

Final Report of the South Australian Dual Involved Project

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

June 2022



Guardian
for Children and
Young People



**Training
Centre**
Visitor

The Office of the Guardian for Children and Young People respectfully acknowledges and celebrates the Traditional Owners of the lands throughout South Australia and pays its respects to their Elders and children and young people of past, current and future generations.

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The Hon Katrine Hildyard, MP
Minister for Child Protection
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The Hon Nat Cook MP
Minister for Human Services
GPO Box 2832,
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10 June 2022

Dear Ministers

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

This report details 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.

I seek a written response to this report from the South Australian government outlining:

1. A response to the recommendations; and
2. A suitable timeframe to implement those recommendations.

I wish to thank frontline staff in DCP and DHS Youth Justice for their ongoing dedication to some of South Australia's most vulnerable children and young people. I also wish to thank ALRM, CAMHS, the Exceptional Needs Unit, Muggies and Dr Kath McFarlane (Adjunct Associate Professor, The Kirby Institute, UNSW Medicine and the University of New South Wales), for sharing their experiences and expertise with us. I also wish to acknowledge the work of our law intern Esther Richards who undertook research for the project.

Most of all, I wish to extend my sincere thanks and gratitude to the dual involved children and young people who worked with us as part of this project. Their strength, courage, and willingness to share their stories with us, so that one day things may be better for others, demonstrates a vast sense of maturity, generosity and hope.

This project would not have been possible without their input.

Yours sincerely

A handwritten signature in black ink that reads "Penny Wright". The signature is written in a cursive, flowing style.

Penny Wright
Guardian for Children and Young People & Training Centre Visitor

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Notes

Relationship to SADI Interim Report

This final project report does not revisit some important material contained in the 2021 SADI Interim Report. For a comprehensive picture, both reports should be read.

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). Available at: <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/10/OGCYP-South-Australian-Dual-involved-Project-Interim-Report-September-2021.pdf>.

Terminology

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

A caution

This report contains some case examples and sensitive information that may be distressing to some readers. If this applies to you, we encourage you to seek support from family, friends or community contacts, including services like Kids Help Line on 1800 551 800 or Lifeline on 13 11 14.

Robust voices – language warning

Our determination to amplify the voices of detainees means that this report comes with a language warning. We do not think that the 'strength' of some of this differs in any way from language use by young people in our general community. The same goes for the robust language sometimes used by members of staff.

In both cases this means that some quotes will be considered offensive or non-inclusive, but we hope that the context for the citation warrants that use.

Participant Anonymity

We have been careful 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.

Acknowledgements

This report was written by Jessica Flynn, Conrad Morris, Alan Fairley and Alicia Smith with project support provided by GCYP and TCVU Advocates and OGCYP Communications and

Administration staff. University of Adelaide Law intern, Jennifer Novak, helped edit the final draft.

The SADI Project itself benefitted from the direct input of dual involved children and young people themselves. You will see them quoted and referred to throughout. The same applies to many staff from the child protection and youth justice systems and other government and non-government agencies.

A note on data considered within 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 therefore does not distinguish detainees who, during the reporting period, began to gender identify alternatively to that assigned when admitted to detention.

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

Acronyms

ALRM – Aboriginal Legal Rights Movement

DCP – Department for Child Protection

CAMHS - Child and Adolescent Mental Health Service

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 (comprised of staff who work in relation to separate mandates held by Guardian, Penny Wright – GCYP, TCV and YTO)

OPCAT – Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment

SADI – South Australian Dual Involved

SAPOL – South Australian Police

TCV – Training Centre Visitor

TCVU – Training Centre Visitor Unit

YTO - Youth Treatment Order

YTOV – Youth Treatment Order Visitor

1. Introduction

1.1 Project aims and implementation

The South Australian Dual Involved Project (SADI) Project describes and analyses over-representation in detention of children and young people from residential care placements. It has drawn on interviews and other interactions with dual involved children and young people at Kurlana Tapa Youth Justice Centre (Kurlana Tapa or KTYJC) or elsewhere, providing them with personal advocacy if required. We sought their views about why they are in detention and whether or how residential care environments influenced their offending behaviour.

We examined the characteristics of this vulnerable cohort and explored factors that may cause or exacerbate youth justice involvement. Research shows that placement in residential care is one of these factors. This is a particular concern in South Australia, given our greater reliance on residential care than any other Australian jurisdiction.¹

The link between adverse childhood experiences and youth offending is well established, with a developing evidence base about pathways from child protection to youth justice, yet little has been drawn together and released about South Australia's own dual involved young people.² As highlighted in Part 2.4 below, this has particular importance for Aboriginal children and young people.

Dual involved children and young people are disproportionately at risk of living criminalised lives. Against this fraught and complex background, the SADI Project explores the most significant aspects of the residential care and youth justice systems which contribute to this risk. Based on the issues and experiences that dual involved children and young people identified during our interviews, the SADI Project concludes with a set of recommendations introduced in Part 1.7 below.

<i>Recommendation 1</i>	<i>Bolstering independent oversight and advocacy</i>
<i>Recommendation 2</i>	<i>Making residential care units safer</i>
<i>Recommendation 3</i>	<i>Assessment of needs and potential</i>
<i>Recommendation 4</i>	<i>Increased support for Aboriginal children and young people</i>
<i>Recommendation 5</i>	<i>Enabling effective care and support</i>

¹ Office of the Guardian for Children and Young People (OGCYP), *South Australian Child Protection Expenditure from the Productivity Commission's Report on Government Services 2021* (March 2021) ('Child protection expenditure report'), p 18.

² While work is underway to address some of these issues, including in the context of *South Australia's Youth Justice State Plan 2020-2023*, a comprehensive consolidation of relevant material has yet to be released.

<i>Recommendation 6</i>	<i>Reviewing and analysing police involvement in residential care</i>
<i>Recommendation 7</i>	<i>Reducing police involvement in residential care</i>
<i>Recommendation 8</i>	<i>Restrictive practices in residential care</i>
<i>Recommendation 9</i>	<i>Accountability</i>
<i>Recommendation 10</i>	<i>Vehicles as places of detention</i>
<i>Recommendation 11</i>	<i>Children and young people in police cells</i>
<i>Recommendation 12</i>	<i>Bail and remand</i>
<i>Recommendation 13</i>	<i>Supporting children and young people in court</i>
<i>Recommendation 14</i>	<i>A specialist DCP 'dual involved' team</i>
<i>Recommendation 15</i>	<i>Improved transition planning</i>

1.2 Training Centre Visitor and Guardian

The Training Centre Visitor (TCV) and Guardian for Children and Young People (Guardian) are the independent statutory oversight officers for dual involved children and young people: the former 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), the latter those who are under the guardianship of the Chief Executive of the Department for Child Protection.³

Penny Wright holds the TCV and Guardian positions concurrently⁴ with both operating from the Office of the Guardian for Children and Young People (OGCYP). The SADI Project traverses these mandates, uniquely providing consistent, specialist advocacy for children and young people under orders across both the child protection and youth justice systems.

The earlier TCV/Guardian Dual Involved Report 2019

Dual involved children and young people were discussed in the 2019 Guardian/TCV report to Parliament, *A PERFECT STORM? Dual involved children and young people in South Australia's child protection and youth justice systems*.⁵

³ With functions and powers assigned respectively by s 14 of the *Youth Justice Administration Act 2016 (SA)*, and s 26 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*.

⁴ Since November 2021, Penny Wright also has held the position of Visitor for the Youth Treatment Order Visitor Scheme under the *Controlled Substances Act 1984 (SA)*, a relevant position for dual involved children and young people.

⁵ OGCYP, *A Perfect Storm: Dual status children and young people in South Australia's child protection and youth justice systems – Report 1* (November 2019) ('A perfect storm').

This report argued that the overrepresentation of children and young people in care who end up in youth detention does not occur because these children and young people are inherently criminal. Rather, it is because the system of out-of-home care 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 to intervene and provide therapeutic support are missed.

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 residential care environment associated with their criminal charges. This cycle reflects a child protection system that struggles to undertake its core function – keeping them safe.

1.3 Senior Advocate, Dual Involved

The SADI Project was only made possible by the creation of the (temporary) SADI Senior Advocate position in 2021. This was undertaken by Conrad Morris who brought his specialist skills, experience and understanding from both the child protection and youth justice systems to the role. Substantial support was provided by other OGCYP policy, advocacy, communications, and administrative staff.

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

With cessation of the specific SADI role at the end of 2021, the OGCYP reverted to existing capacity for advocacy support to dual involved children and young people. While the Guardian/TCV will continue to make the case that these young people deserve special, funded oversight attention, it is important that we maintain project momentum. Arrangements therefore are in place to continue 'SADI' work to the extent possible within current resources, notably through the designation of a specialist, adjunct role for an existing Advocate and associated coordination arrangements.

1.4 Who are the 'dual involved'?

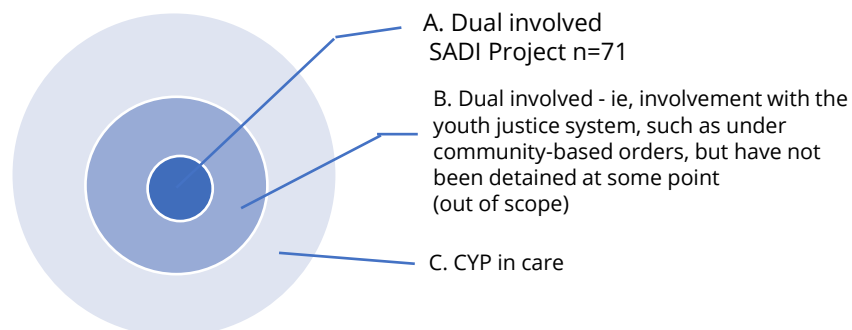
1.4.1 For SADI Project purposes

Generally, children and young people 'in care' are described as 'dual involved' (or 'dual status') once they engage with the broad youth justice system. The SADI Project has a narrower scope.

For SADI Project purposes, the term 'dual involved' applies only to children and young people in care who are or have been detained pursuant to an order under the *Young Offenders Act 1993*.

Seventy one individual children and young people were categorised as 'dual involved' during the project, 16 of whom participated in individual interviews. These 71 children and young people were admitted to Kurlana Tapa on 240 separate occasions. This means that children and young people in care who were subject only to community based youth justice orders, but who have not been *detained* in the KTYJC, were not within the scope of the project. This differentiation reflects the specific mandate for the TCV, which is to promote the best interests and advocate for children and young people who are *detained in youth training centres*.

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



The dual involved children and young people included in this report disproportionately lived in non-family based care placements, which were primarily residential care. As such, the SADI project has a specific focus on the intersection between residential care and the youth justice system.

1.4.2 Kurlana Tapa Youth Justice Centre (Kurlana Tapa or KTYJC)

The Kurlana Tapa Youth Justice Centre (KTYJC) is South Australia's sole youth justice detention centre and is located in northern metropolitan Adelaide. It operates as an administrative unit of the Department of Human Services (DHS).

1.4.3 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. Interviews were semi-structured and addressed themes identified through previous OGCYP work, background research and engagement with project stakeholders.

Interviews did not occur during regular Training Centre Visitor Unit (TCVU) visits to the KTYJC, as these have a more responsive and relationship-building purpose. These visits did provide opportunities to seek detainee agreement to participate (or not) in an interview at a time to be arranged. Only those able to provide informed consent were interviewed and interviews were managed, to respond to individual sensitivities or concerns. Questions were asked in an age, developmental, and/or individually appropriate manner.

1.4.4 The views of sector staff and leadership

The views of KTYJC/DHS, DCP and other service provider staff were also sought, with meetings conducted with over 30 staff from government and non-government service providers.

The Guardian/Training Centre Visitor introduced the SADI Project to the Department for Child Protection Chief Executive and other DCP executives. They were also briefed about project findings and our proposed recommendations prior to the release of this report. Senior DHS and KTYJC staff were also kept informed, the latter having a directly facilitative role for the engagement and interview process.

Child protection definitions – non-family-based, residential, and congregate care

The child protection system is complex, with ‘non-family-based care’ (including residential care) placement being a minority option.

Of the 4,636 children and young people in care in South Australia at 30 June 2021, 655 lived in ‘non-family-based care’, of whom 50 were in ‘Independent Living’ placements and 605 in DCP or NGO-run residential care.⁶ Of the latter category, a small number were on Placement and Support Packages.

Residential care is a non-family-based placement⁷ 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 per cent of the total care population at 30 June 2021 (605 individuals).

⁶ DCP, *Reporting and statistics* <<https://www.childprotection.sa.gov.au/department/reporting-and-statistics>>.

⁷ Other non-family-based care types include Placement and Support Packages (a temporary option), or Supported Independent Living Services (those in care over the age of 16 living in independent or supported accommodation).

A special type of residential care

We use the term **congregate care** in this report to distinguish institutional style residential care facilities that house more than four individual children and young people in non-homelike environments. Three units met this description during the SADI study period with only two operational when it concluded as one large congregate care home has been closed, and another refurbished to make it more home-like (with positive feedback received from children and young people living there, although safety issues remain).

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.

1.5 Detention rates

Children and young people in care 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.

Despite a decline in the overall number of children and young people in youth justice detention in recent years, the number of dual involved has remained about the same, causing this group to increase as a *proportion* of KTYJC detainees. The accompanying charts show how this proportional increase applies with respect to individuals admitted, separate admissions, and as a proportion of the average daily population.

Nationally, AIHW data reporting notes that, for the 2018-19 reporting year, more than half of all young people who had been in youth justice supervision had also received child protection services in the last 5 years.⁸

Dual involved profile

Between 1 February and 31 December 2021, 71 individual dual involved children and young people were detained at Kurlana Tapa on 240 separate occasions.⁹ Of these children and young people –

- 64 lived in non-family-based care (mostly residential care placements) (90.1 per cent);
- 25 were female (35.2 per cent), 46 were male (64.8 per cent);¹⁰
- 30 were Aboriginal (42.3 per cent);

⁸ Australian Institute of Health and Welfare (AIHW), *Young people under youth justice supervision and in child protection 2018-2019* (2020) ('Youth justice supervision'), p1.

⁹ Data drawn from KTYJC daily population lists, supplemented by DCP information.

¹⁰ Note: a small number of transgender dual involved young people were detained but are included in data for the gender with which they identify as we cannot guarantee overall data consistency for general disaggregation purposes.

- 18 were under the age of 14 years (25.4 per cent); and
- 26 had a diagnosed disability (36.6 per cent).

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 2020-21 (16.7 per cent).

During the SADI Project, we held in-depth interviews with 16 dual involved children and young people. Of those who lived in residential care, 73.3 per cent said they had been charged with assaulting carers and 86.6 per cent with damaging property at the residential care facility.

Detailed data collected as part of the SADI Project is presented and discussed in Attachment 1 to this report, with three charts shown below illustrating some broad trends.

Chart 1.5 (a):

Dual involved as a proportion of individuals detained at KTYJC, 2017-18 to 2020-21

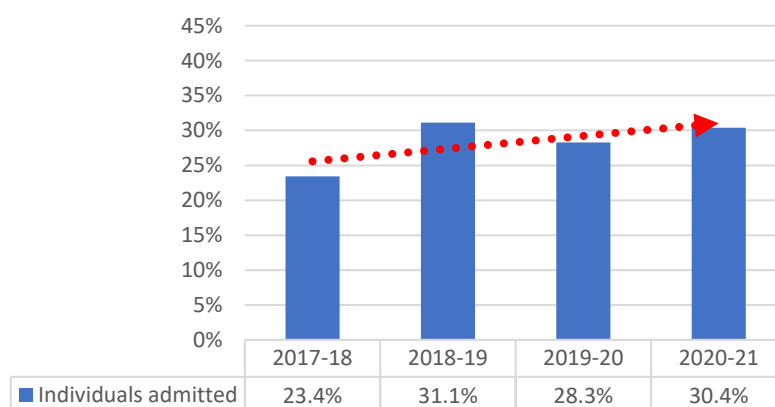


Chart 1.5 (b):

Dual involved as a proportion of separate KTYJC admissions, 2017-18 to 2020-21

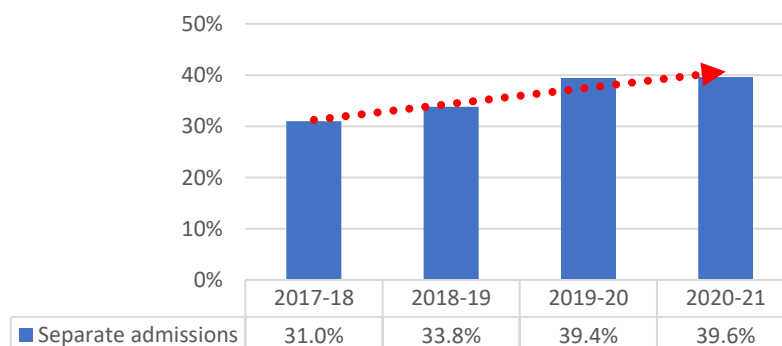
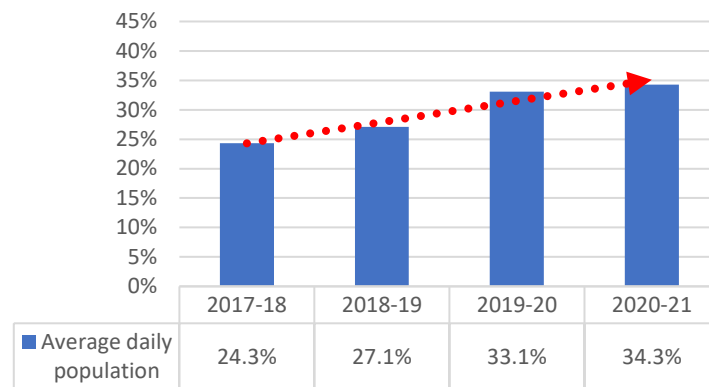


Chart 1.5 (c)

Dual involved as a proportion of KTYJC average daily population, 2017-18 to 2020-21



1.6 Headline project observations

The SADI Project confirmed some existing thinking about the situation of dual involved children and young people and extended our awareness of their views, circumstances, and experiences. Before moving on to project recommendations, we summarise some 'headline' observations.

- It is likely that South Australia's existing residential care system contributes to the criminalisation of resident children and young people.
- Dual involved children and young people often do not feel safe in residential care placements.
- Decision-making and practice in key agencies can be systems-focussed to the detriment of dual involved children and young people.
- The over-representation of Aboriginal children and young people in care and detention carries over to dual involved status.
- Despite often being part of the child protection and youth justice systems for several years, some dual involved children and young people continue to lack proper multi-faceted health, disability and psycho-social assessments.
- Children and young people continue to be held inappropriately in adult police facilities and are subject to unnecessary police intervention in residential care units.
- Systemic placement shortages and staffing problems mean that children and young people can continue to be held in custody despite being granted bail (or when they have completed their term of detention).
- Dual involved children and young people often lack consistent contact with allocated DCP workers and may find it difficult to contact their worker.

- Dual involved children and young people commonly expressed a preference for being detained at Kurlana Tapa rather than living at their residential care placement, partly because of what they see as better support and more positive relationships with staff.
- Dual involved children and young people often feel extreme anxiety about their future and may feel fatalistic that they will inevitably 'graduate' into the adult corrections system.

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 these workers' ability to perform their work in a child's best interests rather than what is manageable or more expedient for the system/s they work within. Systemic interests taking precedence over those of children and young people is a basis for systems abuse.

As discussed in the 2019 report *A PERFECT STORM? Dual involved children and young people in South Australia's child protection and youth justice systems*,¹¹ systems abuse occurs 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.¹²

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.¹³ 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.¹⁴ Previous OGCYP work suggests that systems abuse is prevalent in the lives of dual involved children and young people.

Systems abuse for the purposes of the report therefore refers to preventable harm experienced by dual involved children and young people in the context of policies and programs intended to provide care or protection. It is a useful concept as it challenges an understandable tendency to accept what is *doable* as opposed to what *should be done*.

¹¹ OGCYP, 'A perfect storm', n 5.

¹² K McFarlane, *Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system* (2015).

¹³ Ibid, p 91.

¹⁴ Ibid.

1.7 Recommendations

These recommendations are informed by the views and experiences described during the SADI Project by dual involved children and young people, and people who work with them.

The recommendations require action to address matters that may have an adverse impact before, during, and after a child or young person has become directly involved in the youth justice system. The recommendations are designed to improve outcomes for these children and young people through practical, constructive and systems-focused proposals.

Each is introduced by a brief explanatory statement.

Recommendation 1 – Bolstering independent oversight and advocacy

Parliament established a visitor scheme to ensure independent oversight of children and young people living in residential care in 2017, as set out in Chapter 9 of the Children and Young People (Safety) Act 2017.

In 2022 modest funding has been allocated to OGCYP to establish and partially commence this scheme. The SADI Project affirmed the need to have specialist, and relatively intensive, monitoring activated in this sector.

That the South Australian government provide the Office of the Guardian for Children and Young People with:

- a. The staff and other resources reasonably needed to carry out the functions of the role of Child and Young Person’s Visitor, as are legislated in s118 of the *Children and Young People (Safety) Act 2017*; and
- b. The resourcing to establish a specialist Dual Involved Senior Advocate position to provide individual advocacy and systemic oversight for dual involved children and young people that –
 - i. Operates across government and especially in relation to the child protection, youth justice and health (including mental health) systems; and
 - ii. Must pay particular attention to the needs of Aboriginal children and young people.

Recommendation 2 – Making residential care units safer

Dual involved children and young people often expressed that they did not feel safe in residential care placements. These serious safety concerns require the South Australian government to act with greater urgency to implement key recommendations from the Nyland Report.

That DCP accelerate implementation of Nyland Report recommendations 145 and 149¹⁵ and provide quarterly implementation progress reports to OGCYP.

Recommendation 3 – Assessment of needs and potential

Assessment of the needs and potential of dual involved children and young people did not always occur or sometimes happened too late, when they were about to age out of care. As a result, opportunities to intervene early – which may have diverted youth justice involvement – were missed.

3.1 That the South Australian government commission an independent review of DCP and DHS files to investigate and determine:

- a. The rate of compliance with existing policies regarding health, disability and cultural support needs assessments for children and young people in care, including the extent to which assessments occurred within the requisite timeframes. The audit should specifically consider policies that address the:
 - i. Cultural needs of Aboriginal children and young people;
 - ii. Disability needs of children and young people, including access to the NDIS and implementing NDIS plans; and
 - iii. Health and development needs of children and young people, including mental and psychosocial health.
- b. The extent to which case plans appropriately incorporate identified strategies, applicable placement principles, access to services and other cultural and therapeutic supports;
- c. The extent to which identified strategies, applicable placement principles, access to services and other cultural and therapeutic supports are implemented; and
- d. Targeted recommendations to improve compliance with policies regarding assessment, case planning and implementation of health, disability and cultural support needs.

¹⁵ M Nyland (Hon), [The life they deserve: Child protection Systems Royal Commission Report \(2016\)](#). These recommendations require developing a streamed model of residential care for short term assessment, long-term care and care for children with high therapeutic needs (recommendation 145) and that no child should be housed in a residential care facility with more than four children or when they are under 10 years old, except where necessary to keep a sibling group together (recommendation 149).

3.2 That DCP develop and incorporate the following into the assessment and planning procedures for children and young people in care:

- a. Culturally appropriate tools to identify risk factors for offending behaviours;
- b. Targeted therapeutic and other interventions to mitigate these risks and divert potential youth justice involvement; and
- c. Clear placement principles to avoid placing children and young people with an identified risk of offending behaviours in criminogenic environments.

Recommendation 4 – Increased support for Aboriginal children and young people

Aboriginal children and young people are seriously overrepresented in both the child protection and youth justice systems, and feature within the dual involved population. Several individuals made important contributions to the SADI Project, including through personal interviews. It will be important to evaluate the implementation of the current recommendations with respect to this large sub-population of the dual involved cohort.

That DCP deploy additional effort and investment to support connection to culture for Aboriginal children and young people living in residential care, paying particular attention to the causes of, and potential consequences for, those who have offending behaviours or whose behaviours may risk involvement in the youth justice system.

Recommendation 5 – Enabling effective care and support

The residential care environment is characterised by skilled staff shortages, limited placement options and placement decision-making that does not always respond to the child or young person's best interests. Placement in residential care disproportionately leads to youth justice involvement. Children and young people deemed 'complex' may be offered little scaffolding or support within their placement to address or manage their behaviour. Dual involved children and young people told us that residential care staff often were not equipped to manage their behaviour and relied on calling the police as a core behaviour management strategy.

5.1 That DCP provide the resources, training and framework necessary to enable residential care staff to provide the best possible care and, in particular to ensure that staff are appropriately qualified and staff ratios are sufficient to respond to the complex support and management needs of the residential care population, as a whole.¹⁶

5.2 That the resources, training and framework at 5.1 should include:

- a. Specialist mental health, disability, and drug and alcohol training for residential care staff to improve their capacity to identify and respond to behaviour associated with factors such as mental ill health or substance misuse;

¹⁶ Recommendations 147 and 150 in the Nyland report, *ibid*, also address this issue.

- b. An accreditation scheme which sets specific competency and training benchmarks for staff who work directly with a category of dual involved children and young people who have exceptionally complex support and management needs;
- c. Reviewing the appropriate classification and remuneration for relevant accredited DCP staff members under the relevant industrial instrument; and
- d. A staffing model that incorporates requirements for designated positions to hold or undergo the above accreditation, supported by appropriate roster arrangements.

Recommendation 6 – Reviewing and analysing police involvement in residential care

The SADI Project confirmed that police are often called to attend residential care properties for incidents that should be managed as behavioural, not criminal, matters. These callouts create and normalise engagement with the youth justice system. Other jurisdictions are more judicious about recourse to police intervention based on clear protocols to manage the occasional need for such intervention.

Improved data collection, analysis and reporting in relation to critical incidents in residential care is urgently required to identify and promote good preventive practice and child focussed intervention.

- 6.1 That DCP establish a system to specifically record and monitor critical incidents in residential care which result in police involvement or attendance, in order to –
- a. Track and analyse the prevalence, severity and management of incidents across individual residential care facilities; and
 - b. Identify and mitigate causal factors.

6.2 That DCP urgently review and address the practice of relying on police intervention for behavioural management.

Recommendation 7 – Reducing police involvement in residential care

7.1 That DCP and SAPOL develop a joint protocol to govern the procedure, purpose and required benchmarks for requesting police attendance and response at residential care facilities, with the objective of:

- a. Minimising unnecessary resident contact with the youth justice system; and
- b. Reducing the incidence of charging children and young people living in residential care with property offences.

7.2 That the above protocol be monitored in consultation with:

- a. Children and young people with an experience of residential care;
- b. A representative Aboriginal Community-Controlled Organisation; and
- c. The Office of the Guardian for Children and Young People.

Recommendation 8 – Restrictive practices in residential care

Some of the young people interviewed referred to causing property damage due to being unable to get outside. Some residential care units lock children and young people inside that facility, at times, to minimise the risk of them going missing. Unless properly authorised as a restrictive practice of last resort, supported by planned behaviour support plans and interventions to reduce its necessity, such a practice breaches a child's fundamental right to liberty and security of person and may constitute arbitrary detention.¹⁷

8.1 That DCP investigate the extent and circumstances under which the restrictive practice of locking children and young people inside, or otherwise depriving them of liberty within a residential care unit, is occurring.

8.2 That DCP review policies and staff training to ensure residential care staff are provided with adequate training, support and guidance to implement alternatives to restrictive practices.

Recommendation 9 – Accountability

Accurate data collection, analysis and reporting is required to identify and respond to key population groups, trends and system pressure points, in order to provide a focus for systemic improvement and accountability. It should be possible to better understand and account for the circumstances of dual involved children and young people and thus improve efforts to support and divert them from the youth justice system.

9.1 That DCP and DHS collaborate with other relevant government departments and agencies (such as SAPOL, the Courts Administration Authority, Education and SA Health) to undertake improved collection of data and other information pertaining to the circumstances of dual involved children and young people. Data capture should enable analysis of the following matters for all children and young people in care:

- a. The reasons for and outcomes of police attendance at care placements;
- b. Instances and periods of detention in police vehicles and cells;
- c. Access to diversion;
- d. Access to bail;
- e. Bail conditions and breach of bail offences;
- f. The practice of 'over-charging',¹⁸
- g. Charges that relate to conduct occurring at the care placement;

¹⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1996, 999 UNTS 171, art 9.1.

¹⁸ Over-charging occurs when police charge children and young people with offences that are not supported by the evidence, which are later withdrawn.

- h. Charges that relate to a child or young person being missing from placement; and
- i. Sentencing practices and outcomes.

9.2 That the data should be disaggregated to enable reporting regarding children and young people according to their gender and the following characteristics:

- a. Aboriginal children and young people;
- b. Children and young people with disability; and
- c. Placement type, including residential care.

Recommendation 10 – Vehicles as places of detention

South Australian children and young people in custody continue to be vulnerable while detained in vehicles. Although the TCV/Guardian has raised this publicly several times, the South Australian government has yet to address the fact that there is no independent oversight of what happens in transit (be that under the authority of DHS/Kurlana Tapa, SAPOL, DCP, SA Health or a private contractor).

That the SA parliament legislate to provide the Training Centre Visitor with the mandate and resources to enable independent oversight of children and young people when they are compulsorily detained in transport vehicles under the authority of DHS/Kurlana Tapa, SAPOL, DCP, SA Health or a private contractor, including in the context of the commencement of the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in South Australia.

Recommendation 11 – Children and young people in police cells

A matter commonly raised by the dual involved children and young people who were interviewed was their experience of being held in general police cells, especially in the City Watchhouse. These are adult focussed facilities, not geared to holding and managing custody of children and young people. This practice should be reviewed urgently to ensure that minors are not exposed to the adult custodial environment and management practices, including strip searching.

11.1 That the South Australian Government undertake an urgent independent review of the practice of holding children and young people in police facilities to ensure that any such detention only occur in accordance with strict compliance with child safe principles.

11.2 That the Training Centre Visitor be granted statutory oversight responsibilities for police facilities that function as a place of detention for children and young people, including in the context of the commencement of the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in South Australia.

Recommendation 12 – Bail and remand

All dual involved children and young people interviewed for the SADI Project reported being in detention for breaching their bail conditions, not their primary alleged offence, and these breaches almost always related to placement in residential care (e.g. missing their curfew, or not residing at the placement which functioned as their bail address). Many reported not feeling safe or cared for at that placement, with some frequently going missing to spend time with their family.

Some, while detained at KTYJC, were advised that their placement in the community had been closed (to enable a different child or young person to use the room), their belongings packed up, and that they would move to a different placement upon release. This created stress and exacerbates placement instability.

That DCP, SAPOL and the Youth Court collaborate to investigate and address the relationship between bail-related offences, residential care, remand and detention by –

- a. Reviewing bail and remand practices to identify discriminatory impacts for children and young people in residential care. The review should specifically consider:
 - i. Curfew and non-association bail conditions;
 - ii. The extent to which bail is denied due to unsuitable DCP placements and/or on DCP's request;
 - iii. Cautioning or charging a child or young person with the offence of breach of bail; and
 - iv. Sentencing for the offence of breach of bail.
- b. Developing alternative diversionary responses for children and young people who breach bail for offences committed while in residential care (including to prevent the subsequent impact of remand on placement stability).

Recommendation 13 – Supporting children and young people in court

Good practice suggests that personal support should be available from a responsible person whenever a dual involved child or young person attends Court, just as we would expect a parent to do for a young person who lives with family. DCP representatives, or other carers, however, are not always present, so there may be no support to help a child or young person understand what is happening to them.

The majority of dual involved children and young people who participated in interviews expressed that they did not feel supported by DCP during their involvement in Youth Court. Some felt that a lack of DCP support contributed to being denied bail or sentenced to detention.

That DCP deploy additional resources and efforts to attend court as the corporate parent for children and young people in care.

Recommendation 14 – A specialist DCP ‘dual involved’ team

Dual involved children and young people and youth justice and other workers expressed diverse views about the responsiveness and support they receive from DCP social/case workers. While some were very satisfied, a common view was that it can be very difficult to contact DCP case workers, get necessary information from them or have necessary discussions in a timely way, if at all (especially if the worker is new to DCP or is newly assigned to that child or young person). The overall view was that some DCP workers often lack resources and sufficient understanding of youth justice processes to be able to support their clients to navigate the youth justice system effectively.

A specialist team within DCP would build expertise and facilitate collaboration with DHS and other agencies, to help prevent children and young people in care from entering (or re-entering) the youth justice system and to better support them should they offend.

The SADI Senior Advocate particularly noted that transition-from-care plans are generally poorly executed, a problem compounded for those detained at Kurlana Tapa (who may experience difficulties in accessing services while in detention).

14.1 That DCP establish a specialist ‘dual involved team’ with the role of –

- a. Providing, expert and intensive support to children and young people involved in the youth justice system;
- b. Functioning as a central contact point for other relevant agencies and service providers for dual involved children or young people;
- c. Ensuring that placements are available for dual involved children and young people when they are released from Kurlana Tapa;
- d. Coordinating appropriate bail addresses and bail support to reduce the incidence of dual involved children and young people breaching bail conditions; and
- e. Providing intensive case management to facilitate better access to established mainstream service providers and support while young people are within Kurlana Tapa.

14.2 That the specialist DCP dual involved team include Aboriginal designated positions.

Recommendation 15 – Improved transition planning

The SADI Project noted poor transition processes both when children and young people were released from KTYJC into residential care, and when they turned 18 (and were no longer under child protection orders). Transition from care planning appears often to be ad hoc and rushed, although the transition is foreseeable. In some cases this causes children and young people extreme anxiety about their future and can lead them to feel fatalistic that they will inevitably 'graduate' into the adult corrections system.

Service providers reported that last-minute or poorly communicated placement decisions for dual involved children and young people upon their release could lead to poorer service access, planning, and support. Despite much good work, this can undermine the likelihood of successful disengagement from the youth justice system.

15.1 That DCP take primary responsibility for planning all transitions out of detention for dual involved children and young people.

15.2 That DCP collaborate more effectively with DHS and other relevant agencies to plan for transitions by –

- a. Developing timely plans for transitioning back into the community and/or transitioning from care, in consultation with dual involved children and young people;
- b. Recognising the potentially disruptive effects of transitioning out of detention into community living or 'ageing out' of care;
- c. Retaining placements that are valued by detained children and young people (to maintain accommodation stability and minimise disruptive moves); and
- d. Co-ordinating interventions and services that provide dual involved children and young people with care, rehabilitation, support and development opportunities.

2. Strategic landscape

It is helpful to update discussion about important aspects of the strategic environment described in the 2021 SADI Interim Report.¹⁹ Our broad concerns remain the same, with deleterious impact on dual involved children and young people (and their peers) still foreseeable. We also should reflect on some errors of the past.

'Cause, yeah, that's when, that's when I fucking got introduced to everything, man. That's when I got introduced to drinks, smoking, everything like that, because of a DCP place, yeah. It's just shit, yeah. Like the carers just liked flogged me and shit when I was younger. It's just fucked up. That's why Queenstown got shut down...

2.1 Change of state government

Since the SADI Project was undertaken, in 2021, there has been a change of government after the March 2022 South Australian state election. At this early stage, we simply note that the incoming administration has indicated that it will have different approaches or priorities in some areas that will bear upon the lives of dual involved children and young people. Of most immediate, practical interest, is the new government's commitment to provide some funding to support the introduction of a partial Community Visiting Scheme for children in residential care (\$1.869m over four years).²⁰ This is relevant to Recommendation 1 of this report.

2.2 DCP response to the SADI Interim Report

DCP's response to the findings of the 2021 Interim Report suggested that it was misleading to describe residential care as a 'criminalising environment' because, although residential care placement is a common characteristic of young offenders in detention, it should not be seen as the principal factor leading to youth justice participation.

We acknowledge the complexity of experiences and factors that may contribute to a child or young person becoming involved in the youth justice system, including traumatic early life experiences, disabilities, dysregulated behaviours, mental ill-health, and drug and alcohol misuse. However, it remains a fact that 90 per cent of the dual involved children and young people detained at Kurlana Tapa during the SADI Project came directly from residential care placements.

If children and young people are displaying risk factors for engaging in offending behaviours before they enter care, this makes it even more important to ensure placement decisions are targeted to meet complex support needs and divert potential youth justice involvement. The

¹⁹ OGCYP, *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) ('the Interim Report').

²⁰ For more information, see S Richards, 'Open for Scrutiny': Govt reinstates child protection watchdog (InDaily, 14 April 2022) <<https://indaily.com.au/news/2022/04/13/open-for-scrutiny-govt-reinstates-child-protection-watchdog/>>.

residential care system in its current state is a poor placement option for children and young people displaying these risk factors. Government agencies should take urgent action to acknowledge and address the criminalising effect that the problematic 'home' environment of residential care facilities can have for children and young people in care.²¹

We acknowledge and welcome work underway by DCP to improve and enhance the residential care environment, including the recent introduction of the Sanctuary model of care.²² While supporting this rollout, we caution that it should not be promoted as a *solution* to inherent and ongoing problems and harms associated with residential care, especially in the short to medium term. Implementation of the model cannot fully address, on its own, systemic factors such as criminalisation, peer influence, lack of placement options, and staffing shortages and turnover.

We sought clarification from DCP about the relationship of this model to underlying and ongoing systemic problems such as shortages of care and specialist staff and programs and lack of sufficient and suitable placements. Some important questions raised in the SADI Interim Report have not been answered –

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 case managers, carers and the wishes of the children and young people themselves.*²³

A plan, with specified resources, targets and outcomes should be established to identify how and whether the Sanctuary Model is addressing the residential care system's current failures with respect to dual involved children and young people.

In other words, it remains to be seen whether the Sanctuary model can ameliorate the effects of residents living in environments in which they may not feel safe and may be exposed to offending lifestyles and further trauma.

²¹ For a detailed literature review on findings of key Australian and international studies examining youth justice system involvement for those in care, see K McFarlane (2015), n 12, Chapter 4, which presents findings of studies into the criminalising practices of child protection systems.

²² The introduction of the Sanctuary model of therapeutic, trauma-informed care across all DCP residential care homes was announced in 2020. 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 <<https://dcpintranetanon.adds.cp.sa.gov.au/residentialcare/SitePages/sanctuary-model.aspx>>

²³ OGCYP, 'The interim report', n 19, 21.

2.3 Progress on state-wide strategic commitments

2.3.1 *Safe and well: Supporting families, protecting children*

Safe and well: Supporting families, protecting children is South Australia's whole of government plan for "supporting families at risk of entering the child protection system to safely care for their children, protecting children and young people from harm including when they are in care, and investing in young people in care and leaving care to provide them with opportunities for a bright future."²⁴ The government states that this plan aims to create "connected, coordinated and programmatic reform approach that looks forward beyond the Royal Commissions towards a responsive and integrated child protection system."²⁵ We have seen some evidence of work to meet this objective. However, from the perspective of positive impacts on individual dual involved children and young people, little improvement has been made. Several dual involved children and young people 'aged out' of care during the project period. In one indicative case, the SADI Senior Advocate had to intervene to address significant gaps or failures in planning for a young person's transition from care.

2.3.2 *Youth Justice State Plan Young People Connected, Communities Protected*

The Youth Justice State Plan *Young People Connected, Communities Protected* was identified as sharing a vision for connected services and systems to support young people to better achieve life outcomes and maintain community safety. DHS advises that a project to establish a DHS and DCP 'shared action plan' has been completed while the *Missing Guardianship Children and Young People Steering Committee* informs new policy and practice to help safeguard missing children and young people under guardianship. In March 2022, DCP launched a new 'Missing Guardianship Children Procedure' to be monitored by the Missing Guardianship Children and Young People Steering Committee and reviewed and updated as required.

2.3.3 *Collaboration with SAPOL*

The SADI Project was advised that DCP-SAPOL Local Liaison Groups meet to ensure consistent application of operational protocols to drive child and young person-centred responses. We also were advised that SAPOL and DCP consult on a case-by-case basis prior to taking any action with respect to a child or young person living in residential care who is charged with property damage to determine whether it is necessary for an action to proceed (and thereby involve them in the judicial system). It is unclear how this differs from the usual charging process, where each 'offence' must be individually assessed. It appears that this case-by-case consultation occurs *after* police have attended and charges have been laid. It would be better if DCP/SAPOL consultation in relation to such incidents happened *before* charges have been

²⁴ DPC, *Safe and well* (2021) <<https://www.childprotection.sa.gov.au/child-protection-initiatives/system-reform/safe-and-well>>.

²⁵ Ibid.

laid, not least because police attendance and the laying of charges can be highly traumatising for children and young people (or risk normalising interaction with the police). DCP stated that it is working with SAPOL on strategies to reduce the possibility of charges being laid, an initiative which the Guardian/TCV strongly supports. In the longer term, the success of this work can be gauged by a resultant decline in the rates of dual involved children and young people being detained at Kurlana Tapa.

SAPOL data collection is rudimentary and does not describe a full picture of police interactions with children and young people in care.

2.3.4 R20 Process

Recommendation 20 of the 2008 Mullighan Inquiry²⁶ arose from the finding that allegations of sexual abuse of children and young people in care, and their investigation, should be independently monitored by the Guardian. Collaboration to give effect to this process focuses on quarterly meetings with key stakeholders, SAPOL (State Crime Assessment Centre & Public Protection Branch), the DCP Investigations Unit and the DCP Care Concern Management Unit.²⁷ To date, this R20 process only addresses allegations of abuse where there is an associated care concern.

2.4 Aboriginal children and young people

Aboriginal children and young people comprise 37.5 per cent of all those in care and 42.2 per cent of the dual involved,²⁸ despite only comprising about five per cent of the state's child population. The child protection system is part of the ongoing and intergenerational pathway that leads to overrepresentation in youth justice, as indicated in the 2008 National Apology to the Stolen Generations.²⁹ Australia's history of dispossession, socioeconomic disadvantage and forced removal of Aboriginal children from their families and communities is a legacy that lives on.³⁰

South Australia's Commissioner for Aboriginal Children and Young People has drawn attention to the dual involved agenda, with April Lawrie noting in her 2021 report that –

²⁶ Hon. E.P. Mullighan Q, *Children in State Commission of Inquiry* (2008), 23-24.

²⁷ See page 34 and Part 5.7 of the Guardian for Children and Young People, *Annual Report 2020-2021* (2021).

²⁸ This and similarly recent data consolidated by the Productivity Commission will be reported more fully in *Snapshot of South Australian Aboriginal and Torres Strait Islander Children and Young People in Care and/or Detention from the Report on Government Services 2022* (Guardian/TCV 2022, forthcoming).

²⁹ K McFarlane, *Children and Youth Reported Missing from Out-of-Home-Care in Australia: A review of the literature and analysis of Australia police data* (2021), 58.

³⁰ *Ibid*, 58, referring to Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their families* (1997) (1997) and House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time – Time for Doing: Indigenous youth in the criminal justice system* (2011), 42.

The available data reflects what Aboriginal children and young people and their families have told me that the disconnection of Aboriginal children and young people from family and community through the child protection system sows the seeds for their over-representation in the youth justice system.³¹

Engagement with and responsiveness to Aboriginal dual involved children and young people was intrinsic to the Senior Advocate's work within the SADI Project. The SADI Project was mindful of the need for service responses to be informed or led by Aboriginal community-controlled organisations and service providers. Systemic reform must improve the availability of culturally appropriate specialist services and responses to children and their families, including in regional and remote areas.³²

2.5 Other initiatives

Complex Case Review meetings chaired by the Lead Psychiatric Director facilitate collaborative decision making and coordinate support for children and young people with highly complex needs, including those transitioning in and out of the KTYJC.

The DCP Disability and Development Services team assists case workers and carers to respond to the disability and therapeutic needs of those in care, including through provision of support for navigating the NDIS and building capacity for developmental and therapeutic services to children and young people in residential care.

DHS Youth Justice has advised that it will implement a new screening tool for intellectual and cognitive disabilities as part of a suite of new assessment tools. It is hoped that this initiative, complementing the work of DCP Disability and Development Services team will help divert dual involved children and young people with disabilities away from the youth justice system and allow connected and holistic support to be put in place for those already involved.

³¹ Commissioner for Aboriginal Children and Young People (SA), *South Australia's Commissioner for Aboriginal Children and Young People Report 2020: Family and culture is everything* (2021), 29.

³² These issues are further explored in Sentencing Advisory Council (Vic), *'Crossover Kids': Vulnerable children in the Youth Justice System Report 3: Sentencing children who have experienced trauma* (June 2020) ('Crossover kids'), 7-8.

3. Matters raised by children and young people

3.1 Supporting children and young people

The SADI Project relied on the work of a limited term Senior Advocate experienced with working in the multi-sectoral systems affecting the often complex or unique advocacy needs of dual involved children and young people. This work necessarily crossed the TCV and Guardian's mandate areas. The TCV advocates on behalf of Kurlana Tapa detainees "to promote the proper resolution of issues relating to their care, treatment or control",³³ while the Guardian must "act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse".³⁴

Most SADI Project support or advocacy requests related to DCP decision-making or circumstances that occurred in the community. For this reason, work was performed in accordance with the Guardian's Advocacy Team's protocols, with an issue or matter possibly requiring attention at several levels. Formal advocacy was just one option, and most concerns were resolved without escalation to formal advocacy. *Attachment 2* explains this approach, which distinguishes between different potential support elements, namely: Query and matters for immediate resolution; Assessment; Advocacy; Monitoring; and an Intermediary role.

Case work undertaken under the TCV and Guardian's mandates assumes the direct and ongoing involvement of the affected child or young person, except in exceptional circumstances where a 'best interests' approach is warranted. In a few cases, the Senior Advocate worked on a 'best interests' basis, when it was determined that intervention and advocacy were required without a direct request from a dual involved child or young person.

The balance of Part 3 introduces key themes generated through consultation and advocacy with dual involved children and young people during the SADI Project –

- Family, peer relationships, and 'going missing' from care;
- Problematic placements;
- Release and pick-ups – KTYJC and the Courts;
- Vulnerability while being transported;
- Contact with DCP Social/Case Worker;
- Anxieties about the future and aging out of care; and
- Experiencing the legal system.

³³ *Youth Justice Administration Act 2016*, s 14(1)(d).

³⁴ *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, s 26(1)(b).

3.2 Family, peer relationships, and 'going missing' from care

Contact with family and friends is a critical part of any child or young person's development. Yet, dual involved children and young people often feel isolated from these relationships due to involvement in the child protection and youth justice systems. A significant theme that arose during SADI consultations was concern that family and friends are not allowed to visit them while in residential care placements –

I'm not allowed no one there, which is fucked 'cause that's why I go out and do my crap, you know, because like I can see people on the outside. But, yeah, I bet you ten bucks if I can have my friends over at my place then I would be home every day. I won't be on MPR and that's why I sort of like the [congregate care] units because ... like, you have people in the house, you know.

Asked how he reacted when friends were not allowed to visit his residential care placement, a younger interviewee said he would *'just go run amok'*. At a similar age, another said –

I was asking when I was like 12, 13, I was like, "Can my mate come over?" and, yeah, they just, "Nuh, no one's allowed to come here, only DCP children," you know. Not even other DCP kids from other homes are allowed in. They just call the cops on them. "Get out."

Going missing from residential care, often referred to as 'going on MPR' (ie missing person report), was a common topic young people discussed with the Senior Advocate. A typical scenario was one in which accumulation of MPRs, and subsequent breaches of bail due to missing curfew, can effectively re-criminalise a young person.

The magnitude of this issue can be appreciated by considering the 2017-18 missing persons data the Guardian requested from DCP in 2019. Remarkably, in that year, 360 individual children and young people went missing 7,755 times (with approximately 98 per cent being children and young people living in residential and other non-family-based care).

The main reasons SADI participants gave for going missing were that they felt unsafe at their placement due to other residents or staff, or that they had chosen to 'self-place' with their family.³⁵ Residential care and its impact upon traumatised or otherwise children and young people clearly contributes significantly to the rate of missing person reports. Breaches of bail conditions then can intensify contact with the youth justice system (see Part 3.8 below, with Part 4.4.2 also discussing MPRs).

³⁵ 'Self-placing' is the term used by DCP to describe children and young people in care who do not stay in their DCP-allocated placement, but 'self-place', often with family, friends, or partners.

3.3 Problematic placements

Nine dual involved children and young people requested advocacy from the SADI Senior Advocate about their placements (45 per cent of all matters), five of which resulted in development of formal advocacy positions. Typically, they wanted to be placed with family and reported feeling unsafe in their residential care placement due to factors like problematic relationships with workers, fear of other residents or the availability of drugs and alcohol. These issues often seem to be associated with poor DCP placement matching decisions or outcomes in a situation characterised by a shortage of suitable residential care properties and staff to work within them across the state, especially in regional locations.

We have ongoing concerns about inadequate placement matching of residents that continues to put children and young people at risk generally, but also harm associated with the criminogenic nature of residential care itself. DCP has advised of efforts to deal with this problem through constructive measures, such as growing family-based care and recruiting additional residential care staff. Unfortunately, the challenges remained during the term of the SADI Project.

Inadequate placement matching is often a direct result of placement shortages, despite the best efforts of those involved. One of our young interviewees reported attending court and being unable to get bail three times due to lack of available placements. When there effectively are no other vacancies, there is little scope to consider who else lives in the property and potential risks arising from that co-placement.

In 2018, the Guardian identified concerns that DCP did not have up-to-date placement matching procedures. In August 2019, in response to these concerns, DCP advised that work was being undertaken on a “matching” framework, in line with the development of a practice approach. DCP has since developed a Manual of Practice, incorporating guidance regarding placement principles and key considerations. As at 30 June 2021, the associated procedural work was yet to be finalised. To the best of our knowledge, work to update procedural guidance is still not complete.³⁶

Poor placement matching may be accompanied by a lack of communication and dialogue with affected young people. Several important placement related issues are explored further in Part 4 below.

³⁶ The DCP Manual of Practice refers workers to a “Matching and Allocation Procedure”, which was published in 2016. OGCYP was unable to locate a more recent placement matching procedure available to staff on the DCP intranet.

3.4 Release and pick-ups – KTYJC and the Courts

3.4.1 Release from Kurlana Tapa

SADI Project participants expressed frustration about release arrangements from the KTYJC, especially delayed release or pickups. As noted in the Interim Report,³⁷ one young person was granted release, yet detained for a remarkable five additional days because a suitable placement and staffing had not been ensured. While this is a particularly egregious example, young people can be required to wait for hours past their official release time due to shift changeover arrangements in residential care (and hence ability of carers to collect them from Kurlana Tapa).³⁸ One young person recounted his experience –

--the last time, like two weeks ago. I was waiting like six hours in the cell. ... I go off my head every time. Last time I smashed a DVD player 'cause they wouldn't even let me have a phone call. It's like while I've been waiting there on pre-release you still want to keep me in a cell and won't even give me a phone call. It's like that's pathetic. You know, you might as well just leave me out the front and let me go my own way.

The delay in collecting young people from KTYJC after their release was so commonplace, that one young person said that carers were late “thousands” of times. She expressed her joy about an instance when a carer picked her up on time, telling the Senior Advocate –

I have to wait every single time, except the last time was the best one. My carer was there 'cause they came straight from the court.

Concern was expressed about being picked up from Kurlana Tapa by staff or carers they did not know. So too was the experience of being secured in a room, while waiting, separated from other young people.

3.4.2 Release after court hearings

Dual involved children and young people commonly speak about their frustration arising from being treated badly or disrespectfully when going through the court process.

This was expressed in various ways in interviews with the Senior Advocate, particularly in relation to having to wait for carers to pick them up if they are being released –

- Bailed in the morning, not picked up until the evening;
- Bailed in the morning, not picked up until the next day;
- Waiting 6 hours in the cells;

³⁷ Refer to the case study at OGCYP, ‘Interim Report’, n 19, 26.

³⁸ There was some discussion during the project about who is the most appropriate person to pick up dual involved children and young people after their release. We are aware that residential care staff are often required to undertake work that may traditionally have been the responsibility of the allocated social worker.

- Being granted bail but returned to the KTYJC as the pickup location; or
- Being told that DCP was “too busy” to pick them up immediately.

If this happens when the young person is physically attending court, they are detained in the court cells.

3.5 Vulnerability while being transported

South Australian children and young people in custody continue to be vulnerable while detained in vehicles. The government has yet to address the TCV’s concern that there is no independent oversight of what happens to detainees in transit, be that under the authority of Kurlana Tapa, SAPOL, SA Health or a private contractor.

Our interviewees recounted some of their experiences –

They done my escort to the hospital and I was getting rowdy to the fucking officers, man, and they fucking restrained me and started smashing me in the head and shit. I said, “You’re not allowed to do that.” They were like, “Yeah, we’re allowed to if we’re restraining you.” Yeah, they said, like some, said some technical term or some shit. You’re allowed to like punch them to like, to distract them so you can like put them in a proper restraint. Fuck that.

Yeah, you get fucking grabbed by the fucking G4S people [the former private transport contractor], whatever they’re called, and they pin you against the wall, put the handcuffs on you and walk you out.

3.6 Contact with DCP social/case worker

Dual involved children and young people often reported fraught relationships with their DCP social workers (also referred to as case managers), with high staff turnover contributing to diminished trust and lack of confidence in their reliability. They consistently reported that case managers and carers did not visit them whilst they were detained at Kurlana Tapa, and that communicating with DCP case managers was difficult whilst in detention. (This has been a longstanding perspective of the dual involved which predates the additional complexity posed by management of COVID-compliant visiting and other requirements).

They will allocate you a social worker but they’re not doing anything social with you.

During the project, most requests for support from the Senior Advocate or other TCVU staff about communication with a young person’s case/social worker were resolved quickly. At times, communication issues were exacerbated by the KTYJC phone process. DCP social workers said that it can be difficult to contact detainees, as several steps are required to get through on the phone. In turn, detainees described ongoing issues when calls to social workers that went through to voicemail and they lost ‘phone credits’. This was raised with KTYJC and a ‘workaround’ has been implemented, where children and young people can request staff add extra phone credits to their account when they reach an answering machine.

3.7 Anxieties about the future and ageing out of care

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.

It became apparent that dual involved children and young people were often anxious about the implications of ageing out of care, especially those nearing the age of 18. The process of transitioning to adulthood has three stages for those in care in South Australia and should begin when the young person turns 15 years of age –

- Developing and implementing a case plan for transitioning from care;
- Support for the young person to leave care; and
- Providing the young person with post-care support.³⁹

Specific risks or vulnerabilities may affect dual involved young people who will be turning 18. It was common that those with whom the Senior Advocate worked during the SADI Project had experienced complex trauma, had disabilities, had a history of instability in placements, lacked educational engagement, and had poor or fractured relationships. Relationships with adults in their lives often were characterised by inconsistency and lack of trust, extending to the case workers from various systems who worked with them. There were some notable exceptions where a few did benefit from productive long-term support relationships.

Such factors compound disadvantage, making proper preparation for leaving care even more important for dual involved children and young people. Unfortunately, there was a pervasive sense of inevitability amongst this cohort that they would end up in adult corrections.

Well, I'm nearly 18 so I'm getting a bit worried that I'm going to end up in the big system, 'cause like I had no support from DCP while I was a youth so when I turn 18 what, what support am I going to have ...? Are they just going to chuck me out on the street or what?

This is not to say that planning for leaving care is consistently poor⁴⁰ but, rather, that this appears to be a common experience for the dual involved. This further demonstrates the systemic disadvantage faced by this vulnerable group.

Yeah, I don't really know how to get a job and how to do all that stuff that I need to know, you know, and the only place I can actually do that or, or, or actually learn about that is in here [KTY]C.

³⁹ *Children and Young People (Safety) Act 2017*, ss 111 – 112, oblige the Chief Executive and Minister to provide support to care leavers. Commencing transition from care planning by the age of 15 years is not a legislative requirement.

⁴⁰ See JJ McDowall, *Transitioning into Adulthood from Out-of-Home Care: Independence* (2020), 61.

Another dual involved young person, about to turn 18 while in detention (and therefore age out of care), was unclear about what would happen to him when released from Kurlana Tapa. Asked by the Senior Advocate what he knew about his transition from care, he said –

Apparently they're trying to get me a house and trying to get my payments back on track and trying to get me on the NDIS plan. Yeah, so hopefully when I turn 18 or when I get out they'll have that waiting.

When asked what NDIS support he was expecting, he was unclear, saying –

I'm not not too sure but they help you, I think, so, yeah, so say, like, if you had disability, they would put you on a disability payment for Centrelink and try, like try to get you housing and that.

In his case, the application for an NDIS package was only underway as he was about to turn 18, despite having been in care for many years. Very late, or absence of, planning can mean care-leavers lack core skills and support arrangements to sustain independent living. They are at higher risk of losing tenancies and housing, which can result in homelessness.

Many dual involved children and young people looked forward to turning 18 because, for them, this meant that 'government' had to 'get out of their lives'. Sensitivity is therefore required to reinforce a sense of 'independence' when making transition arrangements, including access to necessary or desirable community based post-care support. The Senior Advocate successfully advocated that two dual involved care-leavers should receive such post-care support, one of whom otherwise was about to be released from KTYJC into homelessness while DCP was planning to close his case (although they had made a referral for an adult guardianship order).

3.8 Experiencing the legal system

3.8.1 The court experience

Part 4.6 below examines some systemic court issues, about which dual involved children and young people expressed some firm views. Court hearings are critical events that loom large in their lives and perceptions.

3.8.2 Breaching bail

Breach of bail is both a cause and effect of the criminalised lives of the dual involved. All those interviewed for the SADI Project had breached bail conditions, often multiple times. Other studies affirm that more intense surveillance in residential care increased rates of convictions for breaches of bail offences.⁴¹

⁴¹ S Baidawi and R Sheehan, 'Cross-over kids': *Effective responses to children and young people in the youth justice and statutory child protection systems* (2018), 202-3; K McFarlane (2015), n 12, p 135.

Contributing factors include problematic relationships with residential carers and a perceived lack of safety or compatibility with other residents in placement. Interviewees told us that they thought that some workers were too quick to call police and activate MPRs, which also can lead to missing other appointments (e.g. with CAMHS) because they are “on the run” (see Part 4.4.2). Some told us that they went missing due to boredom or the influence of peers.

The likelihood is that the dual involved *will* breach bail conditions, often because the system operates to make this almost inevitable in some circumstances.

3.8.3 Detention in the Adelaide City Watch House and other adult police facilities

The SADI Interim Report highlighted the TCV/Guardian’s concerns about the common SAPOL practice of detaining children and young people in the Adelaide City Watch House and other adult police facilities.⁴² Thirteen (or 81 per cent) of our project interviewees confirmed that this had happened to them, one of whom was 12 years old. Their attitude was often blasé, seeing it as commonplace: *Yeah, that’s where I usually go whenever I get arrested.*

This topic is discussed in Part 4.5 below, with a summary of the Guardian’/TCV’s concerns available in a blog released in November 2021.⁴³

⁴² OGCYP, ‘The interim report’, n 19.

⁴³ Available at <<https://gcyp.sa.gov.au/2021/11/29/alarming-numbers-of-young-people-being-held-in-adult-police-cells/>>.

4. Unpacking the story of care criminalisation in South Australia

4.1 Overview

The experiences described by SADI participants in Part 3 and the Interim Report support the findings of research in other jurisdictions: namely, that systemic failures across child protection and youth justice systems in South Australia expose children and young people living in residential care to a disproportionate risk of becoming involved in the youth justice system. Where child protection systems actively contribute to youth justice involvement, this is referred to as 'care criminalisation'.⁴⁴

The below excerpt from a recent Victorian study of dual involved children and young people, conducted by Dr Susan Baidawi and Professor Rosemary Sheehan, explains the nature of the systemic disadvantage faced by dual involved children and young people.

*Systemic disadvantage is identifiable across several stages of cross-over children's trajectories, including: exposure to offending peers in residential care placements; inconsistent and at times unwarranted criminalisation of challenging behaviours; lack of guardian support in relation to criminal justice system contact (e.g. Court, contact with police and lawyers); spending greater periods in custody due to a lack of care and post-care placements; the greater surveillance of criminal justice orders among some children in out-of-home care; the inherent disadvantage in dealing with a complex system due to the impacts of disability and complex trauma; and the lack of differential response available within the criminal justice system to meet the needs of cross-over children.*⁴⁵

For dual involved children and young people, each experience with the care and youth justice systems has the potential to be a therapeutic intervention point, or a formative experience that exacerbates the risk of future offending behaviours or lifestyles. However, for many, there is a complex and multifaceted story of how the child protection and youth justice systems failed to identify and act on their support needs. As highlighted by Baidawi and Sheehan (2018), this story is not limited to missed opportunities. It is also characterised by features of the child protection and youth justice systems that actively contribute to the behaviours and circumstances that may lead a child or young person to being detained.

McFarlane's analysis in *Care Criminalisation* explores how child protection agencies can 'blame' the failure to provide essential support to children and young people in care on the children themselves, labelling them 'complex' or 'hard to place', with these characteristics implying that they bear responsibility for their own criminalisation and incarceration.⁴⁶ Work undertaken in

⁴⁴ See, eg, K McFarlane (2015), n 12.

⁴⁵ Baidawi and Sheehan, n 41, 13.

⁴⁶ K McFarlane (2015), n 12, 223.

the SADI Project suggests that the real concerns are factors such as siloed and systems-focused decision making, with insufficient opportunities for therapeutic interventions.

In the initial SADI report, we highlighted Sara's⁴⁷ insightful articulation of her experience in becoming a dual involved young person. Sara brilliantly captured the nature of the perfect storm which led her into the youth justice system:

"They kept putting us in the same situation but expecting a different outcome".⁴⁸

Informed by the experiences of SADI participants, Part 4 examines how systemic issues in the child protection and youth justice systems generate a cycle for dual involved children and young people, where they are repeatedly placed in circumstances of foreseeable harm that perpetuate their involvement in the youth justice system. The cumulative and cyclical effects of interconnected systemic failures are demonstrated in the below diagram:



⁴⁷ In order to protect the young person's identity, she has requested we use the pseudonym 'Sara'.

⁴⁸ OGCYP, 'A perfect storm', n 5, 4.

4.2 Unsafe and unstable care environments

4.2.1 Safety concerns in residential care

South Australia's primary child protection legislation states that the safety of children and young people is the paramount consideration, and that they must be protected from harm.⁴⁹

Entering state care is an important opportunity to improve safety and wellbeing outcomes for a child or young person who may previously have experienced an environment of abuse or neglect. But dual involved children and young people told us repeatedly that they do not feel safe or cared for in residential care, and often identified that this negatively impacts on their behaviour. Some SADI participants identified the behaviours of other children and young people in their residential care placements as causing or contributing to their offending behaviours.

---it's meant to improve it when you're in care like, you know. Didn't happen.

Increasingly, the OGCYP is reporting that some residential care placements expose children and young people to unacceptable levels of violence and trauma.⁵⁰ It is troubling to observe that some children and young people in the care of the state effectively live in 'homes' where they may be subject to a form of domestic violence; experiencing common, but unpredictable, incidents of violence or threats by the people they live with. Children and young people in these circumstances are observed to exhibit some of the same effects as those exposed to family based domestic violence, such as ongoing anxiety and depression, emotional distress, hypervigilance, eating and sleeping disturbances, low self-esteem, self-harm and disengagement from school.⁵¹

It is ironic that domestic violence and a parent's inability to keep their child safe may well be a precipitating factor in a child or young person's removal from their birth family in the first place.

Residential care, particularly within large congregate care units, concentrates residents with complex needs.⁵² Some have potentially disruptive behavioural issues that should be capably managed by suitably qualified on-site staff.

A young person described how the arrival of a new resident triggered her first arrest.

It was okay for a week then this other chick moved in ... her mental health was not the best ... 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

⁴⁹ *Children and Young People (Safety) Act 2017*, s 7.

⁵⁰ Guardian for Children and Young People, 'Annual Report 2020-21', n 27, 38.

⁵¹ Ibid.

⁵² See Guardian/TCV comments from November 2019 at <<https://gcyp.sa.gov.au/2019/11/27/inadequate-placement-matching-causing-fear-among-children-and-young-people-in-care/>>.

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."

Another participant described "a resident there who always threatens us and trashes up our house and steals our stuff", going on to say –

The only reason I'm out actively offending is 'cause I hate my house, or I hate people in the house. ... I'm offending to get out. Until things change, and if they don't change by the time I get like released out, I'm going to reoffend more just to get back in here [KTY]C. You know, I'll do whatever I can-- to get back.

I learnt on the streets, learnt how to go to the shops, steal things. I'd watch other people that I was with do it so then I just learnt how to do it and I started looking after myself.

Chronic placement shortages have resulted in young people who are not suitably matched being placed together creating unsafe social dynamics and a fraught, unpredictable living environment. This can increase or reshape the risk of further traumatising, physical or sexual abuse and emotional and psychological harm for children and young people while in residential care (including through intimidation, bullying, verbal taunts or threats, and pressure to adopt inappropriate lifestyles).

The child protection system has been unable to deal with increased numbers entering the statutory care system, nor guarantee placement in safe and stable residential care environments. Decisions often appear to be made based on limited systemic capacity, not the best interests of a child; particularly in an environment in which it is very rarely in a child's best interest to be placed in residential care.⁵³ Unfortunately, South Australia's reliance on residential care places us in an unenviable first position nationally year after year. On 30 June 2021, 15.0 per cent of children and young people in care in South Australia lived in residential care placements, compared to the Australian average proportion of 7.3 per cent.⁵⁴

It is now a presumption that DCP will find it difficult to respond appropriately to advocacy to move children and young people to safer placements, as there are few or no alternative placements available. The issue is often reinforced by difficulties in finding staff to support the

⁵³ K McFarlane (2015), n12, p 91, suggests that systems abuse is evident in practices such as exposure to delinquent peers, inadequate staff training, institutional reliance on unsuitable or inexperienced and casual workers, poor placement decisions and poor interagency relationships, all ongoing issues faced by South Australia's residential care system. See also Australian Institute of Health and Welfare, *Youth justice supervision*, n 8, 345.

⁵⁴ Guardian for Children and Young People, *Annual Report 2020-21*, 18.

placement, even if one is available.⁵⁵ Work has been undertaken by DCP and DHS since discussion with the Guardian in late 2018, but little has changed that improves the situation for the children and young people we worked with during the SADI Project. Some staff working in these systems reported that it is getting worse.

Placement decisions that compromise the safety of children, young people and staff increases the demand for police intervention. This includes intervention for behaviour that would not warrant a criminal justice response in almost any other family 'home' environment. In this context, there is a direct connection between the safety of residential care placements and children and young people's exposure to the youth justice system.

Safety for children and young people in residential care units was examined in-depth by the Nyland Report. Recommendations to support placement safety included circumstances where children should not be placed in residential care, strict limits on congregate care and developing a streamed model to improve placement matching and capacity to provide targeted therapeutic supports.⁵⁶

We acknowledge DCP's efforts to roll-out the extensive recommendations made by the Nyland Report. However, implementation of key recommendations that would immediately improve the safety of residential care units – which were accepted by the South Australian government in principle – remain incomplete.⁵⁷ This includes:

Recommendation 145

Develop a streamed model of residential care with the following elements:

- a. Short-term assessment*
- b. Long-term care for children who are not suitable for home-based care*
- c. Care for children with high therapeutic needs; and*
- d. Built-in measures of outcomes that can be used to evaluate performance of the model on a regular basis.*

Recommendation 149

To apply the following standards across residential care:

- a. no child under 10 years to be housed in a residential care facility except where necessary to keep a sibling group together; and*
- b. no child to be housed in a facility with more than four children, except where necessary to keep a sibling group together.*

⁵⁵ Ibid, 39. The GCYP was frequently informed that no alternative placement options existed in the system and that safety concerns would need to be managed via other strategies; strategies which often resulted in no meaningful change to the children and young people's actual and perceived safety in their placements.

⁵⁶ Nyland, n 15, ch 12.

⁵⁷ Child Protection Systems Royal Commission 2021 Recommendation Status is available at:

<https://www.childprotection.sa.gov.au/department/royal-commissions-and-reviews/child-protection-systems-royal-commission>.

4.2.2 The impact of placement instability

It was not uncommon for SADI participants to disclose during interviews that they had lost count of the number of placements they had experienced whilst in the child protection system.⁵⁸ Placement moves were attributed to having “bashed” staff and other residents, leading to being considered “a danger to other residents”. Another young person described living in 11 placements in a period of 12 months after many years of placement stability. Many dual involved children and young people spoke casually about how many placements they had lived in whilst in care.

...oh, I completely missed a spot, missed a move 'cause it was, there would be, I was moved so many times it just, you know-- Too many, like six, maybe seven, yeah, six, maybe seven, but I just can't - I know there was others but I can't remember where...

A study commissioned by the Royal Commission into the Protection and Detention of Children and Young People in the Northern Territory concluded that placement instability is one of the strongest and most consistent predictors of offending behaviours for children and young people in care. This applied not only to residential care, but to other types of care. The report concluded that further investigation was warranted regarding the protective effects of entering placement with stable and consistent foster or kinship carers at an early age.⁵⁹

Achieving a feeling of psychological safety is vital to improve outcomes for children and young people who have experienced trauma; it promotes recovery from trauma and engagement in pro-social behaviours or activities, like going to school, playing sports, or having a part time job. Even when a child or young person is physically safe, they are unlikely to feel safe in unstable situations or in placements where they do not feel at home. Instability in placement further disrupts a young person's capacity to form and continue relationships, attend school and or participate in community activities.

The artificiality of the residential care environment is evident in the fact that friends or family are usually unable to visit. The Senior Advocate described this as a ‘massive’ issue raised during SADI consultations; it doesn't feel like a ‘home’ because you cannot have friends or family over.

OGCYP staff observe that instability most often occurs in residential care placements, due to multiple placement changes for individual children and young people and their fellow residents, as well as care staff turnover.

⁵⁸ See for context: C Farrugia and N Joss, *What contributes to placement moves in out-of-home care* (2021)

⁵⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report, vol 3B (2017) ('NT Royal Commission'), 9.

Yeah, I've lived in units.⁶⁰ I've lived in houses. I've only started going to houses now. ...I lived at [congregate care unit] for a long time ... and only recently I've only been getting moved from one house to another.

Another young person who had been in care since they were about 6 months old reflected on the stability they had experienced in foster care, compared to their entry into residential care coinciding with entry into the youth justice system –

Well, I was lucky enough to be in, put in a foster family. So, yeah, it, it was all right for the first 12 years and then, I don't know, they just - I, I went to respite one time and I didn't hear anything from my family for like 3 months and then I was just stuck there and I started getting into crime in the resi homes. ... I didn't have no guidance, you know. Well, the workers let me do what I want and I guess they didn't really care 'cause they get paid for it so ... So I didn't see my [foster] mum and dad for like 3 months. No one told me anything. I didn't get explained my rights. I was, I felt like I was trapped in the house pretty much.

One dual involved young person had only been placed in care a few months prior to their interview with the Senior Advocate, but they already had multiple admissions to Kurlana Tapa prior to entering care. They said that they had only slept at a residential care placement “twice” in a two-month period, because they were in detention for the rest of the time.

High staff turnover rates and disruptions caused by placement moves undermine a child or young person’s capacity to form trusting and therapeutic relationships, and can exacerbate disability or mental health-related behaviours. This is a particular concern for those who may already suffer from significant trauma and attachment disorders.⁶¹ One young person told Senior Advocate –

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.

Staffing absences and shortages also impact on the extent to which children and young people are able to engage in relationships and activities that foster a sense of stability and community connectivity. Examples raised by dual involved interviewees include insufficient staff to transport them to sports or social outings.

Poor or highly constrained placement matching⁶² intensifies instability in residences, with resulting distress and increased staff and resident turnover. This element featured prominently in individual advocacy undertaken by the Senior Advocate. Decisions that foreseeably cause or ignore instability in placement contribute to systems abuse. Preventable

⁶⁰ ‘Unit’ is the shortened and commonly used term for congregate care units, where up to 12 children and young people can reside (numbers are currently capped at 9).

⁶¹ Sentencing Advisory Council (Victoria), *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* (2019), 69.

⁶² For the DCP perspective, see <<https://www.childprotection.sa.gov.au/service-providers/service-specifications/residential-care>>. Our observation is that a lack of vacancies means that proper matching or transition planning does not always occur, with the real driver being the filling of any vacant beds.

harm is done to children and young people, within programs that should provide care or protection. Our conversations with dual involved children and young people suggest that instability in placement compounds feelings of loss which may, in turn, contribute to feeling safer or preferring to be at Kurlana Tapa.

I'd rather be in here [KTYJC] than that DCP placement.

Another long term dual involved young person described his experiences vividly and was highly critical of his treatment in DCP residential care, contrasting this with Kurlana Tapa –

Yeah, you actually sit back and like play cards and shit with them kind of thing and they'll sit back and let me - can have a yarn with them for hours and like, yeah, they're good people and it's like they relate kind of thing. Like you got some of the ones here like are killer but some of them are just dogs, like straight up dogs, but there's not many of them, you know. Like they're mostly all good people here.

Experiences in South Australia mirror those identified in a Victorian study about the impact of residential care placement changes, which can occur with little warning and for reasons that appeared arbitrary to the child or young person. We heard similar stories of coming home from school to find their bags packed,⁶³ with a sense of outrage that someone has already packed their personal things. This issue was previously raised in a 2013 inquiry by this office into the impact and experience of being moved while in care.⁶⁴

Dual involved detainees face the added threat of their beds being 'closed' and allocated to another young person while they are in custody. This contributes to a sense that they are not worthy or valued and have no place where they belong. They can be moved to a new placement with a new care team and fellow residents following release from KTYJC, often with little say, leading to further disruption and instability in their lives. Young people feel that their privacy is breached if a worker has packed up their belongings.

4.2.3 Relationships with residential care staff

The SADI Project affirms the need to improve communication and consultation for decision-making; both between relevant DCP and other care team staff, as well as to encourage and respect the involvement of children and young people in these processes.

A theme that arose from consultation was that the 'frontline' staff who work directly with children and young people – and often know them best – may feel sidelined when decisions are made by other, more 'distant', teams. Frontline staff expressed particular frustration about this lack of involvement because, in these situations, they are usually required to deliver the 'bad news' to their young clients. In addition to potentially undermining their relationships, it may also 'trigger' or exacerbate trauma related behaviours for children and young people and increase the likelihood of police interactions. A complicating factor raised

⁶³ Sentencing Advisory Council (Victoria) (2019), n 61, 69.

⁶⁴ Guardian for Children and Young People, *GCYP Inquiry Report: The impact and experience of moving while in care* (2013).

by case managers was that dual involved children and young people may also react by requesting new social workers when they are unhappy with these decisions, at times jeopardising the maintenance or development of effective working relationships. The experience of frontline staff highlights the need for improved consultation and participation by them in decision-making.

The positive impact that strong relationships with residential care staff can have on the lives of children and young people was clearly evident from our interviews with SADI participants.

The workers like, yeah, helping me out as they're going right now, like, yeah, just helping me out, getting me into programs, getting me into school and, I don't know, showing, just showing that they care, ... that would probably help me not come back [to KTYJC], or put me back with my [foster] family. I know that that will definitely make me not come back 'cause then I'll be in my family.

Conversely, interviewees also expressed the profound consequences of negative relationships with staff.

See, we had good carers and, and after a while they just started taking away all the good ones and, and sticking in the bad ones with the, the shit kids, you know, 'cause we were bad. We were shit kids but the good carers were the ones that were keeping us good and then they just started putting bad ones in so we got worse. ...Yeah, and when I mean bad ones, I mean just like ones that aren't as nice and, you know, funny and give a shit, you know. They are just in it for the pay cheque, falling asleep on the couch watching TV, you know.

One young person compared their family-based placement experience with residential care –

Well, I mean the, the family house, you know, that's just like a normal family. You get told off, you know, just treat you, they treat you just like your theirs, right, and in resi care it's like, "Nuh, we don't want to know you. Nuh, nuh, do this, do that. Nuh, I'm not your fucking chauffeur," this, that, you know. It's like, "You want something go get it." That's what they'd say in the family house but in resi care it's like, "Oh, wait for me, wait for this, wait for that. I need to call and I need to check. I need to make sure I can leave," whereas everything can just happen then and there, you know.

Some interviewees said that they had lost count of the number of times they had been detained at Kurlana Tapa. When asked why they had returned to detention so quickly, one replied, "My carers."

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.

Asked if they thought they were treated better in residential care or in KTYJC, almost unanimously, project participants chose KTYJC. Boredom in residential care was referred to as a factor leading offending, just for something to do.

In here [KTYJC] I can do stuff ... I don't care if I'm in here. I like it in here, get to meet new people, get food. This, this is better than my [residential care] house.

Working with children and young people with complex behaviours requires a highly specialised skill set and support. Our observation is that the great majority of residential care staff do the best they can in their workplaces and are committed to the children and young people with whom they work. They face significant challenges, including insufficient training and inflexible or inadequate back-up and support, in an environment which is generally acknowledged to be sub-optimal for raising children and young people.

Attracting and retaining staff with the necessary expertise requires appropriate remuneration, adequately supportive work environments and development opportunities. Where workers are not suitably qualified or experienced, it difficult for them to provide a therapeutic and stable care environment.

4.2.4 *The need for independent oversight*

The safety issues for children and young people in residential care demand properly resourced independent oversight.

The many issues associated with systemic failings of the residential care system are well-known by front-line staff, senior agency executives and the relevant ministers. While acknowledging the considerable work that individuals do to manage and mitigate these issues, we must remain cognisant of the clear warning in the Oakden Report:

This report offers some salient lessons about identifying and properly dealing with complaints, the consequences of attempting to “contain” issues of concern and withhold information from senior persons and the extraordinary dangers associated with poor oversight, poor systems, unacceptable work practices and poor workplace culture.⁶⁵

It is not possible to tackle systemic issues of this magnitude and severity without independent oversight and advocacy, to promote transparency and to challenge the tendency of those closest to an issue to accept what is doable, as opposed to what should be done.

The *Children and Young People (Safety) Act 2017*⁶⁶ legislates the role of ‘Child and Young Person’s Visitor’ to operate a visiting and advocacy scheme focussed specifically on the children and young people living in residential and emergency care. In February 2018, the Guardian/Training Centre Visitor agreed to take on this role.

At the time of her appointment, the Guardian/Training Centre Visitor and her team were already conducting a funded two-year trial visiting program, to see how best to implement the scheme when it was formally established. The trial ended in September 2019, with a number of recommendations as to how to proceed with a formal ongoing scheme.⁶⁷ When that funding ceased, she submitted a business case to government, based on employing 13 additional staff to establish an ongoing Child and Young Person’s Visiting Scheme to visit over 200 residential care properties in South Australia. The funding proposal was unsuccessful

⁶⁵ B Lander (Hon), *Oakden: A shameful chapter in South Australia’s history* (2018), 16.

⁶⁶ *Children and Young People Safety Act 2017* (SA), s 118.

⁶⁷ OGCYP, [Final Report on the Trial Child and Young Person’s Visitor \(2020\)](#).

and, in the absence of any dedicated resourcing for the Child and Young Person's Visitor, the Guardian/Training Centre Visitor concluded that she was unable to meet the obligations of the role and resigned from the role.⁶⁸

In April 2022, the newly elected South Australian government committed \$1.8 million over four years to recommence the visitor role for children living in residential care.⁶⁹ This funding was welcome and, while it is not sufficient to establish and run a Visiting Scheme for all residential care facilities, it will enable the Guardian to employ an additional four Advocates to establish some limited visiting and oversight. In the longer term, significant additional funding is required to meet the objectives of the Child and Young Person's Visitor role, and better support the Guardian/TCV to provide existing advocacy and supports for all children and young people in residential care.

⁶⁸ See the Guardian/TCV's media statement at <<https://gcyp.sa.gov.au/2021/08/24/guardian-resigns-from-her-role-of-child-and-young-persons-visitor/>>.

⁶⁹ Richards, n 20.

Recommendations

Recommendation 1: Bolstering independent oversight and advocacy

That the South Australian government provide the Office of the Guardian for Children and Young People with:

- a. the staff and other resources reasonably needed to carry out the functions of the role of Child and Young Person's Visitor, as are legislated in s118 of the *Children and Young People (Safety) Act 2017*; and
- b. the resourcing to establish a specialist Dual Involved Senior Advocate position to provide individual advocacy and systemic oversight for dual involved children and young people that –
 - i. operates across government and especially in relation to the child protection, youth justice and health (including mental health) systems; and
 - ii. must pay particular attention to the needs of Aboriginal children and young people.

Recommendation 2: Making residential care units safer and more stable

That DCP accelerate implementation of Nyland Report recommendations 145 and 149 and provide quarterly implementation progress reports to OGCYP.

4.3 Meeting support needs in care

When a child or young person enters care, the State has a responsibility to learn about, and act on, what that individual needs to live a happy, healthy and connected life. Internal DCP policies set out numerous practices, principles and tools to assess a child or young person's health, development, education, relationship, disability and cultural support needs and potential. Despite the existence of these policies, comprehensive assessment of the needs and potential of dual involved children and young people, or appropriate implementation of identified supports, do not always occur.

Where interventions do occur, it may be years after a child entered care or became dual involved. When this happens, important opportunities to make a difference and divert them from youth justice involvement are missed.

4.3.1 Cultural support for Aboriginal children and young people

Section 12 of the *Children and Young People (Safety) Act 2017 (SA)* enshrines the Aboriginal and Torres Strait Islander Child Placement Principle in legislation in South Australia. Under this principle, if an Aboriginal child or young person is to be placed in care, the child or young person should, if reasonably practicable, be placed with one of the following persons (in order of priority):

- a member of the child or young person's family;
- a member of the child or young person's community who has a relationship of responsibility for the child or young person;
- a member of the child or young person's community ; or
- a person of Aboriginal cultural background.

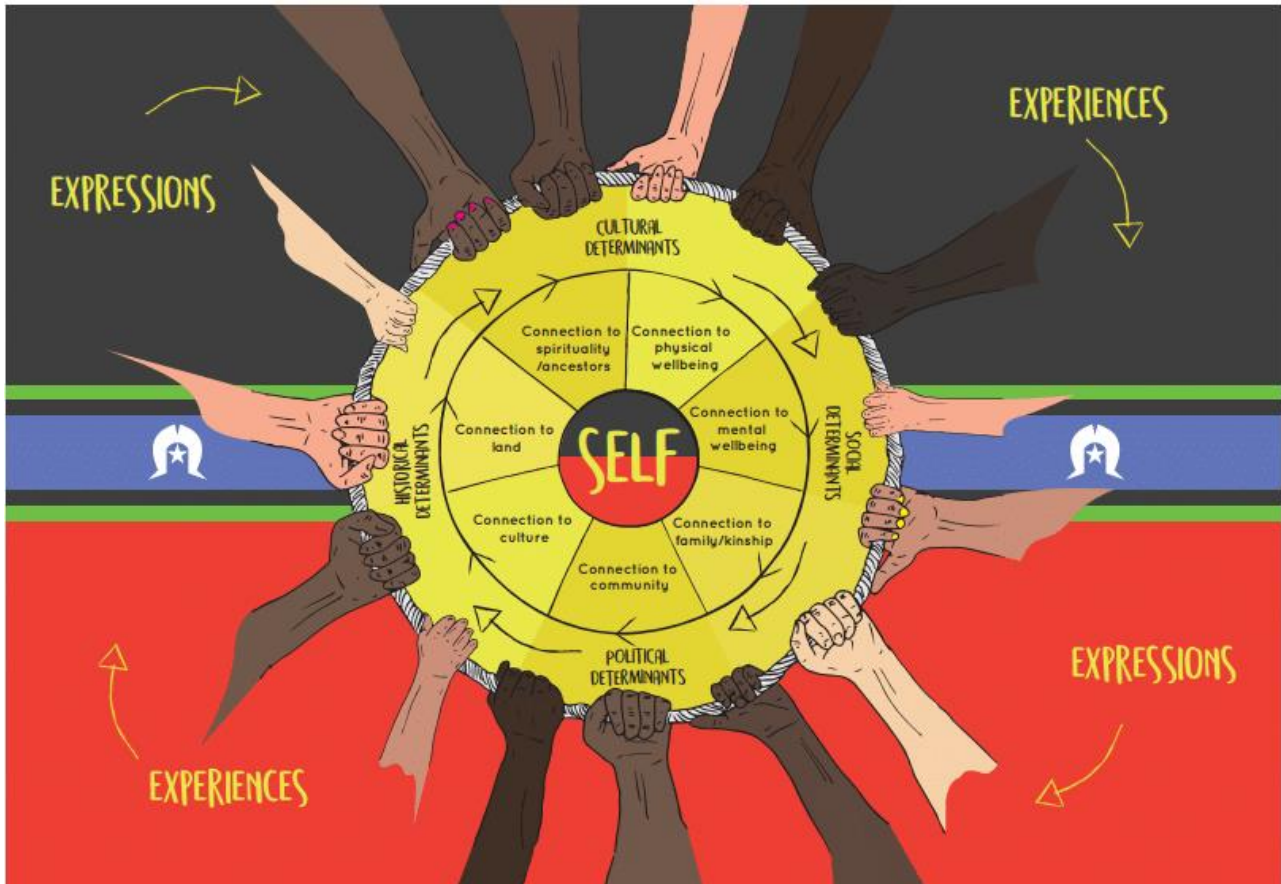
If this is not possible, the child or young person should be given the opportunity for continuing contact with their family, community or communities and culture. Further, before placing an Aboriginal child or young person, DCP must, where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation.

Adherence to this principle is essential to all aspects of an Aboriginal child or young person's wellbeing. As explained by the (Victorian) Koorie Youth Council in their 2018 report *Ngaga-Dji (Hear me): Listening for change* –

Understanding children's lives is the first step to supporting them to be happy and healthy. When supports for Aboriginal children use non-Aboriginal frameworks to understand children's needs and strengths, they are unsuccessful. Aboriginal children are best supported by Aboriginal definitions of identity and wellbeing.⁷⁰

⁷⁰ Koorie Youth Council, *Ngaga-dji (Hear me): Listening for change* (2018).

The below adaptation of the Aboriginal Social and Emotional Wellbeing Wheel demonstrates the inseparable roles of culture, country, community and family for an Aboriginal child or young person's sense of self and identity.⁷¹



Gee, Dudgeon, Schultz, Hart & Kelly, 2013 on behalf of the Australian Indigenous Psychologists Association. Adapted by Jacob Komesaroff from original art by Tristan Schultz, RelativeCreative

DCP policies clearly articulate the requirement to adhere to the Aboriginal and Torres Strait Islander child placement principle and provide guidance on implementation. However, our interviews suggested that a number of Aboriginal SADI participants were placed in residential care when culturally appropriate family placements were available. This reflects our experience of placement decisions for other Aboriginal children and young people more broadly.

Ellie's story below demonstrates the vast potential for culturally appropriate placements to intervene in a young person's cycle of offending.

⁷¹ Ibid, 41.

Ellie – An Aboriginal girl in care, trapped in the youth justice system and inappropriate residential care placements

The OGCYP has worked with Ellie since she first entered youth detention several years ago at the age of ten. Since then, she has consistently served excessive periods of time on remand. Ellie is an Aboriginal child in care and has an intellectual disability. Placements in residential care (24 by 2019) did not meet her needs, with almost all being culturally inappropriate. DCP admitted they were unable to keep her safe.

Ellie was incarcerated on six separate occasions during 2019-20 for a total of 340 days, at an estimated cost of \$1,061,225. She was held under remand orders, and most frequently brought back to detention for breaching her bail conditions. OGCYP records indicate that periods of remand were applied due to DCP's failure to attend court, and/or provide a bail address.

Some officers concluded that Ellie's incarceration was good for her given that it provided access to education as well as some physical and mental health support and therapeutic programs. Some DCP staff expressed the view that she was safer in detention and she engaged more meaningfully with staff within the detention centre.

Stuck in a cycle of detention, then release back into the same environment within which her offending arose, Ellie told OGCYP Advocates that she did not like her residential care placement and wanted to live with family. She attributed her repeated admissions to the fact that DCP did not advocate hard enough to have her released on bail and SAPOL Prosecutions argued she should be held on remand every time she went to court. Ellie said that DCP representatives often agreed with SAPOL's remand request.

Despite repeated admissions, no effective intervention or planning occurred to prevent future periods of incarceration.

In early 2021, DCP acknowledged that Ellie's cycle of detention and return to an unsuitable placement had to be broken. After examining the feasibility of placing her in several metropolitan and regional areas, a culturally appropriate kinship placement was found. Supported by family and immersed in her culture, Ellie has not returned to custody.

Ellie's story has the disturbing appearance of government agencies interacting in a way that deprived Ellie of her liberty, rather than properly exploring alternatives to detention that would meet her needs. The results of Ellie's family placement and eventual access to cultural support demonstrates that detention was clearly not a matter of last resort.

The recourse to detention at the KTYJC as a matter of convenience for larger systems' interests is explored further below.

4.3.2 Health and disability needs

The dual involved children and young people identified for the SADI project have high rates of diagnosed disability (36.6 per cent). In the Interim Report, we highlighted that:

While about 30 per cent of those in care are eligible to receive NDIS services, 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. ...

Consistent with international research, 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. The SADI Advocate's view is that neurodevelopmental impairment is a characteristic of many dual involved detainees, noting positively that Foetal Alcohol Spectrum Disorder assessments were taking place.⁷²

The SADI Advocate identified on several occasions that dual involved children and young people did not appear to have had relevant assessments despite being almost eighteen and about to 'age out' of care.

Apparently they're trying to get me a house and trying to get my payments back on track and trying to get me on the NDIS plan. Yeah, so hopefully when I turn 18 or when I get out they'll have that waiting.

Dual involved children and young people with both diagnosed and undiagnosed disabilities often fall through multiple service gaps in identifying and responding to their needs and potential. This is despite the fact that, often, the behaviours or circumstances that led to offending are directly linked to unmet disability and health support needs.

When children and young people are living in unstable care placements where their workers do not know or understand them, there is a risk that disability-related behaviours are classified as behavioural 'problems'. Where this occurs, disabilities can go undiagnosed and important interventions and supports which may divert youth justice involvement are missed. Further, if they are not appropriate for the disability involved, the interventions that do occur may exacerbate the behaviours and lead to a vicious cycle.

Where disabilities and health conditions are identified, children and young people may not know about their diagnoses. Feeling in control and understanding their own health and disability information can assist a child or young person to develop their sense of identity, connect with peer support and self-advocate or access advocacy services for implementation of their disability or other support plans.

⁷² OGCYP, 'The interim report', n 19, 12-13.

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.

DCP requires that all children and young people undergo a comprehensive assessment of physical health, psychosocial and mental health and development needs within three months of coming into care. Policies provide guidance for case planning for children and young people to access identified health and disability needs, including supporting children and young people to participate in planning and decision-making. DCP caseworkers are required to assess, when they commence working with a child or young person, whether they have a developmental delay or disability. In these circumstances, specialist disability supports and services must be sought through the NDIS.⁷³

These policies are encouraging and offer welcome guidance for DCP caseworkers. However, our experience through the SADI Project, as well as the Guardian's broader individual advocacy work, indicate that comprehensive assessment and case planning is not occurring for all children and young people in care in accordance with DCP policy.

4.3.3 Mental health services and treatment

There is a dearth of specialist mental health services and dedicated drug and alcohol programs for young people in South Australia. Where services are available, they may be 'siloes' and managed in system interests, rather than respond adequately to the needs and associated support demands relevant to an individual child or young person.

A recent inquiry undertaken by Victoria's Commission for Children and Young People exposed systemic mental health issues that impacted negatively on the treatment available to one young person living in residential care.⁷⁴ Similar to cases the OGCYP is familiar with in South Australia, the Inquiry found that the mental health system attributed the young person's issues to 'behavioural' factors rather than poor mental health.⁷⁵

SADI Project interviewees referred to similar circumstances and environments, at times attributing problems with medication and its management to the residential care experience.

⁷³ Sourced from 'DCP Manual of Practice', located on the DCP intranet.

⁷⁴ Commission for Children and Young People (Vic) *Submission to the Royal Commission into Victoria's Mental Health System* (2019), 23.

⁷⁵ Ibid. The inquiry was initiated due to 'Jamie' experiencing chronic levels of self-harm and suicidal behaviour, as well as multiple hospital admissions and police attendances. It found that describing these issues as 'behavioural', significantly impacted upon how non-mental health services regarded and treated Jamie. As often in such cases, Jamie's residential care experience complicated the situation due to high staff turnover, exposure to 'high risk' peers, a lack of structure and routine, and grossly inadequate communication about Jamie's medication which resulted in alarming lack of compliance with the medication regime.

I've been taking pills for it my whole life until I was 12 when I was in resi care and that's when I stopped taking them because they weren't, they weren't telling me I needed to. So that's when I started going downhill and not focusing and started getting into trouble. Yeah, that's how everything started. Yeah.

...they don't care about your medication. They give it to you when they are ready to give it to you. ...I have a set time of 8 o'clock. I told them at 8 o'clock, "Can I have my medication?" "Oh, sorry, we're a bit busy and we'll let you know." I'm in my room and I fell asleep at 11.30 and they still hadn't given my medication.

I've been diagnosed with bipolar, borderline personality disorder. ... I hit my head, bro. I knock myself out. ...they're supposed to do an assessment to get like the right medication 'cause they don't know what to put me on yet.

While some mental health support is available to KTYJC detainees, project participants often said that they disengaged with mental health services once released.

Yeah, they, that's something that there are good at [in KTYJC]. They always have a CAMHS worker

4.3.4 Drugs and Alcohol⁷⁶

Interviewed children and young people often referred to the impact of drugs and alcohol in their lives, a crucial factor that should be addressed properly when in youth justice detention or residential care. Aspects of this were addressed in the Training Centre Visitor's KTYJC Pilot Inspection Report (2020).⁷⁷ Here we just illustrate some of their perspectives.

Yeah, always I've got drugs and alcohol in my system.

It's like, I remember one time I was drunk and I had my little Jim Beam bottle in my hand, my red cup with my coke and Jack Daniels in it, and I fucking - the carers knocked it out of my hand, bro, and then just run into the office 'cause they know I would've gone off because of my alcohol and then I got my bottle of Jim Beam.

[after committing an offence] I've been maggoted in my room, like passing out on vallies, everything, and then they [carers] just, they seen me walk in. ... So walked in, passed out, woke up and the cops were in my face, went to Christies' [police] cells, slept

⁷⁶ The Training Centre Visitor commenced as Visitor for the new Youth Treatment Orders Scheme in November 2021. Established under the *Controlled Substances Act 1984*, an establishment project to initiate this role is underway as this report is being prepared and a project officer commenced in May 2022.

⁷⁷ See TCV, *Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)* (2020) ('Great Responsibility'), 109-11.

for like a day but, yeah, fucking oath, you can get anything there [the residential care placement].

Yeah, but, yeah, other times I just bring, bring my own stuff in, smoke up in my room and drink and I walk past them with a can or something and they don't even really say anything so-- ... They really don't, really, they honestly don't give a fuck.

One young person placed alcohol misuse at the centre of her recidivism. Asked why she kept returning to Kurlana Tapa, she said, *"I don't know, 'cause I get real drunk. I like to drink"*.

4.3.5 Responding to separation trauma

It is not possible to properly identify a child or young person's physical, mental health or disability support needs without understanding the trauma they may have experienced. Holistic, early intervention responses to complex trauma have the potential to prevent or limit a child or young person's contact with the youth justice system.

Recognising the impacts of trauma for children and young people in care is not limited to understanding the experiences in family environments prior to entering care. Instead, it is essential to acknowledge and understand the traumatic nature of removal or separation for the child or young person, in and of itself. The ramifications of the separation, and the child or young person's relationship with that as part of their identity, has lifelong implications. For Aboriginal children and young people especially, the impacts of intergenerational trauma can exacerbate the emotional and psychological distress associated with family separation.

The SADI Project sought our young interviewees' views about why they had been placed in care. Only half of the 16 dual involved children and young people interviewed reported that they understood why they had been placed in care, with the remainder either not knowing, or not wanting to know. While most understood that while they had a right to know the reason, some did not.

For many children and young people, the experience of separation can lead to a searing sense of living alienated lives:

I don't have a mum and dad or my little brother or my siblings. So it was, it was, yeah, 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 lasting impact of separation experiences is evidence through the story one young person shared about their vivid memory of being removed from their home:

I felt bad, like sad and everything [indistinct] that's when they took my brother and my sister and that, chucked them in the car, but I didn't know what they was so like I didn't move. I were sitting in a tree out the front and they would be, "Come on, mate." The cops would yell

at you or the welfare, but I didn't, didn't know what they were taking us for, you know. I thought they were just taking us and then bring us back. That's when I just [indistinct] to get in the car and mum was there. "You got to go with them." So I just said, "Nuh, I'm not going with them white dogs." I said, I said, "Nuh." I was sitting there in a tree and they're singing out like, "Come on, mate," and I go, "Fuck, what the fuck," you know, swearing at them. That's when my little brother and that were crying, yeah.

Children and young people who are experiencing anxiety or distress surrounding their separation from family may leave placements to be reunited with family. Too often, a child or young person's attempts to self-place with family are met by the compounding trauma associated with restrictive care practices, or criminal charges for breaching bail conditions. This has the potential to significantly escalate the complexity of a child or young person's behaviours or distress symptoms.

---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.

Conversely, understanding and recognising the reasons why a child or young person has a strained relationship with state care can lead to targeted therapeutic interventions. This has the potential to improve their safety outcomes, as well as assisting to build strategies to process past trauma and manage related symptoms.

Recommendations

Recommendation 3 – Assessment of needs and potential

3.1 That the South Australian government commission an independent review of DCP and DHS files to investigate and determine:

- a. The rate of compliance with existing policies regarding health, disability and cultural support needs assessments for children and young people in care, including the extent to which assessments occurred within the requisite timeframes. The audit should specifically consider policies that address the:
 - i. Cultural needs of Aboriginal children and young people;
 - ii. Disability needs of children and young people, including access to the NDIS and implementing NDIS plans; and
 - iii. Health and development needs of children and young people, including mental and psychosocial health.
- b. The extent to which case plans appropriately incorporate identified strategies, applicable placement principles, access to services and other cultural and therapeutic supports;
- c. The extent to which identified strategies, applicable placement principles, access to services and other cultural and therapeutic supports are implemented; and
- d. Targeted recommendations to improve compliance with policies regarding assessment, case planning and implementation of health, disability and cultural support needs.

3.2 That DCP develop and incorporate the following into the assessment and planning procedures for children and young people in care:

- a. Culturally appropriate tools to identify risk factors for offending behaviours;
- b. Targeted therapeutic and other interventions to mitigate these risks and divert potential youth justice involvement; and
- c. Clear placement principles to avoid placing children and young people with an identified risk of offending behaviours in criminogenic environments.

Recommendation 4 – Increased support Aboriginal children and young people

That DCP deploy additional effort and investment to support connection to culture for Aboriginal children and young people living in residential care, paying particular attention to the causes of, and potential consequences for, those who have offending behaviours or whose behaviours may risk involvement in the youth justice system.

4.4 Over-policing in residential care

4.4.1 Calling police as a behaviour management tool

The Royal Commission into the Protection and Detention of Children and Young People in the Northern Territory concluded that ‘the two primary factors contributing to care-criminalisation are the use of police to manage behaviour and the lack of care, staff training and support.’⁷⁸ This finding aligns with our observations throughout the course of the SADI Project.

A design requirement of the residential care system is that it be capable of managing the potentially volatile behaviour of those residents who have experienced trauma or have underlying, potentially disability related or psychosocial or developmental needs that need specialist support. It should have the capacity to manage emotional responses to what can be relatively minor stimuli without recourse to the police in all but extreme situations.

So when I get angry, flip my shit, they'll be already on the phone, bro, not even – or even, sometimes I wouldn't even be threatening them and they won't even try and talk to me and say, "Are you all right, mate?" You know, they just talk about nothing. I've never had that happen to me ever - straight away on the phone dialling.

Some interviewees held the firm view that many residential care staff are not equipped to deal with their trauma, mental health or disability related behaviours. They are usually aware of their right to be supported to manage difficult behaviours but say this may not happen.

They will call the cops on me, bro, soon as I go cursing them. Like I sort of go off. I'll, "Fuck you, you white dogs," or something. I'll go off, bro, and they'll press some duress thing like the things they carry around on their necks, every single time and press it and it could be like two minutes, bro, and they'll tackle me and they'll be like, "Why the fuck you're going off?" like blah, blah, blah, you know.

Interviewees recounted stories that illustrated their opinions that DCP staff could be complicit in continued youth justice engagement.

Yeah, this was a long time ago but it was like they didn't say nothing to me and ... like, the worker got out the car and had a phone call, got back in the car and like fucking 20 minutes later a cop car pulls over, man, doesn't even go to like the driver's side and they fucking, but just go straight to back and pulled me out and said, like said my name and shit. It's like, "How do you know my name and shit if like you haven't even asked who the fuck I am?" I thought they set me up, man. Hundred per cent they set me up out there. This was when I was, what, 13. That was fucked up, man.

⁷⁸ NT Royal Commission, n 59, vol 3B, 20.

One of the most effective changes that could reduce the prevalence of children and young people in care entering the youth justice system is cessation of the practice of calling police for behavioural issues that should be handled by on-site staff. Our interviewees expressed that this was the main factor increasing their likelihood of detention.

The very presence of police can have an escalating effect on children and young people in care. Police may not be the trusted people to turn to in times of crisis, as is otherwise commonly taught to children and young people. The normalising effects of police interaction can also erode any deterrent effect which these interactions may generally have.

DCP acknowledges the need to minimise police/court contact in its procedure '*Aggressive behaviour: assault, threats and property damage*' –

It is important to remember that our youth justice system focuses on motivating and supporting young people to stop offending rather than punishment. Even so, DCP Residential Care aims to reduce contact with the police and court system to minimise the criminalisation of children and young people's behaviour.⁷⁹

This procedure guides staff on the relevant factors when deciding whether to contact police in relation to alleged assaults and property damage committed by children and young people in residential care, including 'the risks associated with charges being laid against a child or young person (for example criminalisation and involvement with youth justice system).⁸⁰

Incident reports from residential care properties suggest that these guiding principles to avoid contact with the youth justice system for children and young people wherever possible are not always implemented in practice. We observed a pattern of behavioural incidents quickly escalating into police involvement, with some children and young people restrained by staff and police called. Examples we viewed suggested that some residential care staff simply are unable to deal with complex behaviour that should be accepted as likely to occur in this institutional environment.

So one of the carers tried grabbing my phone out my pocket so I hit them and then they called the cops.⁸¹

Reliance on casual agency staff to fill shifts in residential care is likely to result in a higher rate of police intervention to manage difficult behaviour as non-DCP staff are not permitted to restrain residents.

⁷⁹ DCP, *Residential care – Procedure 'Aggressive behaviour: assault, threats and property damage'* (2021), v 1.2.

⁸⁰ Ibid.

⁸¹ Some interviewees said they had initiated violence at times in residential care, one attributing it to their "anger issues". This is a foreseeable attribute of the environment and clientele that must be managed appropriately.

4.4.2 Missing Persons Reports

One of the major factors drawing children and young people in residential care into the youth justice system is the current approach to reporting them as 'missing' from placement. Insufficient staff ratios in residential care placements create a reliance on SAPOL to find children and young people who are missing, as there is not sufficient coverage to search themselves. Most of our young interviewees reported bail breaches for this reason, usually due to missing curfew, or not residing at the bail address.

The preponderance of missing persons reports (MPRs) associated with residential care facilities indicates that there is a link between this care option, and reasons children and young people go missing from placement.⁸² Dual involved children and young people told us that they go missing if they do not feel safe at their placement or wanted to be with family. They can be frustrated that they effectively are (re)criminalised for what they see as a constructive action.⁸³

I've been more than 76 MPR [last year]. ...they always just put me on MPR some reason, which I don't find fair, 'cause then the cops are always looking for me. They [cops] take me straight home again. Even if I don't want to go home. ... Oh, they take me sometimes to the cells waiting for my carer to pick me up. Depends where I am.

Records for several of our young interviewees show they that had multiple missing person reports (MPRs) over the period of the SADI Project. This high rate is consistent with findings from interstate studies.⁸⁴ Systemic reliance on police intervention to apprehend children and young people from residential care on MPRs draws them into the youth justice system when they have not committed a criminal offence. It is not difficult to see this as an example of systemic abuse.⁸⁵

Q: *So when you were placed in these care homes, did you feel safe there?*

A: *Not really.*

Q: *What made you feel unsafe? What was one of the biggest things that made you feel unsafe?*

⁸² In 2017-18, DCP recorded 7,755 missing persons reports (MPRs) of which 98 per cent, (n:7,612) came from residential care placements although children and young people in those combined placement types was only 13.5 per cent. These MPRs were issued for 360 individual children and young people (an average of 21 times each during 2017-18). This also means that 8.6 per cent of all children and young people who had a period of care during 2017-18 went missing at least once (based on DCP data and the Productivity Commission's Report on Government Services 2020, Table 16A.2 Children in care, by Indigenous status, Children aged 0-17 years in at least one out-of-home care placement during the year 2017-18.)

⁸³ We note that while some children and young people in care may not be safe with some family members, they still often want to return home, and/or live with other family members or kin.

⁸⁴ K McFarlane (2015), n 12, 149-150.

⁸⁵ Ibid, 150.

- A: *'Cause I didn't know them. I didn't know the people there. ...That's when I used to run off all the time, take off, or I'd go back to my [family member's] house.*
- Q: *How often would you be placed on an MPR? You know MPRs are missing person reports?*
- A: *Heaps.*
- Q: *Too many to remember?*
- A: *Yo.*
- Q: *Bud, when you were in there did you ever get in trouble in the houses ...?*
- A: *No, just, oh, yeah, only when I'd breach my curfew and that, take off.*

A Victorian study found that police attitudes to children and young people who run away from parental homes was at variance to their views about those in care.⁸⁶ With the former, Police were concerned that they might be exposed to violence and danger on the streets and urged relevant authorities to provide them with accommodation or therapy, making repeated 'child at risk' notifications to highlight their vulnerability. In contrast, those children and young people missing from care were viewed as problematic, described as 'nuisances' or 'habitual runaways', with police urging courts to 'send a message' or 'teach them lesson'.⁸⁷ Such attitudes could result in less urgency, or a lower risk rating being applied, potentially increasing risk for this cohort.

4.4.3 Responses to property damage

A Victorian Legal Aid report found that, of those in care before the court, half attended for property related offences, usually arising from the residential care environment. It concluded that the pervasive practice of care home staff relying on police and the youth justice system to control resident behaviour was at odds with the child protection imperative to provide suitable care that included behavioural management practices that mitigate challenging behaviour.⁸⁸ This finding is consistent with the views expressed by the young people consulted in the SADI Project.

Research referred to in this report and evidence from our interviews with dual involved children and young people confirmed our understanding that children and young people are frequently charged with property damage offences. Youth justice system stakeholders expressed exasperation at the extent to which children and young people from residential

⁸⁶ K McFarlane (2015), n 12, 149-150.

⁸⁷ Ibid.

⁸⁸ Victorian Legal Aid, *Care not custody: Keeping kids in residential care out of the courts* (2016), 8, referring to K McFarlane 'From Care to Custody; Young Women in Out-of-Home Care in the Criminal Justice System' (2010) 22(2) *Current Issues in Criminal Justice* 345.

care have youth justice involvement due to minor property damage offences (not all of whom end up in detention – a cohort that fell outside of SADI Project scope).

Charges of assault and property damage in residential care can contribute directly to the criminalisation of children and young people.

Like one time I remember I didn't get let out. 'Cause I wanted to have a smoke and they wouldn't let me out and I started lighting up a smoke in the office - not the office, no, like the unit a bit and they called the cops on me and like I went and I just legged it.

No, they would lock the door, just unlock the door to the office and they kept the door locked ... you know, the door in between the office from the unit and like so you would have to smash the window if you wanted to get out when they won't listen to you.

Yeah, that actually was doing my head in and I just grabbed something, threw it at the door. Twenty minutes later the cops rock up and say I'm getting done for fucking aggravated assault 'cause I threatened them.

Like, yeah, petty shit like that or when I get in their face and I've yelled at them couple of times - fucking hell, what else - like throwing stuff in the house and I'm getting done for property damage when I'm clearly angry and I clearly cannot even - like I'm not even thinking about, "Oh, yeah, I'm probably going to get charged."

... like I'm going through a lot of emotions and they're fuckers sitting there razzing me up and they don't, they don't get in trouble for it. Like I cop the charge, have to go to court for it, have to be pretty much forced to stay there 'cause I'm on bail so I can't just leave whenever I want, you know.

Property damage does not occur in isolation. DCP incident reports sometimes lack detail but it is not apparent that residential care staff consistently de-escalate situations, and sometimes it appears that the contrary has occurred.

Young interviewees indicated that property damage in congregate care units often occurred because of their frustration with practices associated with that environment⁸⁹ such as smashing doors and windows to get outside or use the toilet. The Senior Advocate had the following conversation with one of our youngest dual involved interviewees -

Q: *You get angry?*

A: *Yep.*

Q: *And then from there what happens?*

⁸⁹ What has been described as an 'environmental restrictive practice'.

- A: *Then I get a rock and smash.*
- Q: *What do you smash?*
- A: *Car window and my house.*
- Q: *I'm assuming the carers there are trying to help you?*
- A: *Yeah.*
- Q: *So when that happens what do they do?*
- A: *They sit in the carers' room and call the cops.*
- Q: *[Name redacted], do they ever try and calm you down--*
- A: *Nuh.*
- Q: *--sit you down and say, "[Name redacted], don't do that because if you do that you're going to get into trouble"?*
- A: *Nuh.*
- ...
- Q: *Why don't they do that?*
- A: *Because they just like, they'd just rather the cops come and sort me out.*
- Q: *They'd rather the cops come and sort you out?*
- A: *'Cause it's unsafe for them to come out [of the carers' room].*

4.4.4 Restrictive practices

The use of restraint or non-approved restrictive practices are permitted in residential care in limited circumstances; primarily as 'last resort' measures to keep a child or young person safe from harming self or others. Our interviews with SADI participants indicated that restrictive practices, such as locking children and young people in the facility, are utilised on a more routine basis – for behaviour management or purportedly to minimise the risk of them going missing.⁹⁰

Recent practice guidance published by the NDIS Commission describes the necessary approach –

⁹⁰ See, eg, the discussion above at Part 4.3.3.

The decision to use a restrictive practice needs careful clinical and ethical consideration, taking into account a person's human rights and the right to self-determination. Restrictive practices should be used within a positive behaviour support framework that includes proactive, person-centred and evidence-informed interventions. There are some circumstances when restrictive practices are necessary as a last resort to protect a person with disability and or others from harm.⁹¹

Locking children and young people inside their units can undermine their rights and is contrary to good therapeutic practice. Unless properly authorised as a restrictive practice of last resort, supported by behaviour support plans and interventions to reduce its necessity, such a practice breaches a child's fundamental right to liberty and security of person and may constitute arbitrary detention.⁹²

Systemic challenges, such as the practicalities of staff ratios and shortages, are not an acceptable reason to resort to restrictive practices. Wherever these practices are in existence, it is essential to immediately review and implement less-restrictive alternatives that support the individual therapeutic needs and goals of children and young people.

⁹¹ NDIS Quality and Safeguards Commission, *Regulated Restrictive Practices Guide* (2020), 4.

⁹² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1996, 999 UNTS 171, art 9.1

Recommendations

Recommendation 5 – Enabling effective care and support

5.1 That DCP provide the resources, training and framework necessary to enable residential care staff to provide the best possible care and, in particular to ensure that staff are appropriately qualified and staff ratios are sufficient to respond to the complex support and management needs of the residential care population, as a whole.

5.2 That the resources, training and framework at 5.1 should include:

- a. Specialist mental health, disability, and drug and alcohol training for residential care staff to improve their capacity to identify and respond to behaviour associated with factors such as mental ill health or substance misuse;
- b. An accreditation scheme which sets specific competency and training benchmarks for staff who work directly with a category of dual involved children and young people who have exceptionally complex support and management needs;
- c. Reviewing the appropriate classification and remuneration for relevant accredited DCP staff members under the relevant industrial instrument; and
- d. A staffing model that incorporates requirements for designated positions to hold or undergo the above accreditation, supported by appropriate roster arrangements.

Recommendation 6 – Reviewing and analysing police involvement in residential care

6.1 That DCP establish a system to specifically record and monitor critical incidents in residential care which result in police involvement or attendance, in order to –

- a. Track and analyse the prevalence, severity and management of incidents across individual residential care facilities; and
- b. Identify and mitigate causal factors.

6.2 That DCP urgently review and address the practice of relying on police intervention for behavioural management.

Recommendation 7 – Reducing police involvement in residential care

7.1 That DCP and SAPOL develop a joint protocol to govern the procedure, purpose and required benchmarks for requesting police attendance and response at residential care facilities, with the objective of:

- a. Minimising unnecessary resident contact with the youth justice system; and
- b. Reducing the incidence of charging children and young people living in residential care with property offences.

7.2 That the above protocol be monitored in consultation with:

- a. Children and young people with an experience of residential care;
- b. A representative Aboriginal Community-Controlled Organisation; and
- c. The Office of the Guardian for Children and Young People.

Recommendation 8 – Restrictive practices in residential care

8.1 That DCP investigate the extent and circumstances under which the restrictive practice of locking children and young people inside, or otherwise depriving them of liberty within a residential care unit, is occurring.

8.2 That DCP review policies and staff training to ensure residential care staff are provided with adequate training, support and guidance to implement alternatives to restrictive practices.

4.5 Police charges and detention

4.5.1 Police charging and diversion decisions

The paramount consideration in deciding whether to lay charges against a young person can be found in the object of the *Young Offenders Act 1993*:

*to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential.*⁹³

In making this decision, police officers may also consider –

- the child or young person’s personal circumstances (including character, age, mental or physical condition and cultural identity);
- the relative seriousness and attitude of the child or young person to the offending;
- nature and extent of previous offending;
- attitude of the victim to the alleged offending; and
- the extent to which any victim has been inconvenienced or has suffered emotionally, psychologically, physically or financially as a result of the offence.

Information provided by SAPOL is that, even once a child or young person has been charged with an offence, some offences may be considered minor with subsequent diversion away from the Youth Court. This may include a consideration that the commission of the offence causes limited harm, the character and antecedents of the alleged offender, the improbability of them reoffending, and the attitude of parents or guardians where relevant.

Ultimately, the decision whether to lay charges will be considerably influenced by the attitude of the individual arresting or reporting members of the police. SAPOL was unable to provide detail about how these discretionary criteria are applied to children and young people in care, and the extent to which they access diversion. Our interviews with SADI participants suggest that charges may often be laid for offences such as property damage in residential care placements and breach of bail related to curfews. This raises the concern that laying charges for minor or technical offences associated with the home environment may be more commonplace for dual involved children and young people than others, and diversion efforts may be inadequate.

The experience of the SADI project has revealed that there are significant shortcomings in the information and data collected by government agencies, which inhibit the transparency and accountability required to properly understand the circumstances and experiences of the dual involved. A particular concern is the lack of data to analyse how the practice of ‘over-charging’ affects dual involved children and young people. Over-charging occurs when police

⁹³ *Young Offenders Act 1993*, s 3(1).

'charge children and young people with offences that are not supported by the evidence, which are later withdrawn.'⁹⁴ There are significant harms associated with over-charging, including the impact this has on court decisions to remand children and young people, and delayed court proceedings due to negotiations and contested hearings. Children and young people may spend extended periods of time on bail or remand while this occurs.⁹⁵

The issue of over-charging was considered by the Royal Commission into the Protection and Detention of Children and Young People in the Northern Territory. To address this practice, the final report made the following recommendations:⁹⁶

- To undertake a review of charging practices with respect to children and young people;
- Improved training to ensure police understand the basis on which charges may be laid against a child or young person;⁹⁷ and
- That all police receive training in youth justice which covers topics such as child and adolescent brain development, the impact of cognitive and intellectual disabilities, and the effects of trauma.⁹⁸

With respect to South Australia, it is unknown whether dual involved children and young people are being over-charged, or how many police officers in South Australia have undertaken specialist training to work with children and young people who have experienced trauma or the care system. Further, data is not collected which would allow us to examine properly the prevalence of children and young people in residential care being charged with minor property offences or breaches of bail associated with absence from the residential care placement.

These failings in data capture and reporting processes prevent proper analysis of the extent to which cautioning and other opportunities for diversion are made available to children and young people in residential care prior to laying charges, or the practice of over-charging occurs. This information is necessary to respond to key population groups, trends and system pressure points to provide a focus for systemic improvement and accountability. It should be possible to better understand and account for the circumstances of dual involved children and young people and thus improve efforts to support them and divert them from the youth justice system.

4.5.2 Detention in vehicles and adult facilities

South Australian children and young people in custody continue to be vulnerable while detained in vehicles. Despite the TCV/Guardian having raised this publicly several times,

⁹⁴ NT Royal Commission, n 59, vol 2B, 247.

⁹⁵ Ibid.

⁹⁶ Ibid, ch 25.

⁹⁷ Ibid.

⁹⁸ Ibid.

government has yet to address the fact that there is no independent oversight of what happens in transit, be that under the authority of DHS/Kurlana Tapa, SAPOL, DCP, SA Health or a private contractor

Another matter commonly raised by the dual involved children and young people who were interviewed was their experience of being held in general police cells, especially in the City Watchhouse. These are adult-focussed facilities, not geared to holding and managing custody of children and young people. The below quotes from SADI participants demonstrate the extent to which dual involved children and young people are experiencing this practice:

Every single week I was there. I was there for like two weeks every day straight.

They always take us there if you get caught. If you go back to the City they will take us there. ...If you get arrested you always go to the watch house unless you're getting bail ...

And they will laugh at you too. The cops laugh at you when you're in the room. Like they will laugh, bro. They're like, "Ha ha," like, "Can't wait to see you back in lockup," like, you know-- and say "we don't have to deal with you anymore."

South Australia Police (SAPOL) data establish that children and young people were arrested and detained in police cells 2,030 times in 2020-21. Concerned that so many minors were held in an adult custodial facility, we visited the Adelaide City Watch House to get a better understanding of what young people experienced. SAPOL staff were generous with their time and willing to respond to our questions. Our observations confirmed that the Watch House is not a suitable detention environment for children and young people.

A disturbing theme arising from our interviews was the lack of privacy and dignity children and young people experience in police cells.

And one time ... my best friend, she got arrested with me and she had to change her tampon nanga and she was asking for privacy, no people, and this male staff were just staring at her. They were full on just staring, bro. I was like, "What the fuck? Like, like let her have some privacy, man," and he wouldn't stop staring at her and she felt so uncomfortable. She had to wrap her fucking jumper around her own legs and like tuck it in.

Another key issue raised by dual involved children and young people detained in police cells was their sense of safety.

Well, no [I don't feel safe], 'cause like people just watch you and it's like feral and they're so aggressive in there, man, you know. Cops like there are so rude. You haven't been rude to them and like they're not supposed to be arrogant towards you.

Informed by our visit, we requested further information from SAPOL to complete the picture of how many children and young people are routinely detained in adult police facilities and whether these places comply with requirements to provide a safe environment for minors.

We can now say that children and young people were arrested and held in 20 different adult police custodial facilities across South Australia 2,030 times in 2020-21. Of these 2,030 separate admissions, 890 (43.8 per cent) were for Aboriginal children and young people. In some regional/remote locations, all, or almost all children arrested and detained were Aboriginal.

SAPOL was unable to advise how many individual children and young people were represented by this number of arrests and periods of detention. SAPOL was also not able to provide further critical information sufficient to allow us to understand what is going on and enable adequate systemic responses across agency and policy areas. So, we, and the police, simply do not know –

- The age breakdown (for example, how many 10–13-year-olds);
- The gender breakdown;
- How many were ‘in care’ under State guardianship orders; or
- How many had a disability.

We are concerned that police may not be supported to deal with the implications of such diversity and child safe environment responsibilities. The Guardian/TCV has warned about the foreseeable impact of intrusive and traumatic strip searching, limited access to immediate medical oversight, and recourse to isolation practices.

Yes, when I nearly OD'd on the ground in there and they fucking just kept chucking me around. I kept vomiting they had to keep lifting me up so I wouldn't swallow my own, my own vomit so I couldn't choke. They kept moving me by my fucking hair,

These concerns have considerable urgency given that South Australia currently has no independent monitoring in place for police detention facilities as Training Centre Visitor responsibilities do not extend to oversight of the circumstances of children and young people detained in police cells.⁹⁹ The practice of detaining children and young people in police cells should be reviewed urgently to ensure that minors are not exposed to the adult custodial environment and management practices.

⁹⁹ Australia has ratified ‘OPCAT’, the *Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* to ensure independent oversight of all places of detention. For those in which children and young people are detained, oversight must be undertaken by specialists, the basis for the TCV being proposed as an independent body for OPCAT purposes. An *OPCAT Implementation Bill* introduced in 2021 lapsed with the proroguing of parliament. The new State Government, elected in March 2022, is now responsible for progressing this agenda.

Recommendations

Recommendation 9 – Accountability

9.1 That DCP and DHS collaborate with other relevant government departments and agencies (such as SAPOL, the Courts Administration Authority, Education and SA Health) to undertake improved collection of data and other information pertaining to the circumstances of dual involved children and young people. Data capture should enable analysis of the following matters for all children and young people in care:

- a. The reasons for and outcomes of police attendance at care placements;
- b. Instances and periods of detention in police vehicles and cells;
- c. Access to diversion;
- d. Access to bail;
- e. Bail conditions and breach of bail offences;
- f. The practice of ‘over-charging’,¹⁰⁰
- g. Charges that relate to conduct occurring at the care placement;
- h. Charges that relate to a child or young person being missing from placement; and
- i. Sentencing practices and outcomes.

9.2 That the data should be disaggregated to enable reporting regarding children and young people according to their gender and the following characteristics:

- a. Aboriginal children and young people;
- b. Children and young people with disability; and
- c. Placement type, including residential care.

Recommendation 10 – Vehicles as places of detention

That the SA parliament legislate to provide the Training Centre Visitor with the mandate and resources to enable independent oversight of children and young people when they are compulsorily detained in transport vehicles under the authority of DHS/Kurlana Tapa, SAPOL, DCP, SA Health or a private contractor, including in the context of the commencement of the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in South Australia.

¹⁰⁰ Over-charging occurs when police charge children and young people with offences that are not supported by the evidence, which are later withdrawn.

Recommendation 11 – Children and young people in police cells

11.1 That the South Australian Government undertake an urgent independent review of the practice of holding children and young people in police facilities to ensure that any such detention only occur in accordance with strict compliance with child safe principles.

11.2 That the Training Centre Visitor be granted statutory oversight responsibilities for police facilities that function as a place of detention for children and young people, including in the context of the commencement of the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in South Australia.

4.6 Youth Courts and access to justice

Dual involved children and young people enter the youth justice system at a younger age, are more likely to be Aboriginal, and are more likely to have an intellectual disability. DCP, SAPOL and the Youth Court have a duty to ensure these vulnerable children and young people are supported to feel safe and heard, have things explained to them, and can access high quality legal advice and representation.

4.6.1 Bail and remand

The youth justice system often appears to be overdetermined by a lack of placements and suitable bail addresses for dual involved children and young people.

When children and young people are not released on bail and held on remand due to a lack of suitable placements, this is at odds with child and human rights instruments, which insist that detention only be used as a last resort and for the shortest period possible.

Dual involved children and young people in care report that DCP staff members with decision-making capacity do not always attend court, meaning that detention may result because no one is available to facilitate police or court bail or provide a bail address. It also can mean that a magistrate may be denied full information about a child or young person's emotional or therapeutic needs, or relevant background information which could help explain the circumstances of the offending. Other stakeholders (lawyers, agency staff and service providers) expressed similar concerns, suggesting that dual involved children and young people may be subject to extended and unnecessary periods of detention, especially if release hinges on placement availability.

All dual involved children and young people interviewed for the SADI Project reported being in detention for breaching their bail conditions at some time, not their primary alleged offence. Those breaches almost always related to placement in residential care (e.g. missing their curfew, or not residing at the placement which functioned as their bail address). Many reported not feeling safe or cared for at that placement, with some frequently going missing to spend time with their family. Children and young people under the age of 14 are particularly affected by breach of bail, likely due to the nature of complex bail conditions placed on them, and the over-policing and reporting that takes place in the residential care environment.¹⁰¹

The extent to which dual involved children and young people report being unable to access bail, or released on inappropriate bail conditions that exacerbate their involvement with the youth justice system, suggests that current bail practices are not appropriate. Assessing and responding to this issue requires collaboration between SAPOL, the Youth Court and DCP.

¹⁰¹ K McFarlane (2015), n 12, 135-6.

4.6.2 DCP's support role in Court

Good practice suggests that personal support should be available from a responsible person whenever a dual involved child or young person attends court, just as we would expect a parent to do for a young person who lives with family. DCP representatives, or other carers, however, are not always present, so there may be no support to help a child or young person understand what is happening to them. Only one of our interviewees specifically said that they did not want DCP staff to attend court with them.¹⁰²

Well, they weren't there, you know, to sit through with you, but in here [KTY]C, in here you got like the workers that'll sit there and they'll explain everything he's saying to you. They'll put themselves on mute so they, like obviously they can't hear. And when you go off in court, so say, for example, if [I got] like ten months, you know, and you go off, you get like, you'll get like tackled. So, if you're here you're, if you go off, like they'll just turn the video link off and you'll sit there and just cry, you know.

An absence of 'parental' advocacy both at the police station and the court, as well as agencies' failure to meet their legislative and regulatory obligations by assisting children before the court, exposes some children and young people in care to harsh judicial penalties and the increased risk of incarceration.¹⁰³

While some positive support experiences were mentioned,¹⁰⁴ 11 project participants observed that they had not felt supported by their allocated DCP worker when they attended court. Two young people said that their DCP representative did not speak when they did attend, while other interviewees said that they might not even have met the DCP person who turned up, or that different people attended at different times. An experienced young person was clear about the importance of DCP support in court -

Yeah, the, yeah, the judge kind of looks at me differently, "Oh, he's got support. You know, we should try and help him." When they're not there they just would sentence me or something, you know. Yeah, it's a, it's a, fucking oath, it's a different, yeah, way different.

The potential importance of the support role can be appreciated by one young person's comparison of the attitudes of two staff members -

[the carer] gives a shit about me, and when I went there, he actually stuck up for me and said that I was doing the right thing, though there was a few times that I'd fucked up. He didn't say that. He said that I was doing the right thing, which then kept me out. My social worker goes in and she goes, "Yeah, he did this, did that, did this, did that," and it was just like she didn't give a shit so - yeah.

¹⁰²"Yeah, they [DCP] always are [in court] but I don't like them in. I want it myself. It's none of their business. I don't like them there 'cause before I went in care and when I was in, when I was on bail I always went to court by myself 'cause I didn't want no one coming with me, but they always reckon that they can, they can come with me if they want but if I tell them to fuck off they don't. ...They just don't say anything. They listen and then they write in the logbook."

¹⁰³ K McFarlane (2015), n 12, 219.

¹⁰⁴ Asked whether DCP support them at court, one young person was clear: "They try very hard to get me out."

4.6.3 Child-friendly court practices

The Law Council of Australia's Justice Project identified barriers to justice for children and young people in a system designed for adults and which struggles to accommodate different communication needs. Moreover, children and young people also must deal with their dependency on adults and possible psychological barriers¹⁰⁵ that are likely to be exacerbated for those in care, with child protection systems across Australia often failing "to provide high quality, culturally safe or 'child-focused' care [while] staffed with inexperienced workers."¹⁰⁶

Our interviewees commonly told us that, when appearing before the Youth Court, a magistrate had not spoken directly to them, and they only had a limited ability or opportunity to instruct their solicitor.

Children and young people can be disadvantaged due to age-related communication barriers and poor social communication skills, particularly those who have low literacy levels, poor mental health, cognitive or intellectual impairment, and oral language disorders. Some simply do not speak or read in English as a first or even second language. Very young dual involved children and young people commonly exhibit such characteristics.

Specialist child-friendly legal assistance and access to specialist children's courts services play a critical role in ensuring access to justice, but access to these services across Australia is highly limited, which is exacerbated by a lack of lawyers with necessary specialist skills.¹⁰⁷

4.6.4 Attendance at court

Children and young people expressed different views about preferences for attending Court in person or doing so remotely. The nature of the cells and the drawn-out process involved at the Adelaide Youth Court were mentioned as disincentives for personal attendance. For others, personal attendance was valued as they believed they were more likely to be released.

[I prefer] video linkup 'cause when you go to court you have to sit in the frigging cells all day until everyone's finished, you know, then you go back. That's the way, and so video linkup is way better.

Yeah, it takes all day, man. I've been in the court where we got there at like 9.30 and like went back at 5 o'clock, man ... Yeah, so it's a lot shittier going to court 'cause you're stuck in a cell all day and you don't get to do nothing--

Our interviewees assumed that they would have very limited time to speak with their lawyer, sometimes only for minutes immediately prior to the hearing. Most had limited understanding of what was happening in the court process, simply focussing on whether they would be remanded or released on bail.

¹⁰⁵ Law Council of Australia, *The justice project final report part 1: Children and young people* (2018), 18-24.

¹⁰⁶ *Ibid*, 48.

¹⁰⁷ *Ibid*, 4.

Recommendations

Recommendation 12 – Bail and remand

That DCP, SAPOL and the Youth Court collaborate to investigate and address the relationship between bail-related offences, residential care, remand and detention by –

- a. Reviewing bail and remand practices to identify discriminatory impacts for children and young people in residential care. The review should specifically consider:
 - i. Curfew and non-association bail conditions;
 - ii. The extent to which bail is denied due to unsuitable DCP placements and/or on DCP's request;
 - iii. Cautioning or charging a child or young person with the offence of breach of bail; and
 - iv. Sentencing for the offence of breach of bail.
- b. Developing alternative diversionary responses for children and young people who breach bail for offences committed while in residential care (including to prevent the subsequent impact of remand on placement stability).

Recommendation 13 – Supporting children and young people in court

That DCP deploy additional resources and efforts to attend court as the corporate parent for children and young people in care.

4.7 Kurlana Tapa

4.7.1 Detention: a social convenience or a last resort?

Kurlana Tapa often appears to serve as an alternative placement for dual involved children and young people whose behaviours are deemed difficult to manage in a community setting. The SADI Project clarified that some children and young people are unnecessarily detained at Kurlana Tapa simply because suitable child protection placements are not available. This contravenes Article 37b of the *Convention on the Rights of the Child* which states that a child or young person must only be detained as a last resort, and for the minimum amount of time possible and that –

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*¹⁰⁸

This obligation is embedded in State Law in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* which states that –

*Each State authority must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the United Nations Convention on the Rights of the Child and any other relevant international human rights instruments affecting children and young people.*¹⁰⁹

Improved communication and information sharing across government departments, and better, child focussed policies and processes that respond to the needs of the dual involved could alleviate current problems and stop a child's best interests becoming secondary.

Yeah, and then like they couldn't place me be back down in like the northside because I didn't like it down there. I was from the westside ... so they were taking me away from where I was from.

Several young people told us that DCP representatives had advocated for further detention (with one alleging that this was done maliciously). A young woman observed that DCP representatives did not necessarily advocate on her behalf, and even tried to get her in more trouble (although she acknowledged that some of their comments were true) –

No, sometimes they try and get me into more trouble. Like one time the thing was like, "Is, do you reckon she's suitable to go back to placement?" and one of the carers was like, "Well, she keeps blowing it. You see, she never comes home and she doesn't go to school," like then feel like I'm like real bad, you know, and sometimes they're, "Oh, we'll keep her in here

¹⁰⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 3.1.

¹⁰⁹ *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, s 5.

for longer than," and so I've gone, "so what the fuck man," when she could have said, "Yeah, she's right to come home." I would agree to that, and I would have got out. I only had to do three days and I got out.

It is disturbing that there may be instances where DCP staff hold the view that detention is the best option for a dual involved child or young person. The case study below demonstrates how even short periods in detention can contribute to significant harm.¹¹⁰

Case Study – dual involved young person in a Muggy's (independent living) placement

A young person was flagged with DCP disability coordinators for months prior to their detention but the DCP coordinator had no capacity to assess them. Muggy's staff completed a Vineland assessment¹¹¹ with DCP prior to the young person being held on remand.

The young person struggles to maintain a hygienic and clean property and was reluctant to engage about this. They had made some progress through working with Muggy's for several months to address the cleanliness of the property. They were then detained at KTYJC on remand.

KTYJC requested assessment of the young person's Muggy's property for home detention purposes. This was denied as the property was deemed unsuitable due to 'unhygienic conditions'. Muggy's staff were asked to clean the property before they could return, despite their preference for walking alongside young people to help them learn independent living skills, prioritising working *with* young people and not doing things *for* them.

Muggy's and DCP advocated for home detention release to allow the young person to work with Muggy's to clean the house together. This request was denied. Muggy's staff cleaned the house in order to have the young person released as soon as possible.

Muggy's confirmed with Centrelink that the young person's payments had been cut whilst in detention and advised that reinstating them would take some time. Muggy's requested DCP pay the rent while the young person was in detention so that they did not incur a debt. This request was denied twice.

When the young person was released on a Friday, the DCP social worker who had planned to pick them up was sick and had organised a taxi and gave Muggy's \$150 in food shopping vouchers to get them through the weekend. The DCP social worker contacted KTYJC about the young person's Centrelink payments but did not hear back from them. Muggy's followed this up independently leading to the payments being restored six days later.

The young person needed to sign paperwork to receive a crisis payment but became very avoidant once released. Muggy's attended the property twice a day to ask them to secure the

¹¹⁰ This case study was provided by Muggy's, which is an organisation providing independent living accommodation and support for 16–18-year-olds in care.

¹¹¹ Vineland assessments are tools supporting diagnosis of intellectual and developmental disabilities.

necessary signature, but no contact could be made. The deadline for the crisis payment lapsed.

The young person had approximately \$500 in rent arrears when released, putting them at increased risk of homelessness and renewed contact with the youth justice system.

4.7.2 Non-therapeutic detention environments

The dual involved constituted 34.3 per cent of Kurlana Tapa's average daily population in 2020-21,¹¹² an increase of almost 10 per cent since the TCV began reporting in 2017-18.¹¹³ Despite this, there appear to be no specialised planning or programs for a cohort that is probably at greater risk of intensified trauma and the effect of institutionalisation. The possibility of further preventable harm should not be ignored.

The Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') states that one of a justice system's main objectives must be a child's wellbeing.¹¹⁴ Children and young people must be placed in the type of care best suited to their needs, and which protects their physical, mental, and moral integrity and wellbeing.¹¹⁵

Few who participated in the SADI Project believed that that they received therapeutic care while detained in KTYJC. Instead, they reported limited rehabilitation opportunities, interrupted schooling and were subject to isolation primarily due to staff shortages or restrictions associated with behaviour management practices (all exacerbated by COVID requirements). It is clear that there continues to be a dearth of suitable or sufficient programs, irrespective of operational difficulties associated with COVID arrangements. The SADI Project also established that some dual involved children and young people were held in detention without their mental health or capacity being established.

Kurlana Tapa has the ongoing challenge of dealing with cultural blindness, with little evidence available to the SADI Project to suggest the Aboriginal and Torres Strait Islander Youth Justice Principle is embedded deeply into practice, despite the average daily population constituting 55.3 per cent Aboriginal children and young people in 2020-21.¹¹⁶ We note, however, the strong commitment of many staff and managers in this context.

Dual involved children and young people have often experienced trauma throughout their lives which can be compounded when in detention through exposure to violence, being restrained, or simply from the detention environment itself. It is concerning however, that

¹¹² TCV, *Training Centre Visitor Annual Report 2020-2021* (2021) ('Annual Report 2020-2021').

¹¹³ In 2017-18, 24.4 per cent of the average daily population were in care. *Ibid.*, 68.

¹¹⁴ UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, 29 November 1985, A/RES/40/33, r 5.

¹¹⁵ *Ibid.*

¹¹⁶ TCV, 'Annual Report 2020-2021', n 112, 66.

increasingly, dual involved children and young people report that they feel safer in the KTYJC than they do in their residential care placement.

Dual involved children and young people are younger on first entry into the youth justice system, have high rates of disability, and both girls and Aboriginal children and young people are overrepresented in the dual involved population. The youth detention environment is often unable to provide specialist care and rehabilitation, especially for those with intellectual disabilities or a range of socio-developmental issues.

The TCV's report *Great responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)* recommended that the Kurlana Tapa operational model be reviewed to establish whether it helps meet the rehabilitative goals of the *Youth Justice Administration Act 2016*.¹¹⁷ For the purposes of the TCV Annual Report 2020-21, DHS advised that progress had been made with respect to this recommendation, however the nature of that progress is not clear.¹¹⁸

The unavailability of operational staff to fill shifts at KTYJC over the course of the SADI project has resulted in children and young people spending prolonged periods of time isolated and locked in rooms, missing off-site appointments, having very limited opportunities for off-site leave, and experiencing inconsistent schooling due to delays in starting lessons or cancelled classes. This is particularly damaging for dual involved children and young people.

Yet, as noted already, dual involved detainees overall felt *more* supported by KTYJC staff than those with whom they interacted in residential care (although positive and negative comments were made about both).

Some of them are all right. Some of them treat you like shit when they are - like so if you be nice - if, if you treat them like shit, they'll treat you like shit. If you treat them with respect, they'll treat you with respect.

The *Young Offenders Act 1993* creates an expectation that when police and courts charge and sentence children and young people, they will receive the correction and guidance necessary to develop into responsible and useful members of the community and properly realise their potential.¹¹⁹ It is difficult to ascertain the extent to which these objects are met for dual involved children and young people detained at Kurlana Tapa.

¹¹⁷ *Youth Justice Administration Act 2016*, s 3.

¹¹⁸ TCV, 'Annual Report 2020-2021', n 112, 53.

¹¹⁹ *Young Offenders Act 1993*, s 3(1).

4.8 Interagency relationships and responsibilities

A consistent theme identified in the Nyland Report,¹²⁰ as well as interstate inquiries and Royal Commissions,¹²¹ is the critical need to improve collaboration and cooperation between agencies involved in the care of children and young people.

Early in the SADI Project and following release of the interim report in 2021, we convened discussion sessions with youth justice and child protection service providers and administrators from both government and NGO sectors. Common concerns included inadequate information sharing and the efficacy of case coordination and case leadership by DCP. This is a critical issue given the multiple services usually involved in the lives of dual involved children and young people.

Both DCP and DHS are required to undertake screenings and assessments of children and young people when they enter their care. These assessments should identify their health, wellbeing, and educational needs. The extent to which this information is shared consistently between DCP and DHS is unclear, as is the degree to which either system responds to or coordinates follow up to matters identified during assessments across relevant agencies.

Dual involved children and young people and youth justice and other workers expressed diverse views about the responsiveness and support they receive from DCP social/case workers. A common view was that it can be very difficult to contact DCP case workers, get necessary information from them or have necessary discussions in a timely way, if at all (especially if the worker is new to DCP or is newly assigned to that child or young person).

The overall view arising from consultation was that DCP workers often lack resources and sufficient understanding of youth justice processes to be able to support their clients to navigate the youth justice system effectively. Many dual involved children and young people we spoke with said they had little or no communication or support from DCP while in detention. Continuity of care was not evident.

Bluntly stated, it appears that DCP workers often adopt a 'hands off' approach when children and young people in care are detained. DCP is the corporate parent of those in care, yet once a dual involved child or young person is detained at Kurlana Tapa, KTYJC effectively assumes this primary role, with no guarantee that necessary information has been shared or case management arrangements put in place. This is highly inappropriate, as advocacy matters progressed by the Senior Advocate during the SADI Project highlighted systemic failure to

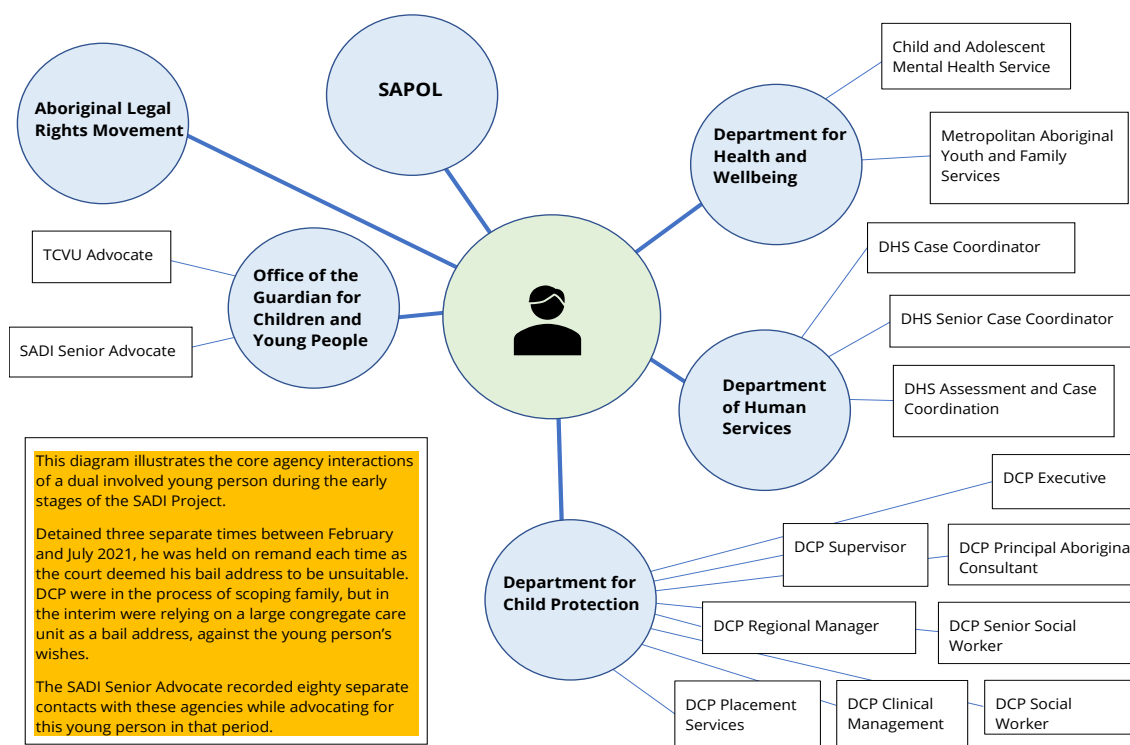
¹²⁰ Nyland, n 15.

¹²¹ See, eg, NT Royal Commission, n 59, vol 3B, 30-31.

meet many of the basic rights outlined in the Charter of Rights for Youths Detained in Training Centres.¹²²

For support workers, incarceration sometimes provides an opportunity to engage with young people when it may previously have been difficult. Needs can be identified with referrals then made to suitable services and community support. Various assessments can occur that probably would not proceed if a young person was not in custody. Yet the dual involved often fall through service gaps, even when staff actively, even doggedly, try to navigate between agency silos.

An unintended effect of this environment expressed by some of our young dual involved interviewees was a feeling of being overwhelmed by the sheer number of people and services that cycle through their lives. The depersonalised (and, for some, overly simplified) accompanying diagram illustrates the range of service/support providers who may be involved in a dual involved young person's life.



¹²² Available at <<https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/07/TCV-COR-poster-full-text-reduced.pdf>>. Reported in some detail in TCV, 'Great responsibility', n 77.

Our young interviewees often expressed a sense of abandonment by DCP and a view that they have better relationships with KTYJC staff and case coordinators. In practice, most came to see their DHS Case coordinator within Kurlana Tapa as the gatekeeper to their futures. This is consistent with the perception service providers expressed that DCP abdicates responsibility for case management leadership for children in care once they enter detention. The SADI Senior Advocate also observed this common (but not universal) tendency for DCP case managers to relinquish primary case responsibility once a child or young person was detained.

South Australia's Youth Justice State Plan 2020–2023, released in June 2020, contains a commitment from DHS to partnering with DCP to better meet the needs of dual involved children and young people. The May 2021 progress update reported this work as 'completed', with a shared action plan developed in "partnership with DCP to strengthen connections and work towards better outcomes for children and young people in both the youth justice and child protection systems."¹²³

A specialist team within DCP would build expertise and facilitate collaboration with DHS and other agencies, to help prevent children and young people in care from entering (or re-entering) the youth justice system and to better support them should they offend.

¹²³ Available at: <<https://dhs.sa.gov.au/services/youth-justice/youth-justice-state-plan/youth-justice-state-plan-20202023-progress-report>>.

Recommendations

Recommendation 14 – A specialist DCP ‘dual involved’ team

14.1 That DCP establish a specialist ‘dual involved team’ with the role of –

- a. Providing, expert and intensive support to children and young people involved in the youth justice system;
- b. Functioning as a central contact point for other relevant agencies and service providers for dual involved children or young people;
- c. Ensuring that placements are available for dual involved children and young people when they are released from Kurlana Tapa;
- d. Coordinating appropriate bail addresses and bail support to reduce the incidence of dual involved children and young people breaching bail conditions; and
- e. Providing intensive case management to facilitate better access to established mainstream service providers and support while young people are within Kurlana Tapa.

14.2 That the specialist DCP dual involved team include Aboriginal designated positions.

4.9 Transition planning

The SADI Project noted poor transition processes both when children and young people were released from KTYJC into residential care, and when they turned 18 (and were no longer under child protection orders). Transition from care planning appears to be in crisis and is often rushed, although the transition is foreseeable. In some cases, this causes children and young people extreme anxiety about their future and can lead them to feel 'fatalistic' that they will inevitably 'graduate' into the adult corrections system.

Service providers reported that last-minute or poorly communicated placement decisions for dual involved children and young people upon their release led to poorer service access, planning, and support. Despite much good work, this can undermine the likelihood of successful disengagement from the youth justice system.

With dual involved detainees mostly being held on remand, time in KTYJC detention can be brief, as can notice of release. This makes it difficult for support programs to plan and deliver throughcare, especially to ensure placements are available when a young person is released.

Some, while detained at KTYJC, were advised that their placement in the community had been closed (to enable a different child or young person to use the room), their belongings packed up, and that they would move to a different placement upon release. This creates stress and exacerbates placement instability.

Uncertainty and a lack of planning ahead for release can increase the chances of dual involved children and young people breaching bail conditions or reoffending, as Kurlana Tapa provides food, shelter, and a routine that can help dual involved children and young people feel more stable.

The SADI Senior Advocate particularly noted that transition-from-care plans are generally poorly executed, a problem compounded for those detained at Kurlana Tapa (who may experience difficulties in accessing services while in detention). When asked about their transition from care plan,¹²⁴ one young person (almost 18 years old) told the Senior Advocate "I don't know anything, nothing at all." This is concerning, especially given the level of service involvement in their life and that transition planning from care should start when they are fifteen. The young person went on to say –

I bet you like a couple of months, not even a, yeah, couple of months off turning 18 do it then. I'm going to end up in the big house, bro, you watch. I'm going to end up there, and I don't want to but where else is there to go, you know? Where there's nowhere to go on the outside I'll end up back in here, so when I'm on the outside and there's nowhere to go, can't come in here so where am I going to end up? In the big house.

¹²⁴ Young people in care should begin preparing to transition out of care in collaboration with their case worker and carer/s from the age of 15 years, based on a consultative 'transition from care plan'.

The TCV's visiting program has made us aware that multiple children or young people from large congregate care units can be detained simultaneously at Kurlana Tapa and are often then released back into the unit within which the offending occurred. Sometimes they welcome this return, other times not. In effect, they are placed in an environment that recreates the risk of breaching bail and further entanglement with the youth justice system.

The transition from detention back to care is an important opportunity to reflect on the experiences and factors which led to a child or young person's youth justice involvement, and plan supports to prevent further contact. If minimal (or no) effort is made to change those circumstances, the systems that are designed to protect and care for children and young people have failed.

Recommendations

Recommendation 15 – Improved transition planning

15.1 That DCP take primary responsibility for planning all transitions out of detention for dual involved children and young people.

15.2 That DCP collaborate more effectively with DHS and other relevant agencies to plan for transitions by –

- a. Developing timely plans for transitioning back into the community and/or transitioning from care, in consultation with dual involved children and young people;
- b. Recognising the potentially disruptive effects of transitioning out of detention into community living or 'ageing out' of care;
- c. Retaining placements that are valued by detained children and young people (to maintain accommodation stability and minimise disruptive moves); and
- d. Co-ordinating interventions and services that provide dual involved children and young people with care, rehabilitation, support and development opportunities.

5. Conclusion

South Australia's child protection legislation and associated care system aim to ensure that children and young people are safe and protected from harm.¹²⁵ The SADI Project suggests that DCP and other responsible agencies do not achieve this core goal for some children and young people in residential care, especially those who end up detained at the KTYJC.

Harmful or inappropriate decisions are made at different levels of the decision-making hierarchy that have associated problems and possible lifelong implications. It is difficult to avoid the conclusion that ongoing child protection system practices such as poor placement matching, problematic staff training or competency expectations, and a propensity to call police to manage behaviour in residential care constitutes systems abuse. These practices foreseeably cause harm to children and young people and help propel them deeper into the youth justice system.

Experiences within the youth justice system are often harsh, alienating and at odds with a child or young person's health and developmental needs and goals. Systemic problems manifest at every stage of a child or young person's engagement with the youth justice system, with the SADI Project unable to establish that much specifically was being done to address the serious over-representation of children and young people from residential care in detention. It is doubtful whether our current processes comply with the principle of proportionality set out in the Beijing Rules.¹²⁶

The findings of the SADI Project strongly challenge the view that the overrepresentation of children and young people who are in residential care entering the youth justice system is in any way a result of the personal characteristics of those individuals. Children and young people in residential care are not inherently criminal. But the experiences they face in the residential care system, and the inability of residential care and youth justice systems to respond to their unique needs, makes their criminalisation more likely than for other children and young people.

The reasons for the systemic failings identified by the SADI Project are complex, interconnected and require whole-of-government collaboration. We acknowledge that these issues are deeply rooted in the care and youth justice systems, and change takes time. We welcome and are encouraged by initiatives underway to address systemic issues.

¹²⁵ *Children and Young People (Safety) Act 2017*, s 7.

¹²⁶ Rule 5 of the Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules) states that: '*The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.*'

However, the challenges of implementing change do not excuse relevant agencies from acting with appropriate urgency.

The recommendations in this report set out immediate actions that can and should be taken to reduce the reliance on residential care as a placement option, improve safety, stability and therapeutic supports for dual involved children and young people in care and properly act on intervention points at all stages to minimise contact with the youth justice system.

Implementing these recommendations as a matter of priority is essential to meeting the child protection system's primary function: to keep children and young people safe.

Appendix 1

South Australian Dual Involved Project – data relating to individuals

This attachment consolidates key data used for SADI Project purposes. It has not been subject to external cleansing or verification and is reliant on the accuracy of DCP and DHS/KTYJC data entry, although corrections have been made to identified errors.

While recognising the need to be cautious about drawing conclusions from a relatively small sample of 71 individual dual involved children and young people, we think it is valuable to describe what we can about South Australia's dual involved.

For SADI Project purposes, the term 'dual involved' describes children and young people in care who are or have been placed in detention pursuant to an order under the *Young Offenders Act 1993*.

Interpretive note

- Data was compiled for the SADI Project period - 1 February to 31 December 2021.
- Attribution of characteristics such as the age, gender, Aboriginal status, disability status, and placement status is that applicable at the point of a first admission to Kurlana Tapa Youth Justice Centre (KTYJC).
- This means that this paper does not reflect the fact that a few individual characteristics may have changed during the project period: for example, a young person may have been diagnosed with a disability after their first admission or had a birthday.
- Data relating to placement and disability status were kindly provided by DCP.
- Other data was extracted from the KTYJC daily population list and as such may reflect occasional errors in that 'dynamic' data report.

Overall dual involved population

Total SA dual involved population, 1 February – 31 December 2021

	N	%		N	%
Total individuals	71	100	Total NFBC ¹²⁷	64	90.1
Total admissions	240	100	Admissions NFBC	225	93.8
Total 10-13 y/o	18	25.4	Total with a disability	26	36.6
Admissions of 10-13 y/o	81	33.8	Admissions disability	90	37.8
Total Aboriginal/TSI	30	42.3	Total NDIS plan	15	57.7
Admissions Aboriginal/TSI	94	39.2			

Seventy one individual children and young people in care were detained at some stage in Kurlana Tapa between 1 February and 31 December 2021, some multiple times, a figure broadly consistent with full year numbers.¹²⁸

These 71 individuals were admitted to Kurlana Tapa 240 times, an average of 3.4 admissions each, 21 of whom had four or more admissions. Dual involved children and young people exceed the average admission rate of 2.3 admissions each.¹²⁹

One dual involved young person was detained 17 separate times in the study period.

The 21 who had four or more admissions comprised 29.5 per cent of dual involved young people and accounted for 158, or 65.8 per cent of all admissions.

¹²⁷ NFBC refers to *Non-Family Based Care*, which, in the study cohort comprised 71 individuals.

¹²⁸ TCV, 'Annual report 2020-2021', n 112, 12. 78 dual involved children and young people were detained at KTYJC between 1 July 2020 and 30 June 2021.

¹²⁹ Ibid.

About two thirds of all dual involved children and young people were already known to our office through previous work.

These **71 dual involved individuals** who made up the study cohort had the following characteristics –

- **25 were girls/young women** (35.2 per cent). This compares with only 21.8 per cent of detainees being female in the most recent annual data compilation shows that only 21.8 per cent of all individuals detained were girls (the highest rate since our reporting commenced).¹³⁰ Dual involved girls, therefore, are seriously overrepresented.
- **46 were boys/young men** (64.8 per cent)
- A small number of **transgender dual involved young people** were detained. They are accounted for within data for the gender with which they identify to ensure confidentiality (neither DCP nor KTYJC provide annual data about children and young people who do not identify within the standard male/female gender binary).
- 18 detainees were **under the age of 14 years** at their first admission during the project period) (25.4 per cent). This proportion is very high compared to 202-21 annual data which reports the figure of 16.7 per cent.¹³¹
- 30 of the 71 dual involved children and young people identified as **Aboriginal** (42.3 per cent), consistent with last year's annual proportion.
- 26 dual involved detainees had been assessed as having a **disability** (36.6 per cent). There is no equivalent annualised data for this category.
- 64 of the 71 were living in **non-family-based care, primarily residential care** at the time of their first admission during the project period (90.1 per cent). Given that residential care overall only accounts for about 13 per cent of all placements, the figure of 64 indicates a significant overrepresentation in our study cohort.¹³²

¹³⁰ Ibid, 13.

¹³¹ Ibid, 12.

¹³² DCP reported that 605 children and young people lived in residential care out of the overall care population of 4,679 on 31 December 2021: <<https://www.childprotection.sa.gov.au/department/reporting-and-statistics>>.

Dual involved children and young people living in family-based care (at first admission)

Of the 71 dual involved children and young people, only seven lived in family-based-care placements (9.9 per cent), despite those living in family-based-care accounting for 86.2 per cent of the total care population in South Australia.¹³³

Significant groups of dual involved children and young people

Girls and young women					
	N	%		N	%
Total no individual girls	25	35.2	Total girls NFBC	22	88.0
Total no admissions girls	65	27.1	Admissions girls NFBC	62	95.4
Total 10-13 y/o girls	8	32.0	Total girls with a disability	6	24.0
Admissions of 10-13 y/o girls	19	29.2	Admissions girls with a disability	25	38.5
Total Aboriginal/TSI girls	11	44.0	Total girls with an NDIS plan	4	66.6
Admissions Aboriginal/TSI girls	26	40.0			

It is extremely concerning that 29.2 per cent of dual involved females were girls aged under 14 years (8 of 25).

McFarlane discusses this degree of prevalence in the context of long-standing attitudes that girls in care are in 'moral danger' and in need of surveillance. A propensity then to use the criminal justice system to 'scare them straight' represents a continuing failure to distinguish between vulnerable children and violent criminals.¹³⁴ It also would suggest that the care system is not equipped to deal adequately with some developmental aspects of adolescence.

¹³³ DCP data indicates that on 31 December 2021, 4,031 children and young people lived in family-based care (of 4,679 children and young people in care): <<https://www.childprotection.sa.gov.au/department/reporting-and-statistics>>.

¹³⁴ This is explored in detail in K McFarlane (2015), n 12, 15.

Boys and young men

	N	%		N	%
Total individual boys	46	64.8	Total boys NFBC	42	91.3
Total admissions boys	175	72.9	Admissions boys NFBC	163	93.1
Total 10-13 y/o boys	10	21.7	Total boys with a disability	20	43.5
Admissions of 10-13 y/o boys	62	35.4	Admissions boys with a disability	65	37.1
Total Aboriginal/TSI boys	19	41.3	Total boys with an NDIS plan	11	55.0
Admissions Aboriginal/TSI boys	68	38.9			

Constituting 64.8 per cent of all individuals admitted to Kurlana Tapa during the project period, dual involved boys and young men accounted for 72.9 per cent of all admissions, probably due to 10 boys aged between 10 and 13 (inclusive) who were detained 62 times, an average of 6.2 times each, double that of the entire dual involved cohort.¹³⁵

Nineteen Aboriginal boys and young men were detained, 41.3 per cent of all dual involved males.

Twenty of the boys and young men had a diagnosed disability (43.5 per cent), 11 of whom had a current NDIS plan (55.0 per cent of those with a disability). Six had NDIS applications in progress at the time of their first admission to Kurlana Tapa during the project period. These 20 boys and young men were admitted to KTYJC 65 times, accounting for 37.1 per cent of admissions for males, which demonstrates a lower admission rate compared to overall rates for dual involved children and young people.

¹³⁵ Although this high rate would have increased the overall cohort's average.

Aboriginal dual involved children and young people

	N	%		N	%
Total no individual Aboriginal DICYP	30	42.3	Total Aboriginal DICYP NFBC	25	83.3
Total no admissions Aboriginal DICYP	94	39.2	Admissions Aboriginal DICYP NFBC	81	86.2
Total 10-13 y/o Aboriginal DICYP	8	26.7	Total Aboriginal DICYP with a disability	12	40.0
Admissions of 10-13 y/o Aboriginal DICYP	30	32.0	Admissions Aboriginal DICYP with a disability	44	46.8
			Total Aboriginal DICYP with an NDIS plan	8	66.7

Thirty Aboriginal dual involved children and young people were detained during the project, 42.3 per cent of the dual involved population. Whilst still massively overrepresented,¹³⁶ this rate follows the overall trend of a reduction in the rates of Aboriginal youth incarceration in line with commitments made as part of Closing the Gap Targets and Outcomes.¹³⁷

However, 83.3 per cent of Aboriginal dual involved children and young people were placed in non-family-based care, bringing into question compatibility with cultural safety standards established in the Aboriginal and Torres Strait Islander Child Placement Principle.

SNAICC asserts that residential care must only be used as an option of last resort.¹³⁸

¹³⁶ Aboriginal children and young people account for approximately 5 per cent of the state's child population.

¹³⁷ For more information generally about South Australia's progress on reducing overrepresentation of Aboriginal children and young people in both the child protection and youth detention systems as per Closing the Gap Targets and Outcomes, see OGCYP, *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021* (2021).

¹³⁸ SNAICC, *The Aboriginal and Torres Strait Islander Child placement Principle: A guide to support implementation* (2018).

10-13 year old dual involved children (age at first admission)

	N	%		N	%
Total no 10-13 y/o DICYP	18	25.4	Total 10-13 y/o DICYP NFBC	18	100
Total no admissions 10-13 y/o DICYP	81	33.8	Admissions 10-13 y/o DICYP NFBC	81	100
Total Aboriginal/TSI 10-13 y/o DICYP	8	44.4	Total 10-13 y/o DICYP with a disability	6	33.3
Admissions Aboriginal/TSI 10-13 y/o DICYP	30	37.0	Admissions 10-13 y/o DICYP with a disability	30	37.0
			Total 10-13 y/o DICYP with an NDIS plan	4	66.7

No dual involved 10-year-olds were detained at Kurlana Tapa during the project period, but five 11-year-olds were.¹³⁹

The 10-13 (inclusive) cohort had high rates of repeated detention (averaging 4.5 times each, however, one was detained 17 times, and two others, 12 and 10 times). This suggests that incarceration does not effectively provide the “care, correction and guidance necessary for their development into responsible and useful members of the community” as required by the *Young Offenders Act 1993*.¹⁴⁰ The minimum age of criminal responsibility should be raised, with more effective measures put in place to address offending by the very young.

Reliance on detention also suggests that the common law doctrine of *doli incapax* (which assumes that children under the age of 14 years do not have the necessary mental capacity to

¹³⁹ South Australia’s minimum age of criminal responsibility is 10 years: *Young Offenders Act 1993* (SA), s 5.

¹⁴⁰ *Young Offenders Act 1993* (SA), s 3.

be held responsible for committing a crime) is not operating as an effective protection mechanism for this vulnerable cohort.¹⁴¹

Dual involved children and young people with a diagnosed disability

Dual involved boys had a much higher rate of diagnosed disability compared to girls (43.5 and 24.0 per cent respectively). We suspect that the actual rates are higher, as suggested by the Kurlana Tapa Disability Screening Assessment Project¹⁴², and the Banksia Hill (Western Australia) study which demonstrated that nine out of every ten children or young people in detention had a disability or a disability-related need, or a severe neuro-disability.¹⁴³

Only 57.7 per cent of those recognised as having a disability in our 2021 study cohort had an NDIS plan in place, although several assessments were underway, and some children and young people did not qualify.

These children and young people appear to be falling through multiple service gaps, yet their behaviour may be disability-related and directly impact upon their criminalisation. The OGCYP is not satisfied that the justice system (including the police, courts, and KTYJC) adequately caters for children and young people who may have significant communication barriers and developmental disabilities. Nor are we confident some with diagnosed disabilities that indicated that their 'developmental' age did not align with their chronological age were being adequately supported.

Dual involved children and young people living in non-family-based care (at first admission)

Soberingly, of the 71 dual involved children and young people detained during the project period, 64 (or 90.1 per cent) were living in non-family-based care, mostly residential care.

Most dual involved children and young people we spoke with reported that their first youth justice interaction occurred soon after entering residential care. Often, this was seen to be a way of fitting in with their new environment and peers. Going missing from their placement then drew them further into the youth justice system by breaching bail conditions.

We did collect some information about the nature of precipitating offending. Of those we interviewed, 73.3 per cent stated they had been charged with assaulting carers (11 of 15 dual

¹⁴¹ For more information about *doli incapax*, see the TCV's blog post: <<https://gcyp.sa.gov.au/2019/02/19/doli-incapax-and-odd-word-with-profound-significance-for-south-australian-children/>>. For the human rights implications of SA's minimum age of criminal responsibility, see: <<https://gcyp.sa.gov.au/2020/03/06/call-to-raise-the-minimum-age-of-criminal-responsibility/>>.

¹⁴² Department of Human Services, *Disability screening assessment project report: Identification of population needs at the Adelaide Youth Training Centre (Kurlana Tapa)* (2020).

¹⁴³ C Bower, et al, *Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia* (2018).

involved children and young people living in residential care), and 86.7 per cent said they had been charged with property damage offences (13 of 15 dual involved children and young people living in residential care), the latter highly unlikely to lead to a charge for child living in a family home.

The Individual Advocacy Model during the SADI Project

an explanatory note for the Final SADI Report, April 2022

Seventy one dual involved children and young people were detained at some time at Kurlana Tapa during the term of the SADI Project (February to December 2021). The Senior Advocate prepared 20 formal Advocacy matters for them (affecting 18 individuals), seven of which were presented during the term of the project, with the rest carried over for subsequent carriage by GCYP and TCV Advocates.¹⁴⁴

The main issues raised related to inappropriate placements (usually in residential care) or wanting to live with or have contact with family. Advocacy also was undertaken for some young people who turned 18 whilst detained, and who therefore were no longer under guardianship orders.

As usual with GCYP and TCVU work, most issues did not progress to formal advocacy and were addressed in other ways as briefly described below with respect to the work of the SADI Senior Advocate.

Query and matters for immediate resolution

A 'query' was raised when a dual involved child or young person (or concerned adult) requested support or advice. Issues often initially arose during Senior Advocate visits to Kurlana Tapa, usually as part of the TCVU Visiting Program. Detainees sometimes initiated contact through (unmonitored) phone calls. Most queries were resolved quickly and relatively informally with the assistance of KTYJC or DCP staff or management. If this was not possible and further assessment warranted, the query moved to an assessment phase.

Assessment

Relevant information is sought and collated during the assessment phase to determine whether to proceed immediately with a formal advocacy position about a specific matter. Alternatively, it could be monitored (see below).

¹⁴⁴ Outstanding Advocacy matters at the conclusion of the SADI Project were added to the existing load of the Guardian's Advocacy Team, which will continue to provide this support to dual involved children and young people from this point on. The TCVU will do so for issues relating to their 'care, treatment and control' in detention.

Monitoring

The Senior Advocate could monitor an issue that may at some point require escalation to formal advocacy. Monitoring often was appropriate where consensus had been reached among various stakeholders about how a child or young person's concern could best be managed to resolve the presenting issue/s of concern. Monitoring involved assessment of whether the matter was being addressed in a child-centred way within an acceptable timeframe and required regular contact with the child or young person and DCP and other involved agencies.

Advocacy

An Advocacy position was developed when the Senior Advocate had the necessary information to hand (primarily from DCP and/or another involved agency) to allow him to establish a position that represented the views of the child or young person and reflected their best interests. That position was then forwarded to the relevant DCP office or Executive Director for action (invariably they anticipated its arrival as often substantial prior discussion had already occurred). Subsequent advocacy work ensued as necessary.

Intermediary role

The intermediary role involved facilitating or mediating communication between the dual involved child or young person and other parties (such as DCP Case Managers, other DCP or DHS staff, schools, or lawyers). The aim was to build shared understanding and collaborate to solve a problem while maintaining a focus on the child and their views and best interests.

Acting as an intermediary typically occurred in situations in which there may not be a clear breach of the child or young person's rights or best interests but, for whatever reason, relationships were fractured or there were other communication barriers. It also could occur in order to assert a young person's right to be, or more actively be, involved in decision-making. This role could be time consuming, involving meeting or case conference attendance with or on behalf of a child or young person. It also could entail support to help them lodge complaints and requests for internal reviews or with referrals to other bodies (such as the Ombudsman or SACAT).

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