

**Our Ref: 696**

Law Council of Australia  
Via email to: [justiceproject@lawcouncil.asn.au](mailto:justiceproject@lawcouncil.asn.au)

29 September 2017

Dear Colleagues

**Comment in response to The Justice Project – Children and Young People Consultation Paper**

I commenced as Tasmania's Interim Commissioner for Children and Young People on 11 September last following the resignation of former Commissioner Mark Morrissey.

I congratulate the Law Council on its comprehensive review of access to justice in Australia and, in particular, its focus on the wide range of legal problems that can be experienced by children and young people and examination of the barriers which can constrain them from accessing justice. I am advised that this office was involved in providing expert subject matter input into the Literature Review: Children and Youth. This office is available to contribute further to the Project as required.

**Background**

The Commissioner for Children and Young People's functions and powers are set out in Part 2, Division 2 of the *Commissioner for Children and Young People Act 2016* (Tas).

The Commissioner has a wide systemic advocacy role in relation to all children and young people in Tasmania as well as an individual advocacy role for young people detained under the *Youth Justice Act 1997* (Tas). Of particular relevance in the context of The Justice Project is the Commissioner's function to encourage and promote the establishment of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them (s8(1)(g)).

In the performance of his or her role, the Commissioner must act according to the principle that the wellbeing and best interests of children and young people are paramount, is required to observe any relevant provisions of the *UN Convention on the Rights of the Child* and should give special regard and serious consideration to the interests and needs of children and young people who are disadvantaged or vulnerable. Consideration of issues related to access to justice by children and young people in Tasmania is therefore relevant to my role as Commissioner.



## Comment

It is beyond the current capacity and resourcing of this office to provide a comprehensive submission in response to the Children and Young People Consultation Paper ('the Consultation Paper') within the time available.

As described below, this office has undertaken or contributed to a number of pieces of work which raise issues relevant to access to justice by children and young people in Tasmania.

### 1. *Children and Young People in Out of Home Care in Tasmania*

As is noted in the Consultation Paper, the correlation between children and young people's experience of the out of home care system and individual vulnerabilities to legal problems is well established.

In the January 2017 report of his review of the out of home care system in Tasmania<sup>1</sup>, the former Commissioner for Children and Young People expressed the view that significant benefits would flow to children and young people in out of home care if they had access to individual advocacy (including through legally qualified advocates) on issues of concern or dispute (eg issues regarding placement, contact with family, quality of care and access to health care).

The report found, *inter alia*, that in other jurisdictions children and young people in out of home care:

- a) have access to individual advocacy and/or children's visitors programs
- b) have recourse to a body independent of the Government Department or agency responsible for child protection and out of home care should they wish to complain about their treatment or seek a review of administrative decisions made in relation to aspects of their wellbeing while placed in out of home care.

These mechanisms form part of the external, independent oversight system of the child protection/out of home care systems and as such are fundamental to ensuring that the system is accountable to the taxpayer, the Parliament and, most importantly, to the children and young people within it.

The report recommended that mechanisms be put in place in Tasmania to seek out and listen to the individual voices of children and young people in the out of home care system, including by establishing a visitors program for individual children and young people in out of home care which incorporates an individual advocacy component. I note that the recommendation for individual advocacy for children and young people in out of home care has particular relevance given that Tasmania does not have a specialist legal service for children and young people (page 18 of the Consultation Paper).

The report also recommended the establishment of a Tribunal in Tasmania vested with jurisdiction to review decisions made about children's wellbeing in out of home care (see in particular Recommendation Six and the discussion at pages 19-23 of the report).

The recommendations contained within the report have been accepted by the Tasmanian Government and work implementing them has begun.

---

<sup>1</sup> Commissioner for Children and Young People (Tasmania), *Children and Young People in Out of Home Care in Tasmania Report* (January 2017).



The full report is available at: <http://www.childcomm.tas.gov.au/wp-content/uploads/2017/01/Children-and-Young-People-in-Out-of-Home-Care-in-Tasmania-Report-WEB.pdf>

## 2. *A Therapeutic Approach to the Provision of Youth Justice Detention in Tasmania*

As is discussed in the Consultation Paper, the findings of recent inquiries into youth justice detention in Australia suggest that punitive culture and practice in youth justice detention centres may hinder young offenders' rehabilitation and may lead to an increase in recidivism and exacerbate young detainee's existing legal problems.

In February 2016, the former Commissioner for Children and Young People provided advice to the Tasmanian Minister for Human Services regarding the need to implement a therapeutic approach to the provision of youth justice detention in Tasmania. A therapeutic approach to youth justice detention recognises the need to bring about behavioural change by facilitating and promoting personal development of young people in detention.

The relevant advice is available at: <http://www.childcomm.tas.gov.au/wp-content/uploads/2017/08/2016-Therapeutic-Approach-to-YJ-FINAL.pdf>.

This advice was also discussed in detail in the *Commissioner for Children Annual Report 2015-2016*: [http://www.childcomm.tas.gov.au/wp-content/uploads/2016/11/CommissionerForChildren\\_AnnualReport\\_2015-16.pdf](http://www.childcomm.tas.gov.au/wp-content/uploads/2016/11/CommissionerForChildren_AnnualReport_2015-16.pdf)

I note that the Tasmanian Government accepted the former Commissioner's recommendations and has allocated \$200,000 to commence the development of a therapeutic approach at Tasmania's only youth detention centre - Ashley Youth Detention Centre.

## 3. *The experiences of highly vulnerable young people in Tasmania*

The Consultation Paper identifies the well-supported link between disadvantage and vulnerability to legal problems and notes that this link is particularly apparent among disengaged or at risk young people.

The heightened vulnerability of at risk young people to a range of problems including experiences of violent victimisation, poverty, homelessness, exposure to drugs and conflict with the law was explored by an Anglicare Tasmania project, *Too Hard? Highly Vulnerable Teens in Tasmania*.

Members of the Commissioner for Children and Young People's staff were on the Reference Group for this project.

The report of this project<sup>2</sup>, which was released in July 2017, describes the persistent and high levels of vulnerability experienced by some young people in Tasmania who "fall through the cracks". It explores a number of barriers to realising their basic rights such as long-term access to safety, shelter, care and education.

The full report can be found at: [https://www.socialactionresearchcentre.org.au/wp-content/uploads/Too\\_Hard-Highly\\_Vulnerable\\_Teens\\_in\\_Tasmania.pdf](https://www.socialactionresearchcentre.org.au/wp-content/uploads/Too_Hard-Highly_Vulnerable_Teens_in_Tasmania.pdf)

---

<sup>2</sup> Catherine Robinson, *Too hard? Highly Vulnerable Teens in Tasmania*, Anglicare Tasmania (July 2017).



#### 4. *An Intermediary/Communication Assistant Scheme for Tasmania*

The significant barriers to accessing justice as a consequence of communication needs and poor oral language development are also canvassed in the Consultation Paper.

In May 2016, the Tasmania Law Reform Institute ('the TLRI') released an Issues Paper on *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania*. This paper canvasses the feasibility of instituting a communication assistant or intermediary scheme in Tasmania for those people with complex communication needs, including children, who are involved in the criminal justice system (eg as a witness, complainant or an accused person) and explores a number of options for law reform.

Members of the Commissioner for Children and Young People's staff were involved in preliminary conversations with the TRLI as it drafted the Issues Paper and participated in a roundtable discussion about the feasibility of an expert intermediary scheme with key government, community and private sector stakeholders.

The TRLI Issues Paper can be found at:

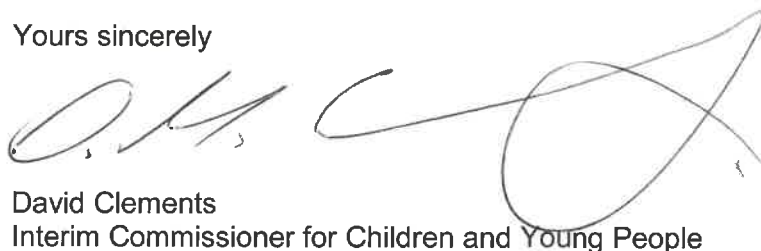
[http://www.utas.edu.au/data/assets/pdf\\_file/0008/831698/Intermediaries\\_IP\\_05\\_A4print\\_sec.pdf](http://www.utas.edu.au/data/assets/pdf_file/0008/831698/Intermediaries_IP_05_A4print_sec.pdf)

#### **Conclusion**

I trust the above information is of assistance to the Council as it works toward finalising its report of The Justice Project.

While my comments focus on responding to the Children and Young People Consultation Paper, I would be most grateful if you would also take them into account when considering feedback in the context of other consultation papers, particularly the Homelessness and Prisoners and Detainees Consultation Papers.

Yours sincerely



David Clements  
Interim Commissioner for Children and Young People

*cc Minister for Human Services*

*cc Minister for Justice*

*cc Attorney-General*