



Commissioner for Children and Young People
Western Australia

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Mr Peter Katsambanis MLA
Chair
Community Development and Justice Standing Committee
4 Harvest Terrace
WEST PERTH WA 6005

Dear Mr Katsambanis

Inquiry into the Magistrates Court of Western Australia's management of matters involving family and domestic violence

Thank you for the opportunity to provide a submission to the Standing Committee's inquiry into the management of family violence matters by the Magistrates Court of Western Australia.

As Commissioner for Children and Young People in Western Australia I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006 (WA)* to advocate for and promote policies, laws, programs and services that enhance the wellbeing of all children and young people in Western Australia. It is also a statutory function of my office to advocate for the views of children and young people to be heard in decision making that affects them. In undertaking these responsibilities I must give priority to Aboriginal children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child (the UNCRC). It is within the context of my role as an independent, statutory office and the functions outlined above that I provide the following comments.

General observations

It is an established fact that family and domestic violence has a significant impact on the physical and mental wellbeing of children and young people. Unfortunately, evidence also shows that Aboriginal and Torres Strait Islander children and young people, along with adult Aboriginal and Torres Strait Islander people, are more likely to be affected by family and domestic violence. Article 19 of the UNCRC makes it the responsibility of State Parties to take all appropriate legislative, administrative, social and education measures to protect children from all forms of physical or mental violence, injury, abuse, exploitation, neglect or maltreatment while in the care of their parents, legal guardians or any other person who has the care of the

child. In the context of this inquiry, this means improving access to those judicial processes that can protect the safety of children and young people. This includes not only ensuring access to judicial processes, particularly in regional and remote areas, in the actual sense of the word, but also ensuring appropriate services are available to support the people accessing these processes. With regard to Aboriginal and Torres Strait Islander people, such a commitment should extend to ensuring that the court processes and support services are culturally safe and eliminate any language barriers which may exist.

Challenges experienced by young court users

In April 2019 I released the *Speaking Out About Family Separation Report*¹, which contains the views of children and young people with experience of the family law system. While I acknowledge family law matters are not within the jurisdiction of the Magistrates Court, I believe that the feedback provided by children and young people with regard to legal proceedings are relevant to this inquiry.

Broadly speaking, children and young people want to be treated fairly and as a person in their own right during court proceedings. They want their views to be listened to and to be kept informed throughout the case. The following quotes from the *Speaking Out* report are particularly pertinent in the context of this inquiry:

"I feel like the biggest thing is, like it becomes quite annoying, they speak to you like you're a little kid, and I feel like I can be spoken to like I'm an adult"

"It would be amazing to just know what happens and what's going to occur, because then I can ready myself for what might occur. It's affecting us, it's our health and wellbeing"

These expectations are in line with the guidelines contained within the Western Australian *Equal Justice Bench Book*² and the rights afforded to children and young people under the UNCRC. Article 12 of the UNCRC requires State Parties to ensure a child who is capable of forming their own views the rights to express those views freely in all matters affecting them, with their views being given due weight in accordance with their age and maturity. In particular, children and young people are to be provided the opportunity to be heard in any judicial proceedings affecting them, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

I believe it would be beneficial for the Standing Committee to speak directly to children and young people regarding their experiences with the Magistrates Court in situations involving family and domestic violence. Such consultation should occur with children and young people in

¹ Available at <https://www.cyp.wa.gov.au/our-work/projects/family-separation-and-family-law/>

² Available at <https://www.supremecourt.wa.gov.au/equaljustice/default.aspx>

metropolitan, regional and remote areas of the State. Of particular relevance to the Committee would be any challenges they experienced in relation to the process of being granted a Family Violence Restraining Order and providing evidence in family violence cases, and how these processes could be improved. It would also be valuable to ascertain whether children and young people believe the Court's processes and the government services made available to them provided the safeguards and supports they needed during this time.

Other ways of managing matters involving family and domestic violence

The trauma and stress that results from family and domestic violence means we should always be looking for ways in which to minimise the additional trauma and stress that any associated legal proceedings may cause. This is particularly so in relation to children and young people who have been subjected or exposed to family violence. At all times the best interests and safety of such children must be a primary concern of the Court.

To this end, I would like to bring to the Committee's attention Recommendation 28 of the Australian Law Reform Commission's Final Report on its inquiry into the Australian Family Law System³. This recommendation states that, with regards to children's matters, disputes involving allegations or legal recognition of the occurrence of family violence are not appropriate matters to be dealt with through arbitration. The Australian Law Reform Commission also highlighted in its report that it had received a number of submissions that agreed "a number of additional processes may be required to enable arbitration in children's matters to proceed safely, to incorporate the views of children, and to appropriately screen for risk of violence and harm." Taken together, I believe this highlights the need for a cautious, evidence based approach when it comes to developing or adopting alternative means of dealing with family violence matters involving children.

Ways to improve the efficiency and effectiveness of the Magistrates Court

A key element to ensuring the efficiency and effectiveness of the Magistrates Court is maintained at a high level in relation to children and young people is a child-friendly complaints mechanisms. Indeed, the United Nations Committee on the Rights of the Child sees the provision of effective complaints procedures for children as part of implementing Article 12 of the UNCRC. As stated in the *Speaking Out About Family Separation Report* mentioned above, a child-friendly complaints mechanism should be a core component of the various services within and connected to the justice system so a child can seek immediate resolution of issues of concern and provide feedback on services they have received. Making such a mechanism available would facilitate an informed continuous improvement focus within the Magistrates Court and across the associated support services available to children and young people.

³ Available at <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/>

Thank you again for the opportunity to provide input into the Standing Committee's inquiry into this matter. I am happy to discuss any aspects of my views with you in further detail if required.

Yours sincerely,

COLIN PETTIT

Commissioner for Children and Young People WA

14th October 2019