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4 November 2013

Access to Justice Arrangements  
Productivity Commission  
GPO Box 1428  
Canberra City  
ACT 2601

By email: [access.justice@pc.gov.au](mailto:access.justice@pc.gov.au)

Dear Sir/Madam,

**Productivity Commission Inquiry - Issues Paper: Access to Justice Arrangements**

I refer to your email correspondence of 16 September 2013 seeking information and comment in respect of the above Inquiry into Access to Justice Arrangements.

Please find attached the Tasmanian Government submission in respect of the questions posed in the Productivity Commission's Issues Paper Access to Justice Arrangements.

Yours sincerely

Simon Overland  
**Secretary**

Attachment – Submission

## COMMENTS IN RELATION TO PRODUCTIVITY COMMISSION INQUIRY - ISSUES PAPER: ACCESS TO JUSTICE ARRANGEMENTS - NOVEMBER 2013

### 5 – *Is unmet need concentrated among particular groups?*

The Tasmanian Government's *Cost of Living Strategy* (2011) ([http://www.dpac.tas.gov.au/divisions/siu/strategy/cost\\_of\\_living](http://www.dpac.tas.gov.au/divisions/siu/strategy/cost_of_living)) outlines the disproportionate and cumulative impacts of the cost of living for particular household groups and places. The households most at risk in 2011 were: workers also receiving income support payments (those receiving 50-90 per cent income support); single parents, lone person households, pensioners and the unemployed (in particular those accessing Newstart allowance). For these households, eligibility to receive a grant of legal aid will depend on income and assets.

In examining the costs of accessing justice services and securing legal representation, it is also important to ensure that the growing numbers of 'working poor' who may be employed in a part-time, casual or intermittent capacity and receive very low or sporadic wages are included in the definitions of vulnerable litigants or those with limited capacity to pay.

- ***What groups are particularly disadvantaged in accessing civil justice and what is the nature of this disadvantage?***

#### Tasmanians with disability

The main issues for Tasmanians with disability are limited access to individual advocacy, lack of information in accessible formats, and the physical inaccessibility of some Tasmanian civil justice institutions and courts.

It can also be difficult to find willing agencies to act as litigation guardian for persons with disabilities. In many cases without a litigation guardian, a person will be unable to access clear entitlements under law.

The Guardianship and Administration Board has published a 'Litigation by Administrators and Guardians' policy on its website:

[http://www.guardianship.tas.gov.au/\\_data/assets/pdf\\_file/0003/79833/Litigation\\_by\\_Administrators\\_and\\_Guardians\\_-\\_Background\\_In.pdf](http://www.guardianship.tas.gov.au/_data/assets/pdf_file/0003/79833/Litigation_by_Administrators_and_Guardians_-_Background_In.pdf).

In addition, the Tasmanian Health Complaints Commissioner has the power to investigate complaints about "services provided for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction" (*Health Complaints Act 1995*, Schedule 1 Part 1). However this avenue of independent investigation and dispute/complaints resolution is not widely promoted, or easily identifiable to Tasmanians with disability and their families, if they have a complaint about a service they are receiving.

#### Culturally and linguistically diverse (CALD) Tasmanians

For culturally and linguistically diverse (CALD) Tasmanians, the lack of access to appropriately qualified interpreters and information provided in community languages can impede access to justice. A further barrier is the limited cultural competency skills in civil justice personnel who may be inexperienced in dealing with cross-cultural issues when they come into contact with Tasmania's relatively small CALD population groups.

Young people, mentally ill people and refugees benefit from accessible legal services and access to free or low cost representation in an understandable language is very important to such groups. For culturally and linguistically diverse groups, alternative dispute resolution is important, given even less familiarity with formal legal systems. Consultation with relevant stakeholder and community groups as to the future direction of access to justice is important in relation to this issue.

#### For older Tasmanians

For older Tasmanians, the predominant barrier (apart from cost and geographical isolation) is access to information. The Australian Bureau of Statistics (ABS) *Adult Literacy and Life Skills Survey 2006* found that over 70 per cent of Tasmanians aged 65-74 lack the necessary literacy skills to understand narrative text or to complete administrative forms, which would constrain their ability to make informed choices and self-advocate when dealing with civil justice issues.

The Internet is an increasingly important source of information about a range of civil justice avenues and options and as a conduit for facilitating individualised legal advice to people in rural and remote areas. However, Tasmanians aged over 65 are less likely to have household Internet access (45 per cent) than other Australians in the same age group (51 per cent), according to the 2011 Census.

#### **7 - Preventing issues from evolving into bigger problems**

#### **8 - Effective matching of disputes and processes**

The Cost of Living Strategy outlines that governments have a responsibility to provide better immediate responses to people in crisis, increase the resourcefulness of individuals, families and communities and implement new forms of planning and service delivery. In relation to access to justice arrangements, this could include:

- increased funding and/or access to advice for unexpected legal issues;
- early intervention mechanisms; and,
- joined up services and effective referral services.

There are new forms of social impact investment that could be applied to the civil justice system that have the potential to increase access to justice for marginalised and disadvantaged groups. Options that could be explored include litigation funders and more broadly, bonds, no-interest loans and social enterprise. Structural and regulatory reform to enable capital (such as via taxation incentives or self-managed super funds) to help to establish a market of social investors will also be important.

The Legal Aid Commission of Tasmania conducts Family Dispute Resolution (FDR) Conferences for people involved in family law disputes. FDR Conferences aim to resolve family law disputes at an early stage. The parties are given the opportunity to negotiate a settlement which suits them both without the need to go to Court. If a settlement is reached, consent orders are drafted and filed in the Family Court. At least one of the parties must have a grant of aid before an FDR Conference can be scheduled. Conferences are held regularly in Hobart, Launceston, Burnie and Devonport ([www.legalaid.tas.gov.au](http://www.legalaid.tas.gov.au)).

## **11 – Improving the accessibility of courts**

The *Social Inclusion Strategy for Tasmania* (2009) ([www.dpac.tas.gov.au/divisions/siu/strategy/strategy](http://www.dpac.tas.gov.au/divisions/siu/strategy/strategy)) addresses cross sectoral approaches to addressing complex social issues. Facilitating pro-bono legal services is critical to engaging private sector contributions to access to justice for individuals and organisations. In the Tasmanian context, pro-bono legal services contributed to the establishment of a Common Ground approach to homelessness. Structural and regulatory reform to enable a pro-bono market, in particular to build the legal capacity of the not-for profit sector, is important to increase access to civil justice and advance social inclusion for Tasmanians.

The Tasmanian Government provides funding to the National Pro Bono Resource Centre to: promote pro bono work throughout the legal profession; provide assistance and support to existing and potential service providers; make available information and resources to assist pro bono service providers; and, promote pro bono law to government, community organisations and the general public. States and Territories have provided funding to the Centre since 2005 and funding is determined on the basis of population. Tasmania's 2013-2014 contribution was \$2,519 (incl. GST).

## **12 – Effective and responsive legal services**

Data collected and published by the Mental Health Tribunal in its Annual Reports includes the number and percentage of patients that are represented at hearings. Section 57(3) of the *Mental Health Act 1996* gives all parties appearing before the Tribunal a right to be represented by a legal practitioner or other person.

The Tribunal's 2012-2013 Annual Report provides that 44.1% of persons appearing before the Tribunal were represented by an advocate from the Mental Health Representation Scheme which is a slight decrease from 2011-2012's figure of 51.5%. In addition, a further 84.2% had been given advice and support by this Service, via the telephone, prior to hearing.

Persons appearing before the Tribunal may be represented by the Mental Health Representation Scheme or the Legal Aid Commission.

The Tribunal's function to authorise the detention and treatment of patients with mental illness is somewhat different to the functions of other courts and tribunals whose primary purpose is resolving disputes between parties.

It should be noted that the Tribunal charges no fees and has no power to award costs to any party. The Tribunal's Annual Reports can be accessed at: [www.mentalhealthtribunal.tas.gov.au/annualreport](http://www.mentalhealthtribunal.tas.gov.au/annualreport).

## **13 – Funding for litigation**

The Tasmanian Social Inclusion Strategy also points to the productive use of technologies as an enabler for social inclusion. The integration of technology with Centrelink for vulnerable clients to streamline application processes for legal aid and reduce complexity is a notable New South Wales initiative cited in the Issues Paper (page 26).

Similarly, the Tasmanian Cost of Living Strategy highlights bill smoothing and hardship policies as important mechanisms to enable disadvantaged clients to manage scarce resources. The application of Centrepay or payment plans for disadvantaged clients in order to increase their capacity to pay legal fees could also be examined.

The following information in relation to Safe at Home may be of note as regards the ability of parties to access justice in Tasmania ([www.safeathome.tas.gov.au](http://www.safeathome.tas.gov.au)).

Safe at Home is the Tasmanian Government's response to family violence. It involves a range of services working together to protect and support victims of family violence, including young people and children, while making offenders responsible for their behaviour.

A high level steering committee has overall responsibility for the progress of Safe at Home and has representatives from the following departments:

- Department of Premier and Cabinet (Chair)
- Department of Justice
- Department of Police and Emergency Management
- Department of Health and Human Services
- Department of Education

Each of these departments is represented on the inter-agency working party. The working party has been responsible for the development and implementation of the Safe at Home program. Regional coordinating committees have been formed to coordinate service delivery in each region.

Safe at Home provides free legal aid services to victims of family violence as well as a Court Support and Liaison Service. The Court Support and Liaison Service provide support to adult and child victims of family violence. Support is available for male and female victims regardless of age or cultural background.

Dedicated Court Support Officers are available Statewide to assist Safe at Home clients with the following

- How to take out a Family Violence Order
- How to vary or extend an existing Order
- Provide advice on legal and court processes
- Provide ongoing updates on progress of a matter through the courts.

Further assistance can be provided by the Court Support Officers as matters proceed through the courts including:

- Providing court orientation in the form of a court tour to explain court layout and facilities and the roles of people in the court
- Accompanying the victim to court and providing support throughout the court process
- Debriefing following court and discussing the impact of a magistrate/judge's decisions
- Follow-up through referral to other services.

These services are free and confidential and are provided by Victim Support Services, Department of Justice.

A dedicated Aboriginal Court Support Officer is available to provide support to Aboriginal adult and child victims of family violence.

Under the Safe at Home Program, the Legal Aid Commission have Legal Officers in Hobart, Launceston and Burnie/Devonport to provide legal advice and assistance to victims of family violence.

Legal Aid may:

- Explain how to take out a Family Violence Order.
- Assist in completion of applications for Family Violence Orders and provide representation in Court for the application.
- Advise about what Orders mean, how they affect the victim and what orders would enable the victim to make necessary arrangements for children and property.
- Advise and/or assist in relation to applications to extend, vary (change) or revoke (remove) Family Violence Orders and Police Family Violence Orders.
- Advise and assist the victim in relation to charges of inciting a breach of a Family Violence Order.
- Give general advice about Family Law matters, especially children's residence and contact and help the victim apply for a grant of aid for a Family Lawyer to act on their behalf.
- Help the victim find out what is happening to the offender's criminal charges in the Magistrates Court and what is likely to happen as a result.
- Where Police are making an application on the victim's behalf, talk with them to help the victim achieve the outcome they would like.

Legal Aid may also provide appropriate referrals to the Court Support and Liaison Service, the Family Violence Counselling & Support Service and the Police's Victim Safety Response Teams. Legal Aid Safe at Home services are free and confidential.

I am aware that National Legal Aid has also provided a submission to the Productivity Commission in relation to this Issues Paper.