

# ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

## STATEMENT OF WITNESS

**Statement of:** David John PLATER

**Occupation:** Legal Practitioner

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This statement, consisting of **10** page(s) signed by me is true to the best of my knowledge and belief.

1. I provide this statement in response to a letter of request from the Royal Commission to the Chief Executive of the South Australian Attorney General's Department, dated 26 February 2016.

**Question 1 - Provide a brief outline of your qualifications and experience.**

2. I combine roles in legal practice and academia. I am providing this statement in my role with the South Australian Attorney-General's Department.
3. I am admitted as a legal practitioner in the Northern Territory, Tasmania, South Australia, England and the Republic of Ireland. I worked from 1992 to 2006 with the Crown Prosecution Service in Kent and London. I held the role of a Senior Crown Prosecutor at the Youth and Inner London Crown Court branch of the CPS. I was closely involved in the preparation and prosecution of child sexual assault and domestic violence cases. I worked as a legal practitioner from 2008 to 2010 with the State DPP in South Australia. I was again closely involved in the preparation and prosecution of cases involving domestic violence and child sexual assault.
4. I have worked as a Senior Legal Officer from 2010 to the present with Legislative Services at the South Australian Attorney-General's Department. I have been closely involved with the *Statutes Amendment (Vulnerable Witnesses) Act 2015* and linked changes since November 2011. I have been involved in various other criminal law and procedure legislative law reform projects.
5. I hold a LLM in Criminal Litigation from the Inns of Court Law School in London. I obtained a PhD from the University of Tasmania in 2011. My thesis examined the development and application of the role of the prosecution lawyer as a 'minister of justice'. My areas of research include Prosecution Role and Discretion, the Position and Experiences of Vulnerable Witnesses and Victims in the Criminal Justice System and the Sentencing of Sexual Offenders. I have spoken at various domestic and international conferences and have had various academic articles published in these areas in a personal role.

6. In 2013, I was part of a national team of researchers led by Professor Kate Warner of the University of Tasmania who were awarded an Australian Research Council Linkage grant to conduct an ongoing national study of jurors aimed at gauging informed public opinion on sentencing for sex offences.
7. I have previously lectured at the University of South Australia and the University of Tasmania (where I retain a role as an Adjunct Lecturer). I am presently a Senior Lecturer at the Adelaide University Law School and Deputy Director of the South Australian Law Reform Institute. I have lectured in subjects including Criminal Law and Procedure and Evidence.

**Question 2 - Outline your involvement in the development and implementation of the reforms contained in the *Statues Amendment (Vulnerable Witnesses) Act 2015*.**

8. South Australia has made various legislative reforms over recent years to support vulnerable witnesses and enhance the prosecution of such cases. However, it was considered that more needed to be done in this area in light of the recurring research (and individual cases) that highlighted the acute continuing problems encountered by vulnerable witnesses and victims, both children and persons with an intellectual disability, in and out of court.
9. It was appreciated that wider more comprehensive reform was necessary and legislative change, whilst important, needed to be accompanied by operational and cultural changes. *The Statues Amendment (Vulnerable Witnesses) Act 2015* has been progressed in this wider context and has been progressed since 2012 with the comprehensive Disability Justice Plan. It has proved a complex, time consuming and multi-layered project.
10. The legal officer with original conduct of this project at the State Attorney-General's Department was the late Helen Wighton, a colleague with much commitment and expertise in this field.<sup>1</sup> I inherited it from her in November 2011 upon her move to another role. Helen sadly passed away in 2014.
11. The project has been progressed from the outset in close engagement with interested parties, both in and out of government. The disability sector has been closely and particularly involved in the process. Indeed, the consultation has been integral to the progression and passage of the Act (as acknowledged by the Attorney-General).<sup>2</sup>

**DISABILITY JUSTICE PLAN**

**Question 3 - Outline the policy impetus for the development of the Disability Justice Plan 2014-17, in particular the vulnerable witness reforms.**

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<sup>1</sup> South Australia, *Parliamentary Debates*, House of Assembly, 7 May 2015, 1117-1118 (Hon John Rau, Attorney-General).

<sup>2</sup> South Australia, *Parliamentary Debates*, House of Assembly, 29 July 2015, 2130 (Hon John Rau, Attorney-General).

12. The Disability Justice Plan was a recommendation in the former Social Inclusion Board's report *Strong Voices: a Blueprint to Enhance Life and Claim the Rights of people with Disability in South Australia* (2012-2020), published on 19 October 2011.<sup>3</sup> The *Strong Voices* report was intended as a blueprint for the way in which people with disability, their families and carers are supported in South Australia. Recommendation 19 of the Report states:

*The safety and protection of people with disability must be recognised as a priority across the criminal justice system. The Government must develop a comprehensive Disability Justice Plan in consultation with people with a lived experience with disability, the Public Advocate, and the Health and Community Services Complaints Commissioner. The plan must ensure:*

- *adequate resources are committed to prioritise investigation and timely prosecution of crimes against people with disability*
- *more effort on prosecution of matters where a person with disability is an alleged victim*
- *increased support for vulnerable witnesses, particularly children.*

13. The South Australian Cabinet subsequently endorsed the development of the Disability Justice Plan as part of its response to the *Strong Voices* report, and the Attorney-General's Department was nominated as the lead agency for its implementation. The Government's response to the *Strong Voices* report was announced on Monday 19 December 2011.
14. Work had already commenced on the legislative reforms that were later passed as the *Statutes Amendment (Vulnerable Witnesses) Act 2015*. It was decided to incorporate the legislative reforms into the broader Disability Justice Plan<sup>4</sup> to support their implementation through operational programs. It was identified at an early stage that there is no legislative 'silver bullet' to these complex issues and that any solution to improve the position of vulnerable parties within the criminal justice system (especially those with an intellectual disability) must combine legislative, cultural, training and operational changes. The Disability Justice Plan has been progressed to support and complement the legislative reforms and has been progressed as a comprehensive strategy with various strands including the specialist training for investigative interviewers and the new communication partner scheme to assist parties with complex communication needs.

**Question 4 - Outline the reforms contained in the Statutes Amendment (Vulnerable Witnesses) Act 2015.**

15. The *Statutes Amendment (Vulnerable Witnesses) Act 2015* was passed by the South Australian Parliament with all party support and received Royal Assent on 6 August 2015. The Act incorporates major changes to the *Evidence Act 1929*.

<sup>3</sup> [http://www.dcsi.sa.gov.au/\\_data/assets/pdf\\_file/0004/13567/strong-voices-a-blueprint.pdf](http://www.dcsi.sa.gov.au/_data/assets/pdf_file/0004/13567/strong-voices-a-blueprint.pdf).

<sup>4</sup> <http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Initiatives%20Announcements%20and%20News/DJP/Disability%20Justice%20Plan%20WEB.pdf>.

16. The Act and the linked specialist training and communication partner scheme have been undertaken as part of the Disability Justice Plan and will have major implications both in and out of court. The Act applies to vulnerable suspects, witnesses, victims and defendants. Though it has a criminal law focus, its relevance is not confined to a criminal context.
17. The Act will come into effect on 27 June 2016. A date of 27 June 2016 will enable the relevant agencies and interested parties to put in place key operational requirements, including the training of agency staff in interviewing and support arrangements and training for communications partners.
18. The *Statutes Amendment (Vulnerable Witnesses) Act 2015* is an important measure to improve the position of vulnerable parties, namely children and persons with an intellectual disability, within the criminal justice system, both in and out of court.
19. The policy of the Act was made clear by the Attorney-General:

*The Bill preserves an accused person's right to a fair trial, whilst recognising that the South Australian criminal justice system needs to be more accessible and responsive to the needs and interests of victims and witnesses who are children and persons with a disability. The Bill builds on previous legislative reforms and the wider Disability Justice Plan.<sup>5</sup>*

*The Disability Justice Plan and the present Bill reflect the Government's commitment to provide a modern and fair criminal justice system that is more responsive to the interests of people with disability, whether as victims, witnesses, suspects or defendants, and to ensure they are better served by the justice system.<sup>6</sup>*

20. In summary<sup>7</sup> the Act will:
  - i) Give people, whether victims, witnesses, suspects, or defendants, with complex communication needs a general entitlement to have a communication assistant present for any contact with the criminal justice system (both in and out of court) to facilitate objective and effective communication with a person with complex communication needs. A new Communication Partner scheme to support the Act will be established;
  - ii) Minimise the number of times 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 (the intention is one comprehensive account will be provided to a specially trained investigator at the outset of the proceedings);

<sup>5</sup> South Australia, *Parliamentary Debates*, House of Assembly, 6 May 2015, 1036 (Hon John Rau, Attorney-General).

<sup>6</sup> South Australia, *Parliamentary Debates*, House of Assembly, 6 May 2015, 1041 (Hon John Rau, Attorney-General).

<sup>7</sup> A detailed summary of the new Act and the supporting forthcoming Regulations is included at Attachment 1.

- iii) Tackle the misconception that disability denotes 'unreliability' (all available research indicates that both children and persons with an intellectual disability are capable of providing reliable and cogent evidence if asked the right questions with the right support);
  - iv) Enhance the supports available for vulnerable victims, witnesses, suspects and defendants, both in and out of court;
  - v) Allow the audio-visual account of a vulnerable witness or victim to be used at trial as a substitute for examination in chief at trial;
  - vi) Allow the evidence of vulnerable witnesses to be taken in informal surroundings, including before trial;
  - vii) Address vexatious and inappropriate questioning of vulnerable parties at trial;
  - viii) 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.
21. The Act is supported by guidelines developed as part of the Disability Justice Plan and in consultation with community representatives, *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best evidence*.<sup>8</sup> The Act will be further supported by the new specialist training program in interviewing children and persons with an intellectual disability and the new communication partner model in South Australia, as outlined below.

**Question 5 - Outline the work that has been undertaken to prepare for the commencement of the reforms.**

22. The *Disability Justice Plan 2014–17* was developed through an extensive consultation process, especially involving people with lived experience of disability. A detailed overview of the consultation process is provided at Attachment 2.
23. The consultation process revealed as its key themes:
- i) A need for better communication between all parties involved in the legal process;
  - ii) Communication supports for people with intellectual disability or other complex communication needs;
  - iii) People with disability are not considered to be credible witnesses or good story tellers;

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<http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Initiatives%20Announcements%20and%20News/DJP/DJP%20Guidelines%20WEB.pdf>.

- iv) Rights awareness among people with disability;
  - v) A need for advocates/independent third persons to be involved in police interviews and the court process;
  - vi) A need for training at all levels including, judges, police investigators and lawyers;
  - vii) A need to consider mandatory reporting for vulnerable adults;
  - viii) A need for the timely resolution of cases involving vulnerable victims;
  - ix) The right for people with disability to be able to participate in jury duty;
  - x) Case management and a central point of call to access information.
24. The Disability Justice Plan is designed to address these concerns. Launched in June 2014, the Government provided \$3.25 million in funding over four years to implement the Plan, including the following key measures:
- i) Specialist training in investigative interviewing for police and other investigators working with vulnerable witnesses in SA Health and Families SA, which will include the independent evaluation of interview techniques for continuous improvement;
  - ii) Training for medical professionals, judiciary and staff working with vulnerable witnesses;
  - iii) Independent communication assistants, who will play a role similar to language interpreters for people with complex communication needs both in court and outside court during investigative and other interviews; and
  - iv) Community education and awareness campaigns in partnership with people with lived experience of disability to inform people with disability about their rights and responsibilities, delivered by the Legal Services Commission.

*Specialist Training for Investigative Interviewers*

25. Specialist training is being funded through the Disability Justice Plan for investigative interviewers working with vulnerable witnesses. Following an open competitive procurement process, the Centre for Investigative Interviewing at Deakin University has been selected to provide specialist training to interviewers working in South Australia Police, Child Protection Services, Families SA, the Department for Education and Children's Services and Disability SA. This training seeks to enhance best practice skills in questioning vulnerable witnesses.
26. On Friday 5 February 2016, SAPOL launched the training program at Fort Largs Police Academy involving approximately 70 training participants.

27. Importantly, the training will give effect to the policy and intention of the *Statutes Amendment (Vulnerable Witnesses) Act 2015*.
28. It is anticipated that 100 interviewers will be trained per calendar year over the initial two-year agreement with Deakin University, following which the Government has the option of two 12-month extensions based on performance.
29. As part of the implementation and evaluation of the specialist training, two researchers from Deakin's Centre for Investigative Interviewing, Dr Lydia Timms and Madeline Bearman, are located full-time in the Attorney-General's Department to undertake new research on how to further refine guidelines for interviewing people with limited expressive ability and to assist in assessing the effectiveness of the training on downstream case outcomes.

#### *Guidelines for Investigative Interviewers*

30. Guidelines for investigative interviewers in the taking of evidence from vulnerable victims<sup>9</sup> were developed as part of a consultative process under the Disability Justice Plan. The guidelines are intended as a concise statement of current best practice in engaging with and interviewing vulnerable witnesses. The guidelines were developed by a committee comprising representation from criminal justice agencies and the disability sector as a part of Change@SA 90-Day Project. The guidelines will be used in conjunction with the implementation of the specialist training for investigative interviewers working with vulnerable witnesses.

#### *Communication Assistant Scheme*

31. The *Statutes Amendment (Vulnerable Witnesses) Act 2015* provides the statutory basis for the establishment of a communication assistant scheme with the introduction of the prescribed role of Communication Partner. The scheme has been titled the Communication Partner Service to reflect the terminology in the Act.
32. Under the Act, a Communication Partner means a person, or a person of a class, approved by the Minister for the purposes of providing impartial communication assistance in proceedings to witnesses with complex communication needs, namely people with a disability and children.
33. The objective of the service is to provide trained independent volunteer personnel to facilitate effective and objective communication between vulnerable victims, witnesses and defendants with complex communication needs in and out of court.
34. As stated in the Disability Justice Plan, the service will be established and operated in the non-government sector. Funding up to \$1.362 million (Ex GST) under the Disability Justice Plan was allocated for the establishment of a Communication Partner Service over four years.

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<sup>9</sup> *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best evidence*, <http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Initiatives%20Announcements%20and%20News/DJP/DJP%20Guidelines%20WEB.pdf>.

35. The communication partner model and market approach was finalised in consultation with criminal justice agencies. As part of a competitive process, the Communication Partner Service Grant was launched by the Attorney General's Department on 16 September 2015.
36. The procurement process for the Communication Partner Service is close to being finalised. The aim is to have a pool of suitably trained and supported volunteers in place by June 2016 when the Act comes into effect.

#### *Disability Justice Plan Symposium*

37. The inaugural Disability Justice Plan Symposium was held on 19 November 2015 and involved 150 participants, including criminal justice agencies, researchers, the legal profession, community advocates, and people with lived experience of disability.
38. The Attorney-General launched the *Disability Justice Plan Annual Report 2014–15* at the event. The report highlights that of a total of 45 priority actions in the Plan, 23 are complete or substantially complete, and 22 are ongoing.
39. Participants heard from keynote speakers, including the former Disability Discrimination Commissioner, Graeme Innes AM, and Terese Henning, the Director of the Tasmanian Law Reform Institute. Workshops were held in the afternoon to contribute to the implementation of key actions in the plan.
40. The symposium provided an opportunity to report back to the community on progress, and contribute to the ongoing cultural change necessary to support vulnerable witnesses and further the new Act. Positive feedback about the event was received. This will be an annual event. It will assist in obtaining feedback as to the progress of the new Act and the wider Disability Justice Plan.

#### *Additional Legislative Reform*

41. In addition to the Vulnerable Witnesses Act, 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, especially by those in positions of power and authority, while respecting the sexual autonomy of persons living with cognitive impairment. This Act drew on close community consultation and is sensitive to the balance of protection and paternalism.

#### *Community Education and Awareness Campaign*

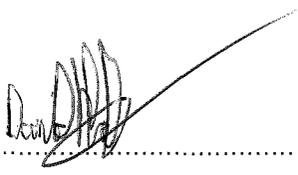
42. The Law4All Program commenced in July 2014 and is being run by the Legal Services Commission to assist people with disability to know their rights, understand their responsibilities and navigate confidently through the legal system, knowing when and where to ask for help and advice.

43. Training under the program is also being delivered to community workers and personnel in criminal justice agencies, and the content includes initiatives in the Disability Justice Plan.
44. 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.

**Question 6 - Outline any plans for an evaluation of the reforms, including the aspects of the reforms to be evaluated.**

45. There is provision for evaluation of the vital aspects of the Disability Justice Plan and the new Act. I should note that owing to possible conflict of interest, I had no role in the tender design or selection process for the specialist interviewer training. In this part of my statement, I rely on information provided to me by my colleague, Dr Stephen Brock, Senior Policy Officer, Attorney-General's Department, who led the tender process to contract a provider for the specialist training.
46. *Priority Area 4* of the Disability Justice Plan, '*Continuously monitor and improve performance*', highlights that the collection of statistical and research data is fundamental to identifying and addressing the barriers faced by person with disabilities in their interactions with the criminal justice system. Key priority actions in this area of the Plan include the development of performance indicators for the implementation of the Plan to track progress and continuously improve performance, and the development of standard variables for the collection of data by criminal justice agencies relating to clients with disability.
47. Investigative interviewers undertaking the specialist training program provided by Deakin University's Centre for Investigative Interviewing will be continually assessed throughout the training and provided with ongoing feedback on their performance. The evaluation methodology is evidence-based and will be in line with that published in Mairi Benson and Martine Powell's peer-reviewed article 'Evaluation of a comprehensive interactive training system for investigative interviewers of children', in *Psychology, Public Policy, and Law*, 2015, Vol. 21, No. 3, 309–322.
48. The successful provider of the Communication Partner Service will collect and analyse operational data to monitor and continuously improve service provision, and report on implementation progress. The data collection will also be utilised in an overall evaluation of the Disability Justice Plan in 2017.
49. A prototype of the Communication Partner Service will be evaluated as part of a staggered implementation process and a review of the findings will inform ongoing implementation of the service statewide.

- 50. The overall *Disability Justice Plan 2014–17* will undergo a comprehensive review before the end of the 2017 calendar year (which will include the *Statutes Amendment (Vulnerable Witnesses) Act 2015*) to revise the approach and identify future directions and potential law reform.

Signed  .....

David Plater

Dated 9 March 2016

### Attachment 1

1. The *Statutes Amendment (Vulnerable Witnesses) Act 2015* amends the *District Court Act 1991*, the *Evidence Act 1929*, the *Magistrates Court Act 1991*, the *Summary Offences Act 1953* and the *Summary Procedure Act 1921*. Reforms include a new provision and procedure for the admission of audio-visual records of interviews as the evidence-in-chief of witnesses who are children aged 14 years of age or younger or intellectually disabled in cases involving a sexual or violent offence (section 10).
2. Replaces s 34CA of the *Evidence Act 1929* with a new s 34LA (section 16) permitting admission of an out of court statement as a limited exception to the hearsay rule in relation to child sexual abuse victims when the time, content and circumstances of the statement provide sufficient safeguards of reliability. The new s 34LA, unlike the previous incarnations of s 34CA, does not require that the maker of the out of court statement be available for cross-examination. The section is intended to apply in a very rare class of case, where the young child whose cognitive development is not such that they could give evidence, or the person with an intellectual disability who similarly does not have the cognitive capacity to give evidence, says something out of court, that amounts to an allegation of sexual interference. The timing, content and circumstances in which the statement is made bespeaks its reliability
3. Regulation of how children or persons with an intellectual disability are interviewed as witnesses in the investigation of sexual or violent offences, and how those interviews are recorded (section 25).
4. Provision for the pre-trial taking of evidence (both evidence-in-chief and cross-examination), in informal surroundings, from children of or under 14 years of age or persons with an intellectual disability who are victims or witnesses in trials involving sexual or violent offences. This allows the evidence to be recorded before trial and played to the court at the later trial (section 7).
5. Amendments to s 50B of the *District Court Act 1991* (section 4), s 126A of the *Supreme Court Act 1935* (section 31) and s 48B of the *Magistrates Court Act 1991* (section 20) to extend the priority listing of sexual assault trials where the complainant is a child to those where the complainant has an intellectual disability.
6. Amending the Declaration of Principles in s 6 of the *Victims of Crime Act 2001* to include specific reference to both physical and intellectual disability (section 32) (and consequential amendments to the *Evidence Act 1929* (sections 5 and 8) and *Summary Procedure Act 1921* (section 29).
7. Clarifying the definition of 'vulnerable witness' under the *Evidence Act 1929* to include people with a 'cognitive impairment' (section 5).
8. Amending the *Evidence Act 1929* and the *Summary Offences Act 1953* to give people, whether victims, witnesses or defendants with complex communication needs a general entitlement to have a Communication Assistant present where appropriate for any contact within the criminal justice system (sections 7, 9 and 12). This applies both

in and out of court. A new Communication Partner scheme to support the Act will be established. The Communication Partner model draws on language interpreters and is intended to facilitate objective and effective communication within the justice system with persons with complex communication needs. The practical operation of the communication partner model will be detailed in the forthcoming Regulations to be made. It is implicit and consistent with existing practice, that a 'witness' includes an accused when testifying.

9. Amending the *Evidence Act 1929* and *Summary Procedure Act 1921* to clarify and increase access to appropriate support persons for vulnerable witnesses, both in and out of court (sections 7, 9, 12 and 28).
10. Amending the *Evidence Act 1929* to broaden the special arrangements available to vulnerable witnesses when giving evidence (section 9).
11. Clarifying the definition of improper question under s 25 of the *Evidence Act 1929* to include questions that are expressed in language that is too complicated for the witness to understand (section 14).
12. Clarifying the criteria for determining the competence of a witness under s 9 of the *Evidence Act 1929* to give sworn or unsworn testimony in court when the court is exercising its discretion to admit recorded interviews under sections 7 and 10 of the Act (section 6).
13. Providing a procedure by which recorded investigative interviews with vulnerable witnesses can be reviewed, assessed or checked for training purposes, including by external specialists for quality assurance purposes, subject to strict confidentiality/privacy requirements (section 28). The results of such evaluation will guide future improvements in questioning vulnerable parties.
14. Expanding the category of witnesses who are to be treated as 'vulnerable witnesses' in the *Evidence Act 1929* and consequential contexts to include children of or under the age of 14 years (rather than under 12 years, as it is at present) (sections 5 and 29).
15. Tightening the restrictions on access to audio-visual records and transcripts of interview, involving vulnerable witnesses in sexual cases, especially to legally unrepresented accused (section 18). There are also consequential amendments to s 69 of the *Evidence Act 1929* to provide that the court be cleared when an audio-visual recording of the statement or evidence of a vulnerable witness is being played (section 19).
16. Amending the procedure and entitlement for close relatives to be exempted from giving evidence under s 21 of the *Evidence Act 1929*. The Bill clarifies and simplifies the current law set out in s 21 of the *Evidence Act 1929* governing the grant of an exemption to a close relative of an accused from a lawful obligation to give evidence against the accused, including to accord the term 'obligation' in s 21 with the dissenting view in *R v G, AP* (2014) 119 SASR 125 of Stanley J.

17. To clarify the operation of s 34M of the *Evidence Act 1929* in accordance with Parliament's intention as suggested by Kourakis CJ in *R v H* [2010] SASCF 24 at [105] - [106].



## Attachment 2

### OVERVIEW OF THE SOUTH AUSTRALIAN DISABILITY JUSTICE PLAN CONSULTATION PROCESS

#### First Consultation Phase

The Attorney-General's Department established a Steering Group in March 2012 to oversee the development and implementation of the Disability Justice Plan (which is closely linked to the intended legislative reforms) and consultation strategy, which included the following agencies:

- Strategic Policy and Organisational Performance, AGD (Chair)
- Legislative Services (AGD)
- Courts Administration Authority
- South Australia Police
- Office of the Director of Public Prosecutions
- Department for Correctional Services
- Public Advocate
- Health and Community Services Complaints Commissioner
- Equal Opportunity Commission
- Department for Communities and Social Inclusion
- Department for Education and Child Development
- Commissioner for Victims' Rights
- Legal Services Commission
- SA Health
- Principal Community Visitor
- Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (Observer)

The community engagement strategy for the Disability Justice Plan was developed in close consultation with the Steering Group, including the development of a discussion paper released in accessible formats. The SA Equal Opportunity Commission and other member agencies of the Steering Group assisted in running public meetings and promoting awareness about the consultation.

Informal consultation was also undertaken with the Chief Justice, the Chief Judge, the Chief Magistrate, the Law Society and the Hon Kelly Vincent MLC prior to the release of the Disability Justice Plan discussion paper.

On 21 May 2013, the Attorney-General hosted a roundtable discussion involving key disability advocates and community leaders at the Disability Information and Resource Centre, prior to launching a discussion paper. The Discussion Paper flagged the potential introduction of a new law based on an existing offence in NSW to make it a crime for an employed or volunteer carer to have sexual contact with the person with intellectual disability in their care. The NSW provision was included in the Discussion Paper for reference, and a feedback was specifically sought from the community on the introduction of such a law in South Australia.

While the consultation period was officially open for two months, community engagement continued well into August 2013. The engagement methods used for the consultation included the following:

- Five public meetings in metropolitan and regional areas:

- Mount Gambier, Friday 14 June 2013.
- Disability Information and Resource Centre, Adelaide, Wednesday evening 19 June 2013, organised in collaboration with the Australian Disability Commissioner, Mr Graeme Innes AM, as part of the Australian Human Rights Commission's national consultation on access to justice for people with disability.
- Minda, Brighton, on the morning of Thursday 20 June 2013
- Port Augusta, on Wednesday 26 June 2013
- Murray Bridge on Wednesday 17 July 2013.
- A community engagement page on the SA Strategic Plan website and the Attorney-General's Department website, including an online survey
- Hard copy and electronic mail-out to disability organisations in SA
- Phone submissions
- Face to face meetings with a broad range of community organisations and interested parties, including people in secure care.

The Attorney-General's Department received 28 formal submissions, approximately 50 completed surveys, and more than 120 people took part in the five public meetings. In addition, valuable information was gained from meetings with a broad range of individuals and organisations, including people in secure care who would not otherwise have been able to take part in the consultation. Those submissions not marked confidential were made available on the Attorney-General's Department website, along with an overview of issues raised during public meetings.

In addition to the public meetings, officers from the Attorney-General's Department met one on one with a range of community organisations, including the following:

- A meeting with a group of people with acquired brain injury organised by the Brain Injury Network of SA
- A meeting with the Julia Farr Youth Group, comprising young people with disability from diverse backgrounds
- A coffee-shop meeting with a representative from Women with Disabilities
- A presentation to the National Disability Services Forum
- Meetings with residents in Supported Residential Facilities
- Meetings with prisoners with disabilities in the Mobilong Prison and the Adelaide Women's Prison
- Meetings with people with disability in secure care in James Nash House
- Aboriginal Legal Rights Movement
- Pika Wiya Health Service, Port Augusta
- Minister's Disability Advisory Council (MDAC)
- Commissioner for Aboriginal Engagement
- South Australian Multicultural and Ethnic Affairs Commission
- Royal Society for the Blind
- SCOSA (Spastic Centres of SA)
- A meeting with parents of children with intellectual disabilities.

Coinciding with the Disability Justice Plan consultation, a Select Committee of the Legislative Council, chaired by the Hon Stephen Wade MLC, was established to inquire into and report on access to justice for people with disabilities, to which officers from the Attorney-General's Department presented evidence. It was agreed that submissions made to the Select Committee would also be considered as part of the Disability Justice Plan consultation, to

avoid duplication. Recommendations from the Select Committee's report, handed down in July 2013, were subsequently incorporated into the Plan.

To accompany the draft Plan, guidelines for investigative interviewers in the taking of evidence from vulnerable victims were also developed as part of a consultative process. The guidelines are intended as a concise statement of current best practice in interviewing vulnerable witnesses. They were developed by a committee comprising representation from criminal justice agencies and the disability sector as a part of Change@SA 90-Day Project. The guidelines will be used in conjunction with comprehensive training in disability awareness and investigative interviewing.

## **Second Consultation Phase**

On 16 December 2013, Cabinet approved the circulation of a draft Bill to introduce a new offence for public comment in conjunction with the release of the draft Disability Justice Plan.

On 10 February 2014, Cabinet approved the release of the draft Plan and associated guidelines for the conduct of investigative interviews, which were made available on the AGD website on Friday 15 February 2014, along with a discussion paper containing a draft *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Amendment Bill* based on the NSW model.

Disability organisations and interested individuals who took part in the initial consultation process were notified by email that the Plan had been released for public comment.

On Wednesday 26 February 2014, the Government announced that it would provide the necessary \$3.246 million in funding over four years to implement the Disability Justice Plan. The funding was subsequently included in the 2014–15 Budget and forward estimates.

A roundtable of community leaders and disability advocates present at the launch of the discussion paper in May 2013 was re-convened to discuss the draft Bill, the draft Plan and associated documents on Thursday 27 February 2014.

Separate meetings were also held with the following groups: the Law Society; the Legal Services Commission and Disability SA; Women with Disability SA; parents of children with intellectual disability and the Disability Justice Plan Steering Group.

Twenty-one written submissions were received as part of this second stage of consultation from a broad range of organisations and individuals, the majority of whom had contributed to the development of the draft Disability Justice Plan through previous submissions.

Public comment closed on Friday 21 March 2014, and the draft Plan, investigative guidelines and proposed Bill were amended in light of feedback. While the amendments to the Disability Justice Plan and guidelines were minor, the Bill to introduce a new offence was subject to further consultation with interested parties. In light of issues raised in the second stage of submissions and the further consultation, the current 'undue influence' model was adopted in preference to the NSW approach, drawing on recommendations made by the Model Criminal Code Officer's Committee and legislation in Canada. This model was thought to most effectively strike the best balance of the conflicting interests in this sensitive area.

Following the extensive community consultation outlined above, the final Disability Justice Plan was approved by Cabinet and launched on Tuesday 10 June 2014, and implementation is now in progress.

The *Criminal Law Consolidation (Sexual Offences-Cognitive Impairment) Act 2014* came into operation on 30 March 2015.

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* will come into effect on 27 June 2016.

The Disability Justice Plan is available on the Attorney-General's Department website:

<http://www.agd.sa.gov.au/initiatives/disability-justice-plan>

### **Disability Justice Plan Advisory Committee**

Consultation is being driven in the implementation phase through community representation on the Disability Justice Plan Advisory Committee, which includes four community representatives. To further ensure transparency, the committee is chaired by the Equal Opportunity Commissioner. In addition, the Advisory Committee comprises representatives from the following agencies:

- Strategy and Reform Division (AGD)
- Legislative Services (AGD)
- Courts Administration Authority
- South Australia Police
- Department for Correctional Services
- Disability SA (DCSI)
- Robbi Williams, CEO, Purple Orange
- Nahtanha Davey, CEO, Brain Injury Network SA (BINSa)
- Margie Charlesworth, Women with Disabilities SA (WWDSA)
- Silvana Gant, community representative with lived experience of intellectual disability