



**Commission of Inquiry into  
the Tasmanian Government's  
Responses to Child Sexual  
Abuse in Institutional Settings**

## **WITNESS STATEMENT OF DR CATIA MALVASO**

I, Catia Gaetana Malvaso of [REDACTED] in the State of South Australia, Senior Research Fellow, Faculty of Health and Medical Sciences, the University of Adelaide, do solemnly and sincerely declare that:

1. I make this statement in a personal capacity.
2. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

### **AREAS OF PROFESSIONAL EXPERTISE AND INTEREST**

3. I have the following qualifications:
  - (a) B Psych (Hons); First Class; and
  - (b) Doctor of Philosophy.
4. My current roles include the following:
  - (a) Senior research fellow in both the School of Psychology and School of Public Health at the University of Adelaide.
  - (b) I am part of BetterStart Health and Development Research, an interdisciplinary team with backgrounds in epidemiology, public health, nutrition, criminology, paediatrics, social work, biostatistics, and psychology. BetterStart's aim is to generate better evidence to inform policy and practice to improve health, wellbeing and development outcomes. I am the criminal justice system research lead.
5. I have previously worked as a Research Consultant for the Northern Territory Royal Commission into the Protection and Detention of Children.
6. My research interests are in the areas of child protection, criminology and developmental psychology. My primary area of research is focused on understanding the developmental pathways by which children who experience abuse and neglect broadly may later end up in the youth justice system, whether for general offences or specific offences (sexual) against other children and young people.

7. My recent relevant publications include:
- (a) "All in the family? Exploring the intergenerational transmission of exposure to adverse childhood experiences and their effect on offending behaviour" (2021) *Youth Violence and Juvenile Justice*, 19(2), 292-307. DOI: 10.1177/15412040211003648. A copy of this paper is attached to this statement and marked **CM-1**.
  - (b) "Opportunities for prevention: a data-linkage study to inform a public health response to youth offending in the Northern Territory, Australia" (2021) *BMC Public Health*, 21(1). DOI: 10.1186/s12889-021-11645-4. A copy of this paper is attached to this statement and marked **CM-2**.
  - (c) "Young people under youth justice supervision with varying child protection histories: An analysis of group differences" (2019) *International Journal of Offender Therapy and Comparative Criminology*, 63(2), 159 – 178. DOI: 10.1177/0306624X18791735. A copy of this paper is attached to this statement and marked **CM-3**.
  - (d) "Adverse childhood experiences in a South Australian sample of young people in detention" (2019) *Australian and New Zealand Journal of Criminology*, 52(3), 411 – 431. DOI: 10.1177/0004865818810069. A copy of this paper is attached to this statement and marked **CM-4**.
  - (e) "The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending" (2017), 64, 32 – 46. DOI: 10.1016/j.chiabu.2016.11.028. A copy of this paper is attached to this statement and marked **CM-5**.
  - (f) "Young people with complex needs leaving out-of-home care: Service issues and the need to enhance practice and policy" (2016) *Children Australia*, 41(1), 69 – 79. DOI: 10.1017/cha.2015.48. A copy of this paper is attached to this statement and marked **CM-6**.
  - (g) "The intersection between the Child Protection and Youth Justice systems in South Australia" (November 2020) Better Start Child Health and Development Research Group, the University of

Adelaide. A copy of this paper is attached to this statement and marked **CM-7**.

- (h) "Youth Justice supervision in South Australia" (November 2020) Better Start Child Health and Development Research Group, the University of Adelaide. A copy of this paper is attached to this statement and marked **CM-8**.
- (i) "Characteristics of children with problem sexual behaviour and adolescent perpetrators of sexual abuse: a systematic review" Catia G. Malvaso, Michael Proeve, Paul Delfabbro & Jesse Cale (2019), Journal of Sexual Aggression, DOI: 10.1080/13552600.2019.1651914. A copy of this paper is attached to this statement and marked **CM-9**.
- (j) "Associations Between Adverse Childhood Experiences and Trauma Among Young People Who Offend: A Systematic Literature Review" (2021) Catia G. Malvaso , Jesse Cale, Tyson Whitten, Andrew Day, Sara Singh, Louisa Hackett, Paul H. Delfabbro, and Stuart Ross, Trauma, Violence, & Abuse 1-18, DOI: 10.1177/15248380211013132. A copy of this paper is attached to this statement and marked **CM-10**.
- (k) "Service approaches to young people with complex needs leaving out-of-home care" (February 2016) Catia Malvaso, University of Adelaide DOI: 10.1080/13575279.2015.1118016. A copy of this paper is attached to this statement and marked **CM-11**.
- (l) "Addressing Intergenerational Trauma in an Adolescent Reunification Program: Case Studies Illustrating Service Innovation" Catia G. Malvaso, Paul H. Delfabbro, Jacqueline Amos, Bryan Todd, and Samuel Carpenter (2019) Journal of Child and Adolescent Trauma, 14(4), 533-544. A copy of this paper is attached to this statement and marked **CM-12**.
- (m) "Researching Adverse Childhood Experiences in the Youth Justice System: Reflections on Methodology From a Members of a Non-Indigenous Research Team" Andrew Day and Catia Malvaso (2021) International Journal of Offender Therapy and Comparative

Criminology. A copy of this paper is attached to this statement and marked **CM-13**.

- (n) "A public health approach to preventing child maltreatment: an intelligent information infrastructure to help us know what works" Catia Malvaso, Rhiannon Pilkington, Alicia Montgomerie, Paul Delfabbro and John Lynch (2020) Child Abuse and Neglect, 106, 104466-1-104466-9. A copy of this paper is attached to this statement and marked **CM-14**.

8. Attached to this statement and marked **CM-15** is a copy of my curriculum vitae.

#### **THE DISTINCTION BETWEEN ADVERSITY AND TRAUMA**

9. At the outset it is important to distinguish and differentiate between adversity and trauma. Research suggests that experiencing adversity and maltreatment can be traumatising, but that does not necessarily mean that all individuals who experience adversity will be traumatised. Further, not all children whom are traumatised will end up offending. This is a very important distinction in terms of understanding the most appropriate interventions.
10. Adverse childhood experiences typically include: child maltreatment (physical, sexual and emotional abuse, and physical and emotional neglect) and what some might describe as adversity relating to household dysfunction, for example, experiencing parental incarceration, substance abuse, and/or mental illness and exposure to family and/or neighbourhood or community violence. Some researchers have argued for a broadening of adverse childhood experiences to include experiences such as poverty, bullying at school and death in the family.
11. The issue is then to consider the extent to which adverse childhood experiences are related to clinical-level trauma symptoms, such as post-traumatic stress disorder (**PTSD**), dissociation, anxiety, anger, and depression. We can think of adversity as an event or series of events, and trauma as the response to those events.

## MEASURING AND TREATING TRAUMA

12. The majority of studies and research undertaken, particularly in Youth Justice settings, measure adverse childhood experiences. There are fewer studies which focus on measuring the trauma symptoms. There are also different ways of measuring trauma and a number of instruments exist, e.g., the Trauma Symptoms Checklist for Children, the UCLA Posttraumatic Stress Disorder Reaction Index, the Clinical-Administered Posttraumatic Stress Scale. It is important to consider the population characteristics when choosing a scale, as well as understanding the validity (or lack thereof) of these scales for different cultural groups.
13. It is also important to consider distinctions between PTSD, as defined in the Diagnostic and Statistical Manual of Mental Disorders, and complex or developmental trauma, and it may be that the tools currently used to assess PTSD may not adequately capture the developmental impact and complex emotional, behavioural and neurobiological sequelae of cumulative traumatic experiences such as chronic child maltreatment. Over the last decade, a great deal of effort has been devoted to developing new assessments of developmental trauma disorders, including Complex Trauma.
14. When we talk about Complex Trauma, what we mean is cumulative and developmentally-patterned trauma resulting from a child's exposure to multiple, repeated adverse events. Some of the characteristics that children in child protection and youth justice systems display, such as callous-unemotional traits and somatic complaints, may be overlooked as indicators of trauma. This is of clinical relevance because we may be presented with new opportunities for treatment responses.
15. For example, there is a school of thought that maintains that callous-unemotional traits are biologically-based and not modifiable and are ordinarily seen to be early markers of prolonged and serious antisocial behaviour. In contrast, there are other theorists who posit that these traits emerge in response to complex trauma experiences – they are coping mechanisms for individuals who detach emotionally due to the distress caused by traumatic experiences. If this is the case, then callous-unemotional traits may be more amenable to change than originally believed. This has significant implications

as it can inform our responses and the selection of the most appropriate interventions available for a child exhibiting these traits.

## **THE LINKS BETWEEN CHILD MALTREATMENT AND OFFENDING**

16. Various cross-sectional studies into youth justice populations give us snapshots at certain points in time and tell us something about the characteristics of children involved in these systems. These studies have documented the high prevalence of adverse experiences and trauma symptoms among young people involved in the justice system, particularly those in custodial facilities. This is really important when considering service planning and interventions for children in, or at risk of contact with, the justice system.
17. But, it matters for prevention and treatment when you know about these experiences of adversity and trauma – either early in life or later in adolescence or adulthood. So, if we want to treat adolescents or adults who have experienced these events in the past, then these studies are helpful. But, if we want to design preventive support interventions, in real time, then they are less helpful. They do not differentiate between children who do and do not later end up in the justice system – we need prospective, longitudinal studies to do this. This helps us understand more about developmental pathways – about the when, why and how experiences of adversity and trauma lead to offending behaviours, and for whom. This is the information necessary for informing prevention efforts.
18. There are few longitudinal studies in Australia that follow children over time that can provide insight into developmental pathways, especially for children who end up in contact with the justice system. It is acknowledged that there is a gap in the data and detailed research available. It is important for us to understand the factors, both risk and protective, influencing these pathways so that we can identify the appropriate opportunities for early intervention and prevention.
19. Longitudinal studies have shown that when you follow children and young people who have experienced child maltreatment, the majority of this cohort will never offend or have contact with the justice system. Our research in South Australia shows that only approximately 6% of these children and

young people who experience contact with the child protection system will end up in contact with the youth justice system. This indicates that the association between child maltreatment and youth offending is not deterministic. It is important that future research using longitudinal data focus on whether we can better identify the mechanisms underlying pathways from experiencing maltreatment to engagement in offending behaviours so that we have a better understanding the factors we might be able to target in intervention and prevention efforts.

20. In terms of the characteristics of those children entering the youth justice system who have experienced adverse childhood experiences, key risk factors tend to include: multiple exposures to maltreatment, repeat contact with the child protection system and placement in out-of-home care.

#### **CHILDREN IN OUT-OF-HOME CARE AND LINKS TO YOUTH JUSTICE SYSTEM**

21. Placement in out-of-home care is a complex issue as it is intended to be a positive intervention to remove children from an unsafe environment. Often children who have experienced the serious and chronic maltreatment end up in out-of-home care. But we also know that children who have been in out-of-home care tend to have poorer health and social outcomes compared to children who have never been placed. Disentangling the impact of care experiences from the trauma and adversity that leads to placement is very difficult.
22. This is particularly challenging because out-of-home care it is not one thing - a child may move between different types of placements (e.g., foster care, kinship care and residential care), at different ages, and may experience a number of placement moves or changes. There may also be period where children are reunified with their birth families, and sometimes these reunifications do not work out and children can re-enter care.
23. The age at which children come into care has been shown to be an important factor that can influence outcomes. It has been shown that children who come into out-of-home care later tend to have a less stable experience than those that enter the system at a younger age. This may be because these children have been left in an abusive/neglectful home environment for a

longer period, resulting in behaviours which have become more entrenched and therefore more challenging.

24. We often see older children being placed in residential care where foster care or kinship care has failed or is not an option. These placements can be less family-focused, and often accommodate a number of children who have experienced significant adversity and trauma. This can lead to placement breakdowns and multiple changes in placements. This instability in placement histories and other associated adversities (e.g., experiences of chronic maltreatment and disadvantage) are often entwined and complex to tease apart.
25. Between 30 and 40% of the youth justice population in detention in South Australia will have had some experience of out-of-home care. However, this is not a causal or deterministic link and the majority of kids in out-of-home care still never end up experiencing youth justice system contact.
26. With my colleagues in BetterStart, we have found that children who have contact with the youth justice system and child protection system tend to have more pronounced patterns of socioeconomic disadvantage risk factors compared to those who don't have contact with these systems, and we can see these risks even before children are born. For example 74% of children born 1991-1998 who have contact with both child protection and youth justice were born to mothers who smoke during pregnancy. It is not about the smoking itself but the disadvantage that travels along with smoking during pregnancy. This disadvantage is known to the health system even before a child is born. The percentage of children in the youth justice system who have been in out-of-home care may be viewed as a result of challenges on the part of the out-of-home care system to intervene and prevent poor outcomes. In my view however the onus should not only be on the out-of-home care system. These are complex social issues that require a whole-of-system response.

***Role of the Courts as a de facto services coordinator***

27. There is anecdotal evidence of remand being used as a form of care for children who are 'hard to place'. Research in the Eastern states has also demonstrated that Judges and Magistrates are sometimes unable to release

a young person on bail because they do not have a fixed home address and/or there is no responsible suitable adult, or can no longer be accommodated in out-of-home care placements.

28. This is especially problematic when the child is under a child protection guardianship order, i.e., when child protection agencies are legally responsible for them. Remanding these children in custody due to placement issues is not appropriate and we lack clear evidence about suitable alternatives. We need a lot more research into diversion options for these children and young people, and we need to consider how culturally appropriate any alternative options may be.
29. There is much discussion around the issue of raising the age of criminal responsibility from 10 to 14 and Australian jurisdictions are facing increased pressure to raise the age and bring Australia in line with recommendations from the United Nations and other bodies, like the Australian Medical Association. However, there is some concern that raising the age simply delays the inevitable and that we actually need to offer children and young people more supports in order to prevent later contact with the justice system. At the moment, the Courts might be viewed as playing a role in trying to connect these younger children with appropriate services and restorative justice practices, such as diversion to family conferences. If this system is not in place, there may be concern that those 10 to 14 year olds displaying challenging behaviours, and having police interactions, may not always be put in touch with the appropriate services that may have the capacity to prevent later justice system contact.
30. However, should the Courts be acting in the role of de facto services coordinator? The alternative response is a child protection response. That said, considering the degree of overwhelm faced by the child protection system, the justice system response may be seen as a secondary fail safe support measure when the child protection system does not have capacity to provide supports to these young people. These older children often fall off the child protection radar, or are not seen as the responsibility of the child protection system. The question then becomes, if child protection aren't responsible, and the justice system isn't responsible, who is?

***The risk of entrenched behaviour patterns***

31. In a situation where it is the justice system which responds, as opposed to child protection, there is a risk that behaviours amongst the 10 to 14 year cohort may become entrenched. Placing a child in a custodial facility may reinforce certain types of behaviours, or expose them to new ones through association and contact with their peers in these environments.
32. Service provision for these young people is also challenging. In some instances this may be seen as in the child's interests to be involved in the justice system because they may be referred to or prioritised for access to services earlier than they may otherwise have been. Sometimes however the opposite is experienced, for example as a young person becomes engaged with the justice system, other services may refuse to be involved because of the child's contact with the youth justice system. Therefore whilst in some instances interaction with the youth justice system may lead to access to services, it may also lead to loss of access, especially placements, due to eligibility and perceived safety issues.
33. Further, had these children been afforded proper access to the support services they needed in the first instance, it may be reasonable to assume that they would have never ended up in contact with the justice system in the first place.

***Do family conferencing and other diversion options have a role to play?***

34. The youth justice system in South Australia tends to be informed by a welfare approach as opposed to a punitive approach to responding to young people who commit crimes. Here the emphasis is placed on diversion, but we are yet to sufficiently understand when diversion works well and for whom it is most effective. There are also different levels and layers of diversion, for example, police diversion which may include informal and formal cautions, and both police and court diversion to family conferencing.
35. Anecdotally, I have been told that family conferencing is more difficult and less successful for children in out-of-home care and who are highly traumatised. Often these children do not have the support networks necessary to benefit from the family conferencing process. There is also a need to consider trauma responses in children which may be triggered by the family conferencing environment, as well as culturally-sensitive responses.

Broadly, we do not have a system view of how the process would best operate in practice e.g. how many family conferences should a young person be involved in before a supervision order is issued? Are conferences where a victim is involved more effective? Do we need multidisciplinary teams around the table for these conferences? These are all issues that require further deliberation to build a better evidence base.

36. Community-based, rather than justice-based, programs may be more responsive to the needs of young people and more effective in preventing justice system contact.

***Supporting transitions between child protection and youth justice system***

37. Cases where children and young people cross over the child protection and the youth justice systems are complex. There is the potential that children will lose and need to re-establish connections as they move between the various service systems. This is the case even within the youth justice system alone.
38. Much depends on whether the young person is on bail or remand, if there are supervision orders, or the young person is in custody. Supervision orders can vary significantly, for example, it may involve case management as well as participation in community service and potentially different supervisors or workers.
39. If a child is placed on remand, and then comes back into out-of-home care, it can be a difficult transition for that child. This is compounded by the fact that they may also have a new child protection case manager or carer, or multiple case managers from different agencies. The implications of this for a child are that this is another form of instability and disruption in this child's life and family or placement. It is also disruptive for other children in those placements.
40. Continuity of services is important for children involved in multiple systems to ensure they continue to receive adequate support.

***Predicting risk of justice system contact***

41. With my colleagues in BetterStart, we have been investigating how well we can predict which children who come into care before the age of 10 will experience Youth Justice supervision by age 18. The purpose of this work is

to investigate the use of administrative data in helping us to identify at-risk groups towards which early intervention/prevention efforts could be targeted. Through a nuanced judgement of model predictive performance, we can conclude that the potential for prevention is large but there are some major ethical and practical considerations as well. For example, we need to define the intended interventions to understand the true cost of inevitable false positive and false negative predictions, for example, the stigma of being labelled as “high risk” for Youth Justice supervision. Another example is that there is no point in screening for risk if we don’t have the effective interventions to offer, so we need to do more to understand if we have effective, non-punitive, community-based and treatment-oriented interventions that can prevent Youth Justice system contact.

***Differences in responses to the behaviour of children in out-of-home care compared to those not in care***

42. There is also anecdotal evidence that children and young people in out-of-home care will experience increased police contact than would ordinarily occur in other family settings. In some out-of-home care placements, the tolerance for certain behaviours is lower and has far more serious consequences than those we would usually see in a family setting.
43. The Northern Territory Royal Commission found that police were more likely to be called, for example, when a child broke something in a residential care home. The reason behind this was that in order to be able to claim insurance where something is broken, a police incident report was required. Consequently this means that there is more police involvement for minor incidents. We need to respond better to the behaviour of children and young people in these settings in safe and productive ways. Trauma-informed responses, rather than punitive responses, have been recommended.
44. This comes back to the concept that once children are in out-of-home care, the care setting is intended to provide a safe and nurturing environment. A functioning family would not call the police in such circumstances. The question we then have to ask is why should we expect a child to feel safe if this is occurring? In effect the child is being managed as opposed to being parented in a meaningful way.

## **AVOIDING TRAUMA AFTER ADVERSE CHILDHOOD EXPERIENCES**

45. Ideally where a child is the victim of sexual abuse the objective is to intervene early and put the appropriate supports in place to minimise the extent to which an adverse event(s) creates a trauma response.
46. The extent to which the negative effects of trauma are successfully minimised will depend on many factors including whether there is a trusted adult, the type of abuse suffered, the frequency of the abuse, the setting in which the abuse occurred and the supports that are immediately available to the child.
47. Once abuse is detected there needs to be capacity to intervene in an age appropriate and situationally appropriate way. This involves multiple disciplines of expertise including social workers, psychologists, intensive clinical treatment. It is also important that there is a trusted adult or friend who can engage with that young person.
48. Engagement of the young person or child can be a significant challenge, particularly in out-of-home care. For children who are traumatised and who have complex needs, the systems currently in place in my view are not always conducive to effective engagement. There are numerous barriers to service engagement for these young people. These include: system level barriers (e.g., reactive and risk averse, strict and inflexible funding models); service level barriers (e.g., narrow or ill-defined eligibility criteria, lack of service coordination and information sharing, staffing issues, punitive and inconsistent service provision); and individual level barriers (e.g., complex behaviours and needs, styles of engagement which are not aligned with service models).

## **WHAT WOULD A CHILD FOCUSED SYSTEM LOOK LIKE?**

49. There is a need for a whole of government approach. A key element of the approach is flexibility. Current government systems tend to be siloed with each agency having different eligibility criteria, key performance indicators to meet and certain agencies who only work with particular types of children. This can make access very difficult for children. Children need to have staff who are flexible, creative and able to engage in ways that build trust. But sometimes there are system or service barriers to this.

50. Government systems and agencies are often structured around resources and finances. This sometimes results in a child disengaging from the process as they are bounced around between different agencies and services with different resource capacities and eligibility criteria. .
51. We are seeing more pressure on child protection systems to do prevention and early intervention work, for example reunification and family preservation. It is questionable whether these are most appropriately carried out by child protection, a human services system or another system which does not have that immediate statutory responsibility of removal, placement and care of the child. The child protection system may not be structured or resourced for prevention and early intervention and may not be the right agency to do this when they are also responsible for removal of children.
52. With my colleagues in BetterStart, we have done some work to outline an example of what a system-wide approach to preventing child maltreatment might look like, and I think this applies to preventing youth justice system contact too, especially given the crossover between child protection and youth justice. This would depend on both government and non-government agencies, as well as community, playing a role in a prevention-oriented system. This includes child and family focused services and agencies, such as antenatal and postnatal health agencies, child care and schools, child and adolescent mental health, child protection and youth justice. Universal agencies, like the antenatal health system, would play a foundational role in prevention because they often service "at-risk" populations before they have contact with child protection. But, a prevention-oriented system would also include adult-focused services, such as adult mental health services, drug and alcohol, housing and homelessness, police and corrections. Although these agencies are largely adult-focused, they can have a substantial impact on child outcomes, particularly when working with parents.
53. Understanding if this type of system-approach to preventing child maltreatment works requires intelligent information infrastructure that is able to routinely examine child and family outcomes, and overall system performance. At the moment, this is limited by siloed data collection and information systems. Our work has shown that three information indicator domains need to be routinely collected and linked to improve capacity to

understand the success of system-wide prevention of child maltreatment. First, we need within-agency activity data, and this is something agencies tend to collect fairly well at the moment, e.g., mandatory report statistics such as the number of notifications and reports. Second, we need referral data. This is a bit of a black hole in terms of data collection and different agencies collect this information to different extents. Third, we need data on child and family outcomes. We need to be able to bring all the data domains together to be able to trace the movement of children and families between systems and the various referrals that occur, but importantly to understand whether these children and families are actually connected with services, the services they actually receive, and how this impacts outcomes.

54. Co-led by my colleague Dr Rhiannon Pilkington, we are now working on scoping system-wide capacity for maltreatment prevention, specifically by quantifying non-statutory adult agency capacity to address drivers of maltreatment, with a focus on mental health, drug and alcohol, and domestic and family violence services. First, we are quantifying the demand for child maltreatment prevention services by identifying population risk profiles, including baseline demand (i.e., determining the size of the South Australia populations experiencing all forms of child protection contact), and demand stratified by risk (i.e., investigating key drivers of child protection, with our current focus on mental health, substance use, domestic and family violence, poverty and intergenerational child protection contact). Second, we are aiming to estimate supply of child maltreatment prevention services through service mapping and interviews with agencies identified as playing a role in addressing these key drivers of child maltreatment. We will collect data from agencies on service capacity, e.g., funding, staffing, eligibility criteria, referrals and models of care. By bringing together the demand and supply aims of this project, we hope to identify service capacity gaps and inform the alignment of services to need.

### ***Multidisciplinary teams***

55. Multidisciplinary teams are needed for responding to the often complex needs of children in child protection and youth justice. Although in practice there will be examples where this works well, there are a number of system barriers, including the way services and agencies are siloed, that can make multi-

disciplinary service delivery challenging. Equally, there are a number of ways that multi-agency coordination could be enhanced. This could be through the appointment of a “lead agency” to ensure all agencies/practitioners involved are held accountable and meet their responsibilities. Often this falls to statutory agencies, like child protection or youth justice, and this confers some benefits in terms of a legal remit that mandates engagement, but this is not always conducive to service engagement. Other times it could be the agency or practitioner who has the best relationship with the young person – a “key” worker who can then act as a conduit and facilitate engagement with other services. This worker then takes more of a relational and coordination role. They may not play a direct role in therapeutic service provision but can ensure smooth handovers between other agencies. Engaging families and other significant people in the young person’s life, where safe to do so, has also been recognised as key in service planning and provision

***Can the justice system provide a trauma informed response?***

56. The provision of services in these context is extremely difficult. We are seeing increasing pressure on youth justice systems to be trauma informed, developmentally responsive, and provide intensive treatment.
57. In the current model, this is challenging. Children are coming in and out of the youth justice system and tend to have very short periods of contact. Workers within the youth justice system have limited capacity to continue working with those children once they leave. Intensive specialist treatment can require months of engagement before any meaningful therapeutic work is possible, and requires significant resourcing. Such treatment is challenging from a practice perspective within a youth justice context, especially when attempting to address complex problems in a timely and meaningful way. Providing the necessary supports would then need to extend beyond the remit of justice agencies and inevitably require close coordination and collaboration between justice and other agencies, like child and adolescent mental health, child protection, education, drug and alcohol services. The success of multi-agency responses relies on greater service flexibility (e.g., not excluding young people from services based on their behavioural issues or justice contact) and methods of engagement that are conducive to the needs of ‘hard-to-reach’ populations (e.g., assertive outreach).

58. There are also questions about the extent to which custodial facilities can be set up to be responsive to the safety needs of young people in their care and their capacity to effectively manage actual or perceived threats to personal safety, including cultural safety.
59. A one-size-fits all approach that lacks a trauma-informed overlay, particularly in custodial settings, is unlikely to be effective and tailored responses are needed.
60. Staff in these settings are a key asset and should receive specific and ongoing support and training on how to interact with young people in trauma-sensitive ways.

***What is the appropriate role of the justice system?***

61. This raises the question of what is the appropriate role of the justice system for addressing developmental and trauma-related needs of young people. There is no one answer, and a lot depends on the underlying philosophies of justice agencies (e.g., welfare-based versus a justice or punitive focus), as well as the legislation and policies that guide their functions. From a legal perspective, part of the youth justice system's role is to supervise court mandates including unsentenced orders (e.g., remand, bail) and sentenced orders (e.g., obligations, detention). The justice system oversees these mandates and has a role to play to ensure compliance with the conditions of these mandates. In traditional risk-needs-responsivity focused-models, the justice agency would also play a role in rehabilitation and responding to criminogenic needs. This can be through services and programs offered within the agency, or by connecting young people to other relevant services.
62. Criminal Justice models in Australia are not as punitive as those in some parts of the US, for example. The approach in Australia tends to be more informed by a welfare and 'best interests' approach, with a lot of diversion opportunities – police diversion and court diversion aimed at keeping children out of the justice system. Although we have these diversion processes in place, further alternatives to justice system supervision can be considered. For example, the potential of developing more therapeutic and culturally-framed accommodation options for young people who pose a low risk to the community instead of relying on remand. Voluntary therapeutic

accommodation placements may have value for young people who do not have access to stable, long-term supported accommodation and whose capacity to engage in therapeutic activities is greatly hindered by a lack of a secure base to reside in.

63. There is broad agreement that punishment and punitive responses do not work to prevent re-offending, but it also acknowledged that individuals who break the law need to be held accountability for their actions. The question is the extent to which a child or young person has the capacity to understand the difference between right and wrong, especially when they have experienced significant adversity and trauma. We need to find ways to respond to these behaviours in non-stigmatising, non-punitive ways and ways that promote future prosocial behaviour.
64. There is also a role for the courts to play in this response, and there is a body of research focusing on the potential for trauma-informed sentencing. Understanding the extent to which taking adversity and trauma into account when sentencing, and the impact this has on future offending behaviour, can provide new insights into how we can better respond to children and young people who offend.
65. In court, there are also opportunities to abdicate a child of responsibility for their actions that can occur through the legal presumption of *Doli Incapax*. If the prosecution fails to rebut the presumption that the child knew the difference between right and wrong at the time of the offence, the presumption of *Doli Incapax* operates and the child will be found not guilty.
66. Psychological assessment and reports are important here, but psychologists need to be adequately trained and skilled at completing these.

#### **THE EXCEPTIONAL NEEDS UNIT**

67. When considering the challenges of multi-agency service provision and coordination, one model/service unique to South Australia that might be worth considering when thinking about providing services to, and engaging with, young people who have complex needs is the Exceptional Needs Unit (ENU). The ENU is a multi-disciplinary service in the Department of Human Services. The team works with systems and services to help support individuals and families who have multiple complex needs – and the young people we see in

Youth Justice, particularly those who also have child protection involvement, often have multiple complex needs. I am not aware of any formal evaluations of this model/service.

## THERAPIES

68. Due to the multiple adversities experienced and often complex needs of children who have contact with the child protection and/or youth justice system, a number of models/holistic programs have been developed to try to address needs across a range of levels (e.g., individual, family, school and community levels). One example is Multi-systemic family therapy (**MST**). MST was originally developed to help support and rehabilitate children and young people with 'antisocial' behaviour, as well as harmful sexual behaviours. Much of the evidence for MST is based on studies conducted in the United States.
69. A recent meta-analysis concluded that the quality of evidence for multi-systemic therapy is mixed and the majority of studies were assessed as having a high risk of bias. Effects were found to be inconsistent across studies, with fewer reductions in arrest/convictions as well as some negative effects in high-income countries outside of the US. When considering outcomes based on moderate to low quality evidence, there was some evidence for reductions in self-reported delinquency and improved parent and family outcomes, but limited evidence of effects on other outcomes (e.g., substance use, peer relations). Furthermore in the UK, a recent trial has demonstrated that there is no evidence for the long-term superiority of multi-systemic therapy over management as usual
70. The Australian context differs from that of the UK or US, therefore it is really important to design programs based on the needs of our population, and to evaluate these programs accordingly. The quality of the evidence upon which conclusions about the effectiveness of such programs have been drawn. Even if we have randomised controlled trials of programs, we need to consider whether these are powered sufficiently and the data can be used to reliably estimate effects. It is also challenging to evaluate programs that are tailored to individual needs, and involve the provision of a number of different types of services or therapies. This makes it challenging to understand which

part of that program has been effective. We need well-resourced long-term evaluations.

71. I refer to trial results of MST studies undertaken in 2020 and 2018 by Lancet Psychiatry annexed at **CM-16** and **CM-17** to my statement.

#### **OBSERVATIONS ON PAST COMMISSIONS AND RECOMMENDATIONS**

72. From my experience with Northern Territory and South Australia Royal Commissions, the biggest challenge is that often there are a significant number of smaller recommendations that are made, and these are really important, but whether these help to change the bigger picture is the real challenge. Often it seems that there is an inability to shift the underlying problems – child protection notifications continue to increase and we continue to see consistent calls for reform to shift the focus from crisis-driven responses toward system-wide prevention of child maltreatment. Research has shown that “tough on crime” approaches do not work to prevent crime or to keep communities safe.
73. We need long-term investment and commitment to drive reforms in child protection and justice that have the capacity to adequately address the key drivers of child maltreatment and youth justice system contact. Evidence-based responses are needed. In the case of Youth Justice, we need to understand how ‘child-first’ approaches to responding to young people who commit crimes support the prevention of future offending behaviours and ensure the needs of young people are being met.

I make this solemn declaration under the *Oaths Act 2001* (Tas).

Declared at The University of Adelaide, North Terrace, South Australia, Australia, 5005

on 29<sup>th</sup> April 2022

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Catia Gaetana Malvaso

Before me

