



Northern Territory Legal Aid Commission

Comments on the draft report of the Australian Productivity Commission Inquiry into Access to Justice Arrangements

May 2014

Introduction

Further to our submission of November 2013, the Northern Territory Legal Aid Commission ('NTLAC') thanks the Australian Productivity Commission ('the Commission') for the opportunity to comment on the April 2014 draft report into access to justice arrangements in Australia.

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 experienced by people in the Northern Territory.

This further submission directly responds to the Commission draft report including the findings, recommendations and information requests.

Chapter 2: Exploring legal needs

NTLAC agrees with draft finding 2.2 that informal dispute resolution mechanisms such as ombudsmen could be better employed to address a significant share of unmet legal need. NTLAC agrees that in this context, it is important to examine how much unmet need could be met by these pathways. Legal Aid Commissions ('LACs') and other publicly funded legal services have limited funding and can only expend funds where there is no other alternative. To the best of our knowledge, these alternative dispute resolution mechanisms are utilised and relied on heavily as referral points.

In the NT geographic context and demographic profile, many services have their own limitations in terms of providing an accessible service. National services have a limited presence in the NT, and even more so outside of Darwin. Clients from non-English speaking backgrounds, with disabilities and living remotely will experience challenges in accessing these services without assistance and usually require assistance in identifying the appropriate agency to assist them, in understanding procedural limitations such as time limits, in completing forms and providing supporting documentation.

Chapter 5: Understanding and navigating the system



NTLAC agrees with recommendation 5.1 that a single contact point for legal assistance and referral is the preferred model. In the NT, the NTLAC has adopted this model to an extent and is excited at the prospect of the concept being expanded as recommended by the Commission.

The NTLAC Legal Aid Helpline and call centre was developed under the National Partnership Agreement and as part of the NTLAC 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 who has access to a legal and information referral 'wiki' database 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. The Helpline is promoted through a range of media including print, online and social media such as the NTLAC Facebook page.

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.

The following telephone information and referral services have been provided by NTLAC in the last 5 years:

	08/09	09/10	10/11	11/12	12/13
Telephone Information Clients	3,951	2,841	2,538	3,722	5,361

Information request 5.2

We note that there are a range of training tools in existence and some being developed to assist staff of non-legal services to identify when their clients have legal problems.

NTLAC has fed into the development of the Department of Human Services module through the Attorney-General's Department and we are interested to see the module once developed.



It would be premature to respond to the request for feedback on which agencies' staff should receive this training and whether funding should be provided to cover training costs until this module has been developed.

Information request 5.3

A single contact point for information and referral would enable information and referral data to be collated and stored in a single location and shared electronically across other services through a medium such as a private wiki which has restricted access for agreed agencies and organisations. This would reduce the need for each agency to separately collate and store the same data.

NTLAC has progressed to some extent to developing this through the development of a legal information 'wiki' database which is being developed on an ongoing basis.

Chapter 16: Court and tribunal fees

NTLAC agrees with draft recommendation 16.1 that court and tribunal fee waivers and deductions should be available to address accessibility issues for financially disadvantaged litigants. Exemptions should apply to parties resolving a dispute and filing consent orders.

Information request 16.2

NTLAC supports the automatic exemption from paying fees in the circumstances outlined.

Chapter 17: Courts

Information request 17.1

Legal Services in the NT are very concerned about the need for future planning to meet the growth in demand on courts in accordance with the NT demographic growth and profile. Current infrastructure in remote communities for courts varies and many facilities are completely inadequate for the purpose of taking instructions, interviewing clients and protecting victims.

In addition, clients who reside in remote locations where court does not sit face significant barriers to accessing the court due to the high cost of transport over long distances, and the lack of public transport.

NTLAC assists clients in remote courts where NAAJA or CAALAS have a conflict of interest, and for ethical reasons cannot represent the person. An MOU between agencies has been developed and is applied. However, this means that NTLAC regularly travels to remote courts utilising considerable time and expense for one or two matters which may take a very short time. This is a very inefficient use of resources, however no viable alternative to this has been identified to date.

Technology can address needs to an extent through video-conferencing. Persons charged with relatively minor criminal matters wishing to enter a plea could do so from a location away from court thereby relieving the cost burden of them attending in person or the cost to the state in executing any warrant.

For civil and family law matters such technology could be used for mentions and procedural matters, however there will be limitations to the utility of such technology for hearings and more complex matters due to the language and literacy barriers experienced by the majority of remote clients.

NTLAC is exploring available technology to identify a model which can be used by our Family Dispute Resolution Conferencing Program. We have identified the need for a product that can allow dispute resolution to be conducted effectively from a private desktop or laptop so that parties in different locations can participate in legally assisted mediation and resolve disputes. These technologies are emerging at a rapid pace and small legal services are not equipped or resourced to pursue this to the required level. To date we have not identified an approach going forward.

Chapter 21: Reforming the legal assistance landscape

Information request 21.1

Demarcation of funds as outlined in draft recommendation 21.1 would ensure that appropriate resources are directed towards civil matters, however this would be to the detriment of already stretched criminal and family law services and would lead to a reduction in access to justice in these areas. NTLAC recommends a separate fund for civil law matters be allocated in addition to existing funding so that other service areas are not compromised. NTLAC used the Collaboration Funding from the Australian Government over two years to establish a Minor Assistance Civil Service ('the Service').

The Service provides minor assistance to vulnerable people to identify their civil legal issues, enable them to progress resolution of these issues and help them access other services and organisations that can help. Minor assistance is legal help from a lawyer to a person to help them take steps to solve their own legal problem. Minor assistance is not a grant of legal aid; is limited to 3 hours per case and does not extend to legal representation.

To be eligible a person must have two or more vulnerabilities such as low income, mental illness, youth or elderly, domestic violence issues, disability, indigenous, Non- English Speaking Background /Culturally and Linguistically Diverse, literacy issues, remote location etc.

Minor assistance will be provided in the following priority civil law areas:

- Consumer issues, including consumer credit and debt, consumer complaints, insurance.
- Employment matters, including unfair dismissal or unlawful termination, employee entitlements, contracts for employment, dispute resolution.
- Discrimination, including disability, age, pregnancy, sex or race.
- Other civil matters, only if it is reasonable or appropriate in the circumstances and there is no other service provider that can help.

(Examples of civil law matters the Service will not assist with include wills and estates, welfare rights or immigration advice, visa applications or immigration reviews/appeals).

NTLAC believes this service is extremely valuable in preventing problems from escalating, this is supported by the findings of the LAW Survey and the Indigenous Legal Needs Pro-

ject Research for the NT. Unfortunately funding for this service was cut in the 2014/15 budget. NTLAC is currently considering if it can continue to provide the Service as planned for the next financial year without this funding.

Information request 21.2

NTLAC has raised concerns in its submission (attachments 2 and 3) about the sustainability of the disparity between legal aid rates and commercial rates for the provision of legal services. We suspect this is a more pressing issue in smaller jurisdictions without a large pool of private practitioners to 'share the pain'. There is a cost of altering the relationship, which we are not able to quantify. The cost of doing nothing is that it places the ongoing viability of the mixed mode model of service delivery at risk in those jurisdictions experiencing this issue.

Other Chapter 21 Responses

The NT Community Legal Education ('CLE') Network is a key mechanism for ensuring that duplication of resources across agencies is avoided. As the only legal service in the NT which covers the entire region, NTLAC takes the lead in convening the broad based network to ensure all agencies are informed of the CLE work each other does, identifies opportunities for collaboration and partnerships as well as gaps in preventative legal service delivery. NTLAC promotes the flow of information throughout the network about activities and issues and facilitates professional development and networking opportunities such as the recent CLE professional development workshop.

The CLE Network involves a wide range of staff representing NTLAC, CLC's, ATSILs, Government agencies such as ACCC, ASIC the courts and parliament and community based service providers who deliver community legal education and associated activities.

The Network has the following main functions.

- Participants meet approximately 8 times a year, to share information and resources on CLE activities of their agencies and thus ensure no duplication, as well as identifying gaps in legal literacy needs to address.
- The network is a forum for sharing information and resources throughout the year on events, materials and opportunities through an email list with over 50 members.
- The network identifies opportunities for partnerships and collaboration to address legal needs and facilitates joint projects where appropriate.
- The network serves as a focus for capacity building of practitioners in approaches and strategies for effective planning, delivery and evaluation of CLE. This role is critical to ensuring the sector as a whole delivers quality CLE.

An update is provided at each network meeting on one topic of relevance to network members. A recent two day professional development workshop held in Darwin involved over 30 participant CLE practitioners from around the NT who gained valuable tools to improve their work. This and other network activities has led to a range of other professional development exchanges, for example a program of professional development will be provided in Alice Springs in June 2014.

It is noted that the above represents an NT regionally relevant initiative that mirrors other successful arrangements referred to in the Commission's report such as the NSW cooper-

ative legal service delivery arrangements (p.172) or agreements in NSW between the LAC and ATSILs to share resources in terms of delivery of information and education. (p.616)

NTLAC developed a Community Legal Education Strategy to guide the agency's preventative work for the coming 3 years, to define who this is targeted to, the aims of CLE, together with the content and methods by which we will deliver it. The strategy provides clear direction on priorities and focus of our resources for the next 3 years. The strategy (attached summary) is a working document with broad guidelines to be applied as relevant over time and in the diverse settings in which NTLAC operates.

Importantly the process of developing the strategy included mapping the scope of work of different agencies in terms of geographical reach, content, target audiences and methods of delivery to ensure that there was no duplication of NTLAC's work. This ensures that our CLE activities are targeted to those who are the most vulnerable and unlikely to receive information and education through other channels.

Consultations tapped into the strong NT wide cross-sectoral networks of NTLAC to ensure wide coverage of both the legal assistance sector, other service providers, and community networks including multicultural, refugee, youth, indigenous, women, and other groups.

Ongoing processes to ensure the strategy is implemented include:

- Attendance at a range of network meetings in the youth, mental health, housing, multicultural services, indigenous and legal sectors.
- Coordinating activities of all staff across the NTLAC to ensure their involvement is consistent with the strategy and relevant to their area of work.
- A consistent approach to evaluating all CLE activities by developing an evaluation framework to review CLE program, projects, activities and materials. This will enable us to better "understand the reach and effectiveness of community legal education strategies" as noted in the Commission's report (p.145).



NTLAC uses its national networks with other LACs to ensure we tap into existing resources and approaches that are developed elsewhere but have relevance to NT settings eg in areas of Commonwealth legislation and for specialised target groups.

We work with National Legal Aid's CLE Working Group (CLEWG) to identify areas in which our efforts can be pooled on areas of national jurisdiction or issues of importance to all. Recent examples include development of *What's the Law?* legal information and education resources for newly arrived migrants and refugees settling in the community, which is able to be used in each state and territory by Legal Aid Commissions as well as other services.

NTLAC's CLE strategy focuses on ensuring we maximize the reach of our existing publications, staff, activities and approaches rather than developing new programs. In many cases an established resource is available to meet a need and can be scaled out and up and delivered on multiple channels eg online, face to face, for individuals and communities. For example 'Cop This' is a booklet and audiovisual film educating young people on their legal rights when dealing with police and is used in schools via curriculum materials, informal

community settings by ATSILs and NTLAC; available in PDF on the NTLAC website and for viewing on the NTLAC Youtube channel, given to clients by criminal lawyers in advice clinics and prison visits, distributed to youth network agencies, and used to train legal educators in delivery of information.

We ensure that resources including self-help resources are shared around the sector and encourage all agencies to use each others materials where relevant and avoid duplication. At NTLAC we have one person working in our CLE area of work 4 days each week.

Chapter 22: Assistance for Aboriginal and Torres Strait Islander People

Information request 22.5

NTLAC supports the development of culturally appropriate Indigenous-specific dispute resolution in high needs areas in Australia. In relation to Family Dispute Resolution, NTLAC notes that 34% of approved grants in our Family Dispute Resolution program in 2012/13 were to Indigenous Australians. This does not meet the need of Indigenous Australians in this area and we acknowledge that the program could be made more culturally appropriate. We also note the report of the Family Law Council of Australia¹ which recognised that there are a number of reasons why Indigenous Australians do not access the Family Law System, including resistance to engagement and fear of the family law system.² The NTLAC Family Dispute Resolution Program is part of the family law system and so these underlying barriers need to be addressed as any initiatives in relation to FDR are considered.

Chapter 24: Data and evidence

NTLAC supports recommendations 24.1 and 24.2 relating to the resource burden of data collection. NTLAC confirms that the costs and resources required to meet additional requests for new information and provide information are considerable.

Information request 24.1

The Commission supports the notion of a data clearinghouse provided the resource concerns raised relating to recommendations 24.1 and 24.2 are factored in if additional resources are required to participate in the clearing house.

NTLAC supports draft recommendation 24.3 however also supports other research being collected regularly in relation to vulnerable clients and legal needs, such as the Indigenous Legal Needs Project. This research is able to complement findings of research such as the LAW Survey as it is able to use data collection methodologies particular to the demographic.

¹ Indigenous and culturally and linguistically diverse clients in the family law system (February 2012)
<http://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

² P 10