



Women's Legal Service Tasmania

Access to Justice Arrangements
Australian Productivity Commission

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women's
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service
tasmania

**Women's Legal Service (Tasmania) Inc
Submission**

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Australian Productivity Commission**

We are a member of Women's Legal Services Australia (WLSA) and have had the benefit of being involved with their submission to this Inquiry. We support the submissions made in that document.

The Women's Legal Service Tasmania (WLS) is a not-for-profit organisation providing free and confidential legal advice to women in all areas of Tasmania. As well as telephone advice, WLS can also provide ongoing legal assistance with casework and representation resources permitting.

WLS provides clients with information about their legal and non-legal options, including referral to other legal services and law firms, or to appropriate support services.

WLS represents women from low socio-economic backgrounds – those who are unable to afford legal assistance and who do not qualify for a grant of legal aid. The majority of our casework is in family law.

The primary means of contacting the service is through a freecall telephone advice line where we answer legal questions on any area of law.

In addition to telephone and face-to-face legal advice and representation, WLS also provides community legal education sessions across the State, conducted on a wide variety of topics, to a wide variety of audiences.

By providing education we aim to prevent legal problems occurring in the first place or limiting the complex nature of it. If a person who faces legal difficulties receives advice or assistance early, it may be resolved quickly or they are directed to an appropriate service to assist them.

We launched the "Girls Gotta Know" app in April 2013. This provides legal information in a mobile, easy to use medium targeted at young women aged 14 to 24. It is the first of its kind in Australia and it is being rolled out nationally.

WLS is committed to making the legal system more accessible and responsive to the issues affecting women in Tasmania.

WLS gathers information about Tasmanian women's experience of the law, bringing relevant issues to the attention of Government and legal bodies. WLS is also active in raising public awareness of concerns relating to the law and in the field of law reform.

We wish to also provide you with a submission from our service drawing on our experience assisting women in Tasmania.

As the majority of our casework relates to assisting women in family law, our submission is concerned with accessing the family law system.

Assessment of the level of demand for legal services

The demand for legal services is ever increasing as the cost of private representation is unaffordable for many people.

In Tasmania, over a third of the population are reliant on welfare to live. Furthermore, ABS statistics indicate that half of Tasmanian are functionally illiterate and more than half functionally innumerate.

Out of the various areas of civil law a person may be exposed to in a lifetime, family law is one which can impact any person and access to justice is crucial to ensure the wellbeing of the parties involved. Funding access to justice in family law should therefore be a priority.

The usual difficulties faced when a relationship breaks down include creating a parenting arrangement for children and dividing the property. If there is family violence or risk of child abuse the matter becomes very complex involving different courts and processes.

In our experience, legal aid is granted in family law matters where the applicant passes the asset test and there is a significant dispute about the parenting arrangements. Legal aid is generally not granted for property matters.

On the face of it, it may seem appropriate that legal aid is not provided for property matters but this does not take into account the reality of the situation. Also, the asset test does not necessarily take into account how accessible the equity actually is resulting in situations where aid is not granted for a parenting matter even though the legal aid applicant has no access to the finances.

Example

Kate separated from her partner that she had been with for 25 years. She has been out of the workforce for the past 20 years as she was looking after her 3 children. She has no money of her own and does not have any superannuation. Her partner John, due to her homemaker support, was able to work full-time and develop his career during their relationship. He has access to sufficient finances to pay for a private lawyer, but Kate does not.

If Phil refuses to negotiate with Kate to develop a parenting arrangement and a just and equitable division of the property, her options of pursuing this are limited to initiating court action herself as she is unable to afford legal representation.

If you were to add into this example the following relationship history, the story becomes far more bleak.

Relationship history

From the beginning of their relationship Phil did not like Kate spending time with friends and family and as the relationship progressed he would not allow her to spend time with her friends and family.

He would provide her with a limited allowance per fortnight to run the household and she would have to show him the receipts.

During the relationship, Phil began drinking and would yell abuse at Kate, call her a whore and a bitch. He has hit her on a number of occasions. The children have witnessed this abuse. When Phil tried to strangle Kate because she refused to have sex with him she escaped to a women's shelter with the children.

How is Kate able to represent herself in a parenting and property matter where the person she is challenging has isolated her from her support network, financially controlled her and physically assaulted her?

This is the reality for many women we assist as they are not entitled to legal aid as they may not have passed the asset test and in any event do not receive aid for their property matter but do have a meritorious claim.

Kate being able to access justice is crucial to her mental wellbeing, economic wellbeing and ability to contribute to the community in the future. If her legal need is not met the likely consequences are that she will suffer financial hardship, poverty, homelessness, diminished emotional, physical and mental wellbeing. The impact on the children is likely to be severe as well.

Family Law and Family Dispute Resolution

In family law, family dispute resolution (FDR) plays an important role in supporting parties in developing a resolution before entering into the court process. As to whether they can resolve their difference is dependent on how willing parties are to negotiate in good faith to find a resolution.

There are cost effective options to resolve parenting and property matters through mediation before commencing proceedings. The Family Relationship Centres and other mediation providers generally charge affordable fees.

Parties should access legal advice prior to signing off on any documents that will impact their legal entitlement. WLS provides a significant amount of advice to clients involved in the FDR process, whether it is before their first session or advising on any draft agreements.

We assist them in developing a number of different proposals, reality test the proposals and suggest the client develop best and worst case scenarios.

Some disputes are deemed to be unsuitable for standard FDR because of a history of family violence, significant power imbalance between the parties or allegations of child abuse. The only option these parties have is to initiate proceedings to seek a resolution.

An alternative would be to consider Coordinated Family Dispute Resolution (CFDR) as a means of assisting clients who are not eligible to participate in normal FDR but would like to try and resolve their dispute in a mediation type setting. We suggest the Productivity Commission review the CFDR Evaluation report produced by the Australian Institute of Family Studies

Our service was involved for a period of time in the pilot project in Hobart and can attest to the benefit CFDR brought to our clients. They felt empowered, informed and able to take control of their affairs. We do note that from an organisational point of view, CFDR was a time and resource intensive program.

It has to be remembered however, that in some cases, mediation will not resolve a parenting dispute and the matter will need to be adjudicated. This is particularly the case where there are allegations of child abuse.

Situation in Tasmania

There are 8 community legal centres (CLCs) in Tasmania providing a mix of legal services. We ensure that our services do not overlap so that we can best service our community.

The policy at WLS is that if a client is eligible for a legal aid grant, we refer them to the Legal Aid Commission for legal representation. In any case where there are sufficient assets to pay for a private practitioner the matter is referred to them. At times, some practitioners will accept payment of their fees when the matter is finalised.

Our Service specialise in family law, family violence and child protection issues and takes a holistic approach to any legal issue. WLS is therefore vital

to ensure that women can seek free legal advice in a supported environment where they feel comfortable disclosing the full details of their legal matter. This is particularly necessary in cases where there is family violence and/or child abuse.

For many Tasmanian women the reality is that the only way they can access justice is through legal aid services whether provided by the Legal Aid Commission or Community Legal Centres like ours.

Recently the Legal Aid Commission in Tasmania reduced the amount of family law legal services they provide, including limiting trial representation unless a lawyer represents the other party. Matters that reach trial in family law usually involve allegations of child abuse or severe family violence. These clients need legal representation and without it are placed in a very vulnerable situation.

With respect to our funding, we only receive recurring funding from the Federal Government which covers 2.5 full time solicitors for the whole State. We do not receive any recurring State funding unlike other CLCs in Tasmania.

We currently employ 4 full time solicitors, one full time administration support, a part-time community support officer and a part-time financial officer. The additional staff members are funded from limited one-off grants. We regularly apply for grants for different projects and to fund continuation of staff positions.

Our aim is to be as cost effective as possible with our limited funding to provide timely legal advice and assistance to Tasmanian women.

Conclusion

Words like fairness, respect and equality are terms that our community strives to represent and these are the words that we frequently hear in family law.

As stated in the WLSA submission, the cost to the community when legal matters remain unresolved are significant, especially in family law. It impacts the health and wellbeing of children, parents and extended families.

For the reasons stated in this submission and in the submission provided by WLSA, access to justice needs to be a funding priority.

