



The case for independent child-centred socio-legal services for children and young people in alternative care

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May 2025

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1. Abstract

Children and Young People in alternative or out-of-home care (OOHC) face significant access to justice challenges that traditional legal aid services are not designed to address. Applying a systems thinking approach to the provision of legal aid services for children and young people in OOHC presents opportunities to advance traditional legal practice and affect systemic change. This paper outlines the experience of establishing *Your Voice – Children’s Out-of-Home Care Advocacy Service* at Legal Aid NSW in Australia. It posits that providing access to independent specialist socio-legal services that respond to children and young people’s fundamental wellbeing and legal needs while in OOHC, is essential to uphold their rights in OOHC.

2. Introduction

Globally, an estimated 2.7 million, or 102 per 100,000 children live in alternative or out-of-home (OOHC) care.¹ Indigenous children and young people (CYP) from colonised countries are vastly over-represented in OOHC and this trend is increasing.² It is well established that CYP in care are one of the most vulnerable, disadvantaged and traumatised groups in our communities.³ Experts have identified that ‘children, young people and families are not receiving the safety and support they desperately need to heal, recover and thrive’⁴ in OOHC and that the experience of OOHC has ‘a lifelong impact that echoes not only through their lives but also those of future generations.’⁵

There is a large body of literature detailing the adverse impacts of institutionalisation on the wellbeing and developmental outcomes of CYP in OOHC,⁶ the complexity of their needs and overrepresentation in criminal justice systems.⁷ Further, innumerable studies and reports document the poor life outcomes of care leavers – they are more likely to be unemployed, homeless, experience poverty, mental health concerns⁸ and have a higher risk of mortality long after leaving care.⁹

Evidence on the social determinants of justice (SDJ) shows that eight factors, underpinned by structural causes, impact how likely someone is to end up in prison.¹⁰ Being in foster care, poor education, early contact with police, unsupported mental health or cognitive disability, alcohol and drug problems, unstable housing or none at all, coming from a poor and disadvantaged neighbourhood – and being Indigenous.¹¹ Legal experts have identified that addressing these factors, and the underlying

¹ UNICEF Data: Monitoring the situation of children and women, ‘[Children in alternative care - UNICEF DATA](#)’ UNICEF Data, June 2024 (accessed 30 April 2025). Note: due to limitations in data collection, this figure is likely significant higher.

² B. Burns, R. Grace, G. Drake and S. Avery, [What are Aboriginal children and young people in out-of-home care telling us? A review of the child voice literature to understanding perspectives and experiences of the statutory care system](#), *The International Journal of Childhood and Children's Services*, vol. 38, no. 6, 2024, p. 2108.

³ S. McMillan, H. Lawson and K. McFarlane, ‘Addressing legal needs of young people in OOHC: practitioners call for radical change’, *Alternative Law Journal*, vol. 47, no. 3, 2022, p. 228-233.

⁴ Centre for excellence in therapeutic care, ‘Agenda for Change: Ensuring a safe and supportive out-of-home care system for children and young people in New South Wales’, *Australian Childhood Foundation: Centre for excellence in therapeutic care*, K. Royds, S. Buratti, J. Tucci & N. Macnamara, 2023, p.5. [CETC - Agenda for Change: Ensuring a safe and supportive out-of-home care system for children and young people in New South Wales - CETC](#)

⁵ Ibid.

⁶ N. Petrowski, C. Cappa, and P. Gross, ‘Estimating the number of children in formal alternative care: Challenges and Results’, *Child Abuse and Neglect*, vol.70, 2017, pp. 388.

⁷ See for example: K. McFarlane, ‘[Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system](#)’ *Australian & New Zealand Journal of Criminology*, vol. 51, no. 3, 2018, p. 412-433.

⁸ Centre for excellence in therapeutic care, ‘Leaving care: What we know and don't know about outcomes for young people’, L. McPherson, 2020, [CETC - Leaving Care: What we know and don't know about outcomes for young people - CETC](#) (accessed 30 April 2025).

⁹ E. Murray, R. Lacey, B. Maughan, and A. Sacker, ‘Association of childhood OOHC status with all-cause mortality up to 42 years later: Office of National Statistics Longitudinal Study’, *BMC Public Health*, vol. 20, 2020, p. 7.

¹⁰ UNSW, ‘The social determinants of justice: 8 factors that increase your risk of imprisonment’, UNSW, Sydney, NSW, R. McCausland, E. Baldry, 2023 [The social determinants of justice: 8 factors that increase your risk of imprisonment](#). (accessed 30 April 2025)

¹¹ Australian research by McCausland and Baldry on the social determinants of justice, utilising data across health, human services and criminal justice agencies, found that 12% of the cohort studied had been in OOHC, compared to less than 1%

structural ‘causes of these causes’ – early abuse, racism, discrimination and poverty - with early intervention and support materially reduce the risk of someone offending and ending up in prison.¹² The researchers leading this work have opined that ‘[f]urther momentum is needed for criminal legal policymakers, scholars and practitioners to engage in holistic and multidisciplinary approaches to reducing criminalisation and incarceration, in particular for targeted and disadvantaged groups.’¹³

The experiences of CYP in OOHC as reflected in the literature and relevant reports underscores the stark reality that in practice, children’s rights contained in international human rights instruments¹⁴ and local children’s rights charters¹⁵ are not consistently being applied and upheld by national or state based legal and social service systems. Indeed, in Australia, the National Children’s Commissioner has called for obligations under the Convention on the Rights of the Child to be put into domestic legislation to increase accountability.¹⁶ In a recent speech coinciding with the release of a report on *How Australia can transform child justice to improve safety and wellbeing*, Australia’s National Children’s Commissioner observed:

After the child protection system, often the next station on the train line for them is the criminal justice system. This journey is predictable, and it is preventable. These children who are in both child protection and justice systems are sometimes called the ‘cross-over kids.’ They are dealt with in separate, disconnected but equally broken systems. This disconnection fails to recognise that in fact they are all children in need of care.

Sadly, the reality is that the systems that are meant to help children and their families – such as health, education and social services – are fragmented, piecemeal and uncoordinated, described by some as ‘mid-last century’ in their design and ‘not fit for purpose’ for an ‘epidemic’ of unmet needs today.

There is significant evidence of the efficacy of systems-based approaches to child protection internationally,¹⁷ and evidence of systems thinking being embraced as a paradigm relevant to legal advocacy.¹⁸ Systems thinking is an approach to understanding and solving complex problems by viewing them as part of an interconnected whole rather than each problem in isolation. It emphasises

in the general population. Further, Indigenous people were 2.6 times more likely to have been in OOHC, experienced more OOHC placements and higher rates of homelessness due to placement breakdowns. Additionally, 84% of those who had been in OOHC as children were found to have complex support needs, multiple diagnoses and disabilities as adults.

¹² Unpublished article by Eileen Baldry AO, Professor Emerita of Criminology at UNSW and Dara Read, Senior Lawyer at Legal Aid NSW.

¹³ R. McCausland, E. Baldry, ‘Who does Australia Lock up? The Social Determinants of Justice’, *International Journal for Crime, Justice and Social Democracy*, vol. 12, no. 3, 2023, p.38.

¹⁴ See United Nations Convention on the Rights of the Child Article 13, “to seek, receive and impart information”, and Article 12 “to express views and have those views given due weight.”

¹⁵ See for example: Department of Communities and Justice, ‘Your rights as a child or young person in care’ 20 September 2024 [Your rights as a child or young person in care | Communities and Justice \(nsw.gov.au\)](https://www.nsw.gov.au/your-rights-as-a-child-or-young-person-in-care)

¹⁶ Australian Human Rights Commission, ‘National Children’s Commissioner Anne Hollonds Press Club Address’, *Australian Human Rights Commission*, 2024, [National Children’s Commissioner Anne Hollonds Press Club address | Australian Human Rights Commission](https://www.humanrights.gov.au/news/press-releases/national-childrens-commissioner-anne-hollonds-press-club-address) (accessed 30 April 2025)

¹⁷ C. Joynes, J. Mattingly, *A systems approach to child protection*, K4D Helpdesk Report. Brighton, UK: Institute of Development Studies, 2018, p. 5

¹⁸ T. Pierson-Brown, ‘(Systems) thinking like a lawyer’, *Clinical Law Review*, vol. 26, 2020, p. 521.

the relationships and interactions between different components of a system, recognising the changes in one part can affect the entire system. Complex social problems such as the challenges besetting child protection in Australia and internationally can benefit from collaboration, including those affected by the problem, to develop solutions. A 'circuit breaker' is a strategic intervention designed to disrupt a process and break harmful feedback loops that exacerbate a problem, allowing for a reset and a new approach. In the context of systems thinking approaches to complex social problems, feedback loops are mechanisms where the output of a system influences its own input, often leading to self-reinforcing cycles. By interrupting these loops, a circuit breaker can prevent the escalation of negative outcomes and create an opportunity to implement more effective solutions.

Social service systems, such as the child protection system do not exist in isolation and are constantly interacting with other systems including the justice, social welfare, education and health systems.¹⁹ Child protection systems have been identified as having 'a set of coordinated components that work together to strengthen the protective environment around each child', including:²⁰

- a strong legal and policy framework for child protection that are compliant with the Convention on the Rights of the Child and other international good practice
- multi-sectoral coordination at different levels across government and between sectors
- child-friendly preventative and responsive services
- is responsive to children's voice and participation [sic]

Viewing the poor outcomes of CYP with OOHC experience through a systems-thinking lens, it becomes apparent that there is a critical need for legal aid agencies, mandated to provide access to justice for the most vulnerable, to expand services beyond traditional legal frameworks which focus on Court based intervention in children's care and protection. Applying a systems thinking approach also presents opportunities to position legal aid services as a key lever for Governments driving purpose-driven transformative changes to address complex social and systemic problems – including the large, and in many jurisdictions rising, number of children in OOHC as well as the significant costs associated with providing OOHC.

In establishing Your Voice – Children's Out of Home Care Advocacy Service (Your Voice), Legal Aid NSW has begun to respond to the challenge of addressing the unmet legal needs of CYP in and leaving OOHC with a holistic socio-legal service. In the words of one young person with OOHC experience consulted in the development and establishment of Your Voice, the service presents an opportunity for 'preventing further harm and restoring lost childhood.'²¹ At its core, Your Voice is designed to enable and empower CYP to have their voices heard and meaningfully participate in and affect decisions that impact their lives.

Your Voice aims to act as a circuit breaker in the out of home care system in NSW and positively impact the outcomes it produces for CYP with experience of the system. The hypothesis underpinning the establishment of Your Voice, is that collaborative approaches, informed by systems thinking, supporting, advocating for and empowering CYP in OOHC from the earliest possible opportunity will translate to better outcomes for individual clients and catalyse wider systems change in the process. That is, we hypothesise that advocating for CYP in OOHC to attend school, advocating for and

¹⁹ Joynes and Mattingly, *A systems approach to child protection*, p. 4.

²⁰ Ibid, p. 7.

²¹ Youth Consult for Change Consultation Report, 10 December 2024, Legal Aid NSW – Your Voice Children's Out of Home Care Advocacy Service, unpublished.

facilitating access to mental health and disability supports in OOHC or empowering CYP in OOHC to speak up, be heard and stay connected to siblings, family, kin, community and culture, will translate to higher levels of educational attainment, reduced contact with the criminal justice system, better health and employment outcomes and stronger connections and reduced social exclusion.

“Children in contact with the child protection and youth justice systems have complex needs such as poverty, marginalisation, systemic racism, disabilities, learning problems, and poor mental and physical health. And we know the systems that are meant to help them are not fit-for-purpose.”

Australian National Children’s Commissioner, Anne Hollonds²²

Lawyers who see the scope of their work as part of broader systems, and who have a discipline for critical reflection, will be prepared to collaborate across disciplinary siloes, and will be poised to develop and implement legal interventions that have whole system impacts. Indeed, these are the movement lawyers, the rebellious lawyers – those who have, perhaps unwittingly, engaged the habits of system thinking in order to maximize the impact of their advocacy.

Tomar Pierson-Brown, Director of the University of Pittsburgh School of Law²³

²² Media Release ‘Report reveals systemic barriers to supporting vulnerable children’ 14 June 2024 in E. Savvas, ‘Rethinking advocacy: child-centred approaches to child protection legal services’, Churchill Fellowship Report, 2023.

²³ Pierson-Brown, *(Systems) thinking like a lawyer*, p. 562.

3. The Right to Protection *and* Participation

Safe and effective participation is an access to justice issue. If the systems, processes and individuals working with children do not enable children to participate safely in matters important to their lives, we fail to uphold their human rights and children's access to justice is limited.

Elicia Savvas, 2023 Churchill Fellow²⁴

The concept of participation encompasses several key rights, including the ability 'to seek, receive, and impart information,'²⁵ as well as 'to express views and have those views given due weight.'²⁶ These rights are recognised internationally in the UNCRC and reflected in various domestic laws. Participation is closely linked with the rights of children to be protected from harm and to have their best interests as a primary consideration. These rights are integral to child protection systems, which aim to ensure the safety and support of families. The global standards for OOHC are set out in the *United Nations Guidelines for the Alternative Care of Children* which are intended to enhance the implementation of the convention on the Rights of the Child.²⁷

The most recent UN Day of General Discussion (DGD) focused on Children's Rights and Alternative Care. The report produced following the DGD was approved by the Committee on the Rights of the Child. Significantly, the report includes the recommendation that 'civil society [organisations and other actors engaged in aspects of alternative care systems] should ensure the participation of children human rights defenders, including children with care experience, in their advocacy work on alternative care and should support them in reporting, and seeking redress for rights violations.'²⁸ Relevantly, the report also contains the following recommendations:²⁹

- States should develop and implement safe and accessible mechanisms to ensure that children, young people, parents, caregivers and others with experience in aspects of alternative care are able to consistently and meaningfully engage with decision-makers and have their views taken into account in care-related decisions and processes related to policymaking, including deinstitutionalization policy.
- States should promote education on children's rights for CYP with experience of the care system to enable them to know and advocate for the fulfilment of their rights, including regarding their care, and prioritize education on children's rights for adults.

²⁴ Savvas, *Rethinking advocacy: child-centred approaches to child protection legal services*, p. 9.

²⁵ United Nations Convention on the Rights of the Child Article 13.

²⁶ United Nations Convention on the Rights of the Child Article 12.

²⁷ See: Save the Children Child's Rights Resource Centre, 'United Nations Guidelines for the Alternative Care of the Children' 2010, [United Nations Guidelines for the Alternative Care of Children | Save the Children's Resource Centre](#) (accessed 30 April 2025).

²⁸ See: [Ibid.](#)

²⁹ See: United Nations Committee on the Rights of the Child, 'Days of general discussion' 2025, [Days of general discussion | OHCHR](#) (accessed 30 April 2025).

- States should develop and implement policies that guarantee children transitioning out of alternative care the right to meaningfully participate in decision-making about their futures.

The aims and service model underpinning Your Voice align with these recommendations.

4. Participation in Practice

'Far too often though, children and young people [in OOHC] report feeling ignored, misunderstood, voiceless, and hopeless.'

CREATE Foundation³⁰

A substantial body of research points to the importance of the meaningful participation of CYP in child protection processes.³¹ Relevant research also identifies that the 'extent to which children are seen, heard and authentically represented ...is mediated by a complex and nuanced interplay of individual (child and professional), organisational and structural factors that are located within a child protection system that endeavours to act in the child's best interests and to promote participation within competing discourses of child protection.'³²

Reports documenting the experience of CYP in OOHC indicate that true participation is often not achieved in practice.³³ This can be attributed in part to the inherent power differential between young people and the care and protection professionals they are interacting with on a day-to-day basis. Researchers have identified that 'the participation of children in the child protection process is intrinsically linked with power relations that are mediated through political, socio-legal and cultural processes.'³⁴

Australian research confirms that young people often feel excluded from decision-making in OOHC.³⁵ For example, the Create Foundation's 2018 survey of 1200 young people in OOHC found that young people in residential care were less likely than any other placement type to have a say about education matters, family contact and placement changes.³⁶ It is notable that OOHC placement was associated with a 1.425 fold increased risk of outcomes relating to adverse health and social needs.³⁷

Comments, such as the following, shared by young people in out of home care speak directly to this reality:

³⁰ CREATE Foundation, 'Best Practice Guide – Children and Young People as Decision-makers: Encouraging Participation in OOHC', 2020, p. 2.

³¹ J. Cashmore, P. Kong, M. McLaine, 'Children's Participation in Care and Protection Decision-Making Matters', *Laws* vol. 12, no. 3, 2023, p. 49.

³² J. Ogle, 'Authenticity, power and the case record: A textual analysis of the participation of children and young people in their child protection conference', *Child and Family Social Work*, vol. 27, no. 2, 2022, p. 283.

³³ See for example: Office of the Advocate for Children and Young People, 'The Voices of Children and Young People in OOHC', 2021, www.acyp.nsw.gov.au/out-of-home-care (accessed 30 April 2025).

³⁴ Cashmore, Kong and McLaine, M, *Children's Participation in Care and Protection Decision-Making Matters*, p. 13.

³⁵ Centre for excellence in therapeutic care, 'Enabling YP participation in residential care decision making' *Centre for excellence in therapeutic care*, 2020, p. 27 [youth-participation-research-brief.pdf](#) (accessed 30 April 2025).

³⁶ *Ibid* p. 6.

³⁷ A. Sareislan, A. Kaarijala, J. Pitkanen, H. Remes, M. Aaltonen, H. Hiilamo, P. Martikainen & S. Fazel. Long-Term Health and Social Outcomes in Children and Adolescents Placed in Out-Of-Home Care. *JAMA Pediatrics*, (2022) Jan 1:176(1): e124324

*"I have been asked. I don't think I have been heard 95% of the time."*³⁸

*"You need to listen. You honestly need to listen to what a young person's got to say."*³⁹

*"Some of us kids just feel like we're treated like a number...we need to start being treated better and our voices need to start being heard a lot more than what they are."*⁴⁰

The Your Voice approach to facilitating participation align with best practice guidelines for encouraging participation in OOHC developed by CREATE foundation, an advocacy agency for CYP in OOHC. Their best practice guide provides:

Best practice involves collaboration and power-sharing; workers and young people coming together as "differently equal partners" Best practice involves seeing CYP articulating, planning, and achieving their own goals and pursuing their dreams and aspirations without feeling handicapped by their care experience or manipulated by a statutory third party.⁴¹

Meaningful participation is also an essential part of systems reform. Reforming care and protection systems cannot be meaningfully achieved unless those with lived experience of the system can safely identify issues, concerns and complaints with the system and advocate to have their fundamental needs met while in the system. Building opportunities and practices for genuine and meaningful participation is critical to creating a culture where children's voices are heard and acted upon in child protection decision-making.

4.1 Contextual considerations

Young people in out of home care are typically subject to long term Court Orders which provide that parental responsibility (decision making) is transferred to the Minister of the relevant government department. That responsibility is delegated to a senior government officer who in turn may engage staff or foster carers to implement decisions by providing day to day care. In NSW, where there is a hybrid model of government and non-government service delivery, as well as a program underway to transfer the case management of Aboriginal children in OOHC from non-Aboriginal non-government organisations to Aboriginal Community Controlled Organisations (ACCO), care and case management arrangements can be even more multilayered and labyrinthine. The CYP in OOHC is not a part of this process of delegating parental responsibility, which is complex and, in many respects, intentionally hidden. The young person's power to influence decisions made about them is limited to being heard by those with power over them or by making people listen through behaviours which draw attention to unmet needs. Seeking to be heard, in a circumstance where a CYP is totally dependent on the decision maker is not without significant risk for the CYP. Self-advocacy may be misinterpreted and result in a worse outcome. Acts of resistance may lead to further restrictions under the cover of the young person's best interest. Expecting CYP to help seek from those who they perceive have caused harm, and for whom they are totally dependent, would objectively seem to place an unfair burden on CYP.

³⁸ Office of the Advocate for Children and Young People, 'The Voices of Children and Young People in OOHC', *Office of the Advocate for Children and Young People*, 2021, p. 26. www.acyp.nsw.gov.au/out-of-home-care, (accessed 30 April 2025).

³⁹ Ibid.

⁴⁰ Ibid, p.25.

⁴¹ CREATE Foundation, *Children and Young People as Decision-makers: Encouraging Participation in OOHC, Best Practice Guide*, November 2020, p. 2.

Hearing CYP in OOHC, particularly in the context of their lived experience, means more than asking or providing a forum for a young person to speak. It means taking into account the young person's life and needs and the way they experience the power of the State directly and indirectly. This is not theoretical. Asking a 15 year old girl to follow a formal complaints procedure about a male carer assaulting her is a huge ask. She sees that carer every day, she does not know what, if any action will be taken and when, she has to negotiate relationships with other residents and staff because of her disclosure, and she may have to deal with issues with respect to trauma and shame.

4.2 Child development considerations

It is axiomatic that CYP are developmentally different to adults. The adolescent brain continues to develop up until the early 20s.⁴² As young people negotiate adolescence, cognitively they experience changes in socio-affective engagement, increase motivation for sensation seeking and risk taking, as well as emerging sensitivity to social context and status. The limbic brain region (associated with socio affective states such as the presence of reward and other emotional stimuli) develops quickly in comparison to the pre-frontal and parietal brain regions (responsible for executive function and the regulation of emotions).⁴³

Recent research has suggested that childhood maltreatment has been associated with maladaptive neurodevelopment, with the type of maltreatment having a differential impact on cognitive function.⁴⁴ Children subject to neglect had poorer cognitive function than those abused but not neglected⁴⁵ with such children having significantly poorer executive function than the norm on behavioural and performance-based measures. Research into adolescent help seeking in medical contexts suggest that using formalised processes creates barriers arising from fear of judgement by professionals, fear of being stigmatised and fear of being treated like a child.⁴⁶

Centring the young person in the context of the developmental status means that it makes sense that CYP may not know what their legal issue or how to get help. An underdeveloped pre-frontal system does not mean the views young people are less important or relevant but rather that care, attention and impartiality need to be the focus. Service provision needs to consider young people are developmentally sensitive to status and judgement from others.

⁴² van Duijvenvoorde, A. C. K., & Crone, E. A. (2013). The teenage brain: A neuroeconomic approach to adolescent decision making. *Current Directions in Psychological Science*, 22(2), 108–113

⁴³ Ibid at p 108

⁴⁴ Eiberg, M. (2024). Cognitive functioning of children in out-of-home care. *Journal of Child & Adolescent Trauma*, 17(2), 217–230

⁴⁵ Ibid at p.219

⁴⁶ Divin, N., Harper, P., Curran, E. *et al.* (2018) Help-Seeking Measures and Their Use in Adolescents: A Systematic Review. *Adolescent Res Rev* 3, 113–122

5. Access to independent legal and non-legal advocates in OOHC

CYP have limited power in OOHC environments and to hear their voice, in the context of their development, there is a need for an independent advocate who is separate from the system of care and help providers and who can tangibly represent and maintain that separation. CYP in OOHC are often reluctant to engage with government services for understandable reasons – their previous interactions have been with agencies associated with the care system have led to poor outcomes and they are unable to distinguish between the role and functions of different agencies.⁴⁷

For a CYP to speak up and be heard, they need to feel, and be, safe to engage. To be safe the CYP needs to have agency and power. The unique qualities of the client/solicitor relationship provides such protection. Services provided by lawyers on instructions attract legal professional privilege and create an exclusive space where the CYP has power, not only to determine what service is to be provided, but perhaps more importantly for a CYP who has experienced information shared being weaponised against them (often in their best interests), what will happen with the information they provide.

The dominant purpose of Your Voice is to provide legal advice, representation and assistance to CYP in OOHC: interactions with Your Voice solicitors attract legal professional privilege. As we outline in more detail below, Your Voice also draws upon the expertise and services of those with skills in non-legal domains including youth advocacy, disability and lived experience. The privilege belongs to the CYP, their power and agency is not hypothetical but rather embedded in the client / solicitor relationship.

Embodying the ideas of agency and co-design CYP with lived experience were involved in formal and information consultations⁴⁸ when developing the model for Your Voice. Through that process we learnt:

- One size fits no one. CYP want to be seen for who they are and not what they have lived through: young people are more than their trauma.
- Young people have life problems not legal problems.
- Young people want to be engaged in their environment and it is important to understand and accommodate their competing needs and priorities
- If you ask a young person for their view, then wait to hear the answer
- Do what you say you are going to do and if you can't do it say so
- Young people often know they have rights but need help to assert them.

Broadly, we learnt that CYP in OOHC needed to be understood as a whole person with strengths as well as trauma and provided with a relationally safe and culturally sensitive service. We also understood that for CYP to be heard, the power needed to be shared.

It is also noteworthy that the CYP we consulted also raised an overarching consideration and concern in relation to the intended implementation of the service. They spontaneously opined that the Department of Communities and Justice (DCJ) has so much control over the lives of CYP in OOHC

⁴⁷ S. McMillan, H. Lawson and K McFarlane (2022) Addressing legal needs of young people in Out-of-Home Care: Practitioners call for radical change. *Alternative Law Journal*, 47(3), 228-233.

⁴⁸ Formal processes including accessing youth consultation bodies such as UC Change and the youth advisory council. Informal process involved inviting past and present CYP client to comment on the model and share their ideas for better practice.

that the idea of early intervention, inherent in the establishment of Your Voice, would require an 'entire paradigm shift' in the whole child protection system.⁴⁹

⁴⁹ Youth Consult for Change Consultation Report, 10 December 2024, Legal Aid NSW – Your Voice Children's Out of Home Care Advocacy Service, unpublished

6. The Current State – limited access to independent legal representation

The administrative arrangements for the appointment of representatives for children in NSW care and associated jurisdictions⁵⁰ is the responsibility of Legal Aid NSW. Legal Aid NSW allocates, funds, trains and accredits care and protection child representatives and has responsibility for maintaining a panel of child representatives to ensure that all children across the state have access to legal representation at the commencement of, and throughout care proceedings. Child representatives can be re-appointed for post final order applications before the Court (such as an application to vary to discharge a care order or an application for a contact Order), for mediations and for court-initiated relisting's in response to concern arising from statutory reports to the court.⁵¹

There is no dispute that CYP should have access to legal representation when the State applies to a Court to intrude or fetter the decision-making responsibility of their parents. CYP bear the direct consequences of such decisions and there is undisputed recognition there is a requirement for independent legal representation to ensure that the correct and preferable decision is made, with such decision-making being informed by the views and wishes of CYP, where they have the capacity.

Whilst the legislation, and the practice and procedures of those responsible for administering the legalisation, accept that the child representation is an essential aspect of litigation and alternative dispute resolution relating to decisions about the allocation or exercise of parental responsibilities, it is notable there is no similar commitment to the ongoing representation for those most affected by the decisions – CYP. The role of child representative is exhausted on the making of final orders and the provision of post order reports.

What that means for CYP in out of home care is that they cannot access independent legal representation with respect to decisions made about their care or wellbeing once the Court matter has finalised. Whilst CYP can access legal representation in relation to their criminal matter and can potentially access legal representation in relation to some civil law issues, CYP do not have ongoing access to a lawyer with respect to how parental responsibility is being exercised on their behalf.

⁵⁰ For example adoption proceedings or administrative review proceedings relating to carers.

⁵¹ ⁵¹ S82(3) *Children and Young Persons (Care and Protection) Act NSW 1998*.

7. The unmet legal needs of children and young people in OOHC

Whilst the legislation and the formal structures of the care and protection system may suggest that a CYP's need for legal representation with respect to the state's reallocation of parental responsibility ends at the time of final orders, CYP's lived experience is different.

Indeed, the plethora of reports and inquiries into the lived experience of CYP in out of home care do not conclude that their issues had been resolved upon the making of final orders. Rather, the consensus is that CYP in out of home care experience a range of poor educational and health outcomes and experience significant social and economic marginalisation.⁵² Indeed, a range of Australian inquiries, reports and judgements have found that many CYP in OOHC are at risk of significant harm⁵³ and are not having their fundamental needs met in OOHC.⁵⁴

Research has also found that CYP in OOHC 'face some of the most challenging access to justice issues due to experiences of trauma, increased interactions with the justice system, distrust of government services, high rates of socioeconomic disadvantage and a lack of accessible support services.'⁵⁵ In addition, CYP in OOHC often lack the skills to identify legal issues when they arise and do not have the capacity or support to access assistance.⁵⁶ Furthermore, research has identified that the system does not provide structural assistance to facilitate CYP's self-advocacy and complaints⁵⁷

Significantly, research suggests that when the voice of CYP is heard by a legal service, numerous intertwined legal issues are identified, with each client having an average of 5 – 8 legal issues.⁵⁸ This is higher than their peers and the general population demonstrating their additional vulnerability.

7.1 The voice of children and young people in OOHC

Whilst the legislation and the formal structures of the care and protection system may suggest that a CYP's need for legal representation with respect to the state's reallocation of parental responsibility ends at the time of final orders, CYP's lived experience is different.

⁵² P. Mendes, S. Baidawi and P. Snow, 'Young People Transitioning from Out-of-Home Care: A Critical Analysis of Leaving Care Policy, Legislation and Housing Support in the Australian State of Victoria', *Child Abuse Review*, vol. 23, no. 6, 2014, p. 402.

⁵³ See for example: ACYP, 'Moving Cage to Cage: Special Inquiry into Children and Young People in Alternative Care Arrangements', ACYP, 2024, p. 17 [ACYP | Special Inquiry \(nsw.gov.au\)](#) (accessed 30 April 2025).

⁵⁴ See for example: NSW Ombudsman, 'Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities', *NSW Ombudsman*, 2024, p 52 – 64. [Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities, NSW Ombudsman](#), (accessed 30 April 2025).

⁵⁵ S. McMillan et al (2022) op cit p. 228.

⁵⁶ Ibid

⁵⁷ NSW Advocate for Children and Young People (2024) Moving cage to cage: *Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements* [ACYP | Special Inquiry](#) (accessed 30 April 2025)

⁵⁸ S. McMillan et al (2022) op cit 230.

Indeed, the plethora of reports and inquiries into the lived experience of CYP in out of home care do not conclude that their issues had been resolved upon the making of final orders. Rather, the consensus is that CYP in out of home care experience a range of poor educational and health outcomes and experience significant social and economic marginalisation. 59 Indeed, a range of Australian inquiries, reports and judgements have found that many CYP in OOHC are at risk of significant harm⁶⁰ and are not having their fundamental needs met in OOHC.⁶¹

Research has also found that CYP in OOHC ‘face some of the most challenging access to justice issues due to experiences of trauma, increased interactions with the justice system, distrust of government services, high rates of socioeconomic disadvantage and a lack of accessible support services.’⁶² In addition, CYP in OOHC often lack the skills to identify legal issues when they arise and do not have the capacity or support to access assistance.⁶³ Furthermore, research has identified that the system does not provide structural assistance to facilitate CYP’s self-advocacy and complaints⁶⁴

Significantly, research suggests that when the voice of CYP in is heard by a legal service, numerous intertwined legal issues are identified, with each client having an average of 5 – 8 legal issues.⁶⁵ This is higher than their peers and the general population demonstrating their additional vulnerability.

⁵⁹ P. Mendes, S. Baidawi and P. Snow, ‘Young People Transitioning from Out-of-Home Care: A Critical Analysis of Leaving Care Policy, Legislation and Housing Support in the Australian State of Victoria’, *Child Abuse Review*, vol. 23, no. 6, 2014, p. 402.

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⁶¹ See for example: NSW Ombudsman, ‘Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities’, *NSW Ombudsman*, 2024, p 52 – 64. [Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities, NSW Ombudsman](#), (accessed 30 April 2025).

⁶² S. McMillan et al (2022) op cit p. 228.

⁶³ Ibid

⁶⁴ NSW Advocate for Children and Young People (2024) Moving cage to cage: *Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements* [ACYP | Special Inquiry](#) (accessed 30 April 2025)

⁶⁵ S. McMillan et al (2022) op cit 230.

8. Your Voice – Children’s Out of Home Care Advocacy Service

Your Voice is a Legal Aid NSW (LANSW) pilot program that has been funded through a discretionary grant from the Law Society of NSW Public Purpose fund.

LANSW recognised that the legal assistance sector had a pivotal role in advocating, supporting and representing CYP, not just at critical court events, such as criminal proceedings and proceedings relating to the statutory removal or restoration of a CYP, but throughout the CYP’s experience in OOHC. LANSW had extensive experience and expertise in providing high-quality family/care and protection services to CYP around court events. Legal Aid NSW also provided holistic civil law support for some children in OOHC who had concurrent criminal matters.

Our experience in working with young people was consistent with the literature which identified that: (a) CYP do not tend to seek legal help; (b) CYP have many unmet legal needs; and (c) the need to frame an unmet need in terms of a legal issue or an intake criteria created barriers to legal help seeking.⁶⁶ We were aware that when legal services worked in partnership with allied health professionals’, outcomes for CYP were enhanced as a range of legal and non-legal issues were identified and addressed.

This experience revealed an unmet need for a socio-legal service for CYP in OOHC, entry for which was not contingent upon proceedings in the criminal or care court or the young person identifying a legal issue within guidelines for legal service delivery. With the strong support of the President of the Children’s Court, the Executive Director of Youth Justice, and the NSW Advocate for Children and Young People, a funding proposal and project plan were developed in the first half of 2024.

The funding proposal identified, notwithstanding there were approximately 15,000 CYP in OOHC, that no agency was providing a specialist legal service providing information, advice and representation to CYP in OOHC in NSW, or for that matter, Australia.

LANSW recognised that delivering a legal assistance service in a novel way to a vulnerable population in a highly politicised environment created significant challenges which could only be addressed through accessing an initial funding source independent of Government. Whilst the project is consistent with the NSW Government’s sector wide Reform Agenda, seed funding through the Public Purpose Fund inoculated the project from the government process and provided scope for creativity, flexibility and the capacity to develop a service that honoured its foundational principles of elevating the voice of the child through providing a child focused, culturally safe, trauma informed, diversity affirming socio-legal service.

The project involved 4 phases:

1. Consultation and theory of change – service design and service model (July 2024-October 2024)
2. Synthesise and finalise the first iteration of the service model (October 2024-November 2024)
3. Service implementation – commenced November 2024
4. Service review and evaluation – commence July 2025 and due to be finalised mid to late 2026

⁶⁶ S. McMillan et al (2022) op cit, at p. 231

A Special Inquiry into Children and Young People in Alternative Care Arrangements (ACAs) conducted by the NSW Advocate for Children and Young people was released in August 2024. The release of this report, in combination with increasing media attention arising from a number of reported cases, suggested that Alternative Care Arrangements (ACA), designed to be a temporary solution to emergency situations but increasingly used as a medium to long term placement solution, was failing to meet the most basic wellbeing needs of CYP.⁶⁷

In response to this clear need, the project focused its attention on rolling out the service, in the first instance, to CYP in ACAs and other forms of High-Cost Emergency Accommodation (HCEA). This placement/accommodation model involves the accommodation and wellbeing needs of CYP being met by paid employees, with a range of different qualifications, certifications and skills, rather than foster carers providing a familial style of care. Children are housed in hotels or rented facilities, with care staff being rostered on to shifts with the young person.

The Department of Communities and Justice (DCJ) have a specialist team (the High Cost Emergency Arrangement Squad) (“the Squad”) who oversee the placement and monitoring of CYP placed in HCEAs. Partnerships were developed with that squad to identify locations, referral pathways and aspects of the service delivery model. Given their expertise and knowledge of the client group, DCJ were considered our primary referral partner. This partnership arrangement created some complexity in accessing clients and delayed service delivery. Whilst working with DCJ to establish the referral pathway, limited referrals were accepted internally and from targeted partners including some non-government agencies providing case management and accommodation services to CYP.

The service was not strictly co-designed with CYP, however ongoing consultation with formal young people advisory committees including Youth Consultation for Change and Youth Advisory Council has meant that young people have played an important role in shaping the service, including its publications, promotional material and the underpinning systems and processes. The service is committed to ongoing consultation with young people including those seeking feedback and input from those who have accessed the service.

8.1 Your Voice – Team Composition

Your Voice is a cross divisional multi-disciplinary socio-legal service. The service was intentionally located in the Family Law Division as it was anticipated there would be a need to bring applications before the Children’s Court seeking to vary, discharge or enhance existing care orders. The team includes:

- Four specialist care and protection lawyers (including the solicitor in charge), all of whom have significant experience representing CYP in a variety of courts and circumstances
- Two specialist civil lawyers with significant expertise in providing civil law advice and representation to young people as well as specialist knowledge in relation to disability and the administrative law associated with disability funding in Australia
- A junior lawyer assisting with research, education and promotion
- A wellbeing team comprising:

⁶⁷ Finn, Lincoln, Marina and Blake Hughes [2022] NSWChC 4; [Finn, Lincoln, Marina and Blake Hughes - NSW Caselaw](#)

- Two Senior Youth Caseworkers – both social workers with an extensive history of providing services to CYP in either statutory child protection or a specialist disability and human rights advocacy
- An Aboriginal field officer who, in addition to providing cultural information support and linkages to CYP in OOHC, assists the team to practice in a culturally safe and sensitive matter.
- A senior project officer and two part-time legal and client support officers

Recruitment for the team commenced in October 2024 and was completed by late January 2025.

8.2 Your Voice – Wellbeing Model of Service Delivery

Your Voice is a trauma informed relational practice with the CYP being at the centre of all decision making. The model aims to view CYP in context: individuals who are involuntary participants in a system that is complex, challenging and often unable to meet their needs. Young people are conceived of as individuals who have a right to achieve their potential and live their lives with dignity. Legal issues facing young people are seen in the context of their wellbeing and as arising as a result of unmet wellbeing needs. Understanding the CYP in the context of their wellbeing needs means that artificial silos around legal issues (for example civil and family law issues) and other socio-legal issues (such as criminalisation of behaviour in response to placement issues) are removed and the young person has the opportunity to resolve legal and social-legal needs holistically.

Figure 1 is a graphic representation of the service model. The young person is at the centre of the model and is influenced in varying degrees by the impact of met and unmet wellbeing domains.⁶⁸ Unmet wellbeing needs may give rise to a range of legal and non-legal issues. Rather than see the child through the lens of defined legal issues, the model sees the child through a wellbeing lens with the theory being that by knowing and addressing the unmet wellbeing needs the legal issues can be more effectively addressed.

⁶⁸ Developed with reference to various wellbeing models. See for example Gee, G., Dudgeon, P., Schultz, C., Hart, A., and Kelly, K., Aboriginal and Torres Strait Islander Social and Emotional Wellbeing p.57, <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/wt-part-1-chapt-4-final.pdf> (accessed 30 April 2025) and the NSW Human Service Outcome Framework: [What is the NSW Human Services Outcomes Framework? | Communities and Justice](#) (Accessed 30 April 2025)

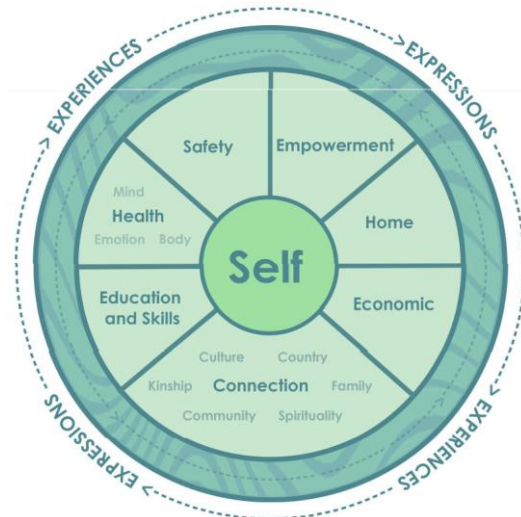


Figure 1. The wellbeing model of service delivery

8.3 Your Voice – processes and practice

The Your Voice model does not require CYP to define their legal issue to access the service. It is enough that the child or young person wants to speak with a lawyer. The referral form reminds the referrer that the young person needs to agree to the service and focuses on questions relating to the young person's circumstances and supports rather than identified legal issues.

Within one business day of a referral being received, an interdisciplinary cross divisional allocation meeting is convened. The meeting is attended by: a senior civil lawyer, a senior family lawyer, a senior youth caseworker and, for every Aboriginal and Torres Strait Islander CYP, the Aboriginal Field Officer. The purpose of the allocation meeting is:

- to determine whether Your Voice can accept the referral, and if the referral cannot be accepted,⁶⁹ determining how that CYP can be assisted by other legal and support services.
- determining which lawyer may be best suited to meeting the needs of the CYP
- determining which member of the wellbeing team may be best suited to working with the young person – subject to the young person's consent
- determining what further information may be required from the referrer including but not limited to the best way to meet with the young person and any issues or concerns we should consider when meeting with the young person

Following the meeting the allocated solicitor will contact the referrer to confirm the referral has been accepted and invite discussion about how and when to meet the young person. We aim to get back to the referrer within 2 working days and then contact the CYP after receiving additional information from the referrer. Prior to contacting the CYP the solicitor and the wellbeing team will meet to discuss the additional information provided by the referrer and options for the solicitor to engage the young person. Cultural and wellbeing advice is provided to the solicitor.

⁶⁹ For example the young person is already working with a care lawyer; or the matter relates to criminal representation.

8.3.1 First contact with the young person

First contact with the young person will occur at a time and manner consistent with the young person's needs and request as detailed by the referrer. Usually, first contact will be by phone or email. The aim of this initial contact is not focused on obtaining instructions (although that can be accommodated if the CYP identifies this need), but rather to meet with the young person, explain the service including the role, functions of the solicitor and wellbeing team, and limits to confidentiality. Here the solicitor also seeks consent for the wellbeing team to participate, and invite the CYP to set the agenda for subsequent meetings.

Our experience has been the CYP generally want that first meeting to be by phone, want the wellbeing team involved and feel some pressure to describe their legal issues. Assuring the CYP at the beginning of the appointment that this is the first of many appointments, allowing the CYP to set the agenda and pace, and meeting the young person on their terms has meant the CYP is usually comfortable to engage and will share contextual information that helps to clarify the legal and non-legal issues. Working with the CYP around issues of confidentiality and privilege distinguishes this appointment from appointments with other professionals such as caseworkers and prioritises the young person's control over the process. The appointment will usually end with an agreement about what will happen next, what further information is required, and how future appointments and communication should occur.

8.3.2 Wellbeing Index Tool

Following the first appointment, subsequent information gathering and follow up appointments, the solicitor and the wellbeing team review the matter and apply the wellbeing index tool⁷⁰ to the young person's circumstances. This index is a strengths-based aide memoire that facilitates discussion between the wellbeing team and the solicitor in relation to the clients met and unmet wellbeing needs. The tool assists the team to identify the key issues for the young person and how these wellbeing issues may translate into legal and socio-legal issues. For example, a client seeking more contact with their birth family may have wellbeing issues related to connection to family, culture and community and have additional issues relating to empowerment.

8.3.3 Your Voice Plan

Having identified the issues and checking with the young person, the solicitor and the wellbeing team then prepare the Your Voice plan which articulates the identified wellbeing issues and response. The plan identifies the scope of work for the solicitor and the wellbeing team as well as specifying intended outcomes. The plan is a dynamic document which is updated as services are provided and client circumstances change. The plan includes measurement of the outcome at the completion of each legal service.

The plan is developed from discussions with the CYP (over time) and will not commence without clear instructions from the CYP to undertake the scope of work identified. Communication of the plan and the scope of work to CYP is part of the process with the young person determining the manner and nature of the communication. Some CYP prefer formalised communication – letter of advice and

⁷⁰ Developed with reference to various wellbeing tools. See for example Gee, G., Dudgeon, P., Schultz, C., Hart, A., and Kelly, K., Aboriginal and Torres Strait Islander Social and Emotional Wellbeing p.57, <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/wt-part-1-chapt-4-final.pdf> (accessed 30 April 2025) and the NSW Human Service Outcome Framework: [What is the NSW Human Services Outcomes Framework? | Communities and Justice](#) (Accessed 30 April 2025)

confirmation of instructions -whereas others prefer a more informal process (phone call / text and check in).

The plan is then implemented and reviewed as required or as outcomes are achieved or identified as unachievable. While the approach to each case is different, the wellbeing team and solicitor will often work jointly when client facing and separately when working through the scope of work associated with the wellbeing issue/s. The wellbeing team is available to provide a range of supports to the client and make an invaluable contribution to the team, particularly in terms of safety planning, liaising with case managers, and assisting solicitor to deliver a trauma informed, neuro-affirming, culturally safe practice.

Wellbeing issues do not conform with Legal Aid NSW divisional structures. A CYP who is dissatisfied with their accommodation can express that dissatisfaction in a range of ways including through leaving the accommodation, engaging in high-risk behaviour and refusing to engage with those tasked to provide services. Focusing on wellbeing assists Your Voice to listen to what the CYP is communicating (including non-verbally) and to develop solutions with that CYP which addresses their holistic needs rather than the legal issue alone.

In practice this means that whilst, for example, a civil lawyer may have primary responsibility for a matter as the young person has fines which mean they can't get a driver's license and there are issues with their formal identification documents which has a flow-on effect in relation to banking, a family lawyer is available to assist that lawyer negotiate issues in relation to contact with siblings and perhaps restoration. The Wellbeing Team can work with the young person in relation to immediate safety planning and together with the legal team work with the CYP's case manager to ensure the holistic needs of the young person are met.

8.3.4 Your Voice – casework

Your Voice is providing holistic care and civil law services including information and advice, minor assistance, casework and representation services, including casework litigation if appropriate, based on client identified priorities. The legal issues identified and addressed by the service to date include: change of placement, contact issues, after care planning, access to basic needs, education issues, access to disability supports, guardianship, Domestic and Family Violence/ADVO matters, legal audit of OOHC files, change of case management, ID, pregnancy support, formal complaints processes, fines, connection to culture/country and Social Security/Centrelink issues. The service can also provide advice and assistance in relation to:

- negotiation and development of appropriate and relevant cultural plans
- restoration (where safe)
- reallocation of some aspects of Parental Responsibility to facilitate family and community participation in decision making
- negotiating access to an appropriate level of support across a range of lifestyle issues and domains including – health and disability supports, education, income support, access to appropriate recreational activities, spiritual and religious need, gender and neurodiversity affirming care

9. Highly attuned awareness of & sensitivity to clients and their system of care

In placing the CYP at the centre of service delivery, the Your Voice team acknowledges that the way we deliver services will directly impact the CYP and their relationship with those providing care services. Young people in OOHC will usually, in the short term continue to live with the same staff providing care to them. There could be a real cost to CYP in engaging with Your Voice and the service is mindful of this when providing advice. Fully informed instructions include discussing with the CYP the consequences of action and providing the CYP with a range of options.

Rarely will litigation or a formal complaint process be commenced as the first option. Generally, CYP will instruct us to work in collaboration with the case managers and service providers to generate creative, often non-legal, solutions. Knowing that legal options are available, and the CYP has a lawyer, however, can create motivation for option generation from service providers and can re-enforce to young people that they are important, and their rights have meaning.

10. The role and importance of independent non-legal advocacy

10.1 Independent Senior Youth Caseworkers

LANSW has a recent history of multi-disciplinary team approaches to legal service delivery. LANSW has recognised that the skills, time and expertise of solicitors can be enhanced by drawing on other professions including social workers and psychologists to provide expert knowledge and advice, assist with engagement, creatively problem solve beyond the presenting legal issues, and provide support which otherwise may not be available. Social workers are embedded in teams providing criminal and civil law services to children as well as in family law teams. Their role and function vary depending on the needs of the team, however, commonly includes providing casework support and advocacy, safety planning and court support. Access to the allied professional staff is by way of an internal referral where the legal team identified an unmet client need.

Your Voice takes a different approach. Senior Youth Caseworkers (SYC) are involved at the time of allocation, the presumption being that every young person who accesses the service can benefit from the involvement of legal and non-legal support. The young person is given the option to opt out of receiving support from the Wellbeing Team

As outlined above, the solicitor and senior caseworker collaborate to identify the unmet wellbeing needs driving the legal issues and develop a plan for addressing the legal and non-legal needs of the young person including outcomes.

The SYCs role includes assisting the CYP understand and navigate the service system, understand and access entitlements, advocate for unmet needs, identify human rights issues and assisting the young person to self-advocate. They also assist solicitors to identify the developmental and psychological needs of the CYP, provide expert advice in relation to human service issues (including mental health, disability and neuro affirming care) and assist solicitors to consider and understand the function or purpose of the presenting issue/s.

CYP in OOHC have a caseworker (often more than one) and many allied professionals in their lives including counsellors, psychologists, doctors and welfare officers. SYCs do not duplicate the services already provided – they do not case manage the young person. Their goal is to challenge and disrupt the traditional thinking about legal issues and engagement and to work in partnership with the CYP, the solicitor and the service to deliver creative solutions to complex problems.

The SYCs capacity to know and understand service providers, collaborate with them and be a communication conduit for solicitors has enabled Your Voice to establish cooperative working relationships with service providers. This, in turn, has enabled the service to advocate in a more targeted and effective way.,

Sarah's caseworker wanted her to relocate from a small country town to a larger regional centre so that she could have access to therapeutic supports. The SYC, having spent time with Sarah and considered her issues not just from a mental health perspective but also as a form of communication, recognised that her connection to community was vital for her recovery. The SYCs identified that the young person could access equine therapy in her current location, and more importantly wanted to. The SYC, having completed the investigative work and establishing her credibility, was able to strongly advocate for the young person's therapeutic needs to be met in her community. The service provider agreed, and the young person was able to remain in their community.

The value of the Your Voice service in this example was the service provider's unspoken knowledge that the young person not only had credible SYCs providing advice and support, but that they were backed up by a legal team, who could take further action if required.

The time, skills, knowledge and expertise of the SYCs has meant the young people can be fully engaged in the service and their legal and non-legal issues explored. All the legal outcomes achieved by the team are partially attributed to the work of the SYCs. Similarly, the non-legal outcomes achieved are framed by a scaffold of legal support and knowledge.

10.2 Your Voice – Aboriginal Field Officer

Aboriginal Young and Torres Strait Islander young people are vastly over-represented in the OOHC system in Australia and this is reflected in the CYP accessing Your Voice. At the time of writing, 56% of the CYP referred identified as Aboriginal or Torres Strait Islander. The Aboriginal Field Officer (AFO) in Your Voice is an integral part of the team ensuring that Aboriginal and Torres Strait Islander clients receive culturally safe services that are responsive to their legal and non-legal needs. The AFOs' deep understanding of culture and community, coupled with their ability to build trusting relationships with community organisations and members, enables the AFO to connect CYP to a range of community-based supports and meaningfully explore and meet their cultural needs in the context of OOHC.

The AFO participates in allocation meetings for every CYP who is identified as Aboriginal or Torres Strait Islander. The AFO's role in those meetings is to challenge all present to consider the CYP through a cultural lens. In Your Voice, the AFO's input has meant that a young person's cultural needs are not seen as a separate domain to their other wellbeing needs. The young person, their experience and their identity is inextricably connected to culture. The role of the AFO is to ensure that the need for connection to country, community and kin as part of the young person's identity, are considered in all aspects of service delivery.

The AFO challenges and supports the Your Voice team to be culturally safe and sensitive and provides expert knowledge skills and direction to the team. The AFO knows community and can assist to link the CYP into community resources that are likely to meet their needs. Importantly, the AFO, in communicating directly with the young person, provides a safe space for that CYP to share aspects of their experience and identity and to seek help. The AFO is a vociferous advocate for CYP and helps both the SYCs and the solicitors to understand and advocate for appropriate cultural planning for CYP in OOHC.

As with the SYCs, the AFO does not replicate the work that has been, or should have been, undertaken by the OOHC agency providing care and case management to the young person, but rather collaborates with and challenges, agencies to ensure that cultural planning is reflective of the young person's articulated cultural needs.

The AFO has been working closely with Jessica, a 15 year old girl who has been in the care of her non-Aboriginal carers since she was 3 days old. She derives her Aboriginal identity from her father's family, however she has a very limited relationship with them. Jessica lives on country and has a cultural plan. In meeting with the AFO she disclosed that her cultural identity is important to her, but she has issues with shame as she has been racially abused at school. She tells the AFO that she wants to learn about her culture but does not want a formal program. The AFO and Jessica made a plan to 'just talk' about culture. This provided Jessica with the opportunity to explore her identity through this communication. The AFO also identified cultural activities Jessica can think about becoming involved in, if and when she feels ready. In parallel, the AFO and the solicitor are working with the young person to explore other issues associated with her identity including her request to change her legal name.

10.3 Service Implementation Challenges

The political climate into which the pilot service has been introduced is challenging. The NSW Government is advancing a major reform agenda for the OOHC system, in the context of the sector's documented failure to meet the needs of many CYP in OOHC. These failures have been acknowledged by the NSW Government and the NSW Minister for Families and Communities.

“Under the former government, the use of hotels and motels for vulnerable children skyrocketed, and the child protection system was left to spiral out of control. We have begun the work to repair the system, but we have a long road to travel to make sure we deliver the best outcomes for young people and taxpayers.”

The Hon. Kate Washington, NSW Minister for Families and Communities⁷¹

“It’s shocking that some out-of-home care providers are failing to provide basic supports to children, despite being paid hundreds of thousands, and in some cases, millions, of taxpayer dollars to do so.”

The Hon. Kate Washington, NSW Minister for Families and Communities⁷²

Your Voice has been developed and positioned as part of these important reforms to assist in the implementation of the key recommendations of recent reviews and reports about the NSW OOHC system. From the outset, we have worked closely with DCJ to identify target cohorts for the service and establish referral pathways for clients to Your Voice. We have established regular governance meetings with DCJ to facilitate the strategic and operational engagement required to support access to the service for CYP in OOHC.

As part of our partnership with DCJ around the implementation of Your Voice, we agreed early in the design and development phase of the project that DCJ would be the primary referral pathway for Your Voice clients. Given this, LANSW and DCJ representatives invested significant time and effort in identifying the common goals, systems and communications tools required to support an ongoing successful interagency partnership and prioritise service delivery to the most vulnerable children in OOHC. Regrettably, there was still a long lag-time before any referrals were received from DCJ. This has recently changed, and we have begun to receive some referrals from DCJ, although we have received far fewer referrals than originally anticipated. We continue to work proactively with DCJ with a view to supporting the referral process with a focus on a multi-staged communications strategy for DCJ management and staff, supported by a range of information and materials.

Our approach to the establishment and implementation of Your Voice has been informed by learnings arising from the development and implementation of the NSW Legal Assistance Partnership Agreement (LAFPA),⁷³ a relatively recent agreement between DCJ, Legal Aid NSW and the Aboriginal Legal Service NSW/ACT to make sure that families can obtain independent legal advice when they first come into contact with DCJ. As part of LAFPA, all three agencies are committed to working collaboratively towards achieving a reduction in the number of children and

⁷¹ Minister for Disability Inclusion, Minister for Families and Communities, 2 May 2024, [NSW Government announces urgent action to repair broken foster care system | NSW Government](#) [Press release]

⁷² Al-Khouri, C., 2 December 2024, [NSW out-of-home care not working in interest of vulnerable children and young people, new report finds - ABC News](#) [Press release] and

⁷³ See for example: [LAFPA](#)

young people entering OOHC. Relevantly, the establishment, implementation and ultimate success of the LAFPA has demonstrated the significant individual and system-wide benefits that can be realised through careful interagency planning, collaboration and communication which is ultimately adopted and embedded into 'business-as-usual' practices. LANSW and DCJ alike have identified the parallels between the establishment of LAFPA and the establishment of Your Voice DCJ referral pathway, including the early work and investment that took some time to translate into referrals which are now received regularly by LANSW from DCJ. It is however acknowledged that, given Your Voice focuses on working with a certain cohort of children and young people in OOHC with a range of complex needs and circumstances, there are particular challenges in facilitating and making referrals to the service.

10.3.1 Integrating social work and legal services

The literature identifies several key challenges that arise when integrating social work and legal services including: differences or conflicts in professional ideology and ethics; confidentiality and reporting obligations; misunderstanding and mistrust – professional stereotypes and communication barriers that can lead to mistrust and undervaluing each other's contributions.⁷⁴ Research has identified that effective collaboration requires overcoming any misunderstandings and building mutual respect and trust.

Research suggests there are four key factors for success when providing integrated services incorporating legal and non-legal support:⁷⁵

Firstly, the service needs the full backing of management across the organisation. Secondly, there needs to be awareness of the skills of each professional – and a willingness for the service to utilise those skills. Thirdly, there must be dedicated funding for the integrated service. Finally, there needs to be demonstrated respect for the work of all roles – legal and non-legal – in an integrated service.

Managing integrated service delivery, in a context where early client volume has not been as high as anticipated, has revealed unexpected challenges with respect to professional boundaries and expectations. Shared values and a joint commitment to client outcomes has not always translated to a seamless integration of unique skills and contributions across disciplines. We have found that effective cross disciplinary practice requires an investment in time and attention from all team members to ensure maximum value and outcomes for CYP. Such attention would not otherwise be necessary in a service providing legal services only. The fact that Your Voice practices across both family and civil law also adds additional complexity.

⁷⁴ Andrews, A and Tarver, L., Review of the Literature on Integrated Social Work and Legal Practice, Law and Advocacy Centre for Women, RMIT, November 2020, <https://cij.org.au/cms/wp-content/uploads/2020/12/literature-review-on-integrated-practice-november-2020.pdf> (accessed 30 April 2025)

⁷⁵ Davidson, J., 'I felt seen: more lawyers partnering with social workers and it's changing lives', NSW Law Society Journal, February 2025, ['I felt seen': more lawyers partnering with social workers and it's changing lives - Law Society Journal](#) (accessed April 2025)

10.3.2 Funding and resource constraints

As a pilot service, Your Voice is currently reliant on short-term funding. A primary focus for LANSW in the short term is to secure further funding to enable the service to reach full casework capacity and conduct an independent evaluation of the service. Evidently, applying for further funding involves an investment in time and effort.

We are hopeful that recent efforts to secure another year of funding for Your Voice will be successful. While the temporary funding for the service has not impacted upon staff retention and morale, we are conscious of the need to provide as much job security to staff and retain the current high-calibre complement of staff who have been involved in implementing the service from the ground up.

More broadly, we have found that introducing a new service with the potential to highlight issues and shortcomings in the OOHC system into an already resource constrained environment, coupled with considerable media and political focus on the OOHC system, can also give rise, at times, to inter-agency tensions. However, in our view, any overt tensions that have arisen during the implementation of Your Voice have been addressed promptly and effectively utilising formal and informal communication channels.

10.4 Reflections and Future Directions

Over the coming year, the focus for Legal Aid NSW and Your Voice is to:

- meet full projected service volume, supported by an established DCJ referral pathway following the initial foundation phase of the project (FY2024-2025)
- strengthen collaboration with DCJ and oversight bodies
- gather data and insights through an independent evaluation to assess outcomes and key success factors for the service
- explore options for long-term sustainability of the service
- identify key learnings for LANSW to inform our service models for vulnerable CYP in NSW, including those with experience in OOHC, across the organisation

10.5 Conclusion

Your Voice presents an opportunity to pilot, iterate and evaluate a new service model to amplify the voice of CYP in OOHC and uphold their rights in OOHC. It also presents an opportunity to test the impact of a service developed with shared information, collaboration and coordination across service systems.

LANSW sees potential for Your Voice to create a blueprint for child-centred socio-legal advocacy that can inform the establishment of similar services across Australia and internationally.⁷⁶

The establishment of Your Voice aligns with recommendations in numerous inquiries and reviews and implements the type of service system coordination and child-centred approaches that human rights agencies and champions of children's rights, in particular, the Australian National Children's

⁷⁶ See for example: Report by Elicia Savvas, 2023 Churchill Fellow, [Rethinking advocacy: child-centred approaches to child protection legal services](#)

Commissioner, have called for to transform child justice and improve child safety and wellbeing.⁷⁷ Ideally, coordinated reform is led at a national level, but even in the absence of a national framework, there is scope for legal aid agencies to initiate and implement collaborative service delivery models that build the evidence base to demonstrate the value of investing in coordinated and collaborative service models and systems reform.

Systems-thinking lawyers address the presenting needs of their clients in tandem with considerations of the social and institutional systems that the client is a part of and affected by. They reflect upon the dual roles that attorneys play: as actors who perpetuate existing systems, as well as agents of systemic change. The ability to recognise and parse the connections which comprise social relationships and institutional processes is consistent with an evolving understanding of what effective, innovative legal practice requires.

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⁷⁷ Australian Human Rights Commission, 'Help Way Earlier!' How Australia can transform child justice to improve safety and wellbeing', *Australian Human Rights Commission*, p. 56-57. ['Help Way Earlier!'- transforming child justice for safety & wellbeing | Australian Human Rights Commission](#), (accessed 30 April 2025)

⁷⁸ Pierson-Brown, *(Systems) thinking like a lawyer*, p. 519.