

21 May 2014

Access to Justice Arrangements
Productivity Commission
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Canberra City ACT 2601

By email: access.justice@pc.gov.au

Due date for submissions: 21 May 2014

To the Commission

Productivity Commission Draft Report on Access to Justice Arrangements

Further Submission by the Refugee Advice & Casework Service (Aust) Inc.

We refer to your draft report entitled Access to Justice Arrangements and our letter dated 4 November 2013.

As you are aware, The Refugee Advice & Casework Service (**RACS**) is a community legal centre that provides free legal advice and assistance to people seeking refugee status in Australia. It is a specialised refugee legal centre and has been assisting asylum-seekers on a not-for-profit basis since 1988.

RACS would like to make further submissions regarding the draft report on Access to Justice Arrangements that are relevant to our service, namely the access to justice issues facing asylum seekers in Australia.

Our cover sheet and a copy of our previous submissions are **enclosed**.

Lack of consideration of RACS' previous submissions

We note that a number of the access to justice issues that are raised generally in your draft report would also relate to issues facing asylum seekers. These issues include but are not limited to:

1. The funding and role of Community Legal Centres (**CLCs**);

2. Pro bono legal work; and
3. Access to the courts and tribunals.

Further we also note that immigration issues specifically feature within the draft report, for example at pages 655, 815 and 835.

However, immigration and asylum seeker issues are only dealt with relatively briefly and do not appear to incorporate any of the submissions made by RACS on 4 November 2013 (**enclosed**).

In light of this concern we have summarised some of the key points from our previous submissions below for consideration in your final report:

1. There is a high level of demand from asylum seekers for legal services due to the complex nature of the legal landscape and a lack of proficiency in English or, at times, illiteracy.
2. Funding previously afforded by the Australian Government to organisations which assisted asylum seekers have been cut, so that asylum seekers who arrive by boat or by plane without a valid visa will not be granted funding to assist their claim for protection in Australia. This places asylum seekers at a disadvantage given that they often lack the financial resources to pay for legal advice and representation.
3. The legal framework surrounding immigration is at times unnecessarily duplicitous and complex, which results in an increased use of resources and in turn increased expenditure.
4. By restricting asylum seekers' access to legal services through the reduction in funding by the Australian Government, it undermines the "just, quick and cheap"¹ principles of the legal system. For example, by restricting legal representation due to lack of funding, asylum seekers may not be able to plead their case effectively resulting in more appeals to the Refugee Review Tribunal and the Federal Court, which will in turn take longer and will result in further costs incurred for the process.

Methodology issues in draft report

Data collection issues

Upon review of your draft report it appears that some of the data collected does not accurately represent the current status of access to justice within the community and in particular asylum seekers. For example, we note that:

1. We have concerns with the LAW Survey referred to on page 92 involving 20,716 telephone interviews, which ran between January and November 2008, in particular that:
 - a. over 6 years have passed since that survey commenced and there have been significant changes that have occurred in the legal environment since then (especially in immigration law). For this reason, we do not believe that these figures would accurately reflect the current legal issues in the community;

¹ Section 56, *Civil Procedure Act 2005* (NSW)

- b. given that a number of asylum seekers were residing in detention centres at the time and would not have had access to a telephone, their participation in this survey would have been extremely limited; and
 - c. in any event, the majority of asylum seekers are not proficient in English further limiting their ability to participate in this survey.
2. On page 835 of the draft report you indicate that from 2008 – 2009 until 2011 – 2012 there has been a sharp fall in the amount of self represented litigants in the Federal Court. We also note that comments were made regarding asylum seekers appealing decisions at the Federal Court to gain access to legal advice and representation. However, we believe that these figures may be misleading as the most recent figures are almost 2 years old and given the current lack of funding to asylum seekers we believe that it is more than likely that the number of self represented litigants will rise.

Funding issues

In your draft report general comments are made regarding funding cuts (pages 601 and 655) and that CLC funding is generally provided on a “historical basis” under funding agreements. This means that the currently funded CLC’s are the ones that were funded 10 – 20 years ago and funding is only cut on an exceptional basis.

The above general comments fail to take into consideration the recent CLC funding cuts, which predominantly relate to asylum seekers (this issue is addressed in more detail above and in our previous submissions, which are **enclosed**).

We note that you also voice concerns regarding the cost of practising certificates in providing pro bono assistance to clients. A further concern, which has also been overlooked by the report, is that providing immigration legal assistance can also have additional expenses tied to it. For example:

1. since the majority of asylum seekers do not speak English, in order to provide legal assistance we are often required to use interpreters, which add an additional significant cost to our services; and
2. as noted at page 452 of your draft report, to provide legal advice in migration matters a person must be a registered Migration Agent. However, you do not identify that this is a further cost (often on top of a practising certificate) that is incurred in order to assist asylum seekers.

Closing comments

RACS strongly supports the continued funding of not-for-profit legal assistance for asylum seekers.

RACS and other community legal centres are uniquely placed to provide accurate, efficient and specialised legal assistance to people seeking immigration advice. RACS and organisations like us have been effective at lowering the cost of access to legal services and promoting equality in the justice system for asylum-seekers experiencing financial hardship.

The level of disadvantage and vulnerability experienced by asylum seekers makes the provision of legal representation and assistance vital for this group. The financial and non-financial costs associated with the removal of legal aid for asylum seekers needs to be properly assessed and the broader impact on Australian society taken into consideration.

To discuss the contents of this submission, please contact us on (02) 9114 1600.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

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