



Women's Legal Service Tasmania

Access to Justice Arrangements
Australian Productivity Commission

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Introduction

Women's Legal Service Tasmania (WLST) is a member of both the National Association of Community Legal Centres (NACLC) and Women's Legal Services Australia (WLSA). We have had the benefit of reading and providing input to their submissions to this Inquiry.

We support their submissions and as such will make only a brief submission to select points within the Draft Report. We would be pleased to provide evidence at any hearings held on the issues discussed within the Draft Report.

WLST is a not-for-profit organisation providing free and confidential legal advice to women in all areas of Tasmania. As well as telephone advice, WLST can also provide ongoing legal assistance with casework and representation resources permitting.

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

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

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

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

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

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

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

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

Response to Draft Report Overview

Information request 5.1

The commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependant on income support.

- Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks.
- What role should non-legal agencies that have regular contact with disadvantaged clients play?
- Do these organisations need to be funded separately to undertake legal health checks?

People frequently do not recognise they have a legal problem until it is too late. Legal health checks are a good way of identifying potential legal issues that a person may face. However, merely identifying a problem is not enough to actually resolve the legal problem. For example, if through the health check someone discovers that they should have a will but then do not actually get one, the relatives will still need to deal with an intestate estate. For a legal health check to actually be effective, the problem needs to be identified including options to rectify the legal problem or prevent it from occurring in the first place.

With respect to the groups of people identified in the information request, the best organisation to administer legal health checks would be Centrelink, however services need to be available to actually provide assistance in addressing the legal health problems that have been identified. There is no point in funding a service to complete legal health checks if there are no services available to address any legal problems. Money is better spent on services that actually can identify and assist someone in resolving their legal problem.

Our service has developed a legal health check booklet based on the laws that apply in Tasmania which covers topics such as relationships, housing, wills and estate, money and dealings with the police. It is very popular and is used to present legal education sessions in the community. Copies of this resource have also been provided to non-legal support services including neighbourhood centres.

Identifying the legal problem, resolving it in a timely manner and referring the to client to suitable non-legal support if necessary is at the core of what we at the Women's Legal Service Tasmania (WLST) do. We approach legal problems from a holistic point of view, resolve the legal problem and refer clients to non-legal support to ensure they do not face the same difficulties again. For example, we assist clients who after a relationship breakdown only have debts to divide. We provide legal advice as to how this should be divided and we encourage our clients to seek financial counselling to limit the likelihood they enter into further debt or to seek assistance in consolidating their debts.

Information Request 7.5

- In what areas of law could non-lawyers with specific training, or limited licences be used to best effect?
- What role could paralegals play in delivering unbundled services?
- What would be the impacts (both costs and benefits) of non-lawyers with specific training or limited licenses providing services in areas such as family law, consumer credit issues and employment law?
- Is there anything unique to Australia that would preclude the adoption of innovations that are occurring in similar areas of law overseas?
- If so, how could those barriers be overcome?

Unbundled legal services

In our practice, we already offer unbundled services. Unbundled services can take the shape of preparing affidavits or other court documents, preparing evidence in chief or possible cross examination questions or pleas in mitigation and providing assistance for opening and closing statements.

It is far more likely for a matter to be resolved early if the paperwork is comprehensive, concise and admissible. It will result in better outcomes if the evidence that the court relies on and the opposing party responds to is clear. We employ 4 full-time solicitors to provide advice to women across Tasmania so providing unbundled services is an effective use of our time to assist many clients.

From our experience, law firms in private practice also prepare affidavits only or only complete work on specific issues depending on the instructions from the client or Legal Aid grants. We do not believe that there is anything that would necessarily prevent unbundled services taking place in family law or other areas of law as long as the client is provided with proper comprehensive legal advice.

Non-lawyers with specific training

Non-lawyers with specific training could provide information and assistance with respect to welfare rights and consumer credit issues. When a person experiences a legal problem in these areas, the options to resolving it are fairly simple and do not necessarily require a long-term legal strategy.

Employment law is more complicated and from our experience the helpline at Fair Work refers to community legal centres and the private profession for people to source advice on the merits of their case, likely outcomes and representation.

From a family law perspective it would be incredibly unwise to use non-lawyers with specific training to provide legal advice to clients. Family law disputes are complex, long term and impact the lives of children and other vulnerable people.

The family law system already uses trained non-lawyer family dispute resolution practitioners (FDRP) to assist parties in coming to an agreement. Where parties are on an equal footing, this process can be effective, affordable and result in the best outcome for

the parties and their families. However, in our experience, where there is a power imbalance, mediation can have dire results for parties and their families.

Frequently the screening process (intake appointment) used to assess parties suitability to participate in Family Dispute Resolution (FDR) does not sufficiently recognise the impact family violence has on a person's ability to negotiate on an equal basis. The FDRP may believe that they can balance the power imbalance by facilitating a shuttle mediation. Alternatively, some parties, even though there has been family violence, really want to mediate in a safe setting to avoid court proceedings.

It is crucial that these parties receive legal advice prior to participating in FDR. Merely receiving information on what the law says is insufficient for a party to make an informed decision as to what is the best outcome or range of outcomes. Where there are elements of risk or family violence, a long-term strategy is necessary.

In these cases it is not appropriate for someone with specific training to provide such legal advice. We have been informed of instances where clients were told during their intake session that the law in Australia is that parents have equal time with the children. Clearly this is incorrect. If such clients did not receive advice from us or other legal practitioners, how would they know that such statements by non-lawyers working in this sector are wrong?

The Family Law Act 1975 was amended in 2011 by the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 to address some of these issues by broadening the definition of family violence and putting greater emphasis on children's safety because parties were entering into unsafe arrangements in FDR. For more information on how family violence affects parties we suggest that you could review some of the material published at that time.

Non-lawyers are already being used in the family law system and their role should not be broadened to provide legal advice through a specific training process. The issues in family law disputes are complex and long-term especially where there is family violence. The suggestion that non-lawyers could be used in family law proceedings to provide legal advice is unsafe.

Information Request 19.2

The Commission seeks feedback on the strength of the case for a Legal Expenses Contribution Scheme and views on any relevant design features, including what legal expenses should be covered and whether it should be limited to particular matters.

Women's Legal Service Tasmania largely supports a Legal Expenses Contribution Scheme in principle, however there are caveats on this support.

People should not be forced into signing up to a Contribution Scheme, neither should they be faced with the option of signing to a Scheme or not having any legal representation. While a scheme may assist middle-income earners who may have the capacity to pay a lawyer but who do not have access to immediately available funds, there are many middle

and low-income earners and welfare recipients who have no capacity to pay a lawyer now, or in the future.

If a scheme were to be introduced careful consideration would need to be taken over setting the rates charged by lawyers. It would be unfair for the legal profession to be forced to use legal aid rates as the basis for the scheme. Legal aid rates are notoriously low and there would be no incentive for lawyers to accept clients in a scheme if this were the case.

It would also be unfair for the scheme to set the rates that lawyers could charge. Lawyers are independent and governed by their own professional rules, bodies and ethics. If they charge extravagant rates they may not have clients, but they should be allowed to charge their usual rate taking into account the skills, workload and expertise each individual case requires, whether it is a part of a contribution scheme or not.

If a scheme were to be introduced the government and not lawyers should carry the risk that the loan may not be paid back, as it does with the HELP scheme. Lawyers already have to write off many accounts as they are not paid, and many lawyers also take matters on pro bono. Any scheme introduced should not be onerous or financially disadvantageous to lawyers who use it to assist their clients.

As previously stated, such a scheme should only be an option if people have the means to repay the loan in a timely manner and without undue financial hardship. The cost of legal assistance should not burden people into the unforeseeable future.

As such, a contribution scheme should not be seen as an alternative to Legal Aid or Community Legal Centres. Legal Aid and Community Legal Centres play an important role in the legal profession for those who cannot afford to pay a lawyer. It is always a better outcome for all involved if all parties have legal representation, or at an absolute minimum, legal advice.

There are always going to be people who cannot afford to pay a lawyer, no matter how much rates are reduced or how many schemes are introduced to assist with repayments.

Women are particularly vulnerable with regard to financial matters. Women earn less than men, even when employed in the same roles. The Australian Council of Trade Unions found that women are now more likely to have a tertiary qualification than men, however women graduates will earn \$2,000 less than male graduates, and \$7,500 less by the fifth year of graduation. Women in full-time work still earn 18% less than men, or \$1 million less over a lifetime. Women also retire with less than half the amount of savings in their superannuation accounts than men.

Women are more likely to stay at home, or work part-time to raise children. Re-entering the workforce after having time off can be difficult, and many women require additional training to find employment. Women are also overwhelming more likely to be victims of family violence, and therefore many suffer from trauma relating to this that can affect work performance. Because of these factors, women are often heavily reliant on Centrelink payments as their sole or primary income.

In our experience, many clients we see are financially overstretched, and the majority, especially those with young children, would be incapable of repaying legal fees if they were subject to a contribution scheme. Their financial future is often bleak as they are balancing employment, family responsibilities and low incomes, and the additional encumbrance of a potentially sizeable debt for legal fees would cause extreme financial distress and anxiety. Services such as Women's Legal Services, other Community Legal Centres and Legal Aid are vital to these women.

Information Request 21.1

The Commission seeks views on whether the above demarcation of funds would be sufficient to ensure that appropriate resources are directed towards non-criminal, non-family law matters.

The demarcation of funds is necessary to ensure that civil matters do receive sufficient allocation for funding given the importance of those matters to members of the community.

We support the recommendation that funding for civil law matters be determined and managed separately from funding for criminal law matters.

In doing so however there is need to ensure that funding for criminal law matters are not simply redistributed and that there is instead an overall increase of funding to meet any unmet needs.

Civil matters, just like criminal law matters, need to be dealt with in a timely and efficient manner and it is crucial that funding is adequate and available to allow this to occur.

Legal issues that go unaddressed rarely resolve themselves and the problems become more complicated, creating a greater need for, at times costly, assistance. Matters that go unaddressed also have a higher likelihood of resulting in lengthy and costly Court proceedings.

The impact on the individuals involved in such matters is also significant. The anxiety and stress alone can reduce an individual's ability to properly function within their home and working lives. This in turn can have a significant impact on their ability to function effectively within the community.

Draft Recommendation 21.3

The Commonwealth and state and territory governments should use the National Partnership Agreement on Legal Assistance Services to align eligibility criteria for civil law cases for legal aid commissions and community legal centres. The financial eligibility test for grants of legal aid should be linked to some established measure of disadvantage.

Comment as to Draft Recommendation 21.3:

The eligibility or merit test used to determine whether or not an individual should be allowed to access legal assistance services, particularly from a community legal centre,

should, in our view, be governed by a number of high level criteria or principals which allow for some flexibility.

Women's Legal Service Tasmania (WLST) prefers to work to eligibility based on a number of guiding principles and factors, which allow for some flexibility.

One example being that many years ago WLST had a policy that stated that a woman who was eligible for a grant from the Legal Aid Commission of Tasmania (LACT) would not be eligible for assistance from our service.

As funding from the LACT became more restricted there were significant numbers of women seeking assistance from our service who, whilst eligible for grants of aid, were unable to obtain them due to a lack of funds at the time of application.

Our service then had to modify that policy to be able to assist some of those women until such time as they were able to obtain a grant of aid. Had we not applied a degree of flexibility it would have been to the detriment of those women, most of who were seeking assistance for matters concerning their children.

At the heart of all community legal centres is the desire to assist those who would otherwise face significant barriers to the access of justice and legal services. Most particularly in the area of family law and family violence, no two matters are the same and as such a degree of flexibility within the eligibility criteria needs to be allowed.

Community legal centres make good use of the funding that they receive. Whilst most centres do apply a degree of flexibility to their eligibility criteria, that flexibility is informed by many factors including, but not limited to, the impact of the legal problem on the applicant's life, the circumstances of the applicant, the prospects of success and the appropriateness of spending limited public legal aid funds.

To prevent or hinder people who are both adept and expert in allocating otherwise limited resources to those seeking assistance, in a manner that will see those resources utilised to their maximum capacity, could indeed prove a barrier to accessing justice in itself.

Information Request 21.2

The Commission seeks views on the appropriate relationships between legal aid rates and market rates for the provision of legal services. What might be the cost of altering the relationship between the two rates?

Market rates for the provision of legal services will always be higher than that which is provided under a legal aid rate.

It has been our observation that in recent years fewer private practice firms have been willing to act on Legal Aid Commission funded matters due to the considerably reduced fee that they receive for their time.

This in itself has created the problem that fewer private practice firms are willing to take on legally aided matters which in turn creates a greater demand on the Legal Aid Commission and community legal centres for assistance for those individuals.

Information Request 21.3

The Commission seeks feedback on how Community Legal Centre (CLC) funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of CLCs are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating CLC funding.

Community legal centres are an essential, cost effective service provider of a number of important legal services. This is something recognised by Legal Aid Commissions, private practice and the community.

Community legal centres garner a huge amount of community support through their various programs and generally run with a high level of volunteer and pro bono assistance. This is not something that would be replicated within the private profession or even within the Legal Aid Commissions across the country.

Community legal centres have an assessed cost benefit ratio of 1:18 which in itself was a conservative calculation. This is not something that could be replicated in the Legal Aid Commission models.

Historically community legal centre funding is lower, pay rates are lower and the resources are less than is seen in Legal Aid Commissions for example. Reallocating funds from community legal centres to Legal Aid Commissions or aid assistance programs would not see the same return as is currently gained by those funds being applied to community legal centres.

Community legal centres complement not compete with both the Legal Aid Commissions and private practice. Community legal centres assist the many people who are ineligible for assistance from the Legal Aid Commissions and who are unable to afford private practitioners. Remove this safety net and the impact on the community will be massive.

In our view the application of a tendering process to the legal profession in the same vein as that which applies throughout the social welfare sector would see a dramatic reduction in services provided along with a dramatic decrease in expertise and specialist assistance. In our view the redistribution of community legal centre funding through the tendering process would see a dramatic decrease in services provided and would in itself prove a barrier to people from low socioeconomic areas accessing justice and legal services.

To a certain extent most community legal centres have an area of specialisation such as family law, tenancy, welfare rights, disability law etc. It is only when centres depart from their funded areas of specialisation, usually to pursue other funding streams, that this becomes problematic.

These areas of specialty have been developed in response to distinct shortfalls within the provision of legal services. People with issues such as tenancy, welfare rights, child support, debt laden property division or small pool property division generally cannot afford a private practitioner and they are rarely eligible for a grant from the Legal Aid Commission.

These are not services that can simply be tendered out or funds reallocated. The expertise of the people working in these fields are not easily replaced.

On a cost benefit analysis, community legal centres provide a far higher return than any other legal service provider. To ignore this would be a mistake. If anything, this should be recognised and community legal centres should be provided with higher levels of funding.

Information request 21.4

The Commission seeks feedback on the extent of, and the costs associated with, meeting the civil legal needs of disadvantaged Australians, and the benefits that would result.

Our service would welcome any move from the Productivity Commission to quantify the levels of funds necessary to properly meet the civil legal needs of disadvantaged Australians and the benefits that would result in.

It is incredibly difficult to measure the true cost associated with meeting such needs.

Anecdotally our service can attest to the fact that, based purely on the number of clients that we need to turn away through lack of resources, but who would otherwise qualify for assistance from us, that an increase in funding is required.

The benefit to disadvantaged Australians in being able to readily access legal services would be huge. The impact of serious legal matters such as family breakdown, workplace issues or matters of welfare rights can be debilitating and the inability to access assistance with these can, without a doubt, see many members of the community become far less active with and functioning within society.

It should be again mentioned that community legal centres all have a heavy emphasis on early intervention and follow triage methodologies in assisting clients. In many instances, community legal centres are able to act so that a small matter does not become a large and costly legal problem. In many instances community legal centres prevent a lot of applications for grants from Legal Aid Commissions through early negotiation and action on behalf of disadvantaged Australians.

Information request 23.1

Would there be merit in exploring further options for expanding the volunteering pool for Community Legal Centres? For example, are there individuals with specialised knowledge that could provide advice in their past area of expertise such as retired public servants or

retired migration agents, that CLCs draw on in the relevant area? Are there currently any barriers to prevent this?

There is no denying that volunteers can be a valuable resource, especially specialised volunteers. Because of the limited wages Community Legal Centres can offer, it is very difficult to attract and retain experienced practitioners to the sector. Community Legal Centres deal with a wide range of legal and non-legal issues and it is important that they have access to experience professionals to expand skill and knowledge bases. It would however be counter-productive to replace paid employees with volunteers.

In our experience, the main barrier to having volunteers is actually finding volunteers. The legal profession is already overworked and underpaid in Tasmania. It is rare to be approached by experienced professionals to volunteer at our Service.

Volunteers can often create more work for employees rather than provide assistance. We regularly have university students and recent graduates undertake work experience with our Service. While we value these volunteers and the work they do, and believe it is important for us to provide this experience for them, it is often the case that the volunteers benefit more from the placement than we do.

It takes time to explain the background of a matter, the work required, forms needed, formatting and writing styles, procedure for saving and printing, and then time to read, edit and amend any work they have done and provide feedback. This process uses valuable resources in which we could be providing assistance to other clients.

While we appreciate that skilled volunteers may need less supervision, they still do require supervision. As they are volunteers they do not hold practicing certificates and work or advice they provide is under an employees' name, and Women's Legal Service are ultimately responsible for work they undertake.

Some Community Legal Centres provide out of hours advice sessions given by legal practitioners from the private profession. This is valuable in that clients can see lawyers with specialist expertise, however the service cannot be run without resources from the Centre, including staff members working overtime to assist, additional running costs of having a Centre open longer hours.

Volunteers do not usually provide stable, regular support for clients or employees. They may volunteer on a one-off or limited basis, or for a short time period. Time is required to manage volunteer rosters, volunteer selection and volunteer training. As WLST's core funding does not even provide for us to employ administrative staff, it is not in any way effective or efficient to expect solicitors to manage volunteers.

Although WLST does not have skilled volunteers, we have wide networks and links with experienced professionals who we often contact for opinions or pro bono assistance. These contacts are invaluable to our Service, and provide us with the opportunity to consult with others and gain from their expertise, without the additional duties and obligations that volunteers bring.

WLST employees are specialists in both family law and family violence. These are our primary areas of practice, and we have the necessary skills and experience to assist women who are in these situations. As previously stated, we consult with skilled professionals where necessary.

Many of the women that we speak to daily have been physically, sexually, mentally and emotionally abused. It is not unusual for a WLST employee to be the first person that a client shares their experience with. Volunteers with specialist legal or professional knowledge, although highly skilled, may not have the experience and training to speak to a woman who has just been raped, or found out that their children have been sexually abused by their father, or have just escaped years of physical abuse and are now homeless, unemployed and alone. There is no substitute for expertise in these circumstances.

WLST solicitors have specialised skills and practical experience to assist the most vulnerable people in the community. Volunteer lawyers may not have this experience due to the sterile environment of private practice and government departments.

There is no doubt that there is a high demand for free legal assistance for lower income earners, especially women, but the best way to provide the required assistance is increased funding to Community Legal Centres for paid employees, rather than using volunteers to fill the void.

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