

**INQUIRY INTO CHILDREN, YOUNG PEOPLE AND THE BUILT ENVIRONMENT**

**Submission on behalf of  
the Legal Aid Commission of New South Wales  
to the  
New South Wales Commission for Children & Young People**

The Legal Aid Commission of New South Wales (Legal Aid) is established under the *Legal Aid Commission Act 1979* (NSW) and is an independent statutory body. It provides legal services to socially and economically disadvantaged people. Legal services include representing them in federal and state courts and tribunals. It also works in partnership with private lawyers in representing legally aided people.

The Children's Legal Service (CLS) of Legal Aid welcomes the opportunity to make a submission to the Committee on Children and Young People's Inquiry into Children, Young People and the built Environment.

The CLS is a specialist unit within Legal Aid dealing exclusively with criminal matters in the Children's Courts in Glebe, Lidcombe, Campbelltown and St Marys.

In the 2004 – 2005 financial year the CLS represented 8,087 children in court and gave advice to 17 349 children over the Youth Hotline.

While, generally speaking Legal Aid has an interest in the area of inquiry, this submission is limited in nature to the CLS's area of expertise.

The CLS believes that any discussions or developments relating to built environments ought to comply with International Treaty Obligations. The CLS believes that any plans and developments for children and the built environment ought to comply with the specific following principles.

### **1. Best Interests of the child**

Article 3.1 of the United Nations Convention on the Rights of the Child (CROC) states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It is conceded that the "best interests of the child" is not the *sole* consideration but rather a *primary* consideration. The "best interests of the child" should be at the forefront of any discussions or developments for the built environment.

### **2. Participation of the child**

The participation of the child is another common theme in international principles relating to children.<sup>1</sup> Article 12 of the CROC provides the most direct support for the principle that children should be given opportunities to participate in decisions that affect them.

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

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<sup>1</sup> For further discussion, see Sparks Richard, Girling Evi and Smith Marion, 'Children talking about punishment' (2000) 8 *International Journal of Children's Rights* 191.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Articles 31, 9 and 40 of the CROC also give children clear rights to participate in decisions that affect them. Rule 50 of the Riyadh<sup>2</sup> also states:

Generally, participation in plans and programs should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

The CLS believes that all children ought to be allowed to participate in decisions about the built environment. This should not be restricted to only children in mainstream schools and with good academic records. Legal Aid believes that children in detention and those involved in the criminal justice system ought to be consulted.

### **3. Right to Freedom of Association**

Article 22 of the International Covenant on Civil and Political Rights ICCPR<sup>3</sup> states:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right...

Article 15 of the CROC states:

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

Legal Aid believes that all built environments should encourage the freedom of associations between children.

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<sup>2</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The *Riyadh* Guidelines)

<sup>3</sup>

In Legal Aid's experience at the Children's Court, children often complain that police can ask them to 'move on' when they are just 'hanging out'. This can also happen in shopping centres, when management ban children from their centres for periods of weeks and years for being in the company of their friends. If the child ignores the banning notice, they can be charged with trespass. This can be problematic if there are other essential utilities at the centres like Medicare, Australia Post and Medical Clinics. This situation can be even harsher in rural and regional areas where the closest centres can be a lengthy distance away.

Common spaces ought to be developed to enable children to interact with their peers in a way that is safe and also not subject to undue interference by other authorities. These spaces need to be easily accessible by public transport. This is because most children do not have access to cars for their personal use and there are legal limits for when they can drive cars and or motor cycles.

Such spaces should also have utilities available such toilets and drinking water facilities.

#### **4. Right to recreation**

Article 31 of the CROC states:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

The CLS is particularly concerned about the use of public spaces. Children enjoy being in public spaces with their friends as part of their recreation. However, public spaces can be inaccessible to children through lack of transport or can be designed so as to be irrelevant to their needs.

Future built environments ought to be developed to promote recreation options for children. The CLS supports the development of skate parks. However, it

believes that future developments should not be limited to skate parks as these do not cater for all children's interests. A variety of recreation options ought to be available for all age groups.

The CLS believes that if more recreation opportunities are developed for children, it may result in a decline in criminal activities. In the experience of the CLS some offences relate to boredom.

A large proportion of offences occur at night and in public spaces. When taking instructions from children about why some offences occur such as robberies and other stealing offences, they often say that they were bored and had nothing to do. Children comment that they would prefer to be involved in legal activities but they have limited options. For example, there was a 16 year old male who was charged with a number of malicious damage offences for illegal graffiti. The child complained that he would like to paint legally as a recreation or as a profession but there were no opportunities for him.

## **5. Right to accommodation**

Legal Aid believes that future built environments should better cater for children who are homeless or where a family breakdown results in limited or no accommodation facilities for them. This is consistent with Rules 34 and 38 of the Riyadh which states:

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

At present, there are too few accommodation options for children in New South Wales. This can lead to children being granted bail but they remain in detention, while appropriate accommodation is found for them. The CLS believes that this

may be a contravention of the principle that detention ought to be a last resort.<sup>4</sup> It can also be very expensive option for the government. The Human Rights and Equal Opportunity Commission has stated that:

The estimated cost of detention is \$100 000 per person per year and it was suggested that this was a significant reason to adopt alternative approaches where possible.<sup>5</sup>

In June 2003, there were 202 in total children aged between 10 and 17 in custody.<sup>6</sup> This would mean an average costs of \$2,020,000 a year.

The CLS believes that bail hostels may be an effective, more economical alternative to detention and should be considered as part of every future development of the built environment. Bail hostels could be built in conjunction with other community organisations such as Anglicare and Department of Community Services. Bail hostels should be built in close proximity to every Children's Court. Children who are refused bail would be able to reside at these hostels on a temporary basis until long term accommodation is found. These hostels could be connected to educational resources and local schools. The aim should be in providing more resources into the education of children in order to provide them with better opportunities.

## 5. Future Courts

We believe that future Children's Courts ought to be designed in such a way that they are readily accessible to children and their families. They should be

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<sup>4</sup> Rule 13.1 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

<sup>5</sup> Human Rights and Equal Opportunity Commission, Submission No 336, p S 1919 in *Joint Standing Committee on Treaties, The Parliament of the Commonwealth of Australia, United Nations Convention on the Rights of the Child* (HREOC, Sydney: 1998) at 349

<sup>6</sup> Charlton Kate and McCall Marissa, 'Statistics on Juvenile Detention in Australia: 1981-2003' (2003) 10 *Australian Institute of Criminology Technical and Background Paper Number 10* at 16.

accessible by public transport and staffed by people who are trained in dealing with children and their families.

Further, children's courts ought to have facilities which include specifically designed interview rooms, separate offices for their legal representatives, comfortable waiting areas for children and their families and the availability of refreshments within the confines of the court complex.

## **6. Future Detention Centres**

The CLS believes that all current detention centres and future detention centres ought to comply with the Beijing Rules and the Riyadh. These international conventions require a differentiation from adult facilities and a variety of recreation options being available for children, for example.

## **7. Conclusion**

The Legal Aid is grateful both for the opportunity to make submissions on *the Inquiry into Children and Young People* and for the extension of time granted to lodge them.

If you have any further questions in relation to this submission, please contact Teresa O'Sullivan on 9219 5120.

