



DISABILITY JUSTICE PLAN

ANNUAL REPORT
2014-15

Foreword

Message from the Attorney-General

In 2014, the implementation of the *Disability Justice Plan* was a key policy commitment in *Let's Keep Building South Australia*.

I announced that the Government would provide \$3.246 million over four years to make the *Disability Justice Plan* a reality.

South Australia is the first Australian state to develop such a plan. The Plan adopts a comprehensive approach that brings together legislative, cultural, operational and training changes.

One year on, the Plan continues to attract national attention as a model for other states and territories to improve access to justice for people with disability.

The Plan has been developed through strong consultation and partnerships with the community, especially with the disability sector. I am delighted to see these partnerships yield results for the community as a whole.

This report highlights some of the significant achievements in the Plan's first year of implementation that will help give people with disability a stronger voice in our justice system.

This year saw a successful awareness and education program entitled **Law 4 All** being run by the Legal Services Commission.

The *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Act 2014* came into operation to provide better protection to people with a cognitive impairment.

I was particularly pleased to see the *Statutes Amendment (Vulnerable Witnesses) Act 2015* pass through Parliament with all party support in July 2015. Its passage was widely celebrated in the community.

The Act contains major reforms to improve support for vulnerable parties within the criminal justice system, including:

- the use of video recorded interviews for examination-in-chief;
- the introduction of communication partners for people with complex communication needs; and
- special pre-trial hearings to take evidence before trial in informal surroundings.

Importantly, the Act is supported by key operational measures in the Plan, including the new communication partner service and specialist training for investigative interviewers.

I am grateful for the interest and active involvement of the Hon Kelly Vincent MLC in the formulation and implementation of the *Disability Justice Plan* and for the ongoing support of my parliamentary colleagues.

I look forward to continuing to work with you to build on the momentum of real change that we have created and to make this Plan an enduring success.

The Hon John Rau MP

Deputy Premier
Attorney-General



Overview of Achievements

In 2014–15 significant progress was made on key priority actions of the Plan. Of a total 45 priority actions, 23 are complete or substantially complete, and 22 ongoing.

Priority Area One

Uphold, protect and promote the rights of people with disability

8 Priority Actions

Current Progress

- 2 Complete
- 2 Substantially Complete or on track
- 4 Ongoing

1

Priority Area Two

Support vulnerable victims and witnesses in the giving of evidence

15 Priority Actions

Current Progress

- 10 Complete
- 4 Substantially Complete or on track
- 1 Ongoing

2

Priority Area Three

Support people with disability accused or convicted of crime

12 Priority Actions

Current Progress

- 1 Complete
- 2 Substantially Complete or on track
- 9 Ongoing

3

Priority Area Four

Continuously monitor and improve performance

10 Priority Actions

Current Progress

- 2 Substantially Complete or on track
- 8 Ongoing

4

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Introduction

It is widely known that people with disability experience many barriers in accessing justice.

Young children and people with cognitive impairment are particularly vulnerable to sexual exploitation and other forms of abuse, especially by those in positions of power, trust or authority. The investigation and prosecution of these cases is often very difficult.

There has been a long-standing belief that both children and people with cognitive impairment are 'unreliable' as witnesses. Evidence shows that when vulnerable people are asked the right questions with the right support, they are capable of providing strong and reliable evidence.

There are no simple solutions to what is a complex set of problems for people with disability when they come into contact with the criminal justice system, whether in a police station, in court, or in the prison system.

These issues and concerns have been widely discussed in various official reports. Reports include the ongoing Royal Commission into Institutional Responses to Child Sexual Abuse and the Australian Human Rights Commission's 2014 report, *Equal Before the Law: towards Disability Justice Strategies*.

In developing the *Disability Justice Plan* we listened to the voice of the community on these issues. The Plan's priority actions are informed by input provided in the extensive community consultation process. People with disability continue to inform and work on the implementation of the Plan.

The success of the Plan is the mix of legislative and policy measures that will contribute to ongoing cultural change. Changes to the law are supported by training, service development and ongoing research and data. The Attorney-General's Department has been working closely with criminal justice and human service agencies to make this happen. This systemic approach will make a real difference to the lives of those individuals and

their families who come into contact with the criminal justice system.

This report shows that we have real results to date. The challenge now is maintaining momentum and building on this year's achievements to ensure access to justice for all people with disability. From the start of the Plan's development we have taken a practical approach to these challenges and have implemented solutions.

We are transparent in engaging with the community and tracking progress in implementing our shared goals and actions. This includes bringing together community representatives with senior criminal justice agency personnel on the Disability Justice Plan Advisory Group.

The Advisory Group is chaired by the Commissioner for Equal Opportunity, Anne Gale. I acknowledge her leadership with the implementation of the Plan and thank her for her ongoing commitment.

I thank the community representatives on the Advisory Group whose insights and feedback are integral to getting the implementation of the Plan right.

I also acknowledge and thank staff in the Attorney-General's Department and other justice agencies who have worked hard to make this Plan a reality.

I look forward to working with you all in maintaining the momentum of the Plan's implementation in the coming year.

Rick Persse
Chief Executive
Attorney-General's Department



Background

In December 2009, the Premier of South Australia asked the Social Inclusion Board to develop a long-term plan on disability reform. The plan's focus was to look at how people with disability, their families and carers were supported in South Australia.

The subsequent report was *Strong Voices: a Blueprint to Enhance Life and Claim the Rights of People with Disability in South Australia (2012–2020)*. It included recommendations on strengthening rights, protection, advocacy and safeguards for people with disability. Recommendation 19 of the *Strong Voices* report called for the development of a comprehensive disability justice plan.

The Attorney-General's Department led the development of the Plan with the support of the Disability Justice Plan Steering Group. The group included representation from statutory authorities, people with lived experience of disability and a broad range of agencies across government.

Following broad and inclusive community consultation, the Plan and associated guidelines *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best evidence* were approved by Cabinet and launched in June 2014. Funding for the Plan was included in the 2014–15 Budget.

Policy Context

The *Disability Justice Plan* is informed by the principles enshrined in the United Nations *Convention on the Rights of Persons with Disability* and other related instruments that impact on people with disability as accused persons or victims of crime. The UN Convention was ratified by the Australian Government in 2008 and aims to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.

In particular, Article 13 of the convention, Access to Justice, stipulates:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

To implement the goals of the UN Convention, Australian Governments endorsed the *National Disability Strategy 2010–2020*.

The focus of the *National Disability Strategy 2010–2020* is to provide leadership toward greater inclusion of people with disability. It aims to raise awareness and improve access to mainstream services so that people with disability can fulfil their potential as equal citizens. South Australia's *Disability Justice Plan* is aligned with priority area two: Rights protection, justice and legislation.

The introduction of the *National Disability Insurance Scheme (NDIS) Act 2013* is transforming the way programs and services are being delivered to people with disability. Work on the implementation of the Plan will continue to be undertaken in consultation with the National Disability Insurance Agency.

The Plan contributes to the Safe Communities, Healthy Neighbourhoods Strategic Priority of the South Australian Government.



Overview of Key Achievements

During the first year of the Plan's implementation there have been a number of key achievements including education and training initiatives, legislative reform and new and improved service development.

Community Education and Awareness Campaign – Legal Services Commission

The Legal Services Commission runs community legal education programs for people living with a disability.

The **Law 4 All** program commenced in July 2014 and is being administered by the Legal Services Commission. The program assists people with disability to know their rights, understand their responsibilities and navigate confidently through the legal system. That is, to know when and where to ask for help and advice.

Training under the **Law 4 All** program is also being delivered to community workers and personnel in criminal justice agencies, and the content includes initiatives in the *Disability Justice Plan*.

Law 4 All sessions can be arranged for organisations or groups by contacting the Legal Education Officer.

Details

Telephone (08) 8111 5555 or cle@lsc.sa.gov.au. If you are deaf, or have a hearing or speech impairment you can contact the Legal Services Commission through the National Relay Service.

TTY users phone 133 677 then ask for 1300 366 424

Speak and Listen users phone 1300 555 727 then ask for 1300 366 424

Internet relay users connect to the NRS and then ask for 1300 366 424

Case Studies – Law 4 All

Case Study 1

Law 4 All presented an information session to a carer advocacy and support group in South Australia. The information focused on raising the awareness of the different types of legal support available in South Australia and was delivered to people with disability and their carers. Particular emphasis was placed upon the availability of services such as the Legal Services Commission's Legal Help Line that offers assistance to people across South Australia.

Participants reported that the information session increased their awareness and knowledge of legal services available. Carers who attended reported that the information was new and that they felt better empowered about services, particularly who to call when dealing with legal questions and difficulties.

Carers further reported that the information about the Legal Help Line and who to call was particularly important for carers who are time poor and are unable to attend face-to-face legal advice sessions due to intensive caring duties. Carers also reported that the sessions increased their sense of support and relief that legal support is available.

Case Study 2

Law 4 All provided specialised training in the area of Sex, Consent, and the Law for a professional body of disability community workers. The training was also designed to contribute to their continuing professional development.

Participants reported that the training exposed them to valuable, relevant and specific information in relation to the law.

Robust discussions during the training fostered a stronger sense of understanding among the group about their responsibilities as workers of victims' rights. Training also discussed the content and operation of the new laws in South Australia and answered questions about various scenarios these community workers face with their clients.

Members of this engaging session reported that the information presented improved their understanding about the practical workings of the new laws. The success of this training event led to further collaborations between the **Law 4 All** Program and a leading health service to create further opportunities to deliver this training.

Case Study 3

Law 4 All presented an information session to a group of people living with disability about some of their legal rights.

A follow up evaluation six months later with one of the participants found that the session was very valuable. The participant reported that the information presented was clear and simple for people with disability to understand, and the examples presented clearly demonstrated how to use their rights and improved their understanding about how the law works in practice. The participant reported that they passed on some of what they learned to other people in their community, and that they are keen for more resources to be made in this area, particularly in picture formats and in Braille.

Law Reform – Attorney-General's Department

The Government has introduced new laws and amended current laws to better serve people with disability.

Two new sexual offences have been introduced in the *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Act 2014* to increase protection for people living with intellectual disability or cognitive impairment from sexual exploitation by those in positions of power and authority.

The *Statutes Amendment (Vulnerable Witnesses) Bill 2015* was introduced into Parliament on 6 May 2015 to improve the position of vulnerable parties, namely children and people with disability, within the criminal justice system, both in and out of court. The Bill extends to victims, witnesses, suspects and defendants.

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015.

The new Act incorporates major changes to the *Evidence Act 1929*. The purpose of the reforms are to:

- require the account of a vulnerable witness or victim to be taken by way of a video-taped interview by a specially trained investigator
- give people, whether victims, witnesses or defendants, with complex communication needs a general entitlement to have a communication assistant present for any contact with the criminal justice system (in and out of court)
- minimise the number of times that vulnerable witnesses have to recount their experiences by providing alternative measures for their evidence to be presented to the court, including the use of pre-recorded evidence and investigative interviews at trial
- tackle the misconception that disability denotes 'unreliability'
- enhance the supports available for vulnerable victims, witnesses and defendants, both in and out of court
- allow the evidence of vulnerable witnesses to be taken in informal surroundings
- extend the priority listing of sexual assault trials where the complainant is a child to those where the complainant has a disability that adversely affects their capacity to give evidence.

Prevention of Sexual Exploitation of People with Cognitive Impairment Laws

The need for new laws to protect people with cognitive impairment, including those with lived experience of intellectual disability, from sexual exploitation was a major theme of the consultations and was strongly supported by the Public Advocate.

From 30 March 2015, the *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Act 2014* provides enhanced protection to people with a cognitive impairment from sexual exploitation by service providers.

These laws cover any person who provides a service to someone with cognitive impairment, whether paid or not. This might include home care assistants, support workers, cleaners or nurses, but also extends to others such as hairdressers, bus drivers or social activity volunteers.

Spouses or domestic partners of the person with cognitive impairment are not covered by the new laws.

Under the laws, a service provider is guilty of an offence if he or she:

1. uses undue influence to obtain or procure sexual intercourse or indecent contact with a person with a cognitive impairment
2. behaves in an indecent manner in the presence of a person with a cognitive impairment without consent or obtaining that consent by undue influence.

A cognitive impairment is defined as:

- an intellectual disability
- a developmental disorder (including autism spectrum disorders)
- a neurological disorder
- dementia
- mental impairment
- a brain injury.

Undue influence is defined as including the abuse of a position of trust, power or authority. It is about someone improperly taking advantage of another person to get him or her to agree to something.

A service provider who is in a position of power, trust or authority will be presumed to have obtained the consent (of the victim) by undue influence unless she or he proves to the contrary. This means that the onus is placed upon the service provider to show that the person with a cognitive impairment gave consent to the sexual behaviour and that the consent was not obtained through undue influence.

The new laws were developed in close consultation with the community and interested parties and seek to strike a careful balance between protection and respecting the sexual autonomy of persons living with cognitive impairment.

Victim Management Section – South Australia Police

The Victim Management Section became a new unit within the Special Crimes Investigation Branch of the South Australia Police during 2014. The unit grew from five specialist police officers to one supervising sergeant and ten specialised police officers.

The Victim Management Section supports South Australia Police to deliver services to vulnerable persons and includes the provision of expert investigative interviewing and statement taking and the management of vulnerable victims and witnesses.

The Victim Management Section is responsible for supporting vulnerable people within the criminal justice system through:

- the conduct of investigative interviews for any crime where the person has a significant cognitive or communication impairment
- conducting interviews/statements for the Special Crimes Investigation Branch
- coordinating forensic medical examinations, counselling referrals and evidence collection for sexual assault matters
- providing advice to operational members on identifying, assessing and engaging with vulnerable people
- providing a consultation service within South Australia Police (connecting police with appropriate external services)
- developing partnerships with external agencies.

The focus is on supporting cases that involve people with an intellectual disability, communication disorders, cognitive impairment and circumstances where community expectation would dictate that a specialist unit undertake the engagement.

South Australia Police and Minda Inc.

Police officers underwent disability training at the SA Learning Centre, a registered training organisation managed by Minda. The SA Learning Centre provides training in disability issues, specifically in intellectual disability. The course was intensive and included face to face training and out of hours study and assessment. Staff from South Australia Police's Victim Management Section completed seven sessions which equates to six units towards a Certificate 4 in Disability Training.

Through the training, South Australia Police were able to see first-hand some of the impressive art work produced by Minda clients as part of their painting program.

South Australia Police were keen to support Minda clients by bringing recognition to their artwork. Through a collaborative effort a number of paintings were showcased in the foyer of the new police building. The artists' work was also available for sale. This joint initiative received strong support as the first exhibit sold out, and new works were quickly sold too.

South Australia Police also collaborated with Minda on a joint art show. The art show was held on Monday 22 June 2015 at the Police Club in Carrington Street. It was highly successful as most works were sold

with all funds going directly to the artists. The event also raised money for the Police Commissioner's participation in the CEO Sleep Out.

Initiatives such as the art show and the pop-up gallery in the South Australia Police building have raised awareness among police of Minda and its diverse clientele. South Australia Police will continue to show artwork created by clients of Minda until late 2015. Minda artists have had the opportunity to visit the South Australia Police building to display new pieces of artwork as others have sold. The initiative has given police members and clients from Minda the opportunity to meet and work together to display these wonderful pieces of artwork.

Specialist Training for Investigative Interviewers – Attorney-General's Department

Specialist training is funded for investigative interviewers working with vulnerable witnesses in South Australia Police, Child Protection Services (SA Health), Families SA and the Care Concern Investigations units in the Department for Education and Child Development and the Department for Communities and Social Inclusion. The training will support the successful implementation of the recent amendments to the *Evidence Act 1929* to allow for the admission of an audio visual record of an investigative interview at trial.

A Request for Proposal for the provision of the specialist training was released to the market on 12 June 2015 and closed on 14 July 2015. The procurement process is well advanced, and training is scheduled to start in January 2016.

Communication Partner Service – Attorney-General's Department

Amendment to the *Evidence Act 1929* supports the establishment of a specialist communication assistance scheme to operate within the criminal justice system in South Australia. The new role of communication partner has been created to provide communication assistance in court. Assistance will also be available in police interviews.

The scheme will provide communication assistance to people with complex communication needs, namely children and people with disability, in their interactions with the criminal justice system, both in and out of court. It extends to victims, witnesses, suspects and defendants.

As stated in the *Disability Justice Plan*, the service will be established in the non-government sector.

The service model and market approach is currently being finalised in consultation with criminal justice agencies.



Report on progress against Priority Actions

Priority Area 1:

Uphold, protect and promote the rights of people with disability



Action Priority 1.1

Provide community education and awareness campaigns in partnership with people with lived experience of disability to inform people with disability about their rights and responsibilities, including making legal resources available in easy access English or relevant community languages.

Lead agencies: Legal Services Commission, Attorney-General's Department

The **Law 4 All** program is a community legal education and awareness program for people living with disability developed and delivered by the Legal Services Commission. Development involved consultation with key agencies and community members on a suitable presentation style to deliver information on legal rights and responsibilities, and services to assist people with disability with legal issues. In 2014–15, a total of 43 sessions were delivered which reached out to 969 individuals in the disability community. This includes people with disability, carers and specialist workers. Two radio interviews on these issues were also held.

Status: Substantially complete or on track

Action Priority 1.2

Introduce a new law that would make it an offence for a person to have sexual contact with a person with cognitive impairment if they work with or volunteer with that person in a formal capacity. The offence would target offenders who abuse their position of power over a person with cognitive impairment in order to obtain consent to sexual contact.

Lead agency: Attorney-General's Department

Two new sexual offences have been introduced through the *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Act 2014* to increase protection for people living with intellectual disability or cognitive impairment from sexual exploitation, by those in positions of power and authority, while respecting the sexual autonomy of persons

living with cognitive impairment. The new laws commenced on 30 March 2015.

Spouses or domestic partners of the person with cognitive impairment are not covered by the new laws.

Status: Complete

Action Priority 1.3

Introduce safeguarding measures and new regulations to further strengthen monitoring and reporting requirements around disclosure of abuse or neglect and the reporting of critical incidents.

Lead agency: Department for Communities and Social Inclusion

Policies and guidelines have been developed by the Department for Communities and Social Inclusion that introduce safeguarding measures for people with disability and strengthen requirements concerning disclosure of abuse and neglect and reporting critical incidents.

Safeguarding Suite of Policies

The *Safeguarding People with Disability* suite of policies includes:

- Overarching Policy
- Management of Care Concerns Policy
- Restrictive Practices Policy
- Decision Making and Consent Policy.

The policies aim to reduce risk and vulnerability and increase safety by fostering an empowerment culture. The policies also aim to strengthen systems and mechanisms that provide effective and reliable safeguards for people with disability. All disability services provided or funded by the Department have been required to comply with these policies since July 2013. During 2014–15 the Department has been updating this suite of policies to reflect changes to the *Advance Care Directives Act 2013* and best practice developments. These amendments are finalised and subject to executive approval.

Disclosure Policy

The intent of this policy is to guide departmental decision-making and action concerning the disclosure of sensitive information to groups or individuals. The policy provides a systematic, consistent, considered, defensible and transparent approach to disclosure and supports the safety and wellbeing of departmental clients, other at-risk people and the community. The policy has been completed and is subject to executive approval.

Critical Client Incident Policy and Guidelines

The Department for Communities and Social Inclusion's Critical Client Incident Policy and guidelines were implemented in June 2014. During 2014–15 the documents were updated with a revised definition of Critical Client Incident, the inclusion of a principle relating to privacy and the use and disclosure of sensitive personal information, and the expansion of 'high-level' processes.

There has also been a campaign to raise awareness of the policy and related documents among departmental executives, and embed a comprehensive reporting framework for critical incidents, which includes:

- weekly reporting to Ministers and the Chief Executive
- monthly reporting to the Executive Leadership Team
- bi-annual reporting to the Executive Leadership Team and Ministers.

This policy aims to support the safety and wellbeing of clients by ensuring that critical incidents are effectively and consistently identified, reported, responded to, managed and monitored. The policy enhances transparency and accountability in the delivery of services, especially to people who are vulnerable and at risk.

Status: Substantially complete or on track

Action Priority 1.4

Undertake further research and investigation on identifying and overcoming barriers to jury duty for people with disability.

Lead agencies: Attorney-General's Department, Courts Administration Authority

This will be progressed in 2015–16.

Status: Ongoing

Action Priority 1.5

Undertake a review of criminal screening processes for those who work with children and vulnerable adults.

Lead agency: Attorney-General's Department

Work has been undertaken on the review of screening processes, however, the findings of the national *Working with Children Checks Report (2015)* prepared by the Royal Commission into Institutional Responses to Child Sexual Abuse need to be considered.

Status: Ongoing

Action Priority 1.6

Ensure that new infrastructure developments across the justice system including the courts precinct are accessible and disability friendly.

Lead agencies: Courts Administration Authority, Department of Planning, Transport and Infrastructure

Although the Courts Precinct project is not progressing at this time, the 2015–16 State Budget did include more than \$24 million over four years for the State's courts system to upgrade information technology (IT) and building infrastructure.

The Department for Correctional Services is planning to improve existing infrastructure to accommodate more prisoners with disability at Port Lincoln Prison, Port Augusta Prison, Yatala Labour Prison (High Dependency Unit) and Mount Gambier Prison.

Status: Ongoing

Action Priority 1.7

Strengthen ties between police in local service areas and clients in supported residential facilities and boarding houses to improve communication and increase awareness.

Lead agency: South Australia Police

South Australia Police (SAPOL) has convened an internal steering committee to progress the priority actions under the Plan where SAPOL is the lead agency. Work is progressing on this action.

Status: Ongoing

Action Priority 1.8

Amend the Declaration of Principles in the *Victims of Crime Act 2001* to include specific reference to disability.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 8—Amendment of *Victims of Crime Act 2001* section 33 – Amendment of section 6 – Fair and dignified treatment.

Status: Complete

Priority Area 2:

Support vulnerable victims
and witnesses in the giving
of evidence

2

Action Priority 2.1

Amend the *Evidence Act 1929* to give people with complex communication needs a general entitlement to have a specially trained Communication Assistant present for any contact with the criminal justice system.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 – Amendment of *Evidence Act 1929* section 14A – Entitlement of a witness to be given communication assistance in certain circumstances.

Status: Complete

Action Priority 2.2

Establish a service in the non-government sector which provides a pool of trained independent Communication Assistants to facilitate communication between witnesses or defendants and an investigative interviewer. The Communication Assistants would be available throughout the criminal justice process.

Lead agency: Attorney-General's Department

An amendment to the *Evidence Act 1929* supports the establishment of a specialist communication assistance scheme to operate within the criminal justice system in South Australia. The new role of communication partner has been created to provide communication assistance in court. Assistance will also be available in police interviews.

The service model and market approach is currently being finalised in consultation with criminal justice agencies to establish the service in the non-government sector.

Status: Substantially complete or on track

Action Priority 2.3

Amend the *Evidence Act 1929* to clarify and increase access to appropriate support persons for vulnerable witnesses. The support person could be a friend or relative and would provide emotional support throughout the criminal justice process.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant sections of the Act are Part 3 – Amendment of *Evidence Act 1929*, section 12AB – Pre-trial special hearings (2) (b) and section 9 – Amendment of section 13A – Special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings (1) (e) (i).

Status: Complete

Action Priority 2.4

Expand the definition of vulnerable witness under the *Evidence Act 1929* to include people with complex communication needs.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 – Amendment of *Evidence Act 1929*, section 5 – Amendment of section 4 – Interpretation (4) (b).

Status: Complete

Action Priority 2.5

Amend the *Evidence Act 1929* to require an audio visual recording to be made of police interviews conducted with vulnerable witnesses and allow that recording to be played to the court as evidence in chief.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 Amendment of *Evidence Act 1929*, section 13C.

Status: Complete

Action Priority 2.6

Amend the *Evidence Act 1929* to allow cross-examination of a vulnerable witness to be recorded pre-trial and played to the court at trial.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 – Amendment of *Evidence Act 1929*, section 12AB (2) (c) (ii).

Status: Complete

Action Priority 2.7

Amend the *Evidence Act 1929* to broaden the special arrangements available to vulnerable witnesses when giving evidence. For example, the removal of wigs and/or gowns, allowing for extra breaks, more time to give evidence and express acknowledgement of augmentative and alternative communication systems.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 – Amendment of *Evidence Act 1929*, section 9 – Amendment of section 13A – Special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings (1) (e) (iv).

Status: Complete

Action Priority 2.8

Clarify the definition of improper question under section 25 of the *Evidence Act 1929* to include questions that are expressed in language that is too complicated for the witness to understand.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 – Amendment of *Evidence Act 1929*, section 14 – Amendment of section 25 – Disallowance of inappropriate questions.

Status: Complete

Action Priority 2.9

Review the admission of evidence given by another person of what a vulnerable witness said outside of court to be used to prove the truth of what was said, by way of the hearsay rule under section 34CA of the *Evidence Act 1929*.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The relevant section of the Act is Part 3 – Amendment of *Evidence Act 1929*, section 15 – Repeal of section 34CA and section 16 – Insertion of section 34LA.

Status: Complete

Action Priority 2.10

Provide appropriate training to staff and practitioners in the criminal justice system in disability awareness. Where practicable, the training should involve people with lived experience of disability in its development and/or delivery.

Lead agencies: South Australia Police, Office of the Director of Public Prosecutions, Courts Administration Authority, other relevant agencies.

South Australia Police currently offers an online training program to all personnel (uniformed police and government administrative staff) about people with disability, and their carers or support workers. South Australia Police also have an Equity Contact Officer Program for personnel who are interested in representing and supporting colleagues' work in a discrimination free workplace.

South Australia Police has convened an internal steering committee to progress the priority actions under the Plan where SAPOL is the lead agency.

Status: Ongoing

Action Priority 2.11

Ensure all investigative interviewers undergo specific training in effective interviewing techniques with an evidence-based evaluation component for continuous improvement.

Lead agencies: South Australia Police, Families SA, SA Health

Specialist training is funded for investigative interviewers working with vulnerable witnesses in South Australia Police, Child Protection Services (SA Health), Families SA and the Care Concern Investigations Units in the Department for Education and Child Development and the Department for Communities and Social Inclusion. The training will assist in implementing amendments to the *Evidence Act 1929* to allow for the admission of an audio visual record of an investigative interview at trial.

A Request for Proposal for the provision of the specialist training was released to the market on 12 June 2015 and closed on 14 July 2015. The procurement process is well advanced, and training is scheduled to start in January 2016.

Status: Substantially complete or on track

Action Priority 2.12

Implement continuing professional development for members of the judiciary in the appropriate questioning of vulnerable witnesses with disability and recent developments in case law.

Lead agency: Courts Administration Authority

In August 2014, the Judicial Development Committee (Courts Administration Authority) conducted an all-day *Interactive Workshop to Address Challenges of Adducing Evidence from People with Disabilities and Other Vulnerable People* for judicial officers. The professional development session was facilitated by a specialist in the area of investigative interviewing. Continuing professional development opportunities will be presented to the Judicial Development Committee in 2015–16.

Status: Substantially complete or on track

Action Priority 2.13

Develop and implement best practice guidelines for interviewing people with disability who are vulnerable in giving evidence.

Lead agencies: Attorney-General's Department, South Australia Police, Families SA, Courts Administration Authority

Guidelines for investigative interviewers in the taking of evidence from vulnerable victims were developed during consultation for the *Disability Justice Plan*. The guidelines are intended as a concise statement of current best practice in interviewing vulnerable witnesses. They were developed by a steering committee with representation from criminal justice agencies and the disability sector as a Change@SA 90-Day Project.

The guidelines were released for consultation at the same time as the draft *Disability Justice Plan*. The *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best evidence* were launched with the Disability Justice Plan. Implementation of these guidelines will occur together with the specialist training for investigative interviewers.

Status: Substantially complete or on track

Action Priority 2.14

Establish a vulnerable victims unit with specialised investigative interviewers to enable vulnerable people to give evidence comprehensively.

Lead agency: South Australia Police

In July 2015, South Australia Police established the Vulnerable Victims Unit within the existing Victim Management Section of the Special Crimes Investigation Branch. The Victim Management Section is responsible for the conduct of specialist investigative interviews for any crime where the person has a significant cognitive or communication impairment. It includes providing all aspects of victim management to vulnerable people within the criminal justice system.

The team of ten dedicated specialist investigators has been responsible for 283 investigative actions. These have resulted in 149 forensic interviews of which 97 involved an individual with a disability. A further 69 adult statements were also taken. In addition, the Victim Management Section engaged in strategy discussions involving 100+ children as part of Operation Prism and issues arising out of the APY Lands. These interagency discussions resulted in 47 children interviews.

Furthermore, the Victim Management Section has been responsible for the taking of significant statements from: vulnerable persons involved in serious motor vehicle accidents; witnesses to homicides; the National Royal Commission; and requests from interstate and international jurisdictions.

Status: Complete

Action Priority 2.15

Amend s 50B District Court Act 1991, s 126A Supreme Court Act 1935 and s 48B Magistrates Court Act 1991 to extend the priority listing of sexual assault trials where the complainant is a child to those where the complainant has an intellectual disability.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015.

Status: Complete

'The Plan adopts a comprehensive approach that brings together legislative, cultural, operational and training changes'.

The Hon John Rau MP

Priority Area 3:

Support people with disability
accused or convicted of
a crime

3

Action Priority 3.1

Investigate and undertake further research into making it a requirement that, where practicable, contact is made with a lawyer before police interview an alleged offender who has an intellectual disability.

Lead agency: Attorney-General's Department

This will be progressed in 2015–16.

Status: Ongoing

Action Priority 3.2

Provide access to a Communication Assistant for alleged offenders with complex communication needs.

Lead agencies: Attorney-General's Department, South Australia Police

An amendment to the *Evidence Act 1929* supports the establishment of a specialist communication assistance scheme to operate within the criminal justice system in South Australia. The new role of communication partner has been created to provide communication assistance in court. Assistance will also be available in police interviews.

The service model and market approach is currently being finalised in consultation with criminal justice agencies to establish the service in the non-government sector.

Status: Substantially complete or on track

Action Priority 3.3

Consult with issuing authorities on the introduction of legislation to allow the issuing authority of an Expiation Notice to withdraw it on the grounds of cognitive and/or intellectual disability.

Lead agency: Attorney-General's Department

This will be progressed in 2015–16.

Status: Ongoing

Action Priority 3.4

Request that the Fines Enforcement and Recovery Unit take into account issues with people with cognitive and/or intellectual disability in the development of guidelines and procedures in relation to the collectability of debt.

Lead agency: Attorney-General's Department

The Fines Enforcement and Recovery Unit was established in February 2014. Since its commencement, work has progressed regarding debt management for vulnerable clients. The Fines Enforcement and Recovery Unit has a dedicated team who assist clients to manage their fines debt. The team engages regularly with vulnerable clients, specific advocacy groups and other government departments. The unit has a high level of understanding of the specific needs of individuals and provides multiple options to assist vulnerable clients to pay their fines. Options include:

- reduced or longer term payment arrangements
- community service
- placing stay of actions on individual's fines to allow them time to organise their affairs
- waiving of fees where applicable.

The unit's successful implementation and co-ordination of debt management processes for vulnerable clients is due to strong working relationships with other government organisations and advocacy groups. These include SA Health, Department for Correctional Services and Community Corrections, Department for Communities and Social Inclusion, Australian Red Cross Society, Salvation Army and Anglicare. The Fines Enforcement and Recovery Unit will continue to work with these groups to look at further options to assist vulnerable clients into the future.

Status: Complete

Action Priority 3.5

Implement additional training for front-line police in disability awareness.

Lead agency: South Australia Police

South Australia Police has convened an internal steering committee to progress the priority actions under the Plan where SAPOL is the lead agency. Discussion is underway with the Police Academy and Crime Intelligence Faculty about the development and delivery of frontline and cadet training, which will include expanding current disability awareness training.

Status: Ongoing

Action Priority 3.6

Provide training for front-line correctional services staff in disability awareness, particularly for clients with cognitive and/or intellectual disability and psychiatric disability.

Lead agency: Department for Correctional Services

Correctional Officers undertake an initial twelve-month Correctional Officer Training Course. There are program sessions delivered by departmental senior psychologists specifically on cognitive and/or intellectual disability and mental health disorders. The Training Course also provides training in working with prisoners with special needs and diversity training, which includes reference to disability.

The Department for Correctional Services also delivers two to four training programs per year for experienced correctional officers. The program runs for ten days over five months with a two-day workshop per month. The program addresses a variety of issues for prisoners and includes information on cognitive and/or intellectual disability and psychiatric disability.

Status: Ongoing

Action Priority 3.7

Give consideration to the implementation of recommendations to support offenders arising from the Sentencing Council's review of Section 8A of the *Criminal Law Consolidation Act 1935*.

Lead agency: Attorney-General's Department

The Government is finalising its response to the Sentencing Council's report *Mental Impairment and the Law: A Report on the Operation of Part 8A of the Criminal Law Consolidation Act 1935 (SA)*.

Status: Ongoing

Action Priority 3.8

Undertake research into the feasibility of a social investment project that would provide alternative accommodation for people with cognitive and/or intellectual disability held on remand in prison, including Aboriginal people in regional institutions.

Lead agency: Attorney-General's Department, Department for Correctional Services, Department for Communities and Social Inclusion, Department for Treasury and Finance

This will be progressed in 2015–16.

Status: Ongoing

Action Priority 3.9

Give consideration to introducing a Continuing Professional Development seminar in order to raise awareness among legal practitioners about how to best represent clients with disabilities in areas including criminal law, family law, care and protection, guardianship board, and other similar matters.

Lead agency: The Law Society

The Law Society of SA hosted a continuing professional development seminar entitled *From the Ballot Box to the Witness Box* –

tackling access to justice for people with disabilities on Thursday 16 October 2014. The presenters were Emeritus Professor Ron McCallum AO, Vice-Chair of the United Nations Committee on the Rights of Persons with Disabilities, Natalie Wade, Solicitor, Department for Communities and Social Inclusion, and Margie Charlesworth, Convenor, Women With Disabilities SA. The seminar focussed on the aims of South Australia's *Disability Justice Plan*.

The Law Society's 2014-15 seminar series included women in the criminal justice system; aboriginal constitutional recognition; aboriginal sentencing; legal aid issues and guidelines; children's mental health and development and dealing with self-represented litigants. Each seminar included information relevant to representing clients with disability.

Status: Substantially complete or on track

Action Priority 3.10

Undertake consultation with organisations promoting awareness of disability on the potential use of tools to alert people in the justice system that the person has a disability, such as a medic alert bracelet. The item could be a card, a key ring or bracelet, and could be supported by contact numbers and online information.

Lead agency: Attorney-General's Department

This action will be progressed in 2015–16.

Status: Ongoing

Action Priority 3.11

Investigate and undertake further research into the appropriate use of cautioning and diversion for minor offences for people with cognitive and/or intellectual disability.

Lead agency: South Australia Police, Attorney-General's Department

South Australia Police has convened an internal steering committee to progress the priority actions under the Plan where SAPOL is the lead agency. To commence in 2015–16.

Status: Ongoing

Action Priority 3.12

Investigate and undertake further research into barriers to compliance with bail conditions and court orders such as intervention orders for people with cognitive and/or intellectual disability.

Lead agency: South Australia Police

South Australia Police has convened an internal steering committee to progress the priority actions under the Plan where SAPOL is the lead agency. To commence in 2015–16.

Status: Ongoing

Priority Area 4:

Continuously monitor and improve performance

4

Action priority 4.1

Develop Key Performance Indicators for the implementation of the *Disability Justice Plan* to track progress and continuously improve performance.

Lead agency: Attorney-General's Department

Key Performance Indicators for the implementation of the *Disability Justice Plan* have been developed in consultation with the Disability Justice Plan Advisory Group and the Office of Crime Statistics and Research.

Key Performance indicators relating to the implementation of the specialised communication assistance scheme and the specialist investigative interviewer training have been set by the Attorney-General's Department to be achieved in the next twelve months.

The *2015–16 Disability Justice Plan Annual Report* will incorporate Key Performance Indicators for the operational programs.

Status: Ongoing

Action Priority 4.2

Lead the development of standard variables for the collection of data by criminal justice agencies relating to clients with disability to facilitate the planning, monitoring and improvement of services.

Lead agency: Attorney-General's Department

Work has progressed on the development of a standard disability question to be used in data collection across the criminal justice sector. The question has been modelled on the Standard Indigenous Question developed by the Australian Bureau of Statistics. Consultation has commenced on appropriate wording. This work is being progressed through the Office of Crime Statistics and Research Advisory Group and the Disability Justice Plan Advisory Group.

Status: Substantially complete or on track

Action Priority 4.3

Incorporate the objectives and strategies of the *Disability Justice Plan* into agency business plans.

Lead agency: All agencies mentioned in the Disability Justice Plan

Disability SA within the Department of Communities and Social Inclusion is leading the development and implementation of Disability Access and Inclusion Plans across government. The Disability Access and Inclusion Plans align with the National Disability Strategy. Outcome 3 of these plans relates to the National Disability Strategy's Rights protection, justice and legislation and incorporates objectives of the *Disability Justice Plan*.

The Attorney-General's Department has incorporated key objectives in the *Disability Justice Plan* into its strategic plan and relevant agency business plans. It also reports against progress in the Attorney-General's Department annual report.

The Department for Communities and Social Inclusion's Business Plan 2014–15 incorporates objectives of the *Disability Justice Plan*, and is committed to 'develop strategies to improve service quality in both government and non-government sectors for people with disability'.

Status: Ongoing

Action Priority 4.4

Amend legislation to provide a procedure by which recorded police interviews with vulnerable witnesses can be reviewed, assessed or checked for training purposes, including by external specialists for quality assurance.

Lead agency: Attorney-General's Department

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* passed Parliament with all party support and received Royal Assent on 6 August 2015. The Regulations under the Act will address this priority action.

Status: Substantially complete or on track

Action Priority 4.5

Report annually on the progress of the Plan in a format that is accessible to people with disability and others. At expiry in 2017, assess the outcomes and review the future direction of the Plan.

Lead agency: Attorney-General's Department

Annual reporting on achievements and progress of the *Disability Justice Plan* will be published by the Attorney-General's Department. This report is the inaugural annual report.

Status: Ongoing

Action Priority 4.6

Communicate across government agencies and share information to improve access to justice for people with disability.

Lead agency: All agencies

The Disability Justice Plan Advisory Group provides a regular forum for agencies to share information on implementation progress of programs and initiatives. The Advisory Group includes representation from criminal justice agencies, Disability SA and community representatives.

A cross-agency committee was established to oversee the development of specifications for the procurement of specialist training for investigative interviewers and to assess responses.

A committee to assist with the procurement of a non-government partner for the establishment of the communication assistance scheme has been convened. It comprises members from the key criminal justice agencies and people with lived experience of disability with knowledge and experience of the disability sector.

A strong working partnership has been established between Disability SA and the Attorney-General's Department. The two agencies have collaborated on a number of projects, including consultation in the

development of the *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Act 2014* and the *Statutes Amendment (Vulnerable Witnesses) Act 2015*. Disability SA also assisted with the formulation and delivery of a communication campaign to ensure that people with lived experience of disability, their families and disability service providers were aware of the new law.

Through Disability SA's Disability Consultation Register, a community consultation was facilitated for South Australia Police. The consultation will assist South Australia Police to develop strategies to better meet the needs of people with disability and inform the agency's Disability Access and Inclusion Plan.

Status: Ongoing

Action Priority 4.7

Value staff diversity and strive to meet employment targets for people with disability in criminal justice agencies to improve awareness and the design of inclusive policies and programs.

Lead agency: Criminal Justice Agencies

Change@SA in partnership with the Equal Opportunity Commission, and the Department for Communities and Social Inclusion implemented a 90-Day Project to increase employment of people with disabilities in the public service. Further to this, the Department of the Premier and Cabinet send regular emails across the public sector to encourage public sector employees to embrace diversity and encourage public service personnel to participate in training about disability facilitated by their agency.

Status: Ongoing

Action Priority 4.8

Provide general disability awareness training that involves people with lived experience of disability to all staff in criminal justice agencies.

Lead agencies: Criminal Justice Agencies

South Australia Police currently offers an online training program to all personnel (uniformed police and government administrative staff) about people with disability, and their carers or support workers. South Australia Police also have an Equity Contact Officer Program for personnel who are interested in representing and supporting colleagues to work in a discrimination free workplace.

In 2014–2015, the Attorney-General's Department's Online Disability Awareness training was a mandated program for all Attorney-General's Department staff and part of induction to the Department for new employees. The Government is currently working on developing a state government wide disability awareness training program.

Once the specialist training procurement is finalised, the Attorney-General's Department will progress the implementation of this priority to provide more generalised training for agencies in the criminal justice system.

Status: Ongoing

Action Priority 4.9

Host a seminar annually bringing together criminal justice agencies, researchers and community representatives to focus on topics related to improving access to justice for people with disability and shared learnings to promote best practice and contribute to a culture of change.

Lead agency: Attorney-General's Department

The Attorney-General's Department will host the inaugural Disability Justice Plan Symposium on 19 November 2015. The inaugural event is being planned in close consultation with community representatives on the Disability Justice Plan Advisory Group. Leading

researchers and community and criminal justice agency representatives will be attending and taking part in this symposium. The *Disability Justice Plan Annual Report 2014–15* will be launched at the symposium.

Status: Ongoing

Action Priority 4.10

Use technology to make it easier for people with disability to access the criminal justice system and continuously identify areas for improvement.

Lead agencies: Criminal Justice Agencies

The Legal Services Commission has installed text to speech technology on their website and the Law Handbook Online. They report an average of 550 audio activations per month since it was installed in February 2015.

Criminal justice agencies will continue to identify how technology can make it easier for people with disability to access the criminal justice system. This includes any new investments in technology and infrastructure, in addition to continuous improvement of day to day service delivery.

Status: Ongoing

Appendix 1 – Disability Justice Plan Advisory Group

Consultation is being driven in the implementation phase through community representation on the Disability Justice Plan Advisory Group, which includes five community representatives. To further ensure transparency, the committee is chaired by the Commissioner for Equal Opportunity. Secretarial support is provided by the Attorney-General's Department.

The Disability Justice Plan Advisory Group comprises representatives from the following government agencies:

- Attorney-General's Department
- Courts Administration Authority
- South Australia Police
- Department for Correctional Services
- Disability SA (Department for Communities and Social Inclusion).

The Disability Justice Plan Advisory Group includes the following community representatives:

- Robbi Williams, CEO, Purple Orange
- Nahtanha Davey, CEO, Brain Injury Network SA
- Margie Charlesworth, Women with Disabilities SA
- Silvana Gant, Adelaide People First
- Sally Haskard, Mental Health Coalition SA

The role of the Advisory Group is to:

- Consider and agree on project schedules and consultation plans
- Monitor project progress and ensure that project targets and milestones are achieved
- Provide advice and guidance on the implementation of the *Disability Justice Plan*
- Recommend changes to project scope and schedule where necessary
- Advise on when appropriate communication and consultation occurs in the implementation of the *Disability Justice Plan*
- Make recommendations through the Chief Executive of the Attorney-General's Department and the Attorney-General.

Attorney-General's Department
Disability Justice Plan Annual Report 2014-15

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