

Towards more child friendly and child focused justice

The youth justice system should be tailored to the needs and characteristics of young people, rather than being designed through an adult lens, argues Commissioner for Children & Young People Helen Connolly.



Under International and South Australian law, all organisations that work with or provide services to children and young people must develop child safe policies, procedures, and environments.

By doing so, we give effect to the United Nations Convention on the Rights of the Child and fulfil our state, national and international obligations in this regard. This includes designing justice systems that allow for safe and respectful contact with children and young people who encounter them, both directly and indirectly.

In addition to organisations meeting their legal requirements, any adult working within them that is required to say and do things that have an impact on children and young people must apply the child safe policies and procedures the organisation has developed. This is because what adults say and do has a profound effect on how children and young people experience the world and learn to understand their place within it.

If we fail to look at the systems we put in place through the eyes of a child, we continue to see their situations through an adult lens. This means we become complicit in developing systems that fail to take children and young people's particular circumstances into account.

We complicate this further by not creating opportunities for them to have input and provide feedback on what they would change if they could, and rarely do we stand up for those children and young people who we see the system failing.

As the adults in children's lives, it is our job to establish systems that protect and respect their rights. We need to see that the indiscriminate and disrespectful ways in which we currently treat children and young people who encounter our justice system is damaging their trust in us and leading them to have feelings of disempowerment, confusion, and frustration.

As South Australia's Commissioner for Children and Young People, my role is advise all levels of government on how well we are, or are not, fulfilling our legal requirements in relation to children's rights. I am required to monitor and report on how South Australia promotes, protects, and provides for children and young people within our various systems, including those who encounter our youth justice system.

In my work, I take every opportunity to consult directly with children and young people. I use this direct input to amplify their voices and to represent their interests to political and civic leaders, so that the changes they say they want, are known and prioritised.

This is one way to facilitate children and young people's participation in the design and delivery of the systems and services that impact them. However, it must not be the only mechanism we use or rely upon.

It is incumbent on all of us working directly or indirectly with children and young people, to have their best interests front and centre always. This means acknowledging that children and young people are the experts in their own lives and that listening to what they have to say about their experiences is crucial to bringing about changes they want to see, and to which they are entitled.

Being heard is much more than 'a nice to do'. It's a child's right. Yet, most children I speak to say their right to be heard is something they have very little experience of; whether they're in the classroom, in their homes, out in the community, or trying to communicate their views via leaders – they tell me they're rarely heard or taken seriously.

For those children and young people who are in contact with child protection, youth justice, family law systems and though parental involvement in adult justice systems the opportunities to realise their right to have a say is virtually non-existent.

Across the country there are significant advocacy efforts focused on raising the age of criminal responsibility, ending the detention of children in adult facilities, reducing the over-representation of Aboriginal children, and supporting those with backgrounds full of trauma and abuse.

With such critical safeguarding and safety concerns at play, it might seem esoteric to be focusing advocacy efforts on the rights of children and young people to be heard and taken seriously in matters affecting them in judicial and administrative proceedings. Yet, if we don't, the systemic failure and crises this has led to will continue unabated.

Unless we recognise, respect, and act upon the experiences, needs, and wishes of the children and young people who these systems are negatively impacting, nothing will change.

Changing them requires us to make an intentional move away from ‘child-blind justice’ toward ‘child-friendly justice’.

It’s where decisions made at every stage of a system are purposefully centred on child rights in and of themselves, not considered as an afterthought or applied as an adaptation of an existing adult-oriented system that has its own set of challenges and problems to address.

This is an approach that recognises that the impact a youth justice system has on a child or young person is of paramount importance. In other words, a justice system made fit for purpose.

As the Hon Margaret Nyland highlighted in the Child Protection Systems Royal Commission, there are ‘dangers of a system that fails to listen to what children say, either directly or through their behaviour’.¹

My [Making Change in Youth Justice](#) report (March 2020) brought to the fore the voices of young people with lived experience of South Australia’s youth justice system through both single and multiple contacts with it. Over the course of their lives, these young people had been in contact with the Youth Court, and/or with Care and Protection units. Others had been in contact with adult courts because they were the child of a parent who had been incarcerated.

They all concluded from their direct experiences that the current system is not child-focused or child-friendly, and that they often felt they were ‘just a cog in a wheel who had no voice’. They wanted to be provided with a much better understanding of what was happening to them throughout the process and be given opportunities to play a larger role in court proceedings.

They said that the Court environment is not conducive to hearing from children and young people. They described feeling both intimidated and overwhelmed by the adults in the court and by the environment of the court itself. They said they did not really understand what was going on in terms of the process, or what was expected of them as they navigated their way through it.

They described ‘being in the dock’ as being ‘put on public display’ and how this felt like a ‘public shaming’. They said it impacted on their ability to think clearly, to manage their emotions, and to respond in ways that might have led to more positive outcomes. Their inability to take in what was happening to them, meant there was potential for them to minimise their compliance beyond the court too, because they were fearful of what was happening while they were in it.

Many of the young people had basic literacy skills and therefore found it difficult to understand the language being used throughout the entire process; from the point of arrest to having bail decisions set; from being held in detention to going to court. They described a strategy of agreeing with everything that was said to them to speed the process up, mainly so they could get out of the situation they were in as quickly as possible.

Young people said they need information presented to them in ways they can easily process and understand. This includes both verbal and written content provided in a timely way. They said they felt ‘everyone else in the court was well versed in the process and had time to

prepare what they were going to say'. By contrast young people felt they were being 'put on the spot' and were 'not given enough time to gather their thoughts' or have an opportunity to 'present themselves to the judge in a way that felt reasonable'.

Their suggestions for adopting 'youth friendly' court room practices included developing procedures that encouraged young people to engage with the 'officials' in the room who they wanted to see take more of a problem solving and restorative approach to the ways in which they interacted with children and young people. They suggested this could include sitting around a table or connecting with the magistrate in ways that are more friendly. They felt this would have enabled them to have genuine opportunities to comment, respond, express their views, and answer questions relevant to their situation without fear of being embarrassed or shamed.

It's well and truly time for a more child-friendly youth justice system to operate in SA. One built on the presumption that all children and young people will have an opportunity to have their voices heard and their ideas acted upon if they should encounter it, and within which all court authorities, police, and other agencies use child safe processes, procedures, and environments at every stage of the process.

If children are children and not adults – our system must reflect this.

Endnotes

¹ Child Protection Systems Royal Commission Report, Volume 1: Summary and Report, August 2016, p. 6. Available at <https://www.childprotection.sa.gov.au/documents/report/child-protection-systems-royal-commission-report.pdf>.