



13 September 2024

Royal Commission into Domestic, Family and Sexual Violence in South Australia
Submitted via the Commission's website

Dear Commissioner Stott Despoja,

Royal Commission into Domestic, Family and Sexual Violence in South Australia

1. Youth Law Australia commends the South Australian Government for establishing the Royal Commission into Domestic, Family and Sexual Violence (the Commission) and taking action to examine existing policies, legislation, administrative arrangements, system structures and funding levers to develop recommendations to deliver the change needed to end domestic, family and sexual violence. We also strongly support the inclusion of a directed focus on the rights and views and experiences of children and young people.

Acknowledgements

2. Youth Law Australia acknowledges the Traditional Owners and Custodians of Country and pays respect to the Elders, past and present. We acknowledge the strength, resilience and capacity of Aboriginal and Torres Strait Islander peoples from the many locations across Australia where we support children and young people in their journey for safety, dignity, equality and justice.
3. We also acknowledge all children and young people who are courageous and hopeful in sharing their experiences with us.

About Youth Law Australia

4. Youth Law Australia (**YLA**) (formerly the National Children's and Youth Law Centre) is an accredited community legal centre dedicated to helping children and young people under the age of 25 years and their supporters to understand their legal rights and find solutions to their legal problems. YLA is Australia's only national, technology-based community legal service, providing specialist child-safe and trauma-informed legal services and referrals primarily through web content, email, phone and live webchat.



Youth Law Australia

W: yla.org.au

5. YLA is the only South Australian community legal centre currently providing a targeted, state-wide combination of phone access (1800 number), email, webform, and live legal webchat services to children and young people who have experienced domestic, family and sexual violence in South Australia including those no longer residing in that state. YLA also has long-standing relationships with organisations in South Australia including the South Australian Department for Education, Shine SA, Uniting Communities Youth Law Centre. and the Legal Services Commission.
6. We receive funding under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* via the *Enhance and Expand Legal Assistance Services for Victims and Survivors of Child Sexual Abuse* program to provide a national legal service, including an online legal webchat service, for children and young people experiencing, or at risk of experiencing child maltreatment including domestic, family and sexual violence.
7. During 2023 the Commonwealth Attorney General's Department commissioned an independent evaluation of the Harm Practice by Urbis. The *Evaluation of the Enhancement and Expansion of Legal Assistance Services for Victims and Survivors of Child Sexual Abuse Final Report* was published on 20 December 2023.¹ The evaluation concluded that YLA provides a unique legal service via an online legal platform that is a mostly appropriate response to the needs of the children and young people experiencing, or at risk of experiencing harm.

Our work with children and young people relating to domestic, family and sexual violence

8. YLA has significant experience and expertise in advising and supporting children and young people and their advocates on matters relating to domestic and family violence in partner/intimate and familial relationships; child physical abuse and neglect; and sexual violence, including peer sexual violence, child sexual abuse; grooming; online harm such as child sexual exploitation material, image-based abuse and sextortion; and sexual exploitation and sexual harassment, particularly in employment and education contexts. We also assist children daily to navigate the complex laws around age of consent, similar age defences, affirmative consent, sexting and accessing pornography.
9. We also work with children and young people accused of using concerning or harmful sexual behaviours, which provides opportunities for preventative education and to help young people who may have both experienced and used sexual violence. A significant component of this work is providing guidance and resources to reduce the risks of offending or reoffending.
10. We provide advice, advocacy, and referrals in relation to legal issues such as reporting to police and child protection authorities, providing statements, trial processes and giving evidence, obtaining records through processes like freedom of information requests, victims support and injury compensation, information sharing and protecting sensitive records, lived experience advocacy, dealing with the media, and defamation.
11. We also provide a holistic legal practice for children and young people which means that whatever the presenting legal problem, we can also assist with any other legal problems that arise. For

¹ The *Evaluation of the Enhancement and Expansion of Legal Assistance Services for Victims and Survivors of Child Sexual Abuse - Final Report* prepared for the Commonwealth Attorney General's Department by Urbis, 20 December 2023, is not publicly available but a copy can be provided on request.

example, children and young people experiencing domestic, family and sexual violence may also need support to leave home; housing; obtain identification documents; obtain copies of records; change their name or gender; obtain housing; transfer school enrolments; obtain and understand the effect of an intervention order; or make an application for victims of crime support.

12. We have an extensive national referral network developed over 30 years of practice and we have strong relationships to facilitate referrals and service delivery with organisations like headspace, Kids Helpline, the National Office for Child Safety and the eSafety Commissioner.

What we learn from our work with children and young people

13. Wherever possible we support Gillick competent young people² to make independent decisions and prioritise the direct participation of all children and young people in all matters that impact them where safe to do so. This is particularly important when responding to domestic, family and sexual violence, as it is common for victims and survivors of violence dealing with policing and justice cultures to feel ancillary or unnecessary to the legal processes which are about them. This disconnect and exclusion is felt more strongly by children and young people as systems have not been designed for their participation and many of our clients present as fatigued from being repeatedly ignored or dismissed by adults. It is not uncommon for a client to ask, “*at what age does my voice count?*”.
14. It is very clear that significant reforms are required across policies and practice in all professions to recognise and respond to children and young people as direct victims of domestic, family and sexual violence. Services must also become proficient in identifying and responding to the critical intersection between children's experiences of family violence and other forms of child abuse and neglect.
15. It is our experience that when provided with free, confidential, trauma-informed and child rights informed access to legal services, children and young people, even very young children, are proactive and engaged in help seeking and finding solutions to their legal problems. They are also generally not afraid or uncomfortable to talk about domestic, family and sexual violence within the context of a legal service where lawyers are trauma-informed and not mandatory reporters.³
16. One of the most significant things we learn from children and young people, especially those who have experienced maltreatment, is the value in having a trusted advocate who can assist over a longer period of time and adapt service delivery to the changing needs of the child or young person. We commonly experience children and young people telling us that they are so happy to have found YLA and describe us as “*my person*” and display great relief and enhanced engagement once reassured that we will not have contact with parents or carers without their consent.

² *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (“**Gillick**”).

³ It is crucial to children's safety to recognise, preserve and emphasise the confidentiality of communications with lawyers who are also not mandatory reporters, except for legal professionals in the NT pursuant to *Care and Protection of Children Act 2007* (NT), see sections 15, 16, 26 and 27.

Drivers of domestic, family and sexual violence for children and young people

17. In addition to the underlying social drivers of domestic, family and sexual violence and barriers that impact all people, there are experiences that must be recognised that are either specific to children and young people or which disproportionately impact them including:

- The inherent power imbalance that comes from being dependent on adults.
- Lack of domestic and family violence informed, and trauma-informed services tailored and targeted to children and young people.
- Lack of accessible self-help information that has been written with children and young people as the intended audience.
- Barriers to children and young people identifying their problem as a legal problem with a potential legal solution.
- Barriers to children and young people's supporters and advocates identifying young people's problems as a legal problem with a potential legal solution.
- Fear that a parent or carer will find out they said something and anxiety that they or someone else will get into trouble.
- Concern about the level of involvement of their parents and carers.
- Fear and anxiety that seeking help can be a catalyst for a range of negative consequences like loss of home and family, triggering a child protection response, loss of respect, loss of peer support, disruption to education and punishment.
- Inconsistent assessments and recognition of Gillick competency, for example at 15 years of age a young person can be viewed as too old to receive substantial assistance from child protection services but too young to be able to live independently.
- Being at greater risk of having information shared about them without their knowledge or consent due to the combined effect of things like mandatory reporting requirements, concealing child abuse offences and failure to assess Gillick competency to facilitate independent engagement with service providers.
- The views of children and young people are not seriously considered in decision making that impacts them.
- Barriers to children and young people participating autonomously in all legal matters concerning them.
- Corporal punishment of children is a generally accepted practice.
- Surveillance and monitoring of children and young people by parents and carers or other adults can be hard to distinguish between reasonable supervision and coercive control.

Child safe and child focused service delivery

18. The key factors that must underpin the provision of services to children and young people in response to domestic, family and sexual violence are:

- The safety of children and young people must be prioritised.
- Direct participation of children and young people to give effect to Articles 12 and 19 of the *Convention on the Rights of the Child (CRC)*.⁴

⁴ United Nations, *Convention on the Rights of the Child*, 20 November 1989, articles 12 and 19.

- Engaging children and young people with lived experience in co-design of services and programs.
- Recognising that children are not a homogenous group and require flexible and varied points of access including digital service delivery involving both active and passive technologies, place-based options, as well as phone lines as not everyone can access technology or devices.
- Having an option for anonymous access to assist children and young people to build trust in the service and gain confidence in discussing sensitive matters before being required to disclose identifying details.
- Providing an early opportunity to engage with a legal service to facilitate access to a confidential service without mandatory reporting obligations to provide children and young people with a voice and an opportunity to make an informed choice about next steps.
- All organisations that provide services to children and young people in response to sexual violence must be committed to a child-safe culture, including implementing the National Principles for Child Safe Organisations.
- Ongoing mandatory training for all key stakeholders responding to domestic, family and sexual violence, particularly police, judiciary, court staff and legal professionals, which is trauma-informed, victim and survivor-centric and culturally safe. For those working with children and young people, they must also be required to undertake regular training about child-safe organisations, how to speak with children and young people and how to assess the maturity and capacity of children and young people to participate.
- Acknowledgement that children and young people in rural, regional and remote locations may be unable or unwilling to access a local service due to issues related to the cultural and social characteristics of living in small communities. Specific barriers include lack of privacy as they and/or a perpetrator may be known to local services providers, and stigma and shame linked to community gossip. Children and young people within First Nations and culturally diverse communities are likely to face similar barriers. In order to leave no child behind, it will be essential to prioritise capacity to be accessible everywhere via digital service delivery.
- Expanded funding for enhanced capacity of services to respond as soon as a child or young person is ready and able to engage, and which is also capable of longer-term holistic engagement for continuity of care, including end-to-end legal and non-legal service support.

We welcome any opportunity to participate in future conversations with the Commission about the experiences and needs of children and young people in response to domestic, family and sexual violence. If you would like to discuss any aspect of this submission, please contact us on [REDACTED]

Yours faithfully,

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