



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLIC:CBcd020623

2 June 2023

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: claire.paton@lawcouncil.asn.au

Dear Ms Nicoll,

Youth Justice and Child Wellbeing Reforms

Thank you for the opportunity to provide input for the Law Council's submission to the Australian Human Rights Commission (**AHRC**) regarding the National Children's Commissioner's consultation on Youth justice and child wellbeing reform across Australia.

The Law Society notes that the issue of children and young people's involvement with youth justice and care and protections systems in Australia is longstanding and, over time, has been the subject of numerous investigations and reviews that provide recommendations for meaningful and urgent change, including the *Family is Culture: Review Report*¹ and the *Independent Review of Out of Home Care in NSW*.² In investigating opportunities for reform across Australia, we support the AHRC's consideration of existing literature and research, in addition to considering stakeholder input.

We welcome the opportunity to contribute to the AHRC's valuable work and offer the following comments for the AHRC's consideration in conducting the project.

Contributing factors

Factors contributing to children and young people's involvement in the youth justice and care and protection systems in Australia are well-documented. As explored in the *Bugmy Bar Book*, some key contributing factors include:

- Exposure to domestic and family violence
- Incarceration of a parent or caregiver
- Experience in out-of-home care
- Early exposure to alcohol and other drug abuse
- Cultural dispossession
- Homelessness

¹ Department of Communities and Justice, 25 October 2019.

² D TUNE AO PSM, 12 June 2018.

Options for change

Decentralising the criminal justice response

In seeking to address the contributing factors to, and prevent or minimise the risk of, children's engagement with the criminal justice system, the AHRC may wish to consider exploring measures outside a criminal justice response. This could include developing or expanding initiatives that provide trauma-informed and multidisciplinary support to vulnerable children and their families, including early intervention focused on supporting families to stay together. It could also include exploring ways to address broader societal factors that contribute to children's involvement in the youth justice and care and protection systems, including poverty, the rising cost of living, homelessness and housing affordability, and systemic cultural dispossession.

Other means of reducing the risk of a child interacting with the criminal justice system could include:

- Investment in the expansion of therapeutic community programs and multidisciplinary support services such as A Place to Go;³
- Ensuring schools and out-of-home care providers are equipped to provide appropriate and trauma-informed responses to a child's challenging behaviours, without the need for police intervention;
- Increasing opportunities for children and families to connect to culture;
- Providing access to support programs including skills development, youth mentoring and work experience initiatives, and programs that educate children and young people on essential life skills that promote stability, accomplishment and self-sufficiency;
- Reviewing offences that commonly introduce children to the criminal justice system, including apprehended violence order provisions and fines, and considering whether there are ways other than criminalisation that can better respond to inappropriate and/or harmful behaviour by children.

Targeted support at key points of transition

System gaps and a lack of support at key points of transition in the youth justice or protection systems can increase the risk of children and young people entering, or returning to, the criminal justice system, as they are exposed to disruption and instability without appropriate support.

As such, in considering changes to better protect the rights and wellbeing of children who interact with these systems, the AHRC may wish to identify transitional points at which children are most vulnerable and target those points as opportunities for intervention and support. Touchpoints could include, for example, entering or exiting out of home care, returning to school after suspension, exiting custody (or transitioning from a Youth Justice facility to an adult Correctional Centre) or when a child's parent enters custody.

Specialist approaches in the criminal justice system

In exploring opportunities to reduce children's trauma in interacting with the youth justice system, the AHRC may wish to consider opportunities in the criminal justice system to employ youth focused, therapeutic, trauma-informed approaches and specialist personnel in engaging with children and young people, including in Courts and other criminal justice agencies that engage with children, such as prosecutorial authorities and police.

³ [A Place to Go overview and referrals](#), NSW Government, May 2022.

Measures implemented in NSW

The Law Society has supported the implementation of specialist Courts and Court procedures that can address factors that contribute to the involvement of children and young people in the NSW criminal justice system and/or provide intensive and culturally appropriate support for young people in the criminal justice system. This includes the establishment of the Youth Koori Court in the Parramatta, Surry Hills and Dubbo Children's Courts, the Walama List Pilot in the Downing Centre District Court and the Drug Court of NSW.

The Law Society also supports the implementation and expansion of justice reinvestment initiatives and diversionary measures, including the Maranguka initiative in Bourke, NSW.

Scope for national leadership

We agree that there is an opportunity for the Commonwealth Government to provide national leadership on issues related to children and young people's involvement with youth justice and care and protections systems, including in encouraging best practice and compliance with international obligations and standards in all Australian jurisdictions, investing in meaningful solutions and facilitating collaboration and knowledge sharing between jurisdictions.

We look forward to further opportunities to contribute as this work progresses.

If you have any questions in relation to this letter, please contact Claudia Daly, Policy Lawyer on (02) 9926 0233 or by email: claudia.daly@lawsociety.com.au.

Yours sincerely,



Cassandra Banks
President