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18 January 2023

Attention: The Hon. Marcia Neave AO, President and Commissioner
Commission of Inquiry into the Tasmanian Government's
Responses to Child Sexual Abuse in Institutional Settings

Dear President,

**Submission of Youth Law Australia to the Commission of Inquiry into the Tasmanian
Government's Responses to Child Sexual Abuse in Institutional Settings**

Acknowledgment of Country

Youth Law Australia acknowledges the Palawa/Pakana and Gadigal people as the original and ongoing custodians of the land upon which we work. We pay our respects to their Elders past, present and emerging, and commit ourselves to the ongoing journey of Reconciliation.

1. Introduction

Youth Law Australia (YLA) is an accredited national community legal centre dedicated to helping young people understand their legal rights and find solutions to their legal problems. Any child or young person (or an adult representing them) can ask us about any legal problem at any time and receive free and confidential legal advice and help. We are

also dedicated to addressing the human rights violations of children and young people in Australia, and we monitor and advocate for their rights and best interests.

We welcome the work of the Commission of Inquiry on the important issue of the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. We are pleased to have the opportunity to provide the following submissions.

2. Youth Law Australia's services in Tasmania

YLA provides a state-wide, technology-enabled, generalist legal service for children, young people and their advocates. YLA aims to respond to any legal problem experienced by children and young people, anywhere in Tasmania.

YLA also has a particular focus on responding to harm/maltreatment, including sexual abuse, in a trauma-informed way, as well as the employment, education, and online safety legal problems of Tasmania's young people.

YLA has a small but growing Tasmanian legal practice. In 2021, we had **116** Tasmanians contact us. In 2022, the figure was **323**- a **178%** increase on the previous year. YLA also provides one of Tasmania's most accessed legal information websites: <https://yla.org.au/>. In 2022, total Tasmanian visitors to the website numbered **45,035**.

Our Student Legal Service ('SLS')

Based in Hobart at the offices of the Tasmanian University Student Association (TUSA), our SLS provides free, generalist legal services to University of Tasmania (UTAS) students.¹ It is supported by Youth Law Australia, TUSA, UTAS and a committee of UTAS law students.² Funding of the SLS is provided by TUSA and UTAS supporting respectively 0.6FTE of a solicitor to provide the SLS and 0.2FTE for that solicitor to support the clinical legal education of students at the UTAS School of Law. Clinical legal education students assisted with research in the development of this submission.

Our Harm Practice

In December 2021, YLA launched the Harm Practice, a technology-enabled legal practice with the goal of intervening early in and preventing child maltreatment in its many forms. Funded by the Commonwealth Attorney-General's Department under the National Strategy to Prevent and Respond to Child Sexual Abuse, the trauma informed harm practice creates a

¹ TUSA, *Student Legal Service* (Web Page) <https://www.tusa.org.au/student-legal-service/>

² TAS *Student Legal Service* (Web Page) < <https://www.tasstudentlegalservice.com/>>

safe space for young people to disclose harm or maltreatment and connects them with legal help in real time.

3. Focus of this submission

The focus of this submission is on children and young people in Tasmania under the age of 25 who are at risk of or who have experienced maltreatment, including sexual abuse, in Tasmanian Government institutional settings and on their access to legal services and legal remedies (access to justice).³

4. Children and young people's access to legal services in Tasmania

Analysis of access to legal services in Ashley Youth Detention Centre: a snapshot

In order to demonstrate the level and nature of children and young people's access to legal services in Tasmanian institutional settings, we have analysed service types in Ashley Youth Detention Centre (AYDC).

We believe the current level of legal services in AYDC provides a useful snapshot of access for children and young people more broadly in Tasmania, especially those in Tasmanian Government institutional settings.

Our analysis draws on the findings of a recent evaluation by the Justice Innovation Centre (JIC), Canterbury New Zealand.⁴ This was an evaluation of a prisoners' legal service, with reference to international literature.⁵

The evaluation found there were three types of legal services relevant to prisoners (and by extension to detainees in youth detention):

- i. *Criminal defence services.* The evaluation identified that prisoners/detainees generally had or have had access to this type of legal assistance (including during their detention).
- ii. *Legal services responding to matters arising from the fact of incarceration itself.* The evaluation found this type of legal assistance was routinely absent within the international literature.

³ Liefwaard, Ton 'Access to Justice for Children: Towards a Specific Research and Implementation Agenda' (2019) 17 *International Journal of Children's Rights* 195.

⁴ Liz Gordon and Jeremy Finn, 'Evaluation of a Prison Advice Service, Canterbury' [2019] *New Zealand Law Foundation Research Reports* 16 < <http://www.nzlii.org/nz/journals/NZLFRRp/2019/16.html> >

⁵ *Ibid.*

- iii. *Legal assistance for a broader set of concerns that may be relevant to a prisoner/detainees' release or reintegration to society.*⁶

Our analysis also draws on the findings of a seminal discussion paper published by the Law and Justice Foundation of New South Wales, *Reshaping legal assistance services: building on the evidence base*.⁷ This identified that for disadvantaged people, especially hard to reach target groups with substantial problems, accessible legal services should, as far as practicable, be:

- Targeted to those most in need
- Conducting regular outreach within other agencies already serving them
- Timely to minimise the impact of problems, and
- Appropriate to the needs and capabilities of disadvantaged users.⁸

Applying these findings to the available legal services operating within AYDC, as disclosed through evidence to the Commission of Inquiry, our analysis finds that there are significant gaps in access to legal services for children detained in AYDC for the second and third types of legal services identified by the JIC. Table 1 (below) illustrates these gaps.

Table 1: Availability of targeted, accessible, joined-up, timely and appropriate legal services to remandees/detainees of Ashley Youth Detention Centre

Criminal defence services	Services targeting detention conditions, abuses, discipline etc.	Broader family and civil law services
<ul style="list-style-type: none"> • Tasmania Legal Aid (TLA) • Tasmanian Aboriginal Legal Service (TALS) 	Nil	Nil

In addition to the Tasmanian Government provided or funded services identified in Table 1 (TLA and TALS respectively), there are four other legal services or sectors of relevance to remandees/detainees and their experiences of abuse. These are listed below. None of these

⁶ Ibid.

⁷ Pascoe Pleasence, Christine Coumarelos, Suzie Forell, Hugh M. McDonald; Geoff Mulherin, foreword. *Law and Justice Foundation of New South Wales, Reshaping legal assistance services: building on the evidence base* (Discussion Paper, April 2014)

<<http://www.lawfoundation.net.au/ljf/app/&id=D76E53BB842CB7B1CA257D7B000D5173>>

⁸ Ibid at 166.

can yet be said to be providing a program of accessible legal service delivery to detainees/remandees while in AYDC, upon release, and up to the age of 25.

- i. *knowmore*. knowmore is a national community legal centre dedicated to responding to sexual abuse and with a particular focus on options for compensatory redress.⁹ knowmore is not a child or youth specific service and access by children and young people in Tasmania to knowmore's services is 2.9% of total access.¹⁰ knowmore is funded by the Commonwealth Attorney-General's Department.
- ii. *Angela Sdrinis Legal (ASL)*.¹¹ ASL is a private law firm that represents survivors of institutional and sexual abuse in compensation claims. It also currently acts on behalf of plaintiffs in the Ashley Youth Detention Centre Class Action claim.¹²
- iii. *Prisoners Legal Service (PLS)*. This is a not-for-profit organisation that offers advice and advocacy services for prisoners and their families.¹³ It offers face to face appointments at Risdon Prison.¹⁴ PLS has received a small, one-off grant from the Tasmanian Government.
- iv. *Youth Law Australia* and other Tasmanian community legal centres. YLA does not receive Tasmanian Government funding while the four (4) other community legal centres most relevant to this cohort do. Neither YLA or the four (4) community legal services are targeting services to this cohort or more broadly to children and young people experiencing abuse in institutional settings. Data regarding children and young people's access to these services generally is at **Annexure 1**.

5. Gaps

While evidence at the Commission of Inquiry indicates there is strong legal assistance work being done for children and young people in AYDC, this is limited in the main to criminal defence work. At the other end of the spectrum, there is strong legal assistance work being done regarding civil litigation and redress options for mostly adult survivors of child sexual or other abuse in AYDC and other institutional settings.

⁹ Written Statement of Warren Strange, Chief Executive Officer, knowmore Legal Service, *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* (28 April 2022) at 3, [10] and 5 [21].

¹⁰ Ibid at 14 [47].

¹¹ 'Angela Sdrinis Legal' (Web Page) <<https://www.angelasdrinislegal.com.au/sexual-and-institutional-abuse.html>>

¹² 'Angela Sdrinis Legal ADYC Class Action' (Web Page) <https://www.angelasdrinislegal.com.au/aydc-class-action.html>

¹³ 'Prisoners Legal Service Tasmania' (Web Page) <https://www.facebook.com/plstas/?tn-str=k*F>

¹⁴ Ibid <<https://www.facebook.com/plstas/about>>

Community legal services in Tasmania, including YLA, are accessing some children and young people in Tasmania, especially regarding their civil and family law needs, but there is no evidence to suggest that responding to child sexual abuse in institutional settings is a significant part of that work.

Our analysis has found that there is a significant absence of child and youth-specific/friendly legal services targeting conditions and abuses in AYDC, and remandee/detainee's broader civil and family law needs.

More broadly, there is a specific gap in providing legal services targeted for children and young people who have already experienced, are currently experiencing or are at risk of experiencing maltreatment, including sexual harm, in Tasmanian Government institutions.

In identifying this specific gap in legal service delivery, we are left to ponder the answer to this question: could trauma informed legal services targeting children and young people who have already experienced, are currently experiencing or are at risk of experiencing maltreatment, including sexual harm, in Tasmanian Government institutions result in many of those young people disclosing their abuse to a trusted lawyer sooner than is currently the case? We believe that we know the answer to this question to be *yes*.

6. Compliance with International Human Rights Law obligations

Improving access to legal services for children and young people in Tasmanian Government institutional settings in relation to issues of maltreatment and child sexual abuse is in keeping with Australia's international human rights obligations, in particular the *Convention on the Rights of the Child*.

It also complies with what Liefwaard¹⁵ refers to as the rights of children and young people to access justice and effective remedies, a concept found in international rights and sustainable development agendas.¹⁶ Liefwaard writes that according to the UN High Commissioner for Human Rights, access to justice is:

the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the [CRC]' (UN High Commissioner, 2013, para.4 with reference to UN Common Approach to Justice for Children, UNICEF, 2008:4).¹⁷

¹⁵ Liefwaard, op.cit.

¹⁶ Liefwaard, op.cit.

¹⁷ Ibid at 198.

The High Commissioner also observed that access to justice:

is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights.¹⁸

The importance of access to legal advice was also highlighted by the Australian Law Reform Commission (ALRC) in its Report of the National inquiry into Children and the Legal Process.¹⁹ The report calls for widespread reform to ensure children's appropriate participation in decision making concerning them.²⁰

Focusing on children and young people in detention, the report finds that access to legal advice means that young people have assistance with appeals and parole applications and advice about their sentences or bail conditions *and their rights in detention*.²¹ The report cites Article 37(d) of the *Convention on the Rights of the Child*, that provides that every child in detention should have the right to prompt access to legal and other appropriate assistance.²²

The ALRC report refers to evidence at the Inquiry indicating that young people in detention face significant difficulties accessing legal advice and representation.²³ 38 of the young people in detention surveyed as part of the Inquiry (31% of the respondents to the question) indicated they were not able to see or talk to a lawyer while in detention.²⁴

While policy and procedure manuals in each State and Territory recognised that young people in detention should have access to legal advice in detention and the draft QOC Standards provided that there should be access to legal representation, proper implementation of these standards were often thwarted due to insufficient numbers of solicitors available to visit detention centres.²⁵

The Inquiry recommended that a national visiting solicitors scheme be established in each State and Territory to provide legal advice to young people in detention.²⁶

¹⁸ Ibid at 198.

¹⁹ *National Inquiry into Children and the Legal Process* (ALRC Report 84 Seen and heard: priority for children in the legal process, 19 November 1977) <<https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/>>

²⁰ Ibid.

²¹ Ibid at 20.90

²² Ibid at 20.90

²³ Ibid at 20.96

²⁴ Ibid at 20.96

²⁵ Ibid at 20.97

²⁶ Ibid at 20.99

Twenty five (25) years on from that recommendation, our analysis finds that the Tasmanian Government has failed to fully implement it.

7. Design and benefits of children and young people’s legal services

Designing legal assistance services for children and young people is a specialised body of work that requires the consideration of the following key concepts, amongst others.

Legal services for children and young people should:

- Be independent
- Accommodate intersectionality
- Be accessible, targeted, timely and appropriate
- Be designed in consultation with children and young people
- Be trauma-informed, child safe and culturally safe, and
- Provide a therapeutic response to legal concerns to ensure that young people are supported holistically.

The implementation of these concepts, alongside the consultation and participation of children and young people, is essential to impactful legal service design.

For example, the Royal Commission into Institutional Responses to Child Sexual Abuse in its Final Report referred to the importance of independence, with regard to institutional complaints handling systems.²⁷ It comments that while these complaints handling systems are essential, there are limitations to these formal systems.²⁸ Appropriately trained legal representatives can provide a degree of external oversight and have the capacity to respond appropriately to allegations of abuse. To do so, however, they need to be accessible to children and young people and develop their trust. As the Royal Commission notes, children will disclose or describe their experiences to those they trust and feel comfortable with.²⁹

An independent legal service may also facilitate greater transparency and openness. The Disability Royal Commission agrees with the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse that there are often problems leaving internal investigations to employing

²⁷ *Royal Commission into the Institutional Responses to Child Sexual Abuse* (Final Report Contemporary Detention Environments, December 2017) Vol. 15, 135.

²⁸ *Ibid.*

²⁹ *Ibid.*

agencies.³⁰ There are conflicting staff loyalties, internal informants are discouraged, and there may be institutional bias and self-protection.³¹

Additionally, an independent legal service has the capacity to address issues of conflict of interest. As part of submissions to the Northern Territory Inquiry, Legal Aid Northern Territory referred to the potential conflicts that may arise when children who are under the care and protection of the Minister have the right to access justice or legal services.³² It referred to a continuing duty to protect the legal interests of children in care during periods of guardianship, including to provide children with ongoing legal assistance where needed.³³ However, the duty of Territory Families to protect the legal interests of a child in care is complicated in situations where a child may have a civil claim against the government or even against Territory Families itself, but this conflict issue does not relieve Territory Families of this duty.³⁴ YLA submits that in this situation, Territory Families' duty towards the child under guardianship extends to obtaining independent legal advice for that child. Likewise, we submit that any potential civil law claims against the Tasmanian Government for alleged sexual or other abuse occurring in an institutional setting, warrants obtaining for the relevant child or children independent legal advice from Tasmanian Government funded legal assistance services.

Recent Royal Commissions and Inquiries have also highlighted the need to recognise intersectionality or the diverse backgrounds of vulnerable children and young people. This diversity may have an impact on risks of and or experience of abuses and access to legal remedies. In many cases, the intersection of attributes such as gender, disability, age and race lead to discrimination and disadvantage.³⁵

For example, knowmore legal service in its submissions to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, states that children and young people with disability may face challenges in disclosing abuse.³⁶ They may lack knowledge about sexuality and what constitutes sexual abuse, or be unable to disclose or

³⁰ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Research Report-Complaint Mechanisms: Reporting Pathways for Violence, Abuse, Neglect and Exploitation, November 2022) page 35

³¹ *Ibid.*

³² Northern Territory Legal Aid Commission Submission to the *Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory*, May 2017, 22

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Law Council of Australia Submissions to the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Criminal Justice System issues paper, 17 August 2020) 12-13

³⁶ Knowmore Legal Service Submissions to the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Criminal Justice System issues paper, 27 March 2020) 9

describe abuse in a way that is readily understood.³⁷ Moreover, they may have an expectation they will not be believed.³⁸

In addition to issues of intersectionality, many of the recent Royal Commissions and Inquiries have recommended that service design should include a wrap-around service that addresses all aspects of wellbeing, which may include financial, legal, medical, psychological, spiritual and other forms of assistance.³⁹

An appropriately designed legal service/program for children and young people with an experience of abuse in institutional settings would address these issues within the design stage to ensure that intersectionality and the diverse backgrounds of vulnerable children and young people do not present as barriers to accessing the service.

8. Findings

The Tasmanian Government has not invested sufficiently in children and young people's legal assistance services, including those with a particular focus on children and young people in or having left a Tasmanian Government institutional environment.

9. Recommendation

YLA recommends that the Tasmanian Government should fund and appropriately design independent legal assistance services for children and young people who have experienced or are at risk of maltreatment and/or sexual abuse in Tasmanian Government institutional settings.

Again, we welcome the work of the Commission of Inquiry and thank you for the opportunity to provide these submissions.

³⁷ Ibid

³⁸ Ibid

³⁹ *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, Advocacy, support and therapeutic treatment services) vol 9, 30. *Royal Commission and Board Inquiry into the Protection and Detention of Children in the Northern Territory* (Final Report) vol 3B 17 November 2017, 35. Insert references to CARC, Northern Territory and DRC.

YLA would also like to acknowledge the hard work and dedication of University of Tasmania clinical legal education students who assisted with these submissions and the help of Rebecca Haynes, Solicitor.

Yours sincerely,

Matthew Keeley
Director

Annexure 1

Table 2: Tasmanian children and young people served by Community Legal Centres and YLA in 2022

Provider	Age 0-17	Age 18-24
CLCs*	42	428
YLA**	15	82

** Data provided by Community Legal Centres Australia in correspondence dated 17 January 2023. NB this data relates to six (6) Tasmanian based community legal centres, all members of Community Legal Centres Tasmania. This data does not include information and referral services.*

*** Data provided by YLA's case management system, extracted 17 January 2023. YLA is a member of Community Legal Centres NSW, and this data is not included in the CLCs total in row 1. This data does not include information and referral services.*

Table 3: Law type of service provided to clients (children and young people) by CLCs and YLA in 2022

Law Type	CLCs*		YLA**	
	Age 0-17	Age 18-24	Age 0-17	Age 18-24
Civil	29	213	16	103
Criminal	18	172	8	30
Family	2	108	0	2

** Provided by some or all of the six (6) CLCs referred to in Table 2. Data provided by CLCs Australia. Total number of law types exceeds total number of clients as clients may present with more than one type of legal problem. This data does not include information and referral services.*

*** Data provided by YLA's case management system, extracted 17 January 2023. Total number of law types exceeds total number of clients as clients may present with more than one type of legal problem. This data does not include information and referral services.*