



Submission to Human Rights consultation: Youth Justice and Child Wellbeing Reform across Australia

Background

The Law and Justice Foundation of NSW ('The Foundation') welcomes the National Children's Commissioner's project investigating opportunities for reform of youth justice and related systems across Australia.

The Foundation is an independent statutory body established to contribute to the development of a fair and equitable justice system that addresses the legal needs of, and improves access to justice for, the New South Wales community. We achieve this by harnessing and disseminating quality information about legal need and effective responses to legal need, with a civil law focus that spans cross-sector interests.

Australia is well supported by organisations specialising in criminal justice and/or youth related research, including the Australian Institute of Criminology, BOCSAR, AIHW, AIFS and university criminology departments such as those of the University of Sydney and the University of NSW. As these institutions are better placed to respond to the questions posed from a criminal justice centric perspective, in this submission we specifically focus on the value of providing civil legal assistance to break the cycle of disadvantage that increases young people's risk of contact with the criminal justice system.

Criminal problems overlap with civil and family issues

The Foundation's research has demonstrated strong links between offending, victimisation and the experience of civil and family legal problems (Pleasence et al., 2014). Our research also shows that those who end up in custody have often led chaotic lives characterised by problems associated with debt, employment, family and housing (Grunseit et al., 2008).

Civil legal problems have impacts beyond the immediate issue, including on mental and physical health, family relationships, housing and finances, which may in turn increase the risk of offending. Young people are by no means immune to experiencing these adverse consequences (Macourt, 2014).

Young people who encounter the criminal justice system are among the most vulnerable groups in society, often presenting with complex needs (Clancey et al., 2020). Some will have been removed as babies and young children from parents/families who lacked access to adequate legal representation, in circumstances where they were perceived to be at risk due to civil legal problems such as housing instability or family conflict. They may have been in the care system, experienced abuse or neglect, housing instability, food insecurity, social conflict and exclusion from school. Mental illness and intellectual disabilities are common compounding factors to these challenges, requiring access to specialist support. Addressing these issues can be a challenge for young people and their families without the capacity to navigate the health, welfare, and educational systems effectively. This is particularly the case for First Nations youth and contributes to the vast over-representation of First Nations among young offenders (Australian Institute of Health Welfare, 2014, 2023). Timely

intervention in the form of civil legal assistance has the potential to mitigate these types of criminogenic factors.

Legal problem experience

As many non-criminal legal problems go unrecognised by those experiencing them, the only reliable measure of the extent of non-criminal legal problem prevalence are legal needs surveys. In Australia, legal needs surveys have generally focused on adults, but the Foundation's LAW Survey included young people aged 15 to 17 and demonstrated their greater vulnerability to some types of legal problems, particularly those related to rights, personal injury and crime (Coumarelos et al., 2012).

Importantly, 'at risk' young people have increased vulnerability to legal problems. For example, those who have been homeless or in out-of-home care and those with a mental illness or physical disability experience higher rates of legal problems (Macourt, 2013).

In consideration of household environments and impacts to young people, the LAW Survey also demonstrates that single parents have the highest prevalence of legal problems among all family types in Australia, with family, crime and consumer issues being particularly prevalent (Karras & Iriana, 2016). This finding holds whether the children live with the parent, or elsewhere.

It should be noted that there was overall lower legal problem prevalence among young people aged 15 to 17 outlined in the Foundation's LAW Survey compared to people in other age brackets, and that this is reflective of lower levels of exposure to the context of many civil legal problems at this age, such as employment, housing, consumer and debt issues.

Why legal problems become entrenched

Young people aged 15 to 17 are relatively unlikely to take action to manage their issues, and this compounds the experience of legal problems. When they do take action, they are less likely to seek professional advice than other age groups (Coumarelos et al., 2015, p. 31) .

Many young people lack the independence, experience and skills to successfully resolve legal problems themselves. They may have poor knowledge of available avenues and assistance services, as well as reduced self-efficacy and diminished legal capability (Coumarelos et al., 2015, pp. 29-33). Identified barriers to obtaining legal assistance experienced by young people include:

- lack of specialist legal services for young people
- lack of awareness of rights and legal entitlements
- reliance on adults to mediate their access to legal services
- fear of being disbelieved or not taken seriously by service providers
- solicitors who lack skills in dealing with children and young people
- an intimidating and formal atmosphere of many legal services
- lack of information strategies which specifically target children and young people.

Young people, particularly those from disadvantaged backgrounds, often lack the knowledge, skills and psychological preparedness to successfully deal with legal problems. For example, young people have been found to have little knowledge about basic legal rights and entitlements and the civil justice system. Many have also been found to lack sufficient verbal communication skills needed to resolve law related problems. Experience of violence and trauma also undermine willingness to seek assistance in some cases. Negative attitudes towards professionals, such as police and legal assistance services, affect use of advisers. We note that difficulty managing law related issues is associated with increased feelings of helplessness (King, 2015).

Service provision

An analysis of high-service-use clients of legal aid in Victoria, who are often aged under 18 at first contact, concluded that Legal Aid should consider providing more intensive and holistic services by embracing a multidisciplinary approach that entails lawyers working actively with social workers, teachers, doctors and police (Victoria Legal Aid, 2014) . Similar findings in New South Wales supported the establishment of the Children’s Civil Law Service, to provide a holistic, trauma-informed and culturally competent legal service to young people identified as having complex needs (ARTD Consultants, 2019).

Marginalised young people may need to be reached via legal outreach through their trusted networks. Effective legal outreach programs thereby often involve collaboration with other agencies, with co-location models within host agencies from health care and welfare settings, alongside charity, youth and community organisations proving effective (Pleasence & McDonald, 2013, p. 41). Health Justice Australia supports collaborations between services to achieve better health and justice outcomes for vulnerable communities. Its research highlights how health justice partnerships can improve outcomes in the context of domestic and family abuse (Forell & Nagy, 2021).

Although young people are widely thought to be avid users of information and communicative technology, online legal information does not necessarily improve the legal capability of young people aged 15 to 26 years. For instance, young people may lack the ability to successfully obtain and apply online legal information in a meaningful way, and, as such, familiarity with technology may not in itself enhance legal capability (Denvir & Balmer, undated).

The efficacy of integrated service delivery models to resolve legal issues among young people, alongside trauma-informed care models in legal settings are developing area of research that we would encourage the Commissioner to recommend is sufficiently resourced. This would enable assessment of the potential for positive impacts from providing wrap-around legal and human services and offer models of effective trauma-informed delivery in legal settings for the most vulnerable families in society.

Recommendations

Drawing on the available evidence, the Foundation recommends that:

1. A more holistic approach is taken to supporting the rights of young people, with recognition that crime prevention and offender rehabilitation is likely to be supported by attention to broader family and civil legal needs.
2. That the specific strategies to reduce the identified barriers to obtaining legal assistance experienced by young people outlined on page 2 of this submission are developed.
3. Given the benefits of intervening in offending pathways, there is likely to be demonstrable value in the appropriate resourcing of legal assistance providers that deliver tailored, intensive legal assistance support to young people for non-criminal matters, such as Youth Law Australia, Youthlaw Victoria, Marrickville Youth Legal Service, NSW Legal Aid's Children's Civil Law Service and Shopfront Youth Legal Centre.
4. Non-legal human service 'problem noticers' working with vulnerable young people are supported in their capacity to identify legal problems and facilitate access to appropriate legal services for their clients.
5. Sufficient resourcing of culturally appropriate Aboriginal Legal Services to allow for the extension of services that increase focus beyond criminal law, to adequately address the civil and family law related needs of First Nations people.
6. As it may not be until the crisis of contact with the criminal justice system that the civil and family legal needs of young people and their families become apparent, that this is recognised as the opportunity to provide access and provide access to non-criminal legal assistance and address non-legal needs.
7. The sponsoring of an Australia-wide program of research to evaluate the impact on youth justice outcomes of providing wrap-around legal and non-legal services, and trauma-informed models of delivery, to address the current evidence gaps.
8. An access to justice education component is designed across Australian high school curriculums, that provides the tools for young people to identify when a problem has a legal component, and the options for assistance in managing such issues.

References

- ARTD Consultants. (2019). *Evaluation of Children's Civil Law Service, Legal Aid NSW*.
<https://files.jobs.nsw.gov.au/qdbiao>
- Australian Institute of Health Welfare. (2014). *Indigenous child safety*.
<https://www.aihw.gov.au/reports/indigenous-australians/indigenous-child-safety>
- Australian Institute of Health Welfare. (2023). *Youth justice in Australia 2021-22*.
<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22>
- Clancey, G., Wang, S., & Lin, B. (2020). Youth justice in Australia: Themes from recent inquiries. *Trends and Issues in Crime and Criminal Justice*(605), 1-19.
<https://doi.org/10.52922/ti04725>
- Coumarelos, C., Macourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. (2012). *Legal Australia-Wide Survey: legal need in Australia*. Law and Justice Foundation of NSW.
[http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)
- Coumarelos, C., McDonald, H. M., Forell, S., & Wei, Z. (2015). *Collaborative Planning Resource - Service Planning*. Law and Justice Foundation of NSW.
<http://www.lawfoundation.net.au/ljf/app/B6DC9E05711F044CCA257EF5000E995F.html>
- Denvir, C., & Balmer, N. (undated). *Digitally (De)Faulted? How do young people use the internet to acquire knowledge of their rights?* University College London.
<https://www.advicenow.org.uk/sites/default/files/uploads/Cat-Denvir-YP-article.pdf>
- Forell, S., & Nagy, M. (2021). *Health Justice Insights: Health justice partnership as a response to domestic and family violence*. Health Justice Australia.
<https://healthjustice.org.au/?wpdmdl=3935>
- Grunseit, A., Forell, S., & McCarron, E. (2008). *Taking justice into custody: the legal needs of prisoners*. Law and Justice Foundation of NSW.
[http://www.lawfoundation.net.au/ljf/site/articleIDs/4DC35D5A0C06F1C4CA25748D00131D8C/\\$file/TakingJusticeIntoCustody.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/4DC35D5A0C06F1C4CA25748D00131D8C/$file/TakingJusticeIntoCustody.pdf)
- Karras, M., & Iriana, R. (2016). *Meeting the greater legal needs of single parents* (Updating Justice, Issue 51). Law and Justice Foundation of NSW.
[http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_51_Legal_needs_single_parents.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_51_Legal_needs_single_parents.pdf)
- King, M. (2015). *Submission to Family Law Legal Aid Services Review Consultation and Options Paper*. <https://www.legalaid.vic.gov.au/node/9708>
- Macourt, D. (2013). *Youth and the law: it's not all about juvenile justice and child welfare* (Updating Justice, Issue 35). Law and Justice Foundation of NSW.

[http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_35_Youth_and_the_law_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_35_Youth_and_the_law_FINAL.pdf)

Macourt, D. (2014). *Youth and the law: the impact of legal problems on young people* (Updating Justice, Issue 38). Law and Justice Foundation of NSW.

[http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_38_Youth_and_the_law_gender_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_38_Youth_and_the_law_gender_FINAL.pdf)

Pleasence, P., Coumarelos, C., Forell, S., & McDonald, H. M. (2014). *Reshaping legal assistance services: building on the evidence base: a discussion paper*. Law and Justice Foundation of NSW.

[http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)

Pleasence, P., & McDonald, H. (2013). *Crime in context: criminal victimisation, offending, multiple disadvantage and the experience of civil legal problems* (Updating Justice, Issue 33). Law and Justice Foundation of NSW.

[http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_33_Crime_in_context_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_33_Crime_in_context_FINAL.pdf)

Victoria Legal Aid. (2014). *Victoria Legal Aid client profiles: high-contact users of legal aid services*.

<http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-client-profiles.doc>