

11 July 2023

Ms Anne Hollonds
National Children's Commissioner
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001
youthjusticereform@humanrights.gov.au

Dear Ms Hollonds,

Youth Justice and Child Wellbeing Reform across Australia

Introduction and summary

National Legal Aid (NLA), representing the CEOs/Directors of the eight State and Territory legal aid commissions (LACs) in Australia, refers to your project investigating the opportunities for reform of youth justice and related systems across Australia (the Project).

LACs are the largest providers of Youth Justice and Child Well-Being legal services to children and young people in Australia.

NLA supports a nationally consistent approach to reforms and would be pleased to do what we can to assist with the Project.

About Legal Aid Commissions and National Legal Aid

The LACs are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

LACs provide in excess of 30,000 services each year to children and young people (criminal, civil, and family law). These services include legal advice, legal task, and legal representation in court proceedings. Additional services include social support, legal and non-legal referrals, and child inclusive family dispute resolution.

5,214 Independent Children's Lawyers were appointed in Commonwealth family law proceedings in 2021-22, and 6,580 legal representatives for children were appointed in State/Territory child protection proceedings.

Attached is a summary of service data by age aggregate and law type.

Project Questions

Our responses to the project questions provide a broad overview and we welcome the opportunity to provide more detailed specific responses.

1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

Factors include:

- Inter-generational disadvantage including poverty.
- Age of criminal responsibility.
- Inadequate and/or inappropriate systems identification of and/or response to disadvantage, and the effects of disadvantage.
- Structural and systemic racism.
- Involvement in the child protection system.

For many young people, these factors are interlinked and compounding.

Attached:

Tasmania Legal Aid report (July 2021)

[*Children First, Children in the Child Safety and Youth Justice System*](#)

Commission for Children and Young People report (June 2021)

[*Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*](#)

NLA submission (February 2020)

[*Council of Attorneys-General, Age of Criminal Responsibility Working Group review*](#)

State of Victoria Sentencing Advisory Council, reports 1, 2 & 3 (2019-2020)

[*Crossover Kids: Vulnerable Children in the Youth Justice System*](#)

Australian Institute of Criminology paper (2019)

[*Crossover Kids: Offending by Child Protection-involved Youth*](#)

Koorie Youth Council report (Victoria, 2018)

[*Ngaga-Dji \(Hear me\), young voices creating change for justice*](#)

[*Royal Commission into the Protection and Detention of Children in the Northern Territory*](#) (2017)

Victoria Legal Aid report (2016)

[*Care not custody: A new approach to keep kids in residential care out of the criminal justice system*](#)

2. What needs to be changed so that youth justice and related systems protect the rights and well-being of children and young people? What are the barriers to change, and how can these be overcome?

- Closing the Gap to be achieved, noting particularly: *Target 11 Young People are not overrepresented in the criminal justice system, and Target 12 Children are not overrepresented in the child protection system.*¹
- Complex needs of children and young people with disability to be identified and addressed.
- Age of criminal responsibility.
- End the overrepresentation of First Nations young people, people of colour, and young people in child protection systems in the youth justice system.
- Education and training for service providers including cross-disciplinary and cross-cultural education and training to be expanded and enhanced.
- Increased diversionary options.
- Facilities for children and young people to be improved.
- Inadequate resourcing.

3. Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

Examples of reforms that show evidence of positive outcomes can be found at [Justice Reform Initiative](#)

4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform across Australia. If so, what are the next steps?

NLA supports a nationally consistent approach to reforms and would be pleased to do what we can to assist with the Project.


Engagement with respective states and territories will be necessary as youth justice and child protection laws are State and Territory based, although there are connected matters, such as family law, which are Commonwealth law based.

Conclusion

Thank you for undertaking this Project and the opportunity to provide this submission.

Please do not hesitate to be in touch if you have any questions in relation to LAC experience in service delivery across the country. The NLA Secretariat can assist in making any necessary arrangements for a meeting.

Yours sincerely,


Louise Glanville
Chair, National Legal Aid

¹ Closing the Gap Targets and Outcomes <https://www.closingthegap.gov.au/national-agreement/targets>

National Legal Aid

Legal Aid Commission Grants of Aid to Children & Young People 2019-20 to 2021-22

	Law type	2019-20	2020-21	2021-22
Grants of aid approved to children <18	Civil	206	272	301
	Crime	11,441	10,493	10,316
	Family	13,260	13,635	12,516
	total >18	24,907	24,400	23,133
Grants of aid approved to young people 18-20	Civil	279	288	264
	Crime	7,547	6,952	6,732
	Family	1,007	888	883
	total 18-20	8,833	8,128	7,879
Total		33,740	32,528	31,012

Source - National Legal Aid statistics <https://www.nationallegalaid.org/resources/>

Legal Aid Commission Grants of Aid for Commonwealth Independent Children's Lawyers and State/Territory legal representatives 2019-20 to 2021-22

	2019-20	2020-21	2021-22
Commonwealth Independent Children's Lawyers ²	5,368	6,110	5,214
State/Territory legal representatives	7,849	7,190	6,590

Source - National Legal Aid statistics <https://www.nationallegalaid.org/resources/>

² Some LACs ration ICL appointments, and the courts, particularly in some locations, are mindful of funding constraints in making orders. Accordingly, the numbers of appointments do not reflect the real extent of need. COVID-19 has also likely had an impact on appointments made, noting the increased appointments in the 2020-21 year. Data also relates to numbers of Grants of Aid, and each grant may involve more than one child.