

Submission to the Productivity Commission Inquiry into Access to Justice Arrangements

June 2014



AUSTRALIAN
CHILD RIGHTS
TASKFORCE

The Australian Child Rights Taskforce

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EXECUTIVE SUMMARY

This submission seeks to draw to the attention of this Inquiry issues and insights of the Taskforce concerning children and young people in the context of access to justice in Australia today.

The submission:

- sets out the available research knowledge around children and young people's access to justice in Australia today;
- provides feedback to the initial findings and recommendations of the Inquiry's draft report; and
- makes further suggestions for recommendations that will improve access to justice for children and young people.

Childhood, adolescence and early adulthood are 'critical times for building capabilities for life'¹ and we suggest for addressing the deep and persistent disadvantage that is a common characteristic of many of the clients of the legal assistance system in adulthood.

Children and young people should be able to learn through education and formative experience how to engage with the mechanisms of citizenship and participation in adult life – work, formal education, health, relationships, wealth and wellbeing.

But today engagement with the justice system for children and young people is almost exclusively as subjects (defendants in criminal matters), objects (of child protection orders or in family law disputes) or not at all. Children and young people are almost never the initiators of a legal process (whether represented by a lawyer or by themselves).

Noting that courts play a particularly limited role for most children and young people as enforcers of their individual rights and entitlements, our submission will focus on the tools or mechanisms such as community legal education, reliable information and easy access to clear and accurate legal advice on referral that can assist a child or young person to prevent or mitigate experiences of injustice.

We will also suggest that a key feature of effectively addressing their legal needs involves working alongside other community agencies with existing relationships with children and young people and together addressing the often complex disadvantage experienced by children and young people.

For these reasons this submission gives its principal attention to the work of the Inquiry as set out in chapters 1 to 6 and 20 to 24 of the Draft Report and will provide brief commentary on the content of other chapters.

¹ McLachlan, R., Gilfillan, G. and Gordon, J. 2013, *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Staff Working Paper, Canberra at page 14.

Background

The Inquiry

The Australian Government has asked the Productivity Commission to conduct an inquiry into Australia's system of civil dispute resolution. The objective is to consider how to constrain costs while still promoting access to justice and equality before the law.

The Commission has produced a draft report and this submission seeks to provide feedback and context to that report. The submission responds in particular to the findings and recommendation contained in chapters 1 to 6 and 20 to 24 and will provide brief commentary on other content.

The Australian Child Rights Taskforce

The Australian Child Rights Taskforce² is a coalition of over 100 organisations, networks and individuals who are committed to the protection and development of the rights of children and young people in Australia. UNICEF Australia and the National Children's and Youth Law Centre (NCYLC) co-convene the Taskforce.

One of the key roles of the Taskforce is to hold Australian Governments to account on the implementation of the *United Nations Convention on the Rights of the Child* (the Convention). When Australia ratified the Convention in 1990, this represented a commitment that every child in Australia should enjoy the rights set out in the Convention. In 2011, the Child Rights Taskforce published the 'Listen to Children' Report³, an examination into the implementation of the Convention in order to assist the United Nations Committee on the Rights of the Child⁴ in its review of Australia's performance. The Report concluded that while Australia is a wonderful place for most of its children, there remained significant structural and material disadvantage for many children.

The Report's findings informed the recommendations of the Committee⁵ which covered a broad range of policy areas where improvements were considered necessary. In particular the Committee noted that despite Australia's ratification of the Convention in 1990, it has yet to effectively incorporate rights into policy and legislative frameworks to benefit children and there are unacceptable gaps in the legal protection of children's rights⁶.

The Right to Access to Justice for Children

² <http://www.childrights.org.au/welcome>

³ <http://www.childrights.org.au/listen-to-children-reports>

⁴ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

⁵

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5 Concluding Observations

⁶ Paragraphs 11, 12, 31 and 32 of the Concluding Observations

The *United Nations Convention on the Rights of the Child* reflected a fundamental shift that had occurred during the 20th Century in the way that children were viewed. Previously children were largely viewed as the property of adults. This shift to an understanding of children as autonomous rights holders has been reflected in domestic legal systems as well as international law.

In the common law system that Australia shares with the United Kingdom, a key decision was the English House of Lords case of *Gillick*⁷ in 1985, which held that children are legally entitled to make decisions in matters which affect them if they are able to understand the implications of the decision and to weigh up the risks and benefits that are likely to flow from the decision. This case recognised the autonomous (albeit evolving) nature of a child's own abilities and also by implication their own rights. In Australia, the High Court made a decision with similar implications in '*Marion's case*'⁸.

The Convention sets out this understanding in a range of ways including through its requirement that processes in law, government policy and judicial review will act to guarantee the effective implementation of the rights set out in the Convention for each Australian child (Article 2.1) and to require that all appropriate legislative, administrative and other measures are taken in order to implement the rights set out in the Convention: (Article 4).

The United Nations Committee on the Rights of the Child

The United Nations Committee on the Rights of the Child monitors the progress made in achieving the obligations undertaken through ratification of the Convention. The most recent reporting cycle on Australia's progress was concluded in June 2012⁹. The Committee's most recent review contains the following observations and recommendations relating to legal protections.

"[The] Committee remains concerned that there continues to be no comprehensive child rights Act at national level giving full and direct effect to the Convention in ... national law..... In this context, the Committee ... notes that due to the State party's federal system, the absence of such legislation has resulted in fragmentation and inconsistencies in the implementation of child rights across its territory, with children in similar situations being subject to variations in the fulfilment of their rights depending on the state or territory that they reside in."

*The Committee reiterates its previous recommendation (CRC/C/15/Add.268, para. 10), for [Australia] to strengthen its efforts in bringing its domestic laws and practice into conformity with the ... Convention, and to ensure that **effective remedies are consistently available in cases of violation of the rights of the child** ¹⁰*

⁷ *Gillick v West Norfolk Health Authority* [1986] AC 112.

⁸ *Secretary, Department of Health and Community Services (NT) v JWB and SMB* [1992] 66 ALJR 300.

⁹ <http://www2.ohchr.org/english/bodies/crc/crcs60.htm>

¹⁰ UN Committee on the Rights of the Child, Concluding Observations- Australia June 2012, Paragraphs 11 and 12.

The Australian Child Rights Taskforce's Contribution

We believe that this inquiry offers an important opportunity to review the limitations of existing policy and practice in access to justice in Australia today and to consider possible future direction and developments that will improve access to justice for children and young people.

*"It is absolutely essential that young people are given opportunities to address their own human rights, to obtain a practical understanding of how the law impacts upon their life and that opportunities are created for young people to take responsibility for the legal issues that impact upon their lives."*¹¹

This submission draws extensively on material and research undertaken by the Taskforce's Child Rights Adviser consultant James McDougall in the course of a recent Evaluation of the legal services delivered to young people in regional Victoria. It also draws on the important work of the LAW Survey¹².

The Taskforce notes that the research literature on the legal needs of children and young people in Australia today and how their needs are most effectively met is limited. We also note that there appears to have been little attention given to the particular circumstances of children and young people in the development of the Productivity Commission's draft report.

We recommend that this is addressed in the final report with particular attention given to children and young people as a group that experiences disadvantage in access to justice. Whilst we welcome the opportunity that this Inquiry provides to consider the broader context of access to civil justice in Australia today, a key concern is that recommendations for reform do not further entrench the barriers to access children and young people already experience.

We also recommend that given the lack of available research that the particular attention is given to the challenges faced by children and young people in accessing justice in research and policy development in the future.

¹¹ Quote from Australian Law Reform Commission & Australian Human Rights Commission "Seen and Heard: priority for children in the legal process" (1997) taken from the Youthlaw website <http://youthlaw.asn.au/about-us/history/>

¹² Law and Justice Foundation of NSW "Legal Australia-Wide Survey" (2012).

The Experience of Young People and Legal Need

Research on Legal Need in Australia

There has been only limited examination of the particular legal needs of children and young people in Australia¹³. However the Taskforce is aware of and grateful for the growing knowledge base around legal need driven principally by the work of the Law & Justice Foundation of New South Wales. We note in particular the Foundation's Access to Justice and Legal Need research program and the Legal Australia-Wide Survey¹⁴ (LAW Survey) comprising a series of nine reports; one on Australia as a whole and one for each state and territory.

The LAW Survey has been the first comprehensive quantitative assessment across Australia of legal needs. The broader research program has now also included a more detailed examination of a number of groups that have been identified as particularly disadvantaged in their access to justice¹⁵.

Although this program has not yet included dedicated research on the legal needs of children and young people, it has still been useful in setting the scene and many of its findings have resonated with the experience of Taskforce members that work with children and young people.

We are grateful that young people 15 years of age and over were included in the research sample for the Survey. We note that the main findings of the Survey were consistent across all nine jurisdictions. These included:

- legal problems are widespread across the community;
- socially disadvantaged groups are particularly vulnerable to legal problems which can be multiple, complex and inter-related;
- many people take no action to resolve legal problems – with poor outcomes as a result; and
- most people who seek advice do not consult legal service providers and seek to resolve their legal problems outside the formal justice system.

The experience of the Taskforce supports these findings for children and young people. We note the Survey's finding that age was one of the strongest indicators for the prevalence of legal problems – in number overall and in their significance and complexity.

The Survey proposes "a robust 'stages of life' effect"¹⁶ suggesting that life experience offers skills that are crucially useful in avoiding legal problems. The data on the type of legal problems¹⁷ supports the 'stages of life' effect. Legal problems such as accidents, crime and personal injury were most prevalent in the younger age groups, either at 15–17 or at 18–24 years. Credit/debt problems were most prevalent for those 25–34 years; and family law at 35–44 years.

¹³ See the next section for a summary of the available Australian research

¹⁴ Law and Justice Foundation of NSW "Legal Australia-Wide Survey – Legal Need in Australia" (August 2012).

¹⁵ Law & Justice Foundation of NSW "*The legal needs of older people in NSW*" (2004); "*No home, no justice: The legal needs of homeless people*" (2005); "*On the edge of justice: the legal needs of people with a mental illness*" (2006); "*Taking justice into custody: the legal needs of prisoners*" (2008)

¹⁶ Law and Justice Foundation of NSW "Legal Australia-Wide Survey – Legal Need in Australia" (August 2012) at pages 16, 77, 172 and 229.

¹⁷ Law and Justice Foundation of NSW "Legal Australia-Wide Survey, Legal Need in Victoria" August 2012 at page 76

The Experience of Young People and Legal Need

Research on Young People and Legal Need in Australia

The research on the legal needs of young people in Australia is limited. Key examples with relevant findings are set out (in chronological order) below.

O'Connor & Tilbury, "Legal Aid Needs of Youth", Federal Attorney-General's Department, 1986

This early research explored the legal needs of young people by examining the use of legal aid services by young people and assessing unmet need through surveys of young people and information from youth workers.

O'Connor & Callahan, "Youth, the Law and Legal Services: Patterns of Legal Need", Australian and New Zealand Journal of Criminology, vol. 21, 1998, pp. 5-19.

This research challenged the prevailing notion that the legal needs of young people (15 to 24 years) were only related to criminal law and child welfare, and noted that issues such as consumer problems, tenancy problems, unpaid wages and police harassment were not being addressed.

Australian Law Reform Commission & Australian Human Rights Commission

"Seen and Heard: priority for children in the legal process" 1997

This landmark report remains the most comprehensive examination of young people and the legal system in Australia. It disclosed evidence of the failures of legal processes for children including:

- discrimination against children;
- a consistent failure to consult with and listen to children in matters affecting them;
- a lack of co-ordination in the delivery of services to children;
- an increasingly punitive approach to children in juvenile justice systems;
- the over-representation of Indigenous children in the justice and protection systems;
- the concentration of specialist services and programs in metropolitan areas, disadvantaging rural and remote children in access to justice;
- court processes which are bewildering and intimidating for children; and
- school exclusion processes without fairness and natural justice.

Colmar Brunton Social Research, "Consumer Issues & Youth",

Consumer Affairs Advisory Council, 2002

This report identified key consumer issues for young people and offered recommendations for consumer education. The key consumer issues included:

- Financial services including savings, credit and insurance;
- Mobile Phones including contracts, responsible use and budgeting and paying bills
- Buying a car – of particular importance to young people in rural and regional areas; and
- Accommodation, understanding tenants' rights, access to essential services, and discrimination in rental property.

The Experience of Young People and Legal Need (continued)

Research of Young People and Legal Need in Australia (continued)

The report called for particular attention to:

- the mistake of treating young people as homogenous – ignoring differences across age, culture, values, geography, social and economic advantage;
- the need to use age appropriate communication;
- the need to involve young people in the development of communications materials;
- the need to consult key stakeholders (including teachers, youth workers and parents)
- the need to consider social norms and context for decision-making by young people.

Dangar Research, "Youth Debt: a research report" NSW Office of Fair Trading, 2003.

This research highlighted the incidence of problematic debt amongst young people and offered insight into the nature of young people's experience with debt.

How Young People Respond to Legal Need in Australia

This submission calls for better understanding of the particular relationship between children and young people and the law. The traditional approach assumed by legal service providers to client-lawyer relationships (a client with legal problem approaches a legal service for assistance) is not appropriate as this is rarely the manner in which a child or young person comes into contact with a lawyer. In the context of civil law in particular, children and young people do not try to find a lawyer.

This is now confirmed in the results of the LAW Survey¹⁸. 18 to 24 year-olds are less likely than nearly¹⁹ every other adult age group to take action in response to legal problems. 15 to 17 year-olds are even less likely to take action than any of the adult age groups.

The difference in response is even more dramatic when we look at the particular action of seeking advice (from any adult professional adviser - legal or non-legal) as a response to a legal problem. 18 to 24 year-olds are less likely than every other adult age group to seek advice. 15 to 17 year-olds are even less likely to seek advice than any of the adult age groups and half as likely or less than half as likely as every other age group over 24.

This challenge has been known for some time by youth legal services. It was also identified by the "Seen and Heard Report" of the Australian Law Reform Commission and the (then) Human Rights & Equal Opportunity Commission in 1996-1997²⁰.

¹⁸ Law and Justice Foundation of NSW "Legal Australia-Wide Survey, Legal Need in Australia" August 2012 Appendix A.5 Table A.5.2

¹⁹ The 55 to 64 year old age group is less likely to take action than 18 to 24 year olds (Table A5.2) in Appendix A.5

²⁰ Australian Law Reform Commission & Australian Human Rights Commission "Seen and Heard: priority for children in the legal process" (1997) Ch 4.

The Experience of Young People and Legal Need (continued)

Young People and Legal Need – the UK Evidence

The momentum for research on legal need in Australia was given considerable impetus from surveys conducted in the United States in 1994 and in the United Kingdom in 1999. As these surveys have generated research findings broadly consistent with Australian evidence, we will briefly examine the available evidence on legal need for young people from the UK.

Of particular interest is the work undertaken in the UK by Independent Academic Research Studies which supported young people to conduct research on young people's legal capability²¹. The participants reported little or no knowledge of most basic rights and entitlements. In particular they seemed unaware of any system of civil law to which they might have recourse. Their lack of knowledge of their rights or entitlements, legal processes or where to go for help significantly limited their ability to recognise that they were dealing with a legal problem. Not surprisingly this affected their ability to resolve the issue. If the participants did seek information or help, it was information in retail settings or by speaking to their family members or friends. There was also little knowledge of available sources of advice.

The UK findings of how young people dealt with legal problems were generally consistent with the Australian evidence. Again young people were the group least likely to obtain legal advice for a legal problem²². The survey responses of the 18 to 24 year olds illustrated that despite having comparatively high levels of internet access, this age group used it less for legal problems than other 'connected' age cohorts. When they did, they were less successful in being able to solve their legal problems. The researchers suggested that young people may be unsure of how to deal with legal problems independently and proposed that there remained a "need for tailored guidance in order to minimise the impact of poor problem resolution"²³.

We note that Australia appears to have a more established range of internet resources tailored specifically for young people (addressing cyber safety and legal, financial, mental health problems)²⁴. However the UK findings do reinforce the recommendations of the Australian LAW Survey for an integrated approach to legal assistance that does not assume that one strategy alone will work.

²¹ Independent Academic Research Studies (2009) *Measuring Young People's Legal Capability*

²² Denvir, Balmer & Pleasence "Surfing the web – Recreation or resource? Exploring how young people in the UK use the Internet as an advice portal for problems with a legal dimension" *Interacting with Computers* 23 (2011) 96–104

²³ Legal Services Research Centre, (2007) *Young People and Civil Justice: Findings from the 2004 English & Welsh Civil and Social Justice Survey*

²⁴ www.cybersmart.gov.au; www.lawstuff.org.au; <https://www.moneysmart.gov.au/life-events-and-you/under-25s>; au.reachout.com

The Experience of Young People and Legal Need (continued)

Lessons from the LAW Survey

The Taskforce suggests that the available research challenges the legal sector and legal service providers to better understand how Australians respond to their legal problems. The LAW Survey in particular notes:²⁵

"Seeking legal advice or assistance was only one of a broad range of actions taken in response to legal problems. Furthermore, respondents often used multiple actions. In Australia as a whole, these actions included seeking advice from legal or non-legal professionals (for 51% of problems), communicating with the other side (38%), consulting relatives or friends (27%), using websites or self-help guides (20%), court or tribunal proceedings (10%) and formal dispute resolution (9%)."

The results are particularly challenging for legal services when we consider the type of advisers consulted. Rather than lawyers or traditional legal services, a wide variety of non-legal workers are more often the points of contact with a professional adviser for many people with legal problems.

*"Across Australia, a legal adviser was consulted for no more than one-third (23–33%) of the legal problems for which professional advice was sought. Given that advice is only sought in about half of all cases, this means qualified legal advice may only be sought for about 16 per cent of all legal problems."*²⁶

Legal service providers for children and young people have been under no illusion for some time as to the challenge in providing effective services to a client group that is largely unaware and lacking in the confidence to use adult-designed and controlled remedies to solve their legal problems²⁷. At least this now sits in the context of a broader challenge for legal services.

The LAW Survey offers some guidance about particular barriers to access and how to overcome them²⁸. Respondents were most often able to obtain access to advice through their own personal resources or networks (74–81%). Considered in the context of children and young people, this would suggest that lack of life experience (with the accumulation of knowledge and networks) operates as a barrier to effective access.

This also confirms the value of some of the strategies currently used by children's and youth legal services. Social media, technology, peer education networks and working with youth services are strategies that are not often found in many mainstream legal service providers but appear to work for children and young people. We note that care needs to be taken in the development of resources to ensure the material identifies and communicates effectively with children and young people.

²⁵ Law and Justice Foundation of NSW "Legal Australia-Wide Survey, Legal Need in Australia" August 2012 at page xvii

²⁶ Law and Justice Foundation of NSW "Legal Australia-Wide Survey, Legal Need in Australia" August 2012 at page xviii

²⁷ Australian Law Reform Commission & Australian Human Rights Commission "Seen and Heard: priority for children in the legal process" (1997) Ch 4

²⁸ Law and Justice Foundation of NSW "Legal Australia-Wide Survey, Legal Need in Australia" August 2012, at pp xix

The Experience of Young People and Legal Need (continued)

Lessons from the LAW Survey (continued)

We also accept the LAW Survey's findings that disadvantaged or socially excluded groups (including children and young people) are also particularly vulnerable to legal problems. These groups are not only more likely to experience legal problems overall, but also are likely to have significant and multiple legal problems.

We note the Survey's particular findings on the reported practical barriers to obtaining advice from legal advisers. These barriers include: difficulty getting through on the telephone (17%), too long to respond (14%), inconvenient opening hours (8%) and waiting lists for appointments (7%). Distance was also reported as a barrier (4–11%): an important finding for young people who often have limited access to private transport and outside the metropolitan area, extremely limited access to public transport.

Cost remains a particularly high reported barrier for those seeking expert legal advice. Given the lack of access to income and financial resources for most children and young people, we would reinforce the importance of free legal assistance to young people and of communicating to young people that legal services provided will not incur any charge.

The Taskforce endorses the key recommendation of the LAW Survey: to call for a fresh look at the framework for legal assistance for disadvantaged groups. We also note that there is international literature which makes a similar call²⁹.

"[The] LAW Survey stresses the value of a holistic approach to justice that is both multifaceted and integrated... in that it provides more tailored, intensive assistance across both legal and other human services for disadvantaged people who have intertwined legal and non-legal needs. Specifically, the survey suggests that such an approach should include all of the following strategies:

- *legal information and education*
- *self-help strategies*
- *accessible legal services*
- *non-legal advisers as gateways to legal services*
- *integrated legal services*
- *integrated response to legal and non-legal needs*
- *tailoring of services for specific problems*
- *tailoring of services for specific demographic groups"*

²⁹ M Barendrecht "Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared" Global Jurist Vol 11 Article 6 (2011)

The Experience of Young People and Legal Need (continued)

Responding to Young People's Legal Need in Australia

There is clearly still more work to be done in developing more effective strategies that identify need and give appropriate priority to the experience of injustice by children and young people. However as knowledge of good practice and effective strategies is shared across jurisdictional boundaries it is being incorporated into the operation of children's and youth legal services. This will be examined in more detail when we review the key characteristics of service delivery used in Australia by legal services to children and young people.

We suggest that there is significant underinvestment in legal assistance for children and young people in Australia today. Legal Aid Commissions provide representation for children and young people for serious criminal matters. For less serious criminal charges, the situation is varied and is generally provided by duty lawyers, private lawyers where a family pays or by community legal services. Most indigenous legal services will provide representation in criminal matters for indigenous children and young people.

Representation for children in family law matters is also provided by Legal Aid Commissions but is limited to more serious or complex disputes such as those where there are allegations of child abuse or family violence.

Generally assistance for children and young people for civil law is provided by community legal services funded by the Federal Government under the CLSP or by State Governments.

The specialist children's or youth legal services are National Children's and Youth Law Centre (based in Sydney); Youthlaw Victoria; Youth Advocacy Centre Qld; Youth Legal Service WA and Shopfront Lawyer (based in Sydney). Some other generalist community legal centres will have a dedicated children's lawyer - generally as a particular response to the articulated needs of their local community.

The Taskforce proposes that the findings of the LAW Survey and existing research evidence support the need for further and more detailed research into the particular experience of children and young people with legal problems.

The Taskforce recommends greater investment in legal assistance for children and young people.

The Taskforce recommends greater investment in legal education for children and young people in the formal schooling system and in other community education settings.

Observations from Working with Young People

A number of the member organisations of the Australian Child Rights Taskforce are community-based service providers with experience in dealing with legal problems for children and young people. Here are some observations drawn from their experience that may assist to inform the Inquiry. Many of the observations are consistent with the findings of the LAW Survey and other available research.

Young People

Many of the young people that have been assisted by community-based legal service providers with face-to-face legal assistance (even those dedicated to children and young people) have come into contact with the service through a referral from another community-based service – most often a youth service. Almost all of the young people assisted would be characterised as disadvantaged. The nature of that disadvantage is often socio-economic.

Many of the young people who have come into contact with youth services and community agencies are in crisis – probably the most common being a young person who is homeless due to family conflict. Their problems include: finance (lack of income or low income); limited access to housing; mental health (depression, low self esteem; self harm and personality disorders) and alcohol and drug issues. The young people have a wide range of legal problems³⁰ often linked to these crisis experiences.

The young people assisted (and by implication many others who did not seek assistance) often did not recognise the problem as legal.

The young people that have come into contact with youth services and community agencies are reluctant to engage with the legal system. This extends beyond a reluctance to seek legal assistance to include dealing with fine notices, court attendance notices, and letters of demand. Young people will often wait until a court date and even then may find a reason not to attend.

Young people's reluctance to engage with the legal system is generally considered to be related to the legal system's association with authority and a lack of confidence / experience in dealing with adult authority figures. It is quite often related to an active distrust of authority figures – based on personal experience (conflict with parents / teachers / police). Lawyers are considered part of the adult world and the world of authority. Their skill in navigating these worlds may undermine their ability to be seen by young people as 'on their side' – particularly in the early stages of the development of a lawyer-client relationship.

In contrast to their antipathy towards the legal system, young people are always keen for accurate information about the law and how it affects them.

³⁰ National Children's and Youth Law Centre; Youthlaw's Annual Reports

Youth Workers

A number of professional youth workers do not always recognise a problem as legal. Often their assumption of legal problem types is limited to criminal and family law. However most youth workers deal with a broad range of legal problems for the young people they work with.

Youth workers can be effective legal problem-solvers dealing with welfare, housing, debt and other issue of conflict and bureaucracy. However there is still a keen desire to have access to more information about the law. There is often confusion about the value of legal support and assistance (although usually only from those youth workers who have not worked directly with dedicated youth legal service lawyers). This may be based on their experience with legal service providers without specialist expertise in dealing with young people (see section on **Other Legal Service Providers**).

Of those youth workers with good levels of awareness of the range of legal problems for which assistance from youth legal services could be sought, many still do not consider referral to seek legal assistance as a matter of course during an intake process.

There are a small number of youth workers with high levels of awareness of legal problems, a sophisticated understanding of when and how to seek legal assistance and with existing effective working relationships with youth lawyers. These attributes often lead to a high level of ability to provide effective follow-up to a legal problem (including what could be described as paralegal skills such as letter writing, negotiation and advocacy).

These more engaged youth workers (particularly those with case management responsibilities) are often able to conduct 'secondary consultations'³¹ (where legal information is passed from a lawyer through the youth worker to the young person).

In some circumstances a youth worker (or agency) may seek to limit a young person's rights in order to manage their own responsibilities (for example setting rules around access to information or privacy in an accommodation agency). These potentially competing needs can be managed but need to be considered.

³¹ Further information on 'secondary consultations' is set out later.

Observations of Taskforce Members from Working with Young People

Youth Agencies

The intake process for a youth agency is a crucial opportunity to identify a young person's legal problems and to consider appropriate strategies for addressing such problems.

There is an appetite for more legal education for youth workers, training in how to identify legal problems and interest in a 'train-the-trainer' approach. As an example the 'Legal Health Check'³² document used by Youthlaw Victoria has been a useful tool – originally designed for research but turned into a legal education tool for youth workers.

Networks and Coordinating Mechanisms

Regions and geographic areas with strong collaborative networks and coordinating mechanisms amongst community agencies working with children and young people offer a benefit in the planning and delivery of legal services to children and young people. Referrals in these areas are more effective and gaps in service delivery are more easily identified. This gives a dedicated legal service provider for children and young people a better platform for adding value as a service to young people in a particular region.

These mechanisms sit largely outside (or at least alongside) the work of legal information and referral mechanisms that are available for adults (such as Law Access). This is probably related to the reluctance of young people to seek assistance from service providers that focus on adults and the relatively poor performance of those providers in addressing the particular needs of children and young people. It should also be noted that often the law as it relates to children and young people (particularly those under the age of 18 years) is different from the law for adults.

The role of coordination is often played by local government but not always. Some regions had effective coordinating mechanisms with a less active role played by local government.

Regions are at very different stages in ensuring services address the needs of children and young people. Often the regions more committed to providing services to young people more actively involve young people in planning.

The most effective regions commit dedicated resources to both involving young people and to supporting planning processes. The Barwon region in Victoria is a good example with strong networks that works as key building blocks for planning and coordination. The Mornington Peninsula region also in Victoria has a focus on more preventative strategies. The Mornington Peninsula region also uses demographic and localised data in regional planning.

³² Appendix 2

Legal Service Providers

Youth and community agencies have mixed experience of the capacity of legal service providers without direct experience of working with children and young people to offer assistance beyond a narrow range of legal problem types (criminal and family law) for the benefit of children and young people. There are often mixed reports as to the capacity of those providers to offer assistance in a manner that was appropriate for young people (such as skills in communicating with young people).

With support and resources, local community legal centres were able to provide community legal education to young people. However these centres faced the same challenges as other mainstream legal service providers in providing effective assistance for children and young people.

Access to services and referrals

A key challenge for children and young people in receiving face-to-face legal assistance is access to transport. This is particularly the case for young people living outside inner metropolitan areas. A local youth agency may offer a more accessible site for gaining access to legal assistance.

Schools can act as useful contact points but require intensive and local relationships.

An interesting model for regional legal service delivery to young people is developing in the Barwon region in Victoria. The youth agency (Barwon Youth) acts as the locally based coordinator for referrals and services. A project worker based at Barwon Youth in Geelong acts as internal and inter-agency coordinator and as liaison with the youth legal service Youthlaw Victoria which is based in Melbourne CBD. The benefits include stronger local engagement, better coordination and more focused case work assistance³³. This model calls for dedicated funding, training and resources at a regional level.

³³ The local coordinator role is emerging as a key development in community service delivery in Australia in recent years. The Communities for Children program has reported similar results. K Brettig & M Sims "Building Integrated Connections for Children, Their Families and Communities" (2011) Cambridge Scholars Publishing particularly Chapter 10.

Specialist skills

Working with children and young people requires particular communication skills as well as specialist legal knowledge. This includes the ability to recognise and understand the overt bravado / disinterest in a young person's presentation. This is most often noticed by youth agencies when dealing with lawyers lacking these particular skills.

With the model of service delivery in criminal law used by some Legal Aid Commissions where duty lawyers, lawyers on assignment or lawyers lacking specialist experience in dealing with children and young people are required to act for children and young people, there can be an additional demand placed on specialist youth lawyers and youth workers. This involves providing support that is complementary to the services of Legal Aid and duty lawyers. This included better preparation for pleas and submissions, more sensitive communication with young people and more comprehensive explanations of process and consequences.

Access to Specialist Youth Legal Services

There is often a preference expressed by youth workers for face-to-face interactions with a specialist youth lawyer. A youth worker's ability to convince a young person to seek legal assistance is significantly enhanced if they can affirm the ability and humanity of the lawyer (as a known and familiar person). A youth worker's ability to convince a young person to continue with legal assistance is enhanced if the young person has interacted personally with the lawyer. Generally it takes at least two sessions to build rapport between a young person and a lawyer.

At the same time there is often also a clear value in having youth workers present during communication between the lawyer and the young person. This gives the young person more options to respond and confidence to ask clarifying questions. It also provided better opportunities for youth workers to provide follow-up support. Issues of confidentiality are normally addressed without obvious difficulty.

In some circumstances there can be efforts made by the youth worker to build the young person's ability to take the initiative and act independently in contact and follow-up with the lawyer. Flexibility offered by youth lawyers to youth workers and youth agencies has become a key distinguishing feature between a specialist youth legal service and other legal service providers.

Technology

There is opportunity offered given young people's familiarity with technology and social media. Many youth services have developed innovative strategies to engage and communicate with young people. Those able to use multiple strategies often have the most success.

Community Legal Services Information System Data

There should be some assistance offered by the official database used by community legal service providers – the Community Legal Services Information System (CLSI) to better understand legal service delivery for children and young people. However that is limited by the narrow categories recorded and the particular nature of the legal assistance provided to children and young people.

Many of the components of building effective legal service delivery to children and young people are not easily recorded as key activities in the CLSI database. These include community development work engaging with youth agencies and workers; training and development with workers and agencies; information to workers as well as young people; and non-casework assistance to workers and young people.

As a result the data does not always accurately reflect the extent of work undertaken or the importance of much of the work.

We are able to recognise from the CLSI data that there is a broad spread of legal problem types for children and young people. There is a broad range of cultural and linguistic backgrounds reflected in the young people assisted. There is often a low rate of young people reporting their status as Aboriginal or Torres Strait Islander.

The issue of data collection is important as it should assist in the measurement of effectiveness. As noted, there is more work to be done in identifying and measuring legal need for children and young people, developing a broad range of strategies that seek to meet that need and articulating the models of service delivery that will meet need and implement those strategies. This will require developing accurate measures of effectiveness of those models and strategies. The current data set is not sufficient to meet that measurement task.

We note that this issue of measurement of effectiveness is receiving broader attention. We refer once again to the work of the Law & Justice Foundation and its discussion paper on “Effectiveness of Public Legal Assistance Services”³⁴ which offers some important instruction on the task ahead.

There is also assistance available that considers the issue of measurement of holistic and integrated legal service delivery models in recent work from Dr Liz Curran of the Law School of the Australian National University³⁵.

The Taskforce recommends that this ongoing work pay attention to the particular challenges faced in ensuring effective measurement of the legal need, strategies and models of service delivery for children and young people.

³⁴ Law And Justice Foundation NSW “Effectiveness of Public Legal Assistance Services” Discussion Paper 16 Justice Issues series October 2012

³⁵ L Curran “*Encouraging Good Practice in Measuring Effectiveness in the Legal Service Sector*” Australian National University Law School May 2013

A Legal Service Delivery Model for Young People?

One of the challenges facing legal service delivery providers for children and young people is the lack of research evidence on the model or models used. This includes any clear analysis or agreement on the key characteristics of any model, its effectiveness and how it could be improved and developed.

Assuming there are identifiable models or strategies, they have evolved out of an arbitrary set of circumstances. These include the availability of funding, a sense of priority of need (real but not clearly defined), the emergence of available resources including collaborating partners and a desire to take advantage of developing technologies.

Drawing on the work of the consultant James McDougall (also the Taskforce's Child Rights Adviser) for Youthlaw Victoria in a recent evaluation of the legal services delivered to young people in regional Victoria, this submission proposes some key features of an effective legal service delivery model for children and young people.

The proposed key features are:

- legal advice and assistance delivered in accordance with appropriate professional standards;
- community development practice (or connection with local community);
- commitment to problem solving;
- specialist skills and knowledge of children's and youth law;
- inter-agency coordination (particularly at a local and regional level);
- a 'triage-style' approach to addressing a young person's legal problems;
- the use of the full flexible range of community legal assistance options available;
- the inclusion of secondary consultation as one of those particular options; and
- a willingness to use appropriate technology.

The inclusion of community development practice is significant. Community development calls for the involvement of the relevant community in planning and delivery. It avoids a top-down delivery approach and seeks to build local capacity and problem-solving skills. It aims to be responsive to local needs and to develop strategies and solutions that build on local strengths and character. This suggests particular attention in programme design and planning. It includes (but extends beyond) the selection, training, capacity of and collaborations with host services.

These features are based on the need to give attention to the particular nature of the relationship between children and young people and the law. This is not to suggest that other groups may not also require particular targeted strategies and models. Much of the evidence of the LAW Survey suggests the need for particular attention to achieve access to justice for a number of groups in the community. Indigenous people, people with a disability, single parents, those living in public housing and on government benefits all experience significant disadvantage in access to justice. There is still more to be done in identifying and developing effective strategies that provide access to justice for these groups. Each group will require its own particular approach. It is hoped that this Inquiry will support the development of more effective strategies for these groups.

Planning for Meeting the Needs of Children & Young People

The available evidence regarding the legal needs of children and young people in Australia remains sparse and largely uncoordinated. There is no clear agreed process for establishing priority in terms of directing services to address need. At present there is no reasonable expectation that the available resources and services will be able to meet all need.

The Taskforce recommends measures to support the participation of children and young people in design and delivery of services and in the development and delivery of policy and advocacy work. This participation will lead to more effective service delivery and improved coordination and planning.

The dedicated recurrent funding for legal services for children and young people remains extremely limited. In recent years many community legal services have been forced to maintain existing services with unpredictable one-off grants of funding. For example Youthlaw Victoria receives no dedicated recurrent funding for legal services to children and young people outside the inner metropolitan region of Melbourne.

This submission recommends the development of a national strategy to measure the legal needs of children and young people and promote best practice and efficient practices to meet the need.

One particular area for development that addresses barriers to access for young people is the use of technology to facilitate the exchange of information – either in the context of particular individual client-lawyer interactions or as part of a broader community legal education strategy. Key lessons could be learnt from the work of the Young & Well Cooperative Research Centre with its ground breaking research on the use of technology and social media in delivering improved health outcomes for young people.

Planning work cannot be left to Government alone. Community agencies with experience in working with children and young people should play a key role. The Taskforce believes that legal services are best delivered to young people in the context of sound community development and in partnership with other youth and community agencies that work with young people.

It will be important to place planning in the context of developments in other sectors and with other planning and priorities. For example in Victoria consideration should be given to the Victorian State Government's "Vulnerable Children" strategy in targeting legal services for children.

As suggested earlier, development should support better regional planning with and for children and young people. We note the recent call for local involvement in planning for services that address the complex issues of deep and persistent disadvantage by Tony Nicholson, Executive Director of the Brotherhood of St Laurence³⁶. We endorse this call in the context of planning legal assistance particularly for children and young people.

³⁶ http://www.bsl.org.au/pdfs/Tony_Nicholson_speech_on_community_welfare_sector_27_May_2014.pdf

Key Features of a Legal Service Delivery Model

This submission proposes the following key features that could be used to build and maintain an effective legal service delivery model for children and young people.

The proposed key features are:

- legal advice and assistance delivered in accordance with appropriate professional standards;
- specialist skills and knowledge of children's and youth law;
- community development practice;
- commitment to problem solving;
- inter-agency coordination (particularly at a local and regional level);
- a 'triage-style' approach to addressing a young person's legal problems;
- the use of the full flexible range of community legal assistance options available;
- the inclusion of secondary consultation as one of those particular options; and
- a willingness to use appropriate technology.

Professional Standards

This feature will be assumed in most settings but is worth stating in the context of working with other community organisations and professionals (such as youth workers) not as familiar with the professional duties and responsibilities of the legal profession.

"Duty to the Law - Being a legal practitioner means you are a part of the administration of the legal system. You may not agree with some parts of the system and you are entitled to lobby for its reform, but you must follow existing laws.

Duty to the Court - As an officer of the Court you must act with honesty, integrity and candour. Any duties owed and directions made by the court must be fulfilled, including undertakings.

Duty to Colleagues - Your professional relationships are important. We do this by showing courtesy to colleagues, even in circumstances where you feel it is undeserving.

Duty to Clients - Your duty to your client requires you to act with due skill and care, reasonable promptness and courtesy, whilst maintaining your client's confidences and avoiding conflicts of interest."³⁷

In the case of community legal centres, there are also the requirements of the National Association of Community Legal Centres' Accreditation which incorporate the Community Legal Services Program Service Standards and the requirements of the National Association's Risk Management Guide.³⁸

³⁷ <http://www.liv.asn.au/For-Lawyers/Ethics/Introduction-to-Legal-Ethics>

³⁸ http://www.naclc.org.au/cb_pages/accreditation_spp.php

Key Features of a Legal Service Delivery Model for Young People (continued)

Specialist Skills and Knowledge

The most comprehensive examination of the needs of children and young people in legal representation in Australia remains the report "Seen and Heard: Priority for Children in the Legal Process". Although its extensive and comprehensive recommendations for training and development of specialist children's legal practitioners have not been implemented, there is a general recognition of the special skills required for lawyers acting for children and young people. Most Legal Aid Commissions around the country use accreditation to determine eligibility for assignments for representation of children in family law and child protection jurisdictions.

There is considerable international evidence and support for the need for specialist lawyers for children and young people. We note the development by the American Bar Association of "Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases" and an ongoing debate in the United States around the issues of effective representation of children and young people.³⁹

The special needs of young people in the legal system are recognised by the UN Committee on the Rights of the Child⁴⁰. The "Guidelines of the Committee of Ministers of Council of Europe on Child-Friendly Justice"⁴¹ state that a *'lawyer representing children should be trained in and knowledgeable on children's rights and related issues, receiving on-going and in depth training and of communicating with children at their level of understanding.'*

The fundamental issue is, as the "Seen and Heard" report stated, "[at] the very least, legal representatives for children should be able to communicate effectively with their child clients."

Community Development Practice

Community development seeks to empower individuals and groups of people by providing them with the skills they need to effect change in their own communities. There is a strong ethical case for community development and there is some growing evidence that with careful planning, participatory community development can lead to the building of stronger community infrastructure⁴².

Community development calls for the involvement of a local community in planning and delivery. It avoids a top-down delivery approach and seeks to build local capacity and problem-solving skills. Community development aims to be responsive to the articulation of local needs and to develop strategies and solutions that build on local strengths and character.

In the current context, the case for community development is also based on the key role that it plays in building the relationships to provide for effective service delivery to young people.

³⁹ <http://www.naccchildlaw.org/?page=Practicestandards>

⁴⁰ General Comment Number 10 (2007) - <http://www2.ohchr.org/english/bodies/crc/comments.htm>

⁴¹ At page 9, available at: http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20childfriendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf

⁴² <http://wbro.oxfordjournals.org/content/19/1/1.short>

Key Features of a Legal Service Delivery Model for Young People (continued)

Inter-Agency Coordination and Collaboration

The ability of a community legal service provider to assist young people often relies for referral on its relationships with youth service and community agencies that work with young people in a particular region. Collaboration and coordination in a region should extend beyond a relationship with one particular agency in the region. Those regions with strong collaborative networks and coordinating mechanisms offer a benefit in the planning and delivery of legal services.

Integrated Legal Service Delivery

This approach⁴³ has also been endorsed in research commissioned by the Consumer Action Law Centre and Footscray Community Legal Centre and undertaken by Dr Liz Curran of the Australian National University in seeking to examine strategic approaches to solving legal problems⁴⁴.

'Triage-style' Approach to Legal Problems

The case for coordination and collaboration is also driven by the imperative of making the best use of the available resources. However good planning and the intelligence available as to the most effective ways to provide assistance to young people also support flexibility and the use of different solutions to different problems. **Triage**⁴⁵ is the process used in medical treatment to determine the priority of a patient's treatment based on the severity of their condition. It can include determining the order and priority of emergency treatment, the order and priority of transfers to different service providers and the choice of service provider. We have noted that many of the young people who have come into contact with youth services and community agencies are in crisis.

Many referring youth agencies will already include in their intake processes elements of a 'triage-style' approach. The most effective approach to the provision of the most appropriate assistance for particular legal problems involves the legal workers supporting the intake process of youth agencies to ensure identification of legal problems, assessment of priority of the legal problem (alongside the assessment of priority by the youth agency) and the suggestion of appropriate options. These options should include referrals to more appropriate legal service providers, ongoing assistance and support to the youth worker, casework assistance and secondary consultations.

By working closely with the youth agency and its workers, this assessment will also include consideration of particular vulnerability and give attention to the process of communicating with the young person to ensure that they are aware of and understand the options available and make informed decisions about them. This process will continue beyond the intake process and will form part of the ongoing management of the young person's 'case' both in a legal and youth work setting.

⁴³ Law and Justice Foundation of NSW "Legal Australia-Wide Survey, Legal Need in Australia" August 2012.

⁴⁴ L Curran, "Solving Problems – a Strategic Approach" Australian National University School of Law March 2013.

⁴⁵ The term comes from the [French](#) verb *trier*, meaning to separate, sift or select.

Key Features of a Legal Service Delivery Model for Young People (continued)

Flexibility and Commitment to Problem Solving

We have noted that a young person's reluctance to engage with the legal system and legal services is not easily overcome. The development of good communication and a relationship of trust between a worker and a young person is no small achievement in itself particularly if that young person has experienced abuse and injustice at the hands of other significant figures in their lives who may also have claimed to have the young person's best interests at heart.

So it may be that a young person is not prepared to take the action that is advised to address a legal problem. That choice must be respected and it then becomes the work of the lawyer (and the youth worker) to come up with other options that will minimise risk of further injustice and personal risk that the young person will consider and hopefully agree to.

Sometimes a young person's choice will be to 'ignore' the problem for even longer in the 'hope' that it will disappear. This experience will be familiar to most youth workers. It gives particular significance to the need for flexibility and commitment to problem solving. It calls for a particular humility for legal workers to know that their carefully considered advice will not always be heeded. Not all lawyers possess it.

Special Attention to the Use of Secondary Consultation

'Secondary consultation' is another concept that has been adapted from health practice. In this context, it would be the setting where legal information is passed from a lawyer through another professional (such as a youth worker) to the young person. As it may not be tailored for the individual young person, it may not constitute 'legal advice'. However it can help to build relationships in preparation for the provision of advice and / or casework assistance; or it can provide information to assist a young person to make particular decisions about self –help or other courses of action.

The Use of Appropriate Technology

This will need to be considered in the context of each particular legal service for young people. However we note that it is possible for models of service delivery to young people to be developed that overcome the barriers created by young people's reluctance to approach a lawyer (as an 'authority figure'). The online information and advice provided by the National Children's and Youth Law Centre's 'Lawstuff' website and 'Lawmail' service are examples⁴⁶.

The effectiveness of tailored legal assistance will still rely on developed relationships. The National Children's and Youth Law Centre relies on its networks and relationships with other community-based organisations to ensure that the services that it provides address the legal issues that arise for children and young people in their local communities around Australia.

⁴⁶ www.lawstuff.org.au

Key Features of a Legal Service Delivery Model for Young People (continued)

The Use of Appropriate Technology (continued)

Experience suggests that technology must be used with flexibility as to methods and settings. Research from the Law & Justice Foundation of NSW has confirmed that video conferencing requires careful attention before it can be effectively incorporated into legal service delivery⁴⁷. Given the confidence with which young people use technology, it remains an important area for exploration. We have noted that some youth services have developed innovative strategies to engage and communicate with young people.

We have also noted the recent UK evidence that young people were not yet particularly successful in obtaining help to address legal problems using the internet⁴⁸. Although salutary for us, the Australian experience may suggest better results. Australia has a more established range of internet resources tailored specifically for young people (addressing cyber safety, legal, financial and mental health problems)⁴⁹. The National Children's and Youth Law Centre reports high levels of satisfaction from its own client satisfaction surveys for its online services.

We note the work of the Young and Well Cooperative Research Centre⁵⁰ exploring the role of technology in young people's lives, and demonstrating how technology can be used to improve the mental health and wellbeing of young people. Some examples of the use of technology that could be incorporated into the service delivery model include:

- Social networking services⁵¹ – to communicate with individual young people or as part of broader community legal education strategies;
- Greater coordination with the National Children's and Youth Law Centre's 'Lawstuff' and 'Lawmail' services;
- Further development of email advice and information options;
- Further development of web resources for training and self-help – both for young people and youth workers; and
- Development of strategies that target particular barriers to access⁵² and particular groups such as young men⁵³ with games and phone applications.

Technology still offers significant opportunities for legal service delivery to young people. The challenge is to shift our thinking from how technology can provide access to a lawyer; to how technology can offer access to a variety of resources to help young people solve their legal problems.

⁴⁷ Law & Justice Foundation of NSW "Legal Assistance By Videoconferencing: What Is Known" Justice Issues Paper 15, Nov 2011

⁴⁸ Denvir, Balmer & Pleasence "Surfing the web – Recreation or resource? Exploring how young people in the UK use the Internet as an advice portal for problems with a legal dimension" *Interacting with Computers* 23 (2011) 96–104

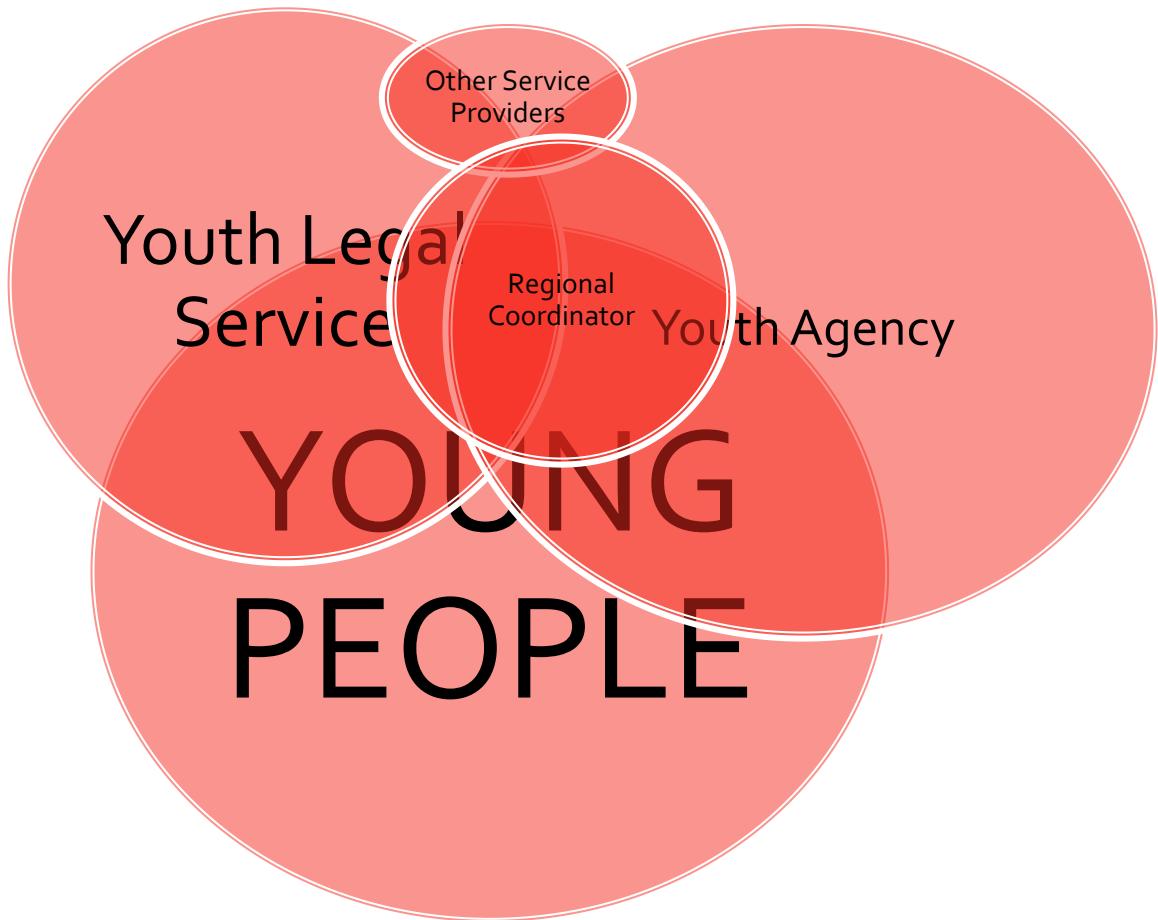
⁴⁹ www.cybersmart.gov.au; www.lawstuff.org.au; <https://www.moneysmart.gov.au/life-events-and-you/under-25s>; au.reachout.com
⁵⁰ <http://www.yawcrc.org.au/about>

⁵¹ Collin, Rahilly, Richardson & Third "The Benefits of Social Networking Services: Literature Review" Melbourne (2011)

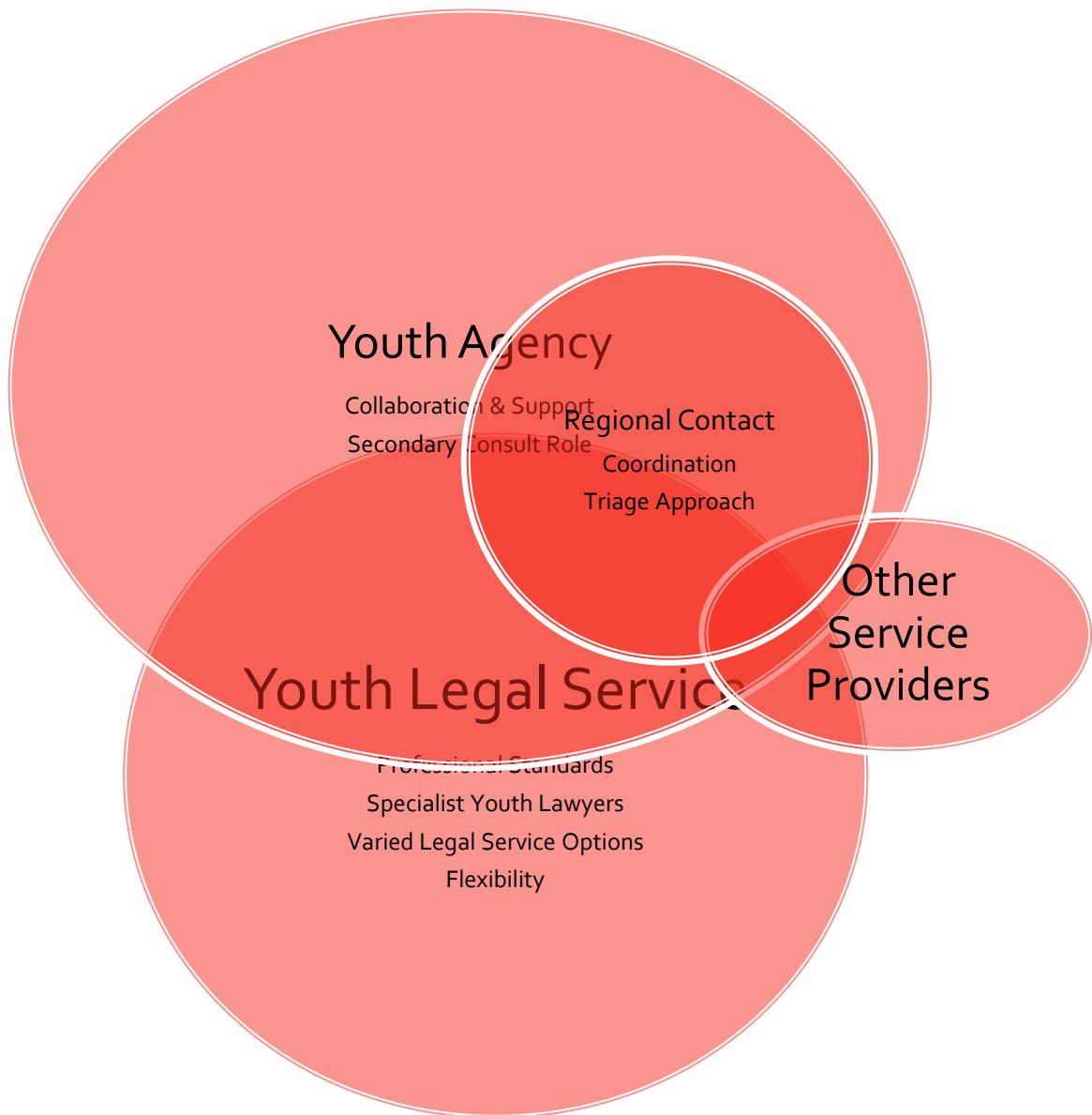
⁵² Stephens-Reicher, Metcalf, Blanchard, Mangan & Burns "Reaching the Hard-to-Reach: How Information Communication Technologies (ICT) can reach young people at greater risk of mental health difficulties". *Australasian Psychiatry*. Vol 19 Supp 1:S58-61.

⁵³ Burns, Webb, Durkin & Hickie, "Reach Out Central: A serious game designed to engage young men to improve their mental health & wellbeing" (2010) *Medical Journal of Australia* 192(11):S27-S30.

A Youth Legal Service Model



A Youth Legal Service Model with Key Features



Responding to the Draft Report

Overview

The Australian Child Rights Taskforce endorses the Key Points set out in the Overview

However it asserts that children and young people are as entitled as adult Australians to expect access to an effective civil justice system. And it asserts that a threshold issue remains un-recognised in the Draft Report – that Australia’s courts, tribunals and ombudsmen are effectively inaccessible for children and young people as avenues to assert rights and achieve justice.

It calls on the Commission to include consideration of children and young people in its final Report and to acknowledge the need for reform of the existing avenues and the development of targeted strategies to provide access to justice for children and young people.

With this threshold issue addressed, we give particular support to the finding that currently many people (including children and young people) have difficulty in identifying whether and where to seek assistance⁵⁴ and the proposal that they should have recourse to a range of informal dispute resolution mechanisms.

Greater support for the provision of clear legal information (particularly for children and young people) would significantly reduce the level of unmet legal need.

Community-based legal service providers to children and young people are developing models of service delivery that can provide the range of options from basic legal information through to more intensive legal assistance for complex matters. These models will usually require local and regional relationships with other community agencies (particularly those that also work with children and young people). These can be integrated with state and national resources⁵⁵.

Given the lack of financial independence of children and young people, these services will invariably need to be free.

Ongoing and with appropriate measurement of effectiveness, increased public funding is required to provide support for these models and their further development. The allocation of funding should support providers to direct assistance to the areas of greatest needs for the greatest benefit.

The Taskforce suggests that the demonstrable ability to work effectively locally and regionally should drive allocation and that competition may not achieve the most appropriate outcomes for local value.

⁵⁴ As set out in earlier sections of this submission that examine the research on young people and legal need

⁵⁵ Such as the National Children’s and Youth Law Centre’s website (www.lawstuff.org.au) and its accompanying email assistance service

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

Overview (continued) - Summary of the Commission's Main Proposals

Many problems permeate both the informal and formal aspects of the system

Consumers lack knowledge about whether and what action to take

The Taskforce endorses the findings and the reform but raises the concern that a single centralised source of legal information, advice and referral in each jurisdiction may not offer appropriately tailored and targeted service for all groups particularly those who experience structural disadvantage in access. Children and young people are one such group.

We note that the National Children and Youth Law Centre's current services are in fact national but offer legal information and referral that is tailored for children and young people in each jurisdiction.

Big potential gains from early and informal solutions

Ombudsmen provide a pathway with negligible cost to complainants

The Taskforce endorses the reform but raises the concern that even the relatively informal mechanism of ombudsmen is not used by children and young people. It is like the courts and tribunals a part of an adult world that children and young people have no particular experience of or confidence in. Further support and strategies are required to offer effective access to justice.

Legal assistance services for disadvantaged Australians

There is scope to improve how governments intervene

The distribution of funds could be better matched to need

There is also scope for better targeting of services

Culturally tailored services are essential but need improvement

Pro bono can play a small but important role in bridging the gap

The Taskforce endorses these reforms but seeks the inclusion of children and young people as a group that experiences particular disadvantage. We point out that there has been significant knowledge acquired by community-based service providers to children and young people on how to better tailor and target services and that this is being incorporated into practice. We do not believe that current funding arrangements have appropriately recognised and supported these developments. In particular we suggest that the role of Legal Aid Commission as the managers of much of this funding is an inappropriate conflict of interest and that more independent and informed decisions about allocation are required.

Steps to understand how the system is functioning

The Taskforce endorses proposed reforms to support better data collection and reporting, policy evaluation and research particularly to improve understanding of how to address the legal needs of children and young people.

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

Overview (continued) - List of Findings, Recommendations and Information Requests

INFORMATION REQUEST 5.1

The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension.

We refer to the use of a Legal Health Check by Youthlaw Victoria as an effective tool for young people and youth workers.

Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks. What role should non-legal agencies that have regular contact with disadvantaged clients play? Do these organisations need to be funded separately to undertake legal health checks?

We suggest that Legal Health Checks can be used as a valuable collaborative tool between legal and non-legal agencies. The use of Legal Health Checks could be built into inter-agency arrangements and practices. In the context of children and young people, the key features of effective service delivery would include such collaborations. Given that the role of local and regional coordination will often be best undertaken by a local non-legal agency that works with children and young people, that role should be funded and could incorporate provision of administration of Legal Health Checks.

DRAFT RECOMMENDATION 5.1

We refer to our comments in the previous section.

INFORMATION REQUEST 5.2

Information is sought on ... the legal problem identification training module (being developed by the Commonwealth Attorney-General's Department and Department of Human Services).

We don't have any information about this training module.

INFORMATION REQUEST 5.3

The Commission seeks feedback on how best to facilitate effective referrals for legal assistance between organisations responsible for human service delivery, and, where appropriate, greater information sharing across departments and agencies.

We refer to previous discussion set out in this submission on collaboration and community development particularly in the section '**Key Features of a Legal Service Delivery Model for Young People**'.

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

Overview (continued) - List of Findings, Recommendations and Information Requests

DRAFT RECOMMENDATION 7.1

The Taskforce endorses this recommendation and suggest that the review also consider the particular professional skills required for effective legal assistance to the wider Australian community including groups who currently experience disadvantage in access to justice (including children and young people).

INFORMATION REQUEST 7.4

How should money from 'public purposes' funds be most efficiently used?

The Taskforce suggest that this question should be considered in the context of the public funding available for legal assistance – perhaps with particular attention to the provision of funding for innovation in legal practice.

DRAFT RECOMMENDATION 8.1

DRAFT RECOMMENDATION 8.3

The Taskforce endorses these recommendations and asks that consideration is given to how alternative dispute resolution can be tailored particularly to assist groups who currently experience disadvantage in access to justice (including children and young people).

Chapters 9, 10 and 11

The Taskforce endorses the recommendations of these chapters and asks that consideration is given to how the mechanisms of ombudsmen, tribunals and courts can be tailored particularly to assist groups who currently experience disadvantage in access to justice (including children and young people).

Chapter 21 - Reforming the legal assistance landscape

DRAFT RECOMMENDATION 21.1

INFORMATION REQUEST 21.1

The Taskforce expresses no view on this recommendation but asks the Commission to note that in our view the current arrangements do not adequately give appropriate priority to meeting the legal needs of children and young people particularly in civil matters.

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

Overview (continued) - List of Findings, Recommendations and Information Requests Chapter 21 - Reforming the legal assistance landscape

DRAFT RECOMMENDATION 21.2

The Commonwealth and state and territory governments should ensure that the eligibility test for legal assistance services reflect priority groups as set out in the National Partnership Agreement on Legal Assistance Services and take into account: the circumstances of the applicant; the impact of the legal problem on the applicants life (including their liberty, personal safety, health and ability to meet the basic needs of life); the prospect of success and the appropriateness of spending limited public legal aid funds.

The Taskforce endorses this recommendation and notes that the impact of a legal problem on the life of a child or young person will often include significant and inter-related issues including consequences for housing, income, family support, personal safety, education and health. We would recommend that children and young people are given particular priority.

RECOMMENDATION 21.3

The Commonwealth and state and territory governments should ... align eligibility criteria for civil law cases for legal aid commissions and community legal centres. The financial eligibility test for grants of legal aid should be linked to some established measure of disadvantage.

The Taskforce endorses this recommendation and suggest that appropriate weight is given to allow for the inclusion of legal assistance that has appropriate key features of models of service delivery for children and young people – particularly where that assistance will support early intervention to prevent the development of more serious impact. We particularly encourage reference to local coordination and effective collaboration with other community service providers.

RECOMMENDATION 21.4

The Commonwealth Government should:

- *discontinue the current historically-based Community Legal Services Program (CLSP) funding model*
- *employ the same model used to allocate legal aid commissions funds to allocate funding for the CLSP to state and territory jurisdictions*
- *divert the Commonwealth's CLSP funding contribution into the National Partnership Agreement on Legal Assistance Services and require state and territory governments to transparently allocate CLSP funds to identified areas of 'highest need' within their jurisdictions. Measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level.*

The Taskforce offers provisional support for the eventual implementation of this recommendation but calls for transitional arrangements that ensure allocation decisions are made independently and with appropriate review after appropriate measures of need are developed through public consultation. Again appropriate weight should be given to the suggested key features of models of service delivery for children and young people and provision is made for local coordination and effective collaboration with other community service providers.

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

INFORMATION REQUEST 21.3

The Commission seeks feedback on how Community Legal Centre (CLC) funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of CLCs are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating CLC funding.

The Taskforce reiterates its recommendation that children and young people are included as a group that experiences particular disadvantage. The Taskforce reiterates that the demonstrable ability to work effectively locally and regionally should be taken into account and that competition may not achieve the most appropriate outcomes for local value. Without a definitive view on an allocation model, we do suggest that the role of Legal Aid Commission as the managers of CLSP funding is an inappropriate conflict of interest and that more independent and informed decisions about allocation are required.

INFORMATION REQUEST 21.4

The Commission seeks feedback on the extent of, and the costs associated with, meeting the civil legal needs of disadvantaged Australians, and the benefits that would result.

The Taskforce refers to the content of this submission.

DRAFT RECOMMENDATION 21.5

The Commonwealth and the state and territory governments should renegotiate the National Partnership Agreement on Legal Assistance Services (following the current one expiring) and seek agreement on national core priorities, priority clients, and aligned eligibility tests across legal assistance providers.

The Taskforce supports this recommendation with the call for priority to be given to children and young people and for community service providers to be heard in the negotiations and agreement. We suggest the Australian Council of Social Services, the National Association of Community Legal Centres and the Australian Research Alliance for Children and Youth as appropriate representatives.

Chapter 24 - Data and evidence

The Taskforce wholeheartedly endorses the recommendations of this Chapter to support better data collection and reporting, policy evaluation and research particularly to improve understanding of how to address the legal needs of children and young people.

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

Chapter 2 Understanding & Measuring Legal Need

Whilst the Taskforce endorses and supports the general conclusion of this important chapter, we call for the inclusion of children and young people as a key group experiencing disadvantage in access to justice. Reference to children and young people and their significant experience of disadvantage in having their legal needs met should be included in Draft Finding 2.1 on page 105.

We support Draft Finding 2.2 on page 107 and call for particular strategies to enable children and young people to gain access to informal dispute resolution mechanisms.

Chapter 3 How accessible is the civil justice system?

The Taskforce endorses and supports the findings of this chapter noting that cost, complexity, lack of understanding and appropriate assistance are the key barriers met by children and young people.

Chapter 4 A policy framework

The Taskforce endorses and supports the proposal of this chapter for a policy framework and endorses the inclusion of measures of wellbeing. We suggest that with appropriate research a framework could identify the benefits of intervention to resolve legal problems at an early age may assist to lessen the risk of entrenching the experience of persistent disadvantage during later life. The resolution of many legal problems experienced by children and young people could offer this benefit. These include unjust suspension or expulsion from school, more effective violence prevention at home or school, access to housing after experiences of homelessness, consumer debt issues due to inexperience in financial management skills, employment and welfare benefit disputes, personal injury and discrimination. We note the recent establishment of the ARC Centre of Excellence for Children and Families over the Life Course⁵⁶ and suggest it may be a suitable research partner for the measurement of the impact of effective dispute resolution during childhood and adolescence.

Chapter 5 Understanding & Navigating the System

The Taskforce endorses and supports the findings of this chapter particularly noting the importance and opportunity offered by community legal education for children and young people.

The Taskforce supports the inclusion of dispute resolution skills as part of the national curriculum for primary and secondary students.

We refer to our comments on this chapter set out in our response to the Overview of the Draft Report.

Responding to the Draft Report of the Inquiry into Access to Justice Arrangements (continued)

Chapter 5 Understanding & Navigating the System (continued)

⁵⁶ http://www.arc.gov.au/ncgp/ce/ce_2014/children_and_families.htm

We reiterate our concern that a single centralised source of legal information, advice and referral in each jurisdiction may not offer appropriately tailored and targeted service for all groups particularly those who experience structural disadvantage in access. Children and young people are one such group. We note that the National Children and Youth Law Centre's current services are national but offer legal information and referral that is tailored for children and young people in each jurisdiction.

We reiterate our view that the pathways to effective legal assistance for children and young people will often rely in relationships with local (non-legal) community agencies and that models (particularly where effective triage is used) will require local coordination and effective collaboration with other community service providers.

We endorse support for integrated serviced delivery and partnerships with other professional groups including youth workers and youth agencies.

Chapter 6 Information and redress for consumers

The Taskforce endorses the findings of this chapter particularly the call for greater focus on the consumer / client.

Chapter 21 - Reforming the legal assistance landscape

We refer to our comments on this chapter set out in our response to the Overview of the Draft Report. The Taskforce seeks the inclusion of children and young people as a group that experiences particular disadvantage. We suggest that appropriate weight is given to allow for the inclusion of legal assistance that has appropriate key features of models of service delivery for children and young people – particularly where that assistance will support early intervention to prevent the development of more serious impact. We encourage reference to local coordination and effective collaboration with other community service providers.

We express concern that competition may not achieve the most appropriate outcomes for local value.

Chapter 24 - Data and evidence

The Taskforce reiterates its support the recommendations of this Chapter for better data collection and reporting, policy evaluation and research particularly to improve understanding of how to address the legal needs of children and young people.

Taskforce Key Recommendations

The Australian Child Rights Taskforce recommends that the final Report give particular attention to children and young people as a group that experiences disadvantage in access to justice.

(The Australian Child Rights Taskforce's Contribution – page 8)

We recommend that particular attention is given to the challenges faced by children and young people in accessing justice in future research and policy development.

(The Australian Child Rights Taskforce's Contribution – page 8)

We endorse the key recommendation of the LAW Survey: to call for a fresh look at the framework for legal assistance for disadvantaged groups.

(Lessons from the LAW Survey – page 14)

We recommend greater investment in legal assistance for children and young people.

We recommend greater investment in legal education for children and young people in the formal schooling system and in other community education settings.

(Responding to Young People's Legal Need in Australia – page 15)

We recommend that attention is given to ensuring effective measurement of the legal need, strategies and models of service delivery for children and young people.

(Community Legal System Information Data – page 21)

We recommend measures to support the participation of children and young people in design and delivery of their legal services.

We recommend the development of a national strategy to measure the legal needs of children and young people and promote best practice and efficient practices to meet the need.

(Planning for Meeting the Needs of Children & Young People – page 23)

We recommend the consideration of the following suggested key features as part of effective legal service delivery for children and young people:

- legal advice and assistance delivered in accordance with appropriate professional standards;
- specialist skills and knowledge of children's and youth lawyers;
- community development practice;
- commitment to problem solving;
- inter-agency coordination (particularly at a local and regional level);
- a 'triage-style' approach to addressing a young person's legal problems;
- the use of the full flexible range of community legal assistance options available;
- the inclusion of secondary consultation as one of those particular options; and
- a willingness to use appropriate technology.

(Key Features of a Legal Service Delivery Model – page 24).