



## **Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:**

Draft General Comment No. 27 on Children’s Rights to Access to Justice and to an Effective Remedy

June 2025

As an advocate for law reform, justice and equity for all Tasmanian Aboriginal peoples, the Tasmanian Aboriginal Legal Service (‘TALS’) welcomes the opportunity to provide comment the *Committee on the Rights of the Child’s* General Comment No. 27 on Children’s Rights to Access to Justice and to an Effective Remedy (‘the *General Comment*’).

TALS is an Aboriginal and Torres Strait Islander Legal Service (ATSILS) that specialises in criminal, civil and family law matters for Tasmanian Aboriginal peoples. TALS also operates SiS Tasmania, a Family Violence and Prevention Legal Service (FVPLS) that specialises in supporting Aboriginal victim/survivors of family violence with legal and non-legal services.

Any reference to Aboriginal peoples in this submission is understood to encompass Torres Strait Islander peoples.

In this submission, TALS will address several core themes identified in the *General Comment*, namely, **lifting obstacles to access to justice and effective remedies, empowering children’s access to justice and effective remedies** and **legitimising children’s value in the process of accessing justice and effective remedies**. Ultimately, TALS are of the position that all decisions and actions that concern children’s rights to access to justice, effective remedies and redress should have the best interests of children as the primary consideration.

## BACKGROUND

Despite the near universal ratification of the *Convention on the Rights of the Child*, and the subsequent transformation that followed, children across the world continue to have their rights violated and experience barriers that prevent proper protection and access to remedies.<sup>1</sup> Rights to access to justice and effective remedies has an important role to play in removing these barriers by challenging discriminatory practices and ultimately driving outcomes that are in the best interests of children.

The *General Comment* aims to address these rights in the context of judicial and administrative processes and provide guidance on empowering children as rights holders.

## IDENTIFIED THEMES

### ***Lifting Obstacles to Access to Justice and Effective Remedies***

The *General Comment*, section V – *Child rights-based approach to the children’s right to access to justice and to an effective remedy*, states that ‘remedial mechanisms are generally designed by and for adults’, which often inadequately addresses children’s rights to access justice and effective remedies, their needs and their capacities.<sup>2</sup> These access barriers include:

- Accessibility and availability of information regarding their rights, presented in a manner children understand.
- Legal age restrictions.
- Financial obstacles.
- Practical barriers, considering children may not have the capacity to move or travel independently.
- Processes, procedural timelines and physical spaces that are not designed benefit children and facilitate self-determination.<sup>3</sup>

The above issues, and more identified in the *General Comment*, sees the development of a dependency on adults to facilitate accessibility, which disempowers a child’s right to access to justice and effective remedies, and can remove impartiality and promote exclusion.<sup>4</sup>

### ***Empowering Children’s Access to Justice and Effective Remedies***

The *General Comment* not only outlines the obstacles to child’s right to access to justice and effective remedies, but it also speaks to how the accessibility of remedial mechanisms can be improved, how children can be empowered to overcome barriers, and the creation of mechanisms that facilitate self-determination. These ideas

---

<sup>1</sup> Committee on the Right of the Child, *Draft General Comment No. 27 on Children’s Right to Access to Justice and Effective Remedies*, United Nations (2025).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

underpin the *General Comment*, section IV – *General principles and foundational elements* which outlines the following points as key to ensuring a child’s right to access to justice and effective remedies:

- Non-discrimination. Ensuring specific measures are taken to ensure justice and effective remedies are genuinely accessible and effective, irrespective of the situation or child’s characteristics.
- The best interests of the child are the primary consideration in all actions concerning them.
- Processes and outcomes should not be harmful.
- A right to be heard. Children’s views must be heard for all matters affecting them.
- Respect for the evolving capacity of children.
- Due process and respect for the rule of law.<sup>5</sup>

### ***Legitimising Children’s Value in the Process of Accessing Justice and Effective Remedies***

A key to empowering children and facilitating self-determination is placing equitable value on their input, enabling participation in remedying their own problems.<sup>6</sup> It is also important that violations against children are addressed not just compensated for, as this promotes true justice, gives due weight to children’s views and concerns, ensures that remedies are in place to mitigate future harms and that the children’s best interests are at the centre of outcomes.<sup>7</sup>

The *General Comment* raises several concerns that can undermine children’s input into their right to access to justice and effective remedies. The concerns include:

- A reliance on adults to facilitate access to justice. This can dis-empower and adversely impact children or block access to justice entirely. For example, if a child makes claims against a family member who they live with, the child themselves may be removed from the family home. Alternatively, an adult charged with assisting a child may be a source of the trauma and may not act in the best interests of the child seeking remedies.
- The lesser value or perceived unreliability placed on a child’s input when seeking access to justice or effective remedies. For example, children are often perceived as unreliable witnesses, their claims or complaints are not taken seriously, or they are accused of lying.<sup>8</sup>

### **TALS COMMENT ON IDENTIFIED THEMES**

Justice systems around the world are generally not designed or adaptable to the needs of children and few regions offer specialized justice processes and mechanisms to handle matters involving children.<sup>9</sup> This can result in children’s rights to access to justice and effective remedies being compromised.

---

<sup>5</sup> Ibid.

<sup>6</sup> Children Australia, *Procedural justice and the impact of court and other decision-making processes on children and families in the child protection system*, The Centre (15 December 2024).

<sup>7</sup> Department of Social Services, *Safe and Supported: the National Framework for Protecting Australia’s Children 2021-2031*, Commonwealth of Australia (2021).

<sup>8</sup> Ibid (n 1).

<sup>9</sup> UNICEF, *Prioritising Access to Justice for all Children: In EU neighbourhood & enlargement policies and relations with Central Asia* (2014).

In Australia there are state driven ‘youth justice’ and ‘child protection’ systems that provide processes and practices for managing young people in contact with the justice system or experiencing other vulnerabilities.<sup>10</sup> However, these systems are inherently flawed and children’s rights to access to justice and effective remedies are undermined by punitive conditions, and many of the issues outlined in the *General Comment*.<sup>11</sup>

A 2024 report by the *Australian Institute of Family Studies* stated that over a 12 year period, systemic issues that hindered opportunities for children to be engaged and saw a lack of investment in mechanisms were repeatedly identified.<sup>12</sup> The report also acknowledged that the youth justice and child protection systems designed to help them were vastly inadequate and ‘not fit for purpose’ to manage children’s complex needs and furthermore, to develop and maintain partnerships with First Nations peoples.<sup>13</sup>

It is critical that children be empowered and included in decision-making processes that impact them wherever possible. This not only upholds their human rights but builds resilience and strengthens their trust in the mechanisms designed to protect them.<sup>14</sup> There is also significant value in ensuring children’s access to independent and culturally appropriate child-rights advocates and legal assistance to help them claim their rights and navigate decision-making processes, as this will ensure that children feel that someone is squarely ‘in their corner’.<sup>15</sup>

However, empowering children requires a significant commitment from established mechanisms. Children must be provided with appropriate information, independent support, and spaces of safety that evoke positive and affirming experiences must be created. How this is facilitated must be consistent and welcoming, otherwise children may experience feelings of further disempowerment or be exposed to greater risk of harm.<sup>16</sup>

Addressing the issue of empowering children in accessing justice and effective remedies is even more pertinent with regards to Aboriginal youths. In Australia, Aboriginal peoples have long experienced disadvantage and unequal access to justice in wider society. Furthering self-determination places Aboriginal peoples at the centre of decision-making processes regarding policies, programs and mechanisms that directly impact them.<sup>17</sup> The principle of Aboriginal self-determination extends to youths, who have long experienced persistent and systemic overrepresentation in the youth justice<sup>18</sup> and child protection systems<sup>19</sup>. Empowering Aboriginal youths to overcome barriers to their right to access to justice and effective remedies is necessary to help them break the

---

<sup>10</sup> Australian Institute of Health and Welfare, *Youth Justice*, Australian Government (28 March 2025).

<sup>11</sup> Australian Institute of Family Studies, *Report reveals systemic barriers to supporting vulnerable children*, Australian Government (June 2024).

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Office of the Children’s Guardian, *Empowerment and Participation: A handbook for organisations working with children and young people*, NSW Government (December 2021).

<sup>15</sup> Rights in Action, *Advocacy for Children: Protecting and Promoting Rights and Wellbeing* (23 September 2024).

<sup>16</sup> Ibid

<sup>17</sup> Victorian Aboriginal Justice Agreement, *The importance of self-determination in developing this strategy*, Victorian State Government (5 August 2024)

<sup>18</sup> Productivity Commission, *Closing the Gap Information Repository*, Australian Government (2025)

<sup>19</sup> Australian Institute of Family Studies, *Child protection and Aboriginal and Torres Strait Islander children*, Australian Government (January 2020).

cycle of institutionalized disadvantage and disempowerment that Aboriginal peoples have long experienced and ensure that future outcomes better reflect their needs and aspirations.<sup>20</sup>

In Australia, systemic issues that create barriers to children's right to access to justice and effective remedies must be addressed. The *Law Council of Australia* have raised concerns with the state of youth justice, particularly the lack of proper policy making for diversion, deliverance of rehabilitation mechanisms, and addressing overrepresentation of First Nations youth in contact with the justice system.<sup>21</sup> Moving forward, the *Law Council of Australia* have strongly endorsed the protection of children's human rights and supports significant investment in intervention and rehabilitation programs, diverse sentencing options, wraparound supports and greater access to culturally appropriate legal and support services for First Nations youths.<sup>22</sup>

The *Centre for Social Impact* mirrored the concerns raised by the *Law Council of Australia* and stated that key changes must be made to facilitate youth's access to justice and remedies in line with a child rights approach.<sup>23</sup> Identified as a key to these changes is generating greater respect and legitimacy for the perspectives of children and their rights.<sup>24</sup> Ultimately, the core of their agenda is to place children first by respecting their rights, providing opportunity and validating their input towards transformative systemic change.

It is also important to note that, to date, Australia has not signed or ratified the *Third Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure* ('OPIC').<sup>25</sup> OPIC is an international treaty that provides an avenue for children to submit complaints directly to the UN Committee on the Rights of the Child, where their rights have been violated and domestic mechanisms and remedies have been exhausted.<sup>26</sup> Not agreeing to this protocol means that Australian children do not have access to this mechanism, which in turn undermines commitments to strengthen existing domestic systems and efforts to enhance accountability against violations.

Reducing barriers to children's right to access to justice and effective remedies will have a profound impact. By addressing their rights earlier, some of our most vulnerable children will be able to access education and support, which will enable their input into the development of fit for purpose mechanisms and schemes, which in turn will facilitate greater access to justice.<sup>27</sup>

By facilitating greater knowledge of their rights and tailoring access to justice, remedies, and mechanisms to best suit their interests, we will maintain children's agency and will lessen the reliance on adults to facilitate access to

---

<sup>20</sup> Victorian Public Sector Commission, *Aboriginal and Torres Strait Islander self-determination*, Victorian State Government (2025).

<sup>21</sup> Law Council of Australia, *Youth Justice* (22 May 2024).

<sup>22</sup> Ibid.

<sup>23</sup> Centre for Social Impact, *Rethinking Australia's Youth Justice System by Embracing Child Rights* (27 April 2023).

<sup>24</sup> Ibid

<sup>25</sup> Australian Human Rights Commission, *The UN Committee on the Rights of the Child and the reporting of children's rights* (accessed 26 June 2025).

<sup>26</sup> Optional Protocols on a Communications Procedure, *Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure* (June 2022).

<sup>27</sup> Australian Human Rights Commission, 'Help way earlier!' How Australian can transform child justice to improve safety and wellbeing (2024).

justice. This will legitimise the voices of children, respect their human right to self-determination and ensure decisions are being made in their best interests.

## CONCLUSION

TALS welcomes the opportunity to reflect upon, and provide remarks, on the *General Comment*. More must be done to ensure that child's right to access to justice, effective remedies and redress is delivered, without constraint or denial.

In Australia, children often experience barriers to justice and remedies despite the mechanisms in place. Unfortunately, these barriers are disproportionately experienced by Aboriginal youth.

For children's rights to truly have the meaning intended with the ratification of the *Convention on the Rights of the Child*, it is imperative that these barriers are removed and that the right to access to justice and effective remedies is strengthened.

TALS welcomes further contact to discuss the content of this submission further.

Warmest regards,

A handwritten signature in black ink, appearing to read 'Lucas Tolputt', with a stylized, cursive script.

**Lucas Tolputt** (He/Him)

Policy and Project Lead

P: 1800 595 162 | M: 0491 018 002 | E: [ltolputt@tals.net.au](mailto:ltolputt@tals.net.au)

Level 1, Office 1A, 67-69 Brisbane Street, Launceston