

Your Ref:  
Our Ref: 736

2 July 2018

Department of Justice  
Office of the Secretary  
GPO Box 825  
HOBART TAS 7001  
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Dear Secretary

**Re: Submission – Evaluation of the Legal Assistance Sector**

Thank you for the opportunity to contribute to the evaluation of Tasmania's legal assistance sector by providing comment in response to the *Evaluation of the Tasmania Legal Assistance Sector: Consultation Paper* (the Paper).

As Commissioner for Children and Young People my functions include providing systemic advocacy for all children and young people in Tasmania, influencing policy development into matters relating to children and young people, promoting children and young people's wellbeing, and promoting children and young people's participation in decision-making. I also have a role in assisting to ensure the State satisfies its national and international obligations in respect of children and young people generally.<sup>1</sup>

In performing my functions, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child*,<sup>2</sup> and
- give special regard to the needs of children and young people who are disadvantaged or vulnerable.<sup>3</sup>

In accordance with my statutory functions I have limited my comments to those matters which, in my view, will affect, or which have the potential to affect, children and young people who have not yet attained the age of 18 years.

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<sup>1</sup> Section 8(1) of the *Commissioner for Children and Young People Act 2016*

<sup>2</sup> Section 3(1) of the *Commissioner for Children and Young People Act 2016*

<sup>3</sup> Section 3(2)(b) of the *Commissioner for Children and Young People Act 2016*



As the Paper acknowledges, access to justice is a fundamental aspect of a civilised society. Access to justice has been described as “a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights”.<sup>4</sup>

For children and young people, access to justice includes the right to relevant information, an effective remedy, a fair trial, to be heard, and to enjoy those rights without discrimination.<sup>5</sup> The Committee on the Rights of the Child has said that:

[c]hildren’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.<sup>6</sup>

It is important to recognise that children and young people can experience a wide range of legal problems. These problems can relate to youth justice and child protection matters, crime victimisation, personal injury, housing, consumer rights, fines, motor vehicle accidents and rights, among others. Legal problems can have very significant consequences for children and young people, including for their mental and physical health. Unfortunately however, children and young people’s legal needs are not always appropriately recognised or met.<sup>7</sup>

## Comment

The Terms of Reference for the evaluation require the Steering Committee to consider and report on, among other things:

- the legal assistance services currently provided by the sector as a whole and the number of individuals currently receiving those services from each provider;
- any duplication that may exist across the legal assistance sector and opportunities to streamline processes to ensure that resources are used to deliver services effectively and as widely as possible; and
- the best combination of legal services that the sector could deliver in the future, including options and methodologies for the distribution of funding to legal assistance providers to deliver legal services.

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<sup>4</sup> United Nations High Commissioner for Human Rights, 2013, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35*, UN General Assembly, Geneva.

<sup>5</sup> United Nations High Commissioner for Human Rights, 2013, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35*, UN General Assembly, Geneva.

<sup>6</sup> Committee on the Rights of the Child, General Comment No. 5, para. 24.

<sup>7</sup> Law Council of Australia, 2017, *The Justice Project - Children and Young People Consultation Paper: August 2017*, LCA, Canberra, viewed 26 June 2018, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>.



I note that the material presented in the Paper does not provide a detailed analysis of the legal assistance services currently available in Tasmania. It would be useful to understand the constitution of each service's client group; the geographical area that each service covers, including the distribution of their client group; and each service's eligibility criteria. While the Paper provides information on the types of services provided by each legal assistance service, it does not detail the quantum of the services provided for each service type or provide data on or an analysis of demand for legal services in Tasmania.

As many of the questions posed by the Paper rely on the availability of these data, it is difficult to address key questions regarding equity of access, service gaps or duplications, unmet need, potential future service arrangements, and methodologies for the distribution of funding, from the perspective of improving the provision and availability of legal assistance services for children and young people in Tasmania.

I do note that the Paper makes various references to a future paper – for example, page 33 states, '[f]urther Tasmania-specific information has been sought to map legal needs in the community, and will be further explored in the final paper'. It would be helpful for any future paper to provide the key data noted above to assist stakeholders to make recommendations to the Steering Committee regarding possible courses of action.

In the absence of the information described above, I have decided to focus my response to the Paper on those questions relating to legal services mapping, barriers to accessing legal services, community legal education, eligibility guidelines and gaps in services.

***Question 2.2: Who should be responsible for legal needs mapping in an ongoing capacity to inform the delivery of legal assistance services?***

While I do not have a particular view on who should be responsible for the mapping of need for legal assistance services in Tasmania, I am of the view that ongoing mapping should be conducted by a centralised body, in accordance with a methodology agreed with the Commonwealth and State Governments, to ensure the equitable distribution of resources for legal assistance in Tasmania.

Further, any mapping should aim to identify legal need for specific disadvantaged groups, particularly children and young people, including those who are Aboriginal and Torres Strait Islander, those who live with disability, and those who live in disadvantaged, or rural and remote locations.

***Question 2.3: Do the barriers accurately reflect the challenges for Tasmanians attempting to access legal services?***

I note that the Paper does not include specific information about the barriers children and young people experience accessing legal services.



The Law Council of Australia, in its *Justice Project – Children and Young People Consultation Paper*, provides a comprehensive discussion of the barriers that affect children and young people's access to justice. In summary, these include:

- dependency on adults, due to limited independence, life experience and education;
- financial barriers, as children and young people have low or no income and face difficulties in obtaining social security support;
- communication barriers, as their social communication skills, vocabulary and language skills may be underdeveloped in comparison to adults;
- psychological barriers, including a lack of knowledge about their legal rights and options for redress, and concern that legal processes can be intimidating; and
- systemic barriers including the complexity and adversarial nature of the legal system, failures to appropriately accommodate children and young people as participants in legal processes that affect them, and limited justice system supports for children and young people.<sup>8</sup>

It should also be noted that the individual circumstances of children and young people can have a differential impact on their ability to access justice. For example, children with disability, Aboriginal or Torres Strait Islander children, children who are homeless and children who experience family violence face different access to justice barriers.<sup>9</sup>

I recommend that, as the evaluation progresses, further consideration is given to:

- the specific barriers that exist for children and young people accessing legal assistance in Tasmania; and
- the strategies and services delivery models that could best address these barriers.

### **Question 3.6 relating to community legal education (CLE)**

Data from the LAW Survey indicate that overall, children and young people are less likely to take action in response to a legal problem compared to other age groups. Findings also indicate that younger people are significantly less likely to seek advice in response to legal problems. With respect to young people aged 15 to 17 years, they are more likely to ignore a legal problem compared to young people aged 18 to 24 years.<sup>10</sup>

I am a strong advocate for CLE as a means to build children and young people's legal capacity generally, and particularly as a strategy to improve their awareness of their legal rights and obligations, their ability to identify issues as legal issues, and their ability to seek timely legal information, assistance or representation from appropriate sources.

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<sup>8</sup> Law Council of Australia, 2017, *The Justice Project - Children and Young People Consultation Paper: August 2017*, LCA, Canberra, viewed 26 June 2018, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>

<sup>9</sup> Ibid 8.

<sup>10</sup> Coumarelos C., McDonald HM., Forell S. and Wei Z., 2015, *Collaborative Planning Resource – Service Planning*, Law and Justice Foundation of NSW, Sydney (p. 30)



CLE should be provided in settings that are accessible to children and young people, for example, in schools, and in formats appropriate to their age and developmental maturity.

### **Questions 3.7 to 3.9 relating to client eligibility guidelines**

In its Inquiry Report *Access to Justice Arrangements*, the Productivity Commission noted that an overarching vision for legal assistance is required and should be reflected in legal assistance services' eligibility guidelines. The Commission was of the view that aligning eligibility requirements would facilitate the allocation of scarce legal assistance resources to deliver the greatest benefit.<sup>11</sup>

It is important that there is equity of access across all geographic locations, and that this equity is achieved by the alignment of eligibility guidelines for all legal assistance services. While I recognise that the eligibility guidelines of some legal assistance services acknowledge the particular challenges faced by children and young people, I suggest that further work is conducted to ensure that the most disadvantaged children and young people are able to access the legal assistance services they need.

### **Question 3.10 & 3.18 – Gaps in Services**

Children and young people need legal assistance services that are relevant and accessible to them. These include services that:

- allow for referral to legal assistance and other services that can provide the required expertise;
- are accessible – for example, can be accessed by public transport, or are provided in child and young person-centred locations (eg schools) or on an outreach basis; and
- are provided by legal advisers who are skilled in this area and who can advise children in language that is understandable and appropriate to their situation.

I note that the material presented in the Paper indicates that young people are less likely to use online resources than other age groups; however technological advances and increasing access to and use of digital technology by children and young people may present opportunities for improved access to legal services. In this regard I understand that there has been increasing demand for the technology-enabled legal services which are provided by the National Children's and Youth Law Centre.<sup>12</sup> I note that the Legal Aid Commission of Tasmania recently introduced a "Legal Talk" function on their website which enables the provision of online legal advice.

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<sup>11</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview*, Inquiry Report No. 72, Canberra.

<sup>12</sup> National Children's and Youth Law Centre submission to the Law Council of Australia's Justice Project, 6 October 2017, viewed 28 June 2018, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/JP%20Submissions/S100%20-%202017%2010%2006%20-%20National%20Children%27s%20and%20Youth%20Law%20Centre.pdf>



I suggest that further work is required to identify and implement service models that address legal assistance barriers for children and young people in Tasmania.

## **Conclusion**

It is fundamentally important that children and young people in Tasmania can access the legal assistance services they require.

The Paper provides limited specific material regarding the needs of children and young people in Tasmania in relation to the legal problems they experience. I would encourage further consideration being given to this group as the evaluation progresses.

I would welcome the opportunity to discuss the matters I have raised above in more detail and to be provided with the opportunity to comment on the future work of the Steering Committee.

Yours sincerely

David Clements  
Interim Commissioner for Children and Young People

*cc: Minister for Justice*  
*cc: Minister for Human Services*