentence are often released from KTYJC on Fridays, minimising access to support and services that mostly are available only on weekdays. Service providers suggest that weekend and out of hours services are desperately needed to ensure that young people can have access to food, clothes and money upon release.

A system- rather than child-centred response is demonstrated when a KTYJC detainee is released but must wait to be picked up by carers due to shift changeover times.

*So DCP reckon that if you get bail, no matter what time you get bail, they are always going to pick you up at handover, which is 2.30, 3. ...Yeah, they take forever to pick up us. They one time said that they can't come for three hours when I got granted bail and the training centre [KTYJC] told them, "You*

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<sup>58</sup> Children and young people detained at KTYJC can call the TCVU on an unmonitored phone line. These unmonitored calls can be transferred to the SADI Advocate. The unmonitored phone line allows children and young people to discuss sensitive matters with the TCVU and SADI Advocate.

*have to come now" ...'cause it's unfair for me 'cause I can't even go out with the girls 'cause you're not allowed to mix with no one when you get out. ...We just sit in a room.*

Service providers reported that no, or last minute, placement decisions made it difficult to plan throughcare services and allocate transition support, a problem exacerbated when even the geographic service region of the placement is unknown. They said that the workforce is usually available to allocate but this process is undermined by poor planning or coordination: last-minute decision-making sets the young people up to fail.

A young person described their recent experience of delayed release from court due to no care team staff being available -

*... I went to court last time I was in here and I went to court at 11 o'clock. I got released at 12 o'clock, you know, but they couldn't let me out because I'm under age. How do they find these people like this? They didn't get here till 6 o'clock at night and I was stuck in my little cell 'cause I couldn't mix with the girls 'cause I'm on pre-release, and I couldn't mix with the girls. I'd just be stuck in my room with nothing, man.*

*... the court people, they were, they were going off at my worker. They weren't going off but they were just like saying, "Well, this is ridiculous," you know. They're supposed to be, they, they are supposed to be finished at 3 o'clock, you know, 'cause that's when court finishes and they had to wait until 6 to get me picked up, to do the paperwork signing.*

*The carer's just like, "Oh, we have to get the staff because since you've not - because I'm the only resident in my care house, since you're not there the staff gets moved around and I was like, "Well, they should be all at the house the day I go to court," you know, and the morning shift should come pick me up but, no, 'cause it's so far away. It takes like an hour to get there and back.*

*Every time I go to court they always leave me here till this afternoon and I have to ask, you know, like around 5, 4 o'clock or something to get picked up, 6 o'clock. ...Exactly, and I'm f\*\*\*\*\*g annoyed with that so I'm like, "You may, may as well let me go catch the bus. I'll be home by the f\*\*\*\*\*g time you get here."... Or just get me a taxi home.*

A service provider described a situation when a young person had been released and not met by their case manager, who was sick. Instead, they were provided with a taxi voucher to take them to their independent living unit, and a money card for food. Another service provider gave an example of a young person sentenced to home detention, who was transported to their placement to find that it had been broken into while they were detained and had been boarded up. That young person had reportedly been dropped off at this house with \$10 in their pocket and were advised to make their way to their DCP office the next morning to collect a food voucher.

One impact of such dysfunctionality was raised with the SADI Advocate by DCP workers when he was advocating for an individual young person. They appropriately expressed concern that dual involved children and young people often become 'disengaged' following release, which may result in them being registered as missing or away from placement, increasing the likelihood of further police involvement.

Unfortunately, once a young person has been designated as “disengaged”, this seems to lead to institutional responses that further marginalise the young person despite their behaviour being, in most cases, foreseeable and understandable in light of the experiences they have had in the course of their lives.

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The 16 young people we interviewed and their 35 peers with whom we also engaged during the SADI Project to date, sit at the pinnacle of complex, interacting systems that are difficult enough for many adults to negotiate. Their experiences point to systems that can only cope with limited amounts of complexity, despite complexity being these systems’ core business.

Project observations and learning, especially as influenced by the views and experiences of dual involved children and young people themselves, suggest that these systems can create or foster conditions that propel them into or further into the youth justice system.

The full SADI Project report, due for release in early 2022, will further explore matters flagged in this interim report and introduce and discuss other issues that together may constitute an environment that tolerates systems abuse.

