



Response to Productivity Commission Draft Report

Springvale Monash Legal Service Inc.

Response to the Productivity Commission Access to Justice Report 2014 ('the Report')

Springvale Monash Legal Service ("SMLS") acknowledges the Productivity Commission Draft Report into Access to Justice Arrangements (the 'Report') and the opportunity to respond to the recommendations and requests for further information as detail in the *Draft Report Overview*.

SMLS notes we have previously provided a detailed submission to the Commission inquiry. SMLS submits the following responses directly target specific sections of the Report. However, SMLS strongly reconfirms the positions as presented in our original submission.

By way of brief background SMLS again provides the following information regarding our service:

SMLS is a community legal centre that has operated within a diverse community for 40 years. For all of our operation, we have been co-located with the Springvale Community Aid and Advice Bureau within the Local Government Area (LGA) of the City of Greater Dandenong. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong and its surrounds. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. As a community legal centre, we offer legal assistance as well as an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. SMLS has also provided valuable contributions to reforms including but not limited to the following areas:

Family violence laws and practices

Civil procedure reforms

Discrimination towards young community members in their use of public space and their interactions with the criminal justice system

This response provides:

Section 1

A brief summary of the distinction SMLS makes regarding community legal services.

Section 2

Specific responses to recommendations contained within the *Draft Report Overview*.

Section 3 IN CONFIDENCE

4 recent case studies that exemplify the characteristics of a CLC.

Section 1: Brief Summary

By way of explanation the discreet responses to specific parts of the report are underpinned by a distinction between the community legal centres (CLCs) and the Legal Aid Commissions (LACs). It is accepted that the ATSILS are specialised services and for the purpose of this response it is unnecessary to draw any distinction between them and community legal centres.

It is noted in the Report when discussing the community legal sector frequent reference is made to the LACs. Whilst at first glance it would be easy to draw commonalities it is important that notable distinctions are highlighted in order to inform the reader of our response to the recommendations as detailed below.

SMLS supports the proposition that CLCs have the unique capacity to explore exceptional legal issues that a particular group may suffer/face; and for that group can be crippling. This proposition is different from being responsive to a particular legal issue affecting a less define group in society. As smaller distinct services, CLCs are connected to the specific community it serves and more flexible to explore targeted needs.

SMLS is located in highly disadvantage pocket in urban Australia. However more importantly than just a low SEIFA rating is the high percentage of non-English speaking migrants that live within the surrounding local government areas. Depending on the basis in which a specific group of migrants arrived in Australia will impact on their capacity to engage within our legal system. It is SMLS's submission that without its own autonomy, control, and eligibility assessment this organisation would not have been so positively adaptive in our service provision to the disadvantaged demographic in our service region.

SMLS employs a strong community development philosophy in order to inform our case work provision, educate our community and evaluate our programs. By way of example; we engage in outreach services and education programs to inform our community of the Australian legal system. We craft our education programs in response to community issues. For instance, education programs designed around ‘Youth & the Police’ have been in response to knowledge gained from outreach services to *Youthlinks* – a youth service with predominantly young people who arrived as unaccompanied-minor asylum seekers.

Two LAC satellite offices are situated in our service region. These compliment the legal aided assistance services by way of their more general service provision in the areas of criminal law, family law, mental health review tribunal work and social security matters. The cooperation includes frequent cross referrals between the services particularly where there is conflict of interest. Another example is where SMLS provides an outreach service to a psychiatric unit at the local hospital. SMLS can ensure clients are linked back to the LAC which provides assistance and representation with applications under the Mental Health Act.

SMLS is also currently involved in a multi-service (CLCs & regional LACs in the south eastern metro-region) needs analysis project. This project is a pro-active initiative to inform services of the legal needs – met & unmet – of our region and guide cooperative service delivery.

Section 2: Targeted Responses

Direct responses to Recommendation made in Chapter 21

Chapter 21

Separate determination and management of civil law legal assistance funding

Draft Recommendations 21.1: Commonwealth and state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.

Whilst it’s noted that this recommendation is related to the method of distribution at LACs in the event of funding being channeled through a central body (e.g. State Governments) then SMLS supports this proposition. Further, it is emphasised that an overwhelming amount of work undertaken by CLCs is characterised as civil law.

These matters will vary with respect to the community that the service assists. Given the size of SMLS, aided by law students enrolled in the professional practice unit of Monash law and, the size of our community we assist with a large variety of civil matters. What is apparent is that there are a diversity of civil matters that when they manifest as a legal issue they impact on an individual's capacity for stability and security. **(Refer to Case Study 1 & 2)**

Draft Recommendations 21.2: The Commonwealth and state and territory governments should ensure that the eligibility test for legal assistance services reflect priority groups as set out in the National Partnership Agreement on Legal Assistance Services and take into account: the circumstances of the applicant; the impact of the legal problem on the applicants life (including their liberty, personal safety, health and ability to meet the basic needs of life); the prospect of success and the appropriateness of spending limited public legal aid funds.

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.

SMLS accepts in principal that in order to manage the availability of [limited] services, eligibility criteria is necessary and, that criteria should embody the attributes that cause disadvantage in the individuals who present.

SMLS accepts that there is the capacity and necessity for service provision to be undertaken by application of strict criteria for a range of legal matters. For instance, those excluded from LACs duty lawyer services would be an obvious example. An English-speaking, employed individual, on a first drink-driving related offence would arguably be able to adequately self-represent (or instruct a private practitioner).

However, that being said, SMLS submits that there are legal issues that arise for individuals (particularly in Civil matters) that can destabilise a client who already lives a relatively marginalize existence **(Refer to Case Study 1)**. This includes those who have little support by way of extended family and limited or no capacity for their financial situation to change.

In these instances it is counter-intuitive to apply a strict set of criteria when the circumstances surrounding the issue may be more relevantly assessed to determine the need and provision of service. This capacity to assess clients is most effectively achieved by services who are in a position to employ a more personalised approach to intake. SMLS submits that that the autonomous control of a community legal centre

and intimacy of intake practices, is the most efficient and effective way of achieving appropriate assessment in these instances.

As reflected in the submissions regarding the distinctions between LACs and CLCs a uniformed eligibility criteria across legal aided assistance programs is not supported. It is SMLS's submission that providing services for legal 'matters' (e.g. criminal law and family law) as opposed to provision of services responding to the needs of a specific marginalised group are different concepts. The difference in the principles of these approaches cannot accommodate the same eligibility assessment.

SMLS client intake sheet requires amongst a range of information the following data that would be used in our initial assessment for ongoing services:

- Risk of homelessness
- Proficiency in English
- Dependants
- Housing Type
- Income & level
- Domestic Violence indicator
- Disabilities

Supervisors assess whether the matter falls within our 'legal matters' criteria. Clients are then referred to 'case meeting' – held each Tuesday. Lawyers discuss each matter, whether we have the capacity in the respective departments of our organisation, public interest and other exceptional characteristics to 'open' a case. If there is no consensus then the Principal solicitor will ultimately decide. **(Refer to Case Studies 1-4. All cases were subject to due process)**

This process allows added scrutiny that cannot be afforded in a larger organisation. It may be clients are not necessarily assisted with their whole matter but a component that may define the outcome.

It is accepted that services should complement each other and that access to services is managed to maximize the capacity and relevancy of service providers in a specific region.

Re-distribution of CLC funds

Recommendation 21.4: The Commonwealth Government should:

- discontinue the current historically based Community Legal Services Program (CLSP) funding model
- employ the same model used to allocate legal aid commissions funds to allocate funding for the CLSP to state and territory jurisdictions
- divert the Commonwealth's CLSP funding contribution into the National Partnership Agreement on Legal Assistance Services and require state and territory governments to transparently allocate CLSP funds to identified areas of 'highest need' within their jurisdictions. Measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level.

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.

SMLS acknowledges that changing demographics and community structures may impact on the relevancy of community based organisations and their viability. SMLS also acknowledges that technological developments have meant major changes in organisational management; including the finance and administration components.

A proposal for competitive tendering is a corporate strategy being applied to a not-for-profit business model. It does not reflect nor foster the capacity of the CLC sector to work strategically to meet unmet need with reference to internal considerations and external considerations (for instance, working with a variety of other service providers, including LACs in partnerships).

CLCs are capable of responding with flexibility to changes in their community's needs as well as the nature of funding models. However, it cannot be emphasised enough that CLCs are distinct from other legal aid assistance programs and should be managed accordingly. SMLS works very closely (often in partnership) with other community organisations to develop and implement programs. The viability of program development includes assessment of our financial capacity. SMLS may redirect

ongoing funding provisions if legal needs change or apply for grant monies for projects from time to time.

We are currently trialling an outreach program at a youth drop-in service (these young people are disengaged and often their situation is compounded by drug & alcohol use). We are using current resources being; a senior manager attends each week and students from our Monash law program attend as part of their study program. Arguably, this outreach service would benefit from a dedicated legal practitioner however at this stage funding capacity would not support that arrangement. It may be in time we seek funds through various channels to provide a stable and secure outreach service. SMLS would submit that this is the uniqueness of CLCs and our relationship to our community that should be encouraged and maintained.

SMLS acknowledges an evidence based approach to funding allocation and service delivery. However it is noted given the level of reporting that CLCs are already subject to through the CLSP program including strategic planning, work plans and six-monthly reporting ensures a high level of accountability. It is also noted that CLCs undertake research and analysis (for example, the *Legal Needs Assessment Framework*) and in our circumstance the regionals need analysis project that was previously referred to. This is being undertaken by a collective of CLCs and LAC to establish met & unmet need in the south-eastern metropolitan corridor in Victoria. The outcome of this project will inform service delivery.

The example of tensions that exists between the perceived overfunding in criminal law matters to the detriment of civil law matters supports the proposition that smaller autonomous organisations are better equipped to assess an individual's legal needs and being able to ensure that funding is proportionately allocated for this purpose. If funding was administered by competitive tendering through the State Government the risk is unmet legal needs in specific regions, on specific legal matters and for specific groups may be not be met. CLCs are capable of providing the evidence based analysis to support their ongoing service provision to this end and without eroding the basis of the CLSP program.