



Northern Territory
Legal Aid Commission

Submission to the Australian Productivity Commission Inquiry
into Access to Justice Arrangements

December 2013

Introduction

The Northern Territory Legal Aid Commission ('NTLAC') welcomes the opportunity to make a submission to this Inquiry by the Australian Productivity Commission ('the Commission') into access to justice arrangements in Australia. It is the view of NTLAC that there are significant access to justice concerns in the NT and widespread unmet legal needs experienced by people living in the NT.

This submission is intended to be read as a supplement to the submission made by National Legal Aid and to provide detail on the NTLAC's perspective regarding issues impacting on access to justice enjoyed by people in the Northern Territory.

This submission aims to provide a Northern Territory context of access to justice issues in the NT as they relate to NTLAC generally and, where relevant, to the questions raised in the Productivity Commission's Access to Justice Arrangements Issues Paper of September 2013.

NTLAC will make every endeavour to meet any further requests for more specific information from the Commission.

About NTLAC

NTLAC is an independent statutory body established under the *Legal Aid Act NT (1990)* and is governed by a Board of Commissioners appointed by the NT Attorney-General. NTLAC provides information, community legal education, legal advice, representation and assistance to persons in a range of matters, including:

- Family law, including Family Dispute Resolution;
- Domestic violence;
- Child in need of care;
- Criminal law; and
- Civil law.



NTLAC also auspices the Domestic Violence Legal Service. A separate submission will be provided by this service.

NTLAC aims to ensure that the protection or assertion of the legal rights and interests of people in the Northern Territory are not prejudiced by reason of the inability to:

- obtain access to independent legal advice;
- afford the financial cost of appropriate legal representation;
- obtain access to the Federal or Territory legal systems; or
- obtain adequate information about access to the law and legal system.

NTLAC also provides early intervention and prevention services pursuant to the *National Partnership Agreement on Legal Assistance Services* the ('NPA') between the Australian

and NT Governments. These services include legal information, education, referral, advice, advocacy and minor assistance.

Offices and geographic reach

NTLAC is a Northern Territory-wide legal service provider with offices across the NT and fits within a matrix of legal and related service providers in the NT. NTLAC’s head office is in Darwin, with regional offices located in Palmerston, Alice Springs, Katherine and Tennant Creek¹. NTLAC’s client base is approximately 30% Indigenous; this is broadly in line with the Indigenous population in the Northern Territory.

Due to the high levels of geographic remoteness in the NT, many people in the NT are not able to access NTLAC services in person. People who speak English may access services of the Commission by phone, however a high number of people in the NT do not speak English as a first language². While there have been significant improvements in access to interpreters and training of interpreters and professionals who use interpreters in recent years, there are still significant concerns at the lack of accredited indigenous language interpreters in languages required and in the ability of professionals and services such as the courts to use interpreters appropriately. Even with the facility of interpreters, geographic remoteness is an additional barrier to accessing legal services from a remote location.

Legal service arrangements

NTLAC provides five main service types:

- Casework - legal representation at court, tribunal, mediation or other body for which a grant of aid had been submitted and approved;
- Duty lawyer services - initial representation in court for clients who do not have their own legal representation;
- Legal advice - provision of legal advice by telephone, in person at clinics and through outreach programs;
- Community legal education; and
- Legal information and referral.

The following legal aid services have been provided by NTLAC in the last 5 years:

	08/09	09/10	10/11	11/12	12/13
Legal aid service					
Applications for Aid:					
Received	2,305	2,336	2,142	2,555	2,425
Approved	1,977	2,051	1,899	2,271	2,086
Refused	280	233	239	273	332

¹ The Tennant Creek office was established following the report NTLAC, *Justice Too Far Away* 2003, which has been provided to the Commission

² ABS, Australian Social Trends, 4102-0

Free Legal Advice Sessions	5,695	5,564	5,946	5,809	5,795
Duty Lawyer Services	3,581	3,745	2,654	2,428	2,565
Telephone Information Clients	3,951	2,841	2,538	3,722	5,361

Casework

NTLAC administers grants of aid to assist clients with casework. NTLAC provides services in-house through its own employed solicitors, as well as funding private practitioners to provide casework services under a grant of legal aid. Clients must qualify under the NTLAC guidelines, including under the NTLAC means and merits test, to receive casework representation. Clients must contribute a minimum initial contribution of \$110 unless the client is a juvenile or remanded in custody. These arrangements are discussed in more detail in the National Legal Aid Submission.

The majority of legal case work is undertaken in-house, except where the capacity of the Commission's in-house practice is such that it can't provide the assistance or a conflict of interest is presented in which case a private practitioner is engaged. This is particularly evident in criminal law cases in which approximately 15% of matters are out sourced to private practitioners.

The Family Law Practice assists parties in dispute following family breakdown, provides an independent children's lawyer service and represents parents in child protection proceedings. Fifty two percent of the NTLAC Family Law Practice matters were referred to private practitioners in 2012/13. This is because there are always two parties in family law matters and only one can be handled in-house.

NTLAC once had an in-house civil law practice; however this was cut some years ago due to national funding cuts to Legal Aid Commissions. NTLAC does not have an in-house civil casework practice. Civil advice clinics are conducted partially by in-house lawyers and partially sub-contracted to private practitioners. All civil casework matters are referred to private practitioners under a grant of aid. Grants of aid are usually limited to investigation only and if there is sufficient merit. If there is merit, a private solicitor may undertake the matter on a speculative basis. NTLAC is currently establishing a 2 year pilot Minor Assistance Civil Service to assist priority clients in civil law matters, primarily employment law, consumer, credit and debt matters in order to arrest financial problems evolving into larger legal problems. This service will also assist people in immigration detention with non-immigration law matter types. This service is funded through a short term and discrete funding agreement with the Australian Government.

This important pilot recognises that many people face challenges in self-advocating in relation to legal problems and disputes, and that the assistance of an advocate can often resolve a matter. The continuation of this service depends on future funding and demonstrated need.

The NTLAC administers the Contingency Legal Aid Fund ('the Fund'). Where private practitioners are prepared to speculate their professional fees, clients can apply for financial assistance for disbursement only grants from the Fund to enable their legal matter to continue. The merit is assessed for each application by an independent Committee. At the conclusion of the matter if the client is successful and receives a settlement they are required to repay the Fund the amount advanced plus interest. The Fund is self-sustaining and is an important mechanism to provide access to justice in civil matters in the NT.

Duty lawyer services

Duty lawyer services are provided in relation to criminal and family law matters. This service is important to assist parties presenting to court unrepresented to obtain advice in relation to their matter, be referred to appropriate services and assist in communicating with the court in relation to their matter which is listed on that day. Duty lawyer services are free and are not means tested. NTLAC previously conducted duty lawyer services in Child Protection proceedings and matters before the Mental Health Review Tribunal relating to involuntary detention and treatment. These services ceased in 2010 due to funding constraints. NTLAC will trial the reinstatement of duty lawyer service before the Mental Health Review Tribunal for a period of 6 month as of 1 January 2014. The following table provides a breakdown of duty lawyer services that have been provided by NTLAC in recent years. The reduction in civil duty lawyer services in the past 3 years can be attributed to the cessation of the duty lawyer service before the Mental Health Review Tribunal.

Duty lawyer services					
	08/09	09/10	10/11	11/12	12/13
<i>Family</i>					
Advice Only	35	36	8	15	17
Advice and Representation	332	387	200	237	112
Other	3	4	1	0	4
<i>Criminal</i>					
Advice Only	257	344	109	84	183
Advice and Representation	2,486	2,721	2,277	2,071	2,241
Other	14	14	14	11	5
<i>Civil</i>					
Advice Only	8	3	1	2	0
Advice and Representation	243	235	44	8	3
Other	0	1	0	0	0
TOTAL	3,581	3,745	2,654	2,428	2,565

Legal advice

Legal advice clinics are held in the matters of civil law, criminal law, family law (including child protection) and domestic violence law face to face and by phone. These services are

free and are not means tested. The following table demonstrates the advices provided by the Commission in the predominant service delivery areas.

Free advice sessions					
	08/09	09/10	10/11	11/12	12/13
Family	1,905	1,954	1,174	1,774	1,954
Criminal	1,520	1,611	2,319	1,855	1,888
Civil	1,949	1,999	1,903	2,180	1,953
TOTAL	5,695	5,564	5,946	5,809	5,795

Outreach Programs

Indigenous Outreach

The NTLAC Indigenous Outreach Program was funded under the NT Emergency Response Funding and is now funded under *Stronger Futures*. The Project has met a range of objectives, including:

- Delivering information to community members and stakeholders about the range of services which are available to assist people in the region. Information and resources about these agencies is taken to the community and passed on as relevant.
- Legal advice and minor assistance is available.
- Following discussions with community members and stakeholders, an education session may be arranged as requested.
- Where it is appropriate to make a referral to other agencies, we endeavour to make a 'warm referral' where we first approach the agency to ensure they can assist the person.
- Networking and liaison with other agencies has been an important part of the Outreach activities, as it is vital to be up to date on the operations, scope and guidelines of related program areas.

Please see the attached report³ in relation to previous activities. The project is highly collaborative and vital to enhancing access to justice in remote Indigenous communities, with a focus on the Katherine and Barkly Regions of the NT.

Culturally and Linguistically Diverse Communities (CALD) project

The CALD project is staffed part time by a Multicultural Educator and a solicitor. The CALD project maintains strong relationships with CALD communities and with key services and networks. The Project shares resources and activities with other services, including Top End Women's Legal Service ('TEWLS'), Darwin Community Legal Service ('DCLS') Anglicare, Melaleuca, Multi-cultural Council of the NT ('MCNT') and Charles Darwin University ('CDU').

The *Whats the Law* education kit is an initiative of Australian Legal Aid Commissions through National Legal Aid. This educational DVD has ten simple stories in basic English

³ NTLAC, Interim Evaluation Report on outreach Project 10-11

dealing with the most common legal issues experienced by recently arrived migrants and refugees. The DVD is suitable for use with adult ESL learners or education sessions for groups with limited English language skills. There are student activity sheets to support each story, and teacher answer sheets. This DVD was produced by National Legal Aid. The education kit is available at no charge, which includes the DVD with all 10 stories and accompanying activity sheets and resources⁴. NTLAC uses this resource as the basis of CLE sessions in Migrant English classes at Charles Darwin University. These are delivered in partnership with the Top End Women's Legal Service and Darwin Community Legal Service.



The project also delivers regular CLE sessions introducing the legal system to new arrivals on humanitarian visas for Melaleuca Refugee Centre's settlement orientation program.

A successful partnership with Anglicare's Refugee and Migrant Settlement Service gained funding to deliver the first ever "*Community Legal Guides Program*" training key people from 2 emerging refugee communities in information and referral strategies for the legal system. The 8 participants undertook over 30 hours of training delivered by the CALD project with presentations from DCLS, TEWLS, ACCC, Working Women's centre, NT Parliament, NT Electoral Commission, and NTLAC family law section. This project worked in a two-fold way: to provide information and links for community members about their legal rights and avenues for assistance and to facilitate the delivery of quality community legal education by a range of legal sector organisations to the communities.

Community Legal Education

The NTLAC Community Legal Education ('CLE') section undertakes a wide range of activities to assist the public to have access to good quality and appropriate information about legal rights and responsibilities. The focus of the community legal education team is on developing ways of working collaboratively with other services to produce resources and programs with the aim of assisting the people of the Northern Territory to:

- Learn about the services available that can assist when a legal problem is encountered;
- Develop an awareness of legal rights and responsibilities;
- Prevent legal problems from occurring or escalating through early intervention;
- Access appropriate resources containing information about the law and services that can assist;
- Feel confident about approaching our services for information and help.

The Commission is involved in a large range of CLE activities:

- Continued co-ordination of the NT CLE Network, involving justice and related agencies in the NT.
- Activities and education sessions about human rights in remote communities.

⁴ http://www.ntlac.nt.gov.au/legal_info/whatsthelaw.htm

- Publication of written resources available in hard copy and on the commission's website⁵.
- Assisted with the NT launch of the 'Indigenous Legal Needs Report 2012'
- Utilising social media tools such as Facebook⁶ and YouTube⁷ effectively to distribute high quality and relevant legal information to the public.
- Delivering presentations on using social media and advertising campaigns in community legal education to the NT Community Legal Education Network, National Legal Aid Community Legal Education Working Group and the Legal Services Commission of South Australia.
- National Youth Week Activities including a social media campaign aimed at educating young people about their legal rights and responsibilities and heavily promoted our new youth focused publication 'At what age can I? The laws affecting young people in the NT (2013)'
- National Law Week – where we took a leading role in facilitating activities during law week on behalf of the Northern Territory Community Legal Education Network. These activities included a 'Know Your Rights' information session and barbecue in Raintree Park, Darwin CBD and a talk about National Law Week and its activities on the Top End Aboriginal Bush Broadcasting Association (TEABBA).
- Presentations to school classes and other target audiences about the laws affecting the relevant group.
- Presentations to staff at different community agencies, specifically explaining what services NT Legal Aid Commission provides and how to access. An emphasis has been on the promotion of the Legal Aid Helpline. Some of the agencies presented to include – The Council of the Ageing, the North Australian Aboriginal Family Violence Legal Service and Anglicare NT.
- Continuing Professional Development (CPD) Sessions to NT CLE Network on community legal education skills.
- Delivering several community legal education sessions in remote communities as part of the NT Legal Aid Commission Indigenous Outreach Project. These sessions included education sessions at the schools, information sessions about housing rights, consumer rights, wills and estates, rights with police, making complaints, domestic violence orders. Many of these sessions were conducted where possible in partnership with other services, For example, the Top End Outreach Team co-presented with NAAJA and NAAFVLS at a training day for Night Patrol Officers from Mataranka, Jilkminggan and Minyerri in April 2013.



⁵ www.ntlac.nt.gov.au

⁶ <https://www.facebook.com/NTLAC>

⁷ <http://www.youtube.com/user/NTLegalAid>

- Co-ordinating a working group of representatives from different National and Northern Territory legal services to develop a culturally appropriate film and audio resource in 6 different Aboriginal languages about 'rights when renting from Territory Housing' in remote communities. This project demonstrated a significant way that legal services can work together to produce quality materials in areas of significant need.⁸
- Running various information stalls at high profile and relevant community events including:
 - Northern Territory National Youth Conference 2012;
 - NAIDOC Family Day at the Waterfront 2012;
 - World Refugee Day 2013;
 - Seniors Info Day, Palmerston and Darwin City Council 2012;
 - Law Week Information Day;
 - International Human Rights Day 2012.



Legal Information and Referral

The Legal Aid Helpline and call centre was developed under the National Partnership Agreement and as part of the Commission's Information and Referral Strategy.

The Legal Aid Helpline continues to provide assistance to people who have a legal problem. The service operates during business hours and is accessible to anyone throughout Australia. Callers to the service are able to speak with a paralegal to discuss their problem and obtain information, receive referral to other helpful services and if required, make an appointment to obtain free legal advice. The service continues to expand the volume of service delivery with 5,361 callers being provided with assistance during 2012-2013, an increase of 44% from the previous year.

Information in relation to other services which can assist is also available through the Commission's website and referrals are provided by staff of NTLAC to clients in relation to services which can assist them including by phone and in person.

Case Studies

A number of case studies are provided in the attached report and one confidential case study has been submitted separately to this submission. We are also pleased to provide the following case studies to demonstrate the powerful impact that legal assistance services can have on the lives of individuals, their family and community.

Outstanding fines

21 year old, Silas Peterson⁹ lives in the remote community of Epenarra. He has been involved the CDEP programs. He had completed some training courses as well. When he was younger he had visited the larger town of Tennant Creek. He ended up getting in trouble with the law and had to go to Court. The Magistrate gave him a fine and ordered a restitution order. This really started to worry Silas and it began to affect his life. He didn't

⁸ <http://www.youtube.com/watch?v=PXgm-JpPqZM&feature=c4-overview&list=UUGVMGOPYoKalsm-oOI0zh-Q>

⁹ Mr Petersen has provided permission to share his story

know how he could pay the restitution from where he lived and the Magistrate told him he would go to gaol if it wasn't paid. He started to have problems at home, He had a good job at the school but he stopped going to work. The school said he would lose his job but he was just too worried about court and thought that he would go to gaol.

A Legal Aid Outreach solicitor and an Indigenous Liaison Officer visited Epenarra Community. Silas spoke to them about his problems. Legal Aid spoke with his employers and Silas got a chance to keep his job. Legal Aid also helped organise payroll deductions so that he could pay his restitution order in time for his next Court date. With Legal Aid's help Silas life turned around. All this trouble is behind him now. Silas enjoys his work and wants to do a Certificate III in Education Support and get a job as a teacher. Recently, his story about working with the school featured in the Barkly Shire Council Magazine. He is a role model for his community and has said thank you to Legal Aid for helping him when he was in trouble.

Warrants

Outstanding warrants can impact on the ability of people to participate fully in society including to seek gainful employment. This is a common theme in remote communities in the NT which court does not access regularly:

J from (remote community) called the NTLAC Helpline and was referred to an outreach lawyer. J had a warrant on historical charges. He had been worried about the police charges for three years.

We assisted in vacating the warrant and entered into negotiations on his behalf with the prosecution. Most charges were withdrawn but police would not remove charges that related to the possession and illegal possession of a firearm. J has dealt with those charges now and the matter is finalised with J receiving small fines. The client told the Indigenous Community Liaison Officer that he now has a job offer with a road crew in the region. He now has the opportunity of earning a good income for himself and his family. He does not have to worry about being arrested.

Overview of Funding Arrangements

Both Commonwealth and Territory law applies in the NT. This jurisdictional distinction impacts upon the services provided by NTLAC. NTLAC receives funding from both the Commonwealth and NT governments. Commonwealth funding is to be used only for Commonwealth law matters (for example, family, Commonwealth criminal matters) except for:

- the provision of early intervention legal education, information, advice, assistance and
- advocacy services; and
- legal representation of individuals whose legal problems involve a mixture of Commonwealth family law issues and Territory law family violence and/or child protection issues.

Territory funding is to be used only for Territory law matters, which are primarily Territory criminal matters but also include child in need of care matters and matters before the Mental Health Review Tribunal.

For NTLAC (and all Legal Aid Commissions in Australia) this jurisdictional distinction and the corresponding funding allocation from Commonwealth or State Government is applied irrespective of whether the client is Indigenous or non-Indigenous.

The Commonwealth Government provides separate funding for the Aboriginal and Torres Strait Islander Legal Services (ATSILS) to provide legal services to Indigenous Australians. In the NT there are two major providers – Northern Australian Aboriginal Justice Agency (NAAJA) and Central Australian Aboriginal Legal Aid Service (CAALAS). Cost shifting from one jurisdiction to the other occurs where ATSILS are unable to assist a person in relation to an NT law matter due to conflict of interest or because of the cost of a matter is likely to be expensive (eg murder or serious sex offenders civil detention) or if the ATSILS has exhausted its referral budget and those matters are referred to NTLAC. A matter which was previously funded by the Commonwealth Government to the ATSILS is then funded by NTLAC's NT Government funding.

Service demands are difficult to predict and plan for. This arises in two main areas, being casework demands and policy and law reform impacting on service delivery.

NTLAC grants aid according to its Guidelines which are established under the Act and approved by the Board of NTLAC. NTLAC commits funds when granting aid in accordance with these guidelines. It is difficult to predict in advance what the demand on services will be as there are so many variables outside of the control of NTLAC which can impact on this during the course of the year, including policing, unusual or expensive matters, changes to court practices such as sitting days and listing arrangements.

In some circumstances NTLAC can seek additional funds from the NT Government however this application may be refused in part or in whole. This uncertainty for additional funding to cover these unusual or expensive cases has the potential to put the Commission in a difficult financial situation.

Policy and legal changes can also significantly impact on the service demands of NTLAC. Sometimes provision is made for the increased costs associated with these changes in grant funding, however the expectation is that the Commission is to meet these additional/increased demands, quantify them and seek additional funding in future years. For example, the NT government passed the *Serious Sex offenders Act* in 2013 which provides for the ongoing civil detention of certain prisoners after the completion of their term of imprisonment. The application must be made in the Supreme Court and will be determined following the hearing of evidence relevant to the issues in dispute. While NTLAC has raised concerns about meeting the additional costs of such matters, it has not received any additional funds to do so. Furthermore, NAAJA have advised that the cost of these matters is such that they are referring all future matters to NTLAC.

Another example is reinstating duty solicitor service at the Mental Health Review Tribunal. As previously advised, this service ceased in 2010 due to funding limitations. The Commission will be recommencing this service in January 2014 for a trial period of 6 months. The purpose of the trial period is to determine the cost of the providing the service with the intention to include the costs in the subsequent financial year funding. However, the Commission will be providing this service from the family section, whose costs are pre-

dominantly allocated to the Commonwealth. So this service will result in a cost shift from the Commonwealth to the Territory which was not included in the budget for 2013/14.

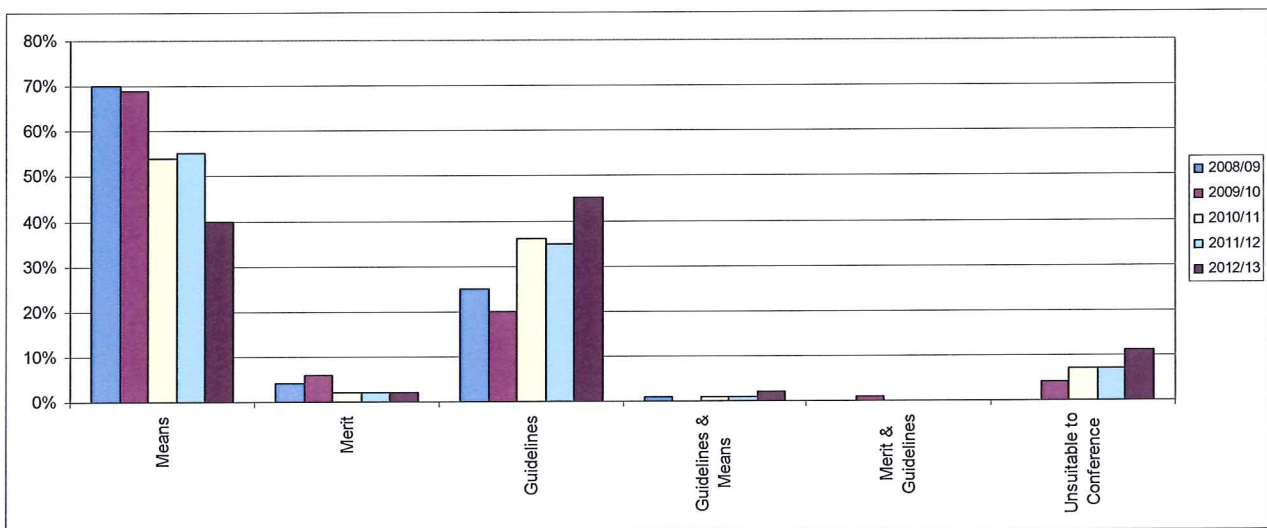
Means testing and access to justice

As stated above, NTLAC follows guidelines when processing applications for grants of aid. Applicants are assessed according to their income and limited allowable expenses. Neither the income nor allowable expenses under the means test is regularly reviewed or adjusted to take into account changes in wages and the cost of living.

Centrelink recipients fall within the Commission’s means test, however there are many other people who are ‘working poor’ with significant expenses who are not eligible for legal aid.

The means test is out of step with the economy of the NT and many people who are refused legal aid according to the means test are unable to afford their own legal representation. The following table demonstrates the reasons for refusals of legal aid by NTLAC in the past 5 years.

The decrease in refusals under the means test has a corresponding increase in refusals under the NTLAC guidelines. This reflects austerity measures taken by NTLAC in recent years due to funding pressures, which includes restricting the guidelines to limit categories of matters in which legal aid is granted.



There has been an increase in complexity of people’s legal needs over the years. Despite Australia's economic boom over the last 15 years, the socially disadvantaged or vulnerable clients that we service have not benefited from it. Housing stress and lack of affordable housing is a compounding factor across the whole of the NT, and particularly in remote and regional areas. Mental health concerns, substance abuse and family and domestic violence are extremely frequent features in a large part of our casework.

The 2006 shared parenting legislation has given rise to a lot more litigation of family disputes. The 'less complex matters' are now appropriately obtaining assistance through

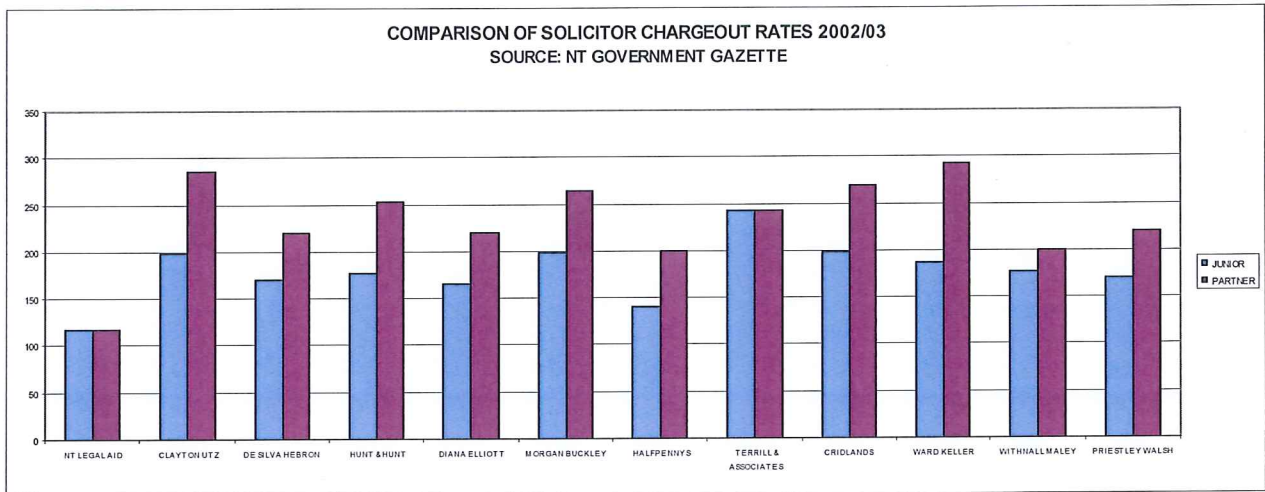
Family Dispute Resolution. This leaves very complex and difficult 'pointy end' litigation matters which are extremely time consuming and expensive.

Mixed model service delivery

NTLAC notes that the 'mixed model' of service delivery has been explained in the submission to the Commission by National Legal Aid. NTLAC supports the submission made in this regard, in particular in relation to the benefits of the model. The table below demonstrated the division of legal aid work by private practitioners (referred) and legal aid staff (in-house).

	08/09	09/10	10/11	11/12	12/13
Applications approved and referred to private practitioners					
Family	237	273	137	141	149
FDR			165	202	209
Criminal	99	118	98	203	200
Civil	70	65	49	84	46
Domestic Violence	16	0	0	0	0
TOTAL	422	456	449	630	604
Applications approved and handled by commission staff					
Family	223	233	124	115	138
FDR			96	129	153
Criminal	1,258	1,310	1,174	1,281	1,170
Civil	61	52	56	116	21
Domestic Violence	13	0	0	0	0
TOTAL	1,555	1,595	1,450	1,641	1,482

It is noted that under this model, NTLAC is very much dependant on the willingness of suitably qualified and experienced private practitioners to undertake work at legal aid rates. As the chart below demonstrates, these rates were significantly out of step with Government charge out rates in 2002/3. NTLAC rates for private practitioners have not increased since this time. This gives rise to concerns at the sustainability of the model if there is no commensurate increase in the rates paid to private practitioners undertaking legal aid work.



Attached to this submission are letters from two firms, DS Lawyers and Terrill and Associates raising concerns about the rates that legal aid pays to private practitioners. NTLAC does not agree with all comments in these letters. For example, NTLAC does have time recording limitations on its in-house family law practice and practices to check that work performed on matters is commensurate with a grant of aid.

NTLAC has included these letters in this submission as we would like to raise the concern of the sustainability of the mixed model under current funding arrangements. Without the ability to appropriately remunerate suitably qualified professionals, there is a risk that the NTLAC panel will be reduced to inexperienced solicitors who are not able to provide the level of service which is required in the many complex matters which receive grants of aid. This poses a threat to the sustainability of legal aid operations under the mixed model.

Legal aid funding must be increased to enable increases to legal aid rates to private lawyers undertaking legal aid work and to enable ongoing increases on an annual basis to ensure ongoing sustainability of the mixed model.

Policy and Law Reform

NTLAC submits that law reform and policy responses must be:

- Evidence based; and
- Accountable and transparent.

These are elements of all sound policy decisions, however are especially important where new and untested laws are being introduced which impact on socially, culturally and economically disadvantaged people. Unfortunately this has been the demographic most affected by recent law reforms in the NT and NTLAC submits that they will continue to be the most impacted demographic under the proposed changes.

Law reform and policy changes can demand a response from legal services in repositioning their services. This can impact on the efficiency of the legal services and therefore access to justice. Reforms can be highly politicised and, where they are not based on evidence, significant resources can be wasted where legal and related services adjust to new laws and policies with little tangible benefit.

Unfortunately due to its finite resources, NTLAC's ability to provide meaningful input into policy and law reform proposals is limited.

Working collaboratively

Funding limitations, the challenges of remoteness and client demographics in the NT demand a great emphasis on collaborative approaches to service delivery. NTLAC places a high premium on working collaboratively and is pleased to demonstrate this by the following examples.

NT Legal Assistance Forum.

A NT Legal Assistance Forum ('NTLAF') was established in 2012. The NTLAF comprises legal services in the NT and related peaks such as the NT Council of Social Services. NTLAF focuses on improving access to legal services across the NT and information sharing about emerging legal need, service pressures and policy and legal changes. The participants at the forum discuss collaborative approaches in relation to issues of joint concern, including:

- Working collaboratively
- Review of the NPA
- Policy and law reform
- Unmet legal needs and service gaps
- Changes in service demands

Collaboration in Family Dispute Resolution

NTLAC continues to foster collaborative relationships with the Family Relationships Centre operated by Relationships Australia NT and other legal and related services. The main aspects of this are as follows:

- A Memorandum of Agreement between the services setting out our collaboration, mutual referral of clients and training/ education opportunities;
- Fine tuning the process for NTLAC referring parties to the FRC in Darwin and Alice Springs to participate in their Child Inclusive Process (CIP)/ access their Child Consultant;
- Parties to a NTLAC conference are able to attend a "Kids Come First" session at the FRC in Darwin and the "Building Connections" session in Alice Springs. We delayed the trial for making attendance at these sessions a condition of the grant of legal aid for all family law matters involving children, as we are concerned about the delays this will cause in arranging conferences.
- A NTLAC family lawyer attends the weekly "Kids Come First" session at the Darwin FRC and delivers the legal section of this presentation. This is being updated by the FRC and NTLAC is assisting with this project;
- Parties to a NTLAC conference are able to access the services of an Indigenous Family Consultant at the FRC;
- Disseminating information to the private solicitors and FDRPs, particularly in relation to the Family Law Pathways Network events, training opportunities etc; and
- Providing training and education to in-house NTLAC staff and private solicitors.
- NTLAC continues to explore opportunities to bring new skills and resources to the NT for the benefit of people working in this area.

Working collaboratively in Community Legal Education

The Commission completed a collaborative project involving NACLCS, NAAJA, CAALAS, CAWLS and TEWLS and DCLS and in consultation with Territory Housing in the development of a 'Renting in Communities' DVD. This DVD was launched as part of Law Week in May 2013. The DVD has been distributed in 6 languages and this year alone the English video on you tube has been viewed over 120 times.

The Commission continues to host the CLE Network Meetings every 3 months. These meetings are an opportunity to share information and opportunities for collaboration and are attended by legal and related services across the NT.

NTLAC, in cooperation with Pathways, developed a DVD 'Moving Beyond Family Conflict'. This DVD has been widely distributed and well received. The video has had 144 views on the Commission's You Tube Channel in the 2012/13 year.

Collaborative referrals

NTLAC has Memoranda of Understanding with:

- North Australian Aboriginal Legal Aid Service
- Central Australian Aboriginal Legal Aid Service
- Darwin Community Legal Service
- Supportlink trial in Alice Springs.
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The purpose of these documents is to ensure that clients are referred between services expeditiously and efficiently.

Answers to some questions posed by the Productivity Commission in the discussion paper

How can the Commission best add value?

Evidence gathering

The NTLAC partnered with James Cook University in undertaking research in the NT in relation to the unmet legal needs in Civil and Family Law¹⁰. While providing an extremely valuable indication of legal need, these reports are by no means comprehensive. We suggest that ongoing and in depth research is required to inform program funders in making decisions about the direction of scarce resources would produce robust and relevant evidence of current and future legal needs in the NT.

It is also frustrating that even where there is strong evidence, funding decisions are made without reference to these. For example, the Indigenous Legal Needs Project of the NT found the predominant legal issue faced by indigenous people in the NT was housing and tenancy concerns. However, the resourcing of legal services in the NT still does not enable these needs to be met.

Clear and comprehensive reporting

NT legal services, including the NTLAC have from time to time been the subject of reviews¹¹, which have provided some value to independently gathering information to inform funders about the outcomes and pressures of Commissions. There have also been numerous reviews at a national level which provide important information to inform government.

In addition to the existing reporting of the NTLAC to numerous funding agencies and grants, the resource burden of meeting additional requests for new information and providing information is considerable. NTLAC does not have dedicated statisticians or staff whose sole function is to meet these reporting requirements. Submissions and reports must be made from existing staff who already have a full workload.

We support the NLA submission that there is a need for an independent economic authority that has not been commissioned on behalf of a service provider, to test the notion of economic value in relation to legal assistance services. NTLAC believes that the Productivity Commission has the authority, independence and capacity to undertake this type of analysis and arrive at a conclusion which has broad support among policy makers. NTLAC considers that this is one area where the Productivity Commission could add significant value.

¹⁰ Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney, Legal Australia-Wide Survey: Legal need in the Northern Territory; Allison, F, Cuneen, C, Schwartz, M Behrendt, L, 2012 Indigenous Legal Needs Project NT Report.

¹¹ KPMG Review of NTLAC 2011

Geographic constraints and access to justice issues in rural and remote Australia.

There are significant geographic constraints in the NT which impinge on access to justice. These include access to facilities, transport¹² seasonal road closures, poor road conditions, availability of personal motor vehicles and the expense of air travel to remote and island communities. The cost of providing services in rural and remote areas is significant. For example, during period of seasonal road closures, the only available travel is by air. Chartering a plane is extremely expensive and it is not an efficient use of funds to charter a plane for only one matter. NTLAC attempts, wherever possible, to share a plane with other services or court staff but often there is no space available. Another minor issue is where a matter was initially listed for the day is carried over for the next day. NTLAC must change flight details, at a cost, find suitable accommodation at the last minute, which can be expensive difficult to source at the last minute.

Few family or civil private lawyers travel to remote communities and small regional centres have a limited pool of lawyers in family law matters which is exacerbated where there is a conflict or no capacity.

Access to Family Law Courts

The NT has only one Family Law Courts Registry in Darwin. Although Federal Circuit Court circuits to Alice Springs quarterly, this is generally for a week and usually interim, undefended or final hearings are listed.

The closure of the Alice Springs Registry of the Family Law Courts is reportedly due to high running costs and low user filing numbers. This rationale fails to consider the cost of providing services in remote and rural areas which cannot be based on mere numbers alone but also need to consider the greater problems and issues of isolation, accessibility of nearby services and level of socio-economic disadvantage or cultural and language barriers.

As there is no full or part-time registry open in either Alice Springs or Katherine, litigants are required to use a combination of technology or Australia Post to file and receive sealed court documents. Interim or interlocutory type appearances are done only over the telephone. Such use of technology provides limited access to justice for literate or legally represented court users. However, it provides little or no access to aboriginal and CALD court users who have no registry to attend and seek the assistance of an interpreter. Often access to technology to access forms, Commonwealth Courts Portal and information is also extremely limited and not in a format which is easy to understand. Face to face contact with lawyers is crucial to their access to justice.

Two 2012 studies by the Family Law Council into *Improving the Family Law System for Aboriginal and Torres Strait Islander and clients and clients from Culturally and Linguistically Diverse Backgrounds*¹³ highlighted these and other access to justice problems in the area of family law.

¹² NTCOSS, *Fair Transport, how do we get there?* <http://www.ntcoss.org.au/sites/www.ntcoss.org.au/files/FAIR%20TRANSPORT%20-%20HOW%20DO%20WE%20GET%20THERE%20PAPER%20NTCOSS%20CONF%2017-18%20APRIL%202008.pdf>

¹³ <http://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

Dispute Resolution Involving Remote Clients

While the Commission is an NT service with a Family Dispute Resolution Program, there are significant challenges in making this Program accessible to people outside of the Darwin metropolitan region. Some of the factors impacting this include:

- Challenges in engaging Chairpersons who are willing to undertake FDRP work outside of Darwin.
- A preference that parties, their solicitor and the chairperson be in close physical proximity which is difficult to achieve in Katherine, Tennant Creek and Alice Springs.
- Challenges with identifying safe facilities in locations where there are no purpose built facilities.
- While there is some technology available which can assist with this, it is still in the early stages of development.

Some steps the Commission has taken to endeavour to meet these challenges include:

- Booking Conference Chairpersons in areas outside of Darwin for several conferences at one time, making the travel and related costs more efficient.
- Considering the use of appropriate facilities, for example we have an agreement with the Family Relationships Centre in Katherine
- Exploring emerging and current technology, for example 'collaborate' which is used by Charles Darwin University for remote teaching.
- Working collaboratively with Legal Aid Commissions to source trained Chairpersons.

To what extent can technology overcome geographic barriers?

NLAC have limited funds as a small Commission and are unable to expend the required amount on IT infrastructure to maximise its operations and efficiencies.

The extent to which technology can overcome geographic barriers is dependent on the existence of infrastructure, flexibility of the courts and legal services, level and extent of literacy, language proficiency, socio-economic advantage, access to or availability of technology in particular parts of Australia.

For example, while legal practitioners in Alice Springs and Katherine can use the Commonwealth Courts Portal to file documents on-line, the self represented 'working poor' litigant from a CALD background is unlikely to have the capacity to register and use the Portal. Indigenous clients in remote communities are even less likely to be able to use these facilities.

The only successful technology has been the telephone for interim or interlocutory hearings before the Court. Video-links are either not possible due to lack of equipment, incompatibility of the courts' or organisations' systems or are too costly and time consuming to arrange.

Internet connections in rural and remote parts of the NT are not always reliable and sometimes the only contact to remote communities is by satellite phone.

Does a lack of physical proximity represent a barrier to accessing justice?

Lack of physical proximity is a considerable barrier to accessing justice. While there is a presence of courts and lawyers in some regional, rural and sometimes remote locations

(most notably for criminal matters) rarely do courts circuit to remote or rural communities for civil matters, with the exception of the Federal Circuit Court which circuits to the town of Alice Springs quarterly. As a consequence, greater reliance is placed on legal outreach programmes which are often underfunded.

Which particular regions, groups or case types face geographic constraints to accessing the justice system?

All people outside of the Darwin and greater Darwin region face significant barriers in accessing civil and family law justice systems. This is due to a range of factors including the geographical challenges discussed above, the paucity of services to provide support and referrals in the regions and the limited court facilities and legal services. The following categories of clients who experience disadvantage:

- those who are or should be a participant in court proceedings to participate in the proceedings which will adjudicate their dispute;
- those who have a legal issue which could be resolved if they knew that there were appropriate services that could assist them.
- people who are vulnerable due to their circumstances and therefore are not able to engage services to assist them from another location for example indigenous and CALD clients, aged or disabled people.

As outlined above all people seeking assistance with Family Law matters outside of Darwin face challenges in participating in court proceedings.

People involved in care and protection proceedings in all areas outside of Darwin, Katherine, Tennant Creek, Nhulunbuy and Alice Springs face challenges in participating in court proceedings, as there are no gazetted courts in these matters outside of these areas.

People in detention, including immigration detention in the NT face significant geographic barriers in accessing justice systems in the NT. People in immigration detention experience numerous challenges including:

- the physical constraints of their environment
- language and cultural barriers
- disability, including mental health issues arising from torture and trauma
- a paucity of legal services which can assist them in their location.

Costs to individuals and the community as a result of geographic barriers

There are a range of costs to the individuals and the community arising from geographic barriers. These can be indirect costs of resolving a dispute. For example a rogue salesperson who enters into numerous unfair and unconscionable contracts to take family portraits in a remote community can cause a significant economic cost to the entire community. If the community does not have access to services which can assist them in advocating the rescission of the contracts, vulnerable and disadvantaged people continue to pay large sums of money. However, assistance in having the contracts set aside will result in more disposable income with which to meet other financial demands.

More directly, geographic barriers to participate in court proceedings in care and protection or family law matters can result in the removal of children from the other parent and/or extended family members, communities and country both in the areas of family law and child protection. This will have long term social consequences for the family and the child.

Is unmet need concentrated among particular groups?

We note NLA has made comprehensive submissions on this point. Unmet need in the NT is concentrated among the following groups:

- People with legal problems who are not eligible for assistance from legal services but can't afford private representation.
- Remote clients, particularly indigenous clients, in civil and family law matters, including:
 - Consumer and credit matters
 - Public housing tenants
 - Defendants of restraining order applications
- CALD clients including those settled in rural and regional areas that work and earn sufficiently to cover their daily living expenses but earn too much to obtain a grant of legal aid. While migrant resources services in these areas provide assistance and advocacy, their services are not equipped to meet the legal needs of such individuals.
- People in prison
- People in immigration detention
- Members of the public who have a problem which they don't identify as a legal problem.

Some Indigenous clients in remote communities would not access to the legal system unless:

- (a) they committed a criminal offence;
- (b) were perpetrators or victims of violence; or
- (c) had their children removed from them by a child welfare authority.

Measuring Disadvantage

Disadvantage in accessing justice is difficult to measure. There is a need to identify and map the likely cascade of events that occurred prior to legal proceedings being brought against a person.

Often Indigenous and CALD clients are not aware of their legal rights, responsibilities and remedies under the law. The consequence of that is that they do not identify the legal problem and consequently do not seek to remedy it. For example, sometimes CALD clients do not understand what constitutes appropriate physical discipline of children and find themselves facing not only criminal proceedings but also domestic violence applications which they may consent to without having had prior legal advice only to discover that breaching these orders opens them to a further criminal liability.

A further example can be found in remote Indigenous communities, where many parents are unaware that they can defend an application for a child protection order rather than accept the removal of their children by the welfare agency without having a say in it. Their 'child protection history' is established and snowballs when they have other children who are then removed due to the earlier history.

Similarly, a domestic violence restraining order made by police for full non-contact between parents of a child will often need to be varied to enable both parents to spend time

with the child. Police only act in relation to urgent issues and so if a legal service is not available to provide this assistance, it is likely that the situation will lead to a breach of a restraining order, and potentially imprisonment of one party.

Self represented litigants

Individuals or organisations may represent themselves in court out of necessity or by virtue of their circumstances. For example, mental health concerns can play a significant role in a person representing themselves and their access to the justice system. Engagement with lawyers is problematic for several reasons:

- difficulty in conceptualising their legal problem and remedy;
- difficulty in accepting and following legal advice
- concerns about capacity
- frequent breakdown in solicitor/client relationships as a result of the above
- difficulty in navigating the justice system on their own
- transfer of pressure on other justice system providers (Court staff, judicial officers, or complaint handling officers).

Frequently court proceedings serve to compound or exacerbate a pre-existing mental health condition. This may also be coupled with financial stress and self-sabotaging behaviours such as drug or alcohol abuse, becoming non-compliant with medication and so on.

Self represented litigants from Indigenous or CALD backgrounds with mental health concerns in remote, rural and regional communities would have significant problems in accessing the justice system, unless charged with a criminal offence.

Geographical constraints such as the lack of a Family Law Courts registry in Alice Springs and other parts of the NT limit the ability of a self represented litigant to, for example, inspect subpoenaed documents as part of the discovery process so essential to family law matters. The Federal Circuit Court has attempted to overcome the problem of inspecting subpoenaed documents (all held in Darwin except during circuits) by family law practitioners in other parts of the NT, by granting leave to copy (with prohibitions on direct access by clients). Leave is not granted where there are self represented litigants, (unless to the Independent Children's Lawyer only).

Preventing issues from evolving into bigger issues

The Commission runs a successful Family Dispute Resolution Program which assists parties to resolve disputes and enter consent agreements following separation at the early stages of the dispute. This prevents the dispute from escalating. It also assists parties to reach agreements after proceedings have been filed which avoids the need for the parties to proceed to hearing. Grants of legal aid to parties participating in this Program has increased in recent years, while there has been a commensurate reduction in grants of aid for litigation in family law matters.

NT Legal Aid Commission has received one-off funding to establish a 2 year pilot Minor Assistance Civil Service to assist priority clients in civil law matters, primarily employment law, consumer, credit and debt matters in order to arrest financial problems evolving into larger legal problems. This service will also assist people in immigration detention with non-immigration law matter types.

This important pilot recognises that many people face challenges in self-advocating in relation to legal problems and disputes, and that the assistance of an advocate can often resolve a matter. The continuation of this service depends on future funding and demonstrated need.

NTLAC has recently learned that legal assistance to people in immigration detention under the Immigration Advice and Application and Assistance Scheme has been suspended and this is a decision of grave concern generally. It has the potential to place pressure on other important services of NTLAC to the public such as this Minor Assistance Civil Service.

How can early intervention programs be best targeted and delivered?

As outlined above, NTLAC has significant early intervention programs. The ability to measure the effectiveness of these programs is a matter of some debate at present and the NTLAC is actively exploring mechanisms to evaluate early intervention and prevention programs.

- Community education and community engagement strategies are essential to ensure that vulnerable people and those who work with them can recognise legal problems and seek early assistance
- The provision of information can resolve a significant percentage of legal problems at an early stage
- Advice and discrete task assistance can resolve many civil personal legal issues, particularly consumer disputes

With these strategies large numbers of people can receive assistance to resolve legal issues. In many cases this assistance has a significant impact on the client and their family. These services can prevent people from experiencing further problems and therefore prevent social exclusion.

Conclusion

All evidence indicates that strong and vibrant indigent legal services provide value for money and cost effectiveness for government and service providers. Legal aid also contributes significantly to the wellbeing of civil society as well as decreasing the costs to our communities in the long run.

NTLAC is a relatively small service with a limited budget which is divided among numerous service priorities. NTLAC provides value for money within the budget available.

The mixed model of service delivery is the ideal structure for NTLAC and is internationally regarded as the ideal, however, it is vital that private lawyers are appropriately remunerated for undertaking legal aid work if the mixed model is to survive.

Funds must be made available to ensure legal aid is available to those who cannot afford representation and to expand current legal aid services to particularly vulnerable groups with civil and family law needs.

We thank you for considering this submission.