

WOMEN'S LEGAL SERVICES (SA) INC

Submission to the Productivity Commission inquiry into Access to Justice

31 May 2014

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ABOUT WOMEN'S LEGAL SERVICE (SA) INC

"Women's Legal Service gives a voice to women who are unable to express themselves...."

External Stakeholder feedback, 2014

The Women's Legal Service (SA) Inc. is a stateside service that provides a holistic legal service response to vulnerable groups of women living in South Australia. We are based in metropolitan Adelaide but provide outreaches within both the metropolitan area and within rural, regional and remote areas of South Australia. During the 2012-2013 financial year we provided outreaches to the following locations:

Amata

10 September 2012
30 May 2013
4 June 2013
5 February 2013

Ceduna

12-14 February 2013

Clare

13 November 2012

Coober Pedy

16-20 July 2012
12-13 December 2012
16 January 2013
6 March 2013
21-22 May 2013
16-19 June 2013

Ernabella

9 September 2012
12 September 2012
1 May 2013
4 June 2012
6 February 2013

Fregon

23 October 2012
4 February 2013
3 Jun 2013

Indulkana

12-13 September 2012
25 October 2012
2 May 2013
7 February 2013
6 June 2013

Kangaroo Island

22-23 April 2013



Mimili

11 September 2012

13 September 2012

24 October 2012

5 June 2013

Mount Gambier

25-28 March 13

Murray Bridge

23 January 2013

Noarlunga

Every 2nd Friday

Pipalyatjara

29 May 2013

Port Augusta

11 February 2013

25-27 February 2013

8 April 2013

20 May 2013

Roxby Downs

24 May 2013

Yalata

16 February 2013

We also provided legal advice to over 2275 women during the 2012-2013 financial year. Advice and assistance was provided to women from over 71 different countries. There were a total of 219 open cases during the financial year which were handled by four solicitors. In addition to our case work we delivered 100 community legal education sessions to a diverse range of women and organisations.

The available client demographics for the 2012-2013 financial year include:

- 5 % of clients had low English proficiency;
- 10 % of clients identified as being Aboriginal or/and Torres Strait Islander;
- 14 % of clients identified as having a disability;
- 17 % of clients lived in rural, regional and remote areas of South Australia and
- 63 % had an income lower than \$26,000.00.

External stakeholder consultations conducted in May 2014 showed that Women's Legal Service was viewed as being a compassionate, respectful and professional service that had specialist skill sets around the law and domestic & family violence. A number of service providers stated that

Women's Legal Service is the *preferred* provider for Aboriginal women. It was also widely viewed as the legal service which was willing to take on the cases that were deemed too challenging or complex by other legal aid providers or the private legal profession. In the vast majority of these cases the organisation has been able to achieve a just outcome for our clients.

Women's Legal Service (SA) Inc. is often the last place of resort for many women seeking assistance with their civil legal matters. For many of the clients' the assistance provided is not only invaluable for the purposes of ensuring their access to justice but also in some instances in being a catalyst for positive change within their lives. Box 1 below contains feedback provided by a client who had been provided with ongoing assistance by the organisation. The sentiments echoed in the feedback are shared by many of the clients who are provided ongoing assistance.

Box 1.

You have helped me reach a property settlement with and get a divorce from my abusive ex-husband. In itself that is a huge thing to do for someone, especially because it took more than a year to get it all done, due to the hurdles my ex and his lawyer kept putting up.

I appreciate the constant and exhaustive paperwork that went into it. And you will never know how desperate I was when I came to see you for the first time, having not one cent to my name and in no way able to pay you. I thank you yes, but I am also grateful to whoever took the decision to let you take me on as a client.

There are two things that no one expects really, things that you did above and beyond the call of duty. Things that make you amazing and unique...

I have no knowledge of the law besides the commercialised stuff we are fed through TV shows. But you managed to simplify the jargon, explain the procedure in such a way that I actually understood what was going on and what needed to be done. You also patiently answered every question that I had.

My diagnosed severe depression was at its peak when I met you. And there was nothing you could do to fix it but the compassion, kindness and warmth (read these 3 words again) you showed me made this awful procedural part of my life easier.

I can say today that my therapist, my psychiatrist, my GP, a friend, my ex mother in law and YOU saved me, in those devastating months of my life.

Here is thanking you for everything and wish you good luck for this work that you are meant to be doing

However, the stakeholder feedback also highlighted that resources, both human capacity and financial resource are limiting the ability of the service to be accessible and truly state-wide in its

service provision. The state-wide nature of the service will be severely impacted upon by recent changes in funding. Many of the services currently provided by the organisation may no longer be available to vulnerable groups of women seeking legal help.

Alternative dispute resolution

Draft recommendation 8.5

Consistent with the Learning and Teaching Academic Standards for a Bachelor of Laws, Australian law schools should ensure that core curricula for law qualifications encompass the full range of legal dispute resolution options, including non-adversarial options. In particular, education and training is required to ensure that legal professionals can better match the most appropriate resolution option to the dispute type and characteristics.

Consideration should also be given to developing courses that enable tertiary students of non-legal disciplines and experienced non-legal professionals to improve their understanding of legal disputes and how and where they might be resolved.

Women's Legal Service (SA) Inc. strongly supports awareness raising and training with law schools and the legal profession around alternative dispute resolution options, including non-adversarial options. We also agree that education and training should be afforded to legal professionals to ensure that these avenues are explored before attention and resources are utilised on pursuing the litigation. Women's Legal Service (SA) Inc. has in recent times noticed an increase in frivolous matters being brought before the court, especially in the family court jurisdiction. In many of these instances, the parties would have been better served by the use of alternative dispute resolution processes.

We cautiously welcome training for non-legal disciplines and experienced non-legal professionals. However such training must encapsulate clear guidelines for discerning when alternative dispute resolution processes may be appropriate. Women's Legal Service (SA) Inc. firmly believes that alternative dispute resolution processes are not appropriate in matters where there are allegations of domestic or family violence, sexual abuse and/or child abuse. In such situations similar exemptions such as those which exist within the family law domain should be applied.

Caution also needs to be observed when solicitor assisted alternative dispute resolution processes are being used to address potential power imbalances between two parties or in situations of domestic and family violence. In our view it is sometimes the case that there is considerable pressure placed on achieving quantitative outcomes/agreements to the detriment of ensuring that any such agreements or outcomes have long term viability and protect the vulnerable party's (and

children) safety. There needs to be a balance struck between achieving outcomes/targets and ensuring that the outcomes achieved are reflective of the safest and most sustainable outcomes, bearing in mind resource constraints.

Vexatious Litigants

Information Request 12.6

The Commission seeks feedback on the best way to respond to vexatious litigants and litigation. Could reform that focuses on earlier intervention with more graduated responses to manage vexatious behaviour reduce negative impacts? Should the bar be lowered in terms of the type of behaviour that attracts a response from the justice system? Do jurisdictions need to make available a publicly searchable register of orders against vexatious litigants?

Women's Legal Service (SA) Inc. submits that the bar should be lowered in terms of the type of behaviour that attracts a response from the justice system as the current threshold is too high. Earlier identification and better case management of potentially vexatious litigants should be a priority. Vexatious litigants utilise an enormous amount of court time and resources in hearing matters that have no or little legal merit. It also goes without saying that for the other party who is responding to such a claim that is without merit, it can be both financially and emotionally taxing. Court actions can provide an alternative avenue for perpetrators of violence to have ongoing relationship with their victims. The two cases studies selected demonstrate how particularly for victims of family violence, dealing with vexatious litigants is an extension of the domestic or family violence abuse.

Box 2

Mary separated from her de-facto partner of 12 years after suffering for years as a result of domestic violence. Philip her de-facto partner also had a gambling problem which led them to lose their house. The relationship ended when Philip was charged with assault. After separation, Mary and Philip divided what little property was left and this mostly consisted of household items. Mary took on the remaining debt and obtained part-time work. Prior to Mary obtaining assistance from Women's Legal Service (SA) Inc. Philip had been charged with two additional aggravated assault charges and 2 breaches of an intervention order. Mary sought assistance as just prior to the 2 year limitation period for de-facto property running out, Philip filed an application in the Federal Circuit Court seeking a share of her superannuation which at the time was approximately \$4,500.00. He filed an application as a self-represented litigant upon obtaining advice from a private legal practitioner that he had a valid cause of action. Philip wanted half of Mary's superannuation. Mary sought assistance from our service as she found the situation stressful and she was unable to afford private legal representation but at the same time did not qualify for legal aid. . Mary agreed to sell her mother's jewellery, which she received as part of a small inheritance so that she could pay Philip out \$1500.00 to resolve the matter expediently. The superannuation company could not split the amount in her superannuation account because sum in her account was so low. By the end of the matter Mary felt that she had lost much more than the monetary sum that was given to Philip and much more than her mother's jewellery.

Box 3

Katherine and Mark had been in and out of the family law courts for 4 years as a result of a property settlement. The total equity from the property settlement was less than \$50,000.00. However the parties had been to court on two previous occasions. On the last occasion Mark filed an application in which he stated that he had not received an item that was to be transported by Katherine to his home. It transpired during the proceedings that the item had been actually delivered to his house. Mark then changed his application so that he could claim that the item was delivered but did not have any door handles. As such the matter was listed several times in court in relation to the issue of 'door handles.' We were able to assist the client in having the matter dismissed and an order made that the applicant would be restrained from filing an application without first having leave from the court. It is important to point out that these proceedings occurred against a backdrop of family violence and an intervention order was also put in place.

Both of these cases demonstrate that frivolous and unmeritorious matters can and do consume an inordinate amount of limited court resources. Women's Legal Service (SA) Inc. assisted both female parties due to the background of family violence and the fact that defending such cases unrepresented would have a severely damaging effect on the women, not just in terms of the time that they required to defend the allegations but in terms of their psychological wellbeing.

Reforming the legal assistance landscape

Draft Recommendation 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.

Women's Legal Service (SA) Inc supports draft recommendation 21.1 which provides that 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. However it is important to stress that funding for civil law matters should not come at the expense of funding for criminal law matters. Funding for civil law matters should be increased to meet the needs of the community. Women's Legal Service (SA) Inc. refers the Commission to the submissions made by Women's Legal Services Australia (WLSA) at page 16 and 17 and supports the submission of WLSA.

Draft Recommendation 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.

The guidelines provided by the Commission is in line with the eligibility criteria utilised by Women's Legal Service (SA) Inc. The current eligibility guidelines for the organisation is as follows:

Box 4

A woman seeking assistance must fulfil the following criteria:

- a. whether there is legal merit,
- b. whether the woman is not eligible for a grant of legal aid,
- c. whether the woman cannot be referred to a generalist community legal centre,
- d. whether the woman is not able to pay for a private solicitor
 - (i) We will look at her income, expenses, assets and debts when assessing her capacity to use a private solicitor.
- e. Whether there is a vexatious litigant and the woman is likely to face poverty or hardship if she receives assistance elsewhere.
- f. Whether the case will have an effect on women's access to justice generally.
- g. Whether WLSSA is able to meet the woman's legal needs in terms of resources and expertise.

We refer the Commission to pages 17 and 22 of Women's Legal Services Australia's submission and also pages 25 to 29 of the National Association of Community Legal Centres submission. We reiterate that whilst we support the general guidelines provided by the Commission in the draft recommendations we would be opposed to the same eligibility criteria being imposed by all legal aid providers. The eligibility criteria applied by LACs is too tight and rigid and often disadvantages victims of domestic/family violence. The merit criteria is often used to deny many victims of domestic/family violence the opportunity to formalise arrangements regarding children. Furthermore the inability of legal aid to be granted in situations where women require legal help with both children and property matters positions vulnerable women in an even more precarious state. It is not uncommon to have situations where women have been granted legal aid for their children matters but because property is not funded by LAC they have had to seek assistance for property matters from community legal centres or the private legal profession. As such women in these situations are sometimes running two cases simultaneously within the family law jurisdiction whereas ideally the matters should be dealt with at the same time and by the same solicitor as there is often a high degree of overlap between children and property matters.

Furthermore the manner in which LAC eligibility guidelines are made do not allow them to take into account a true picture of a party's finances or merit. The case study below demonstrates how sometimes due to the rigid application of the guidelines, unintended consequences may arise.

Box 5

Melinka was a young Indigenous woman who had left a violent relationship with Bob. She fled the relationship with her 6 week old baby girl. During a visit organised at her mother's house, Bob ran away with the baby. Melinka was distressed as Bob had drug issues and she was concerned for the safety of the baby. She received information from a family member and went to her local LAC office to apply for legal aid. Melinka was a recipient of the Centrelink single parent pension and was receiving the baby bonus as a fortnightly period payment at that time. The Lac denied her application for aid on the basis that her income was too high. It was this point that Melinka then approached Women's Legal Service (SA) Inc. who organised legal representation. By this stage the baby had been out of her care for 2 weeks as she had waited for the LAC to respond to her application. Women's Legal Service (SA) Inc. would later learn that legal aid had been denied as she was in receipt of the baby bonus.

In the situation above Women's Legal Service (SA) Inc. was able to raise the issue with the LAC to ensure that women in similar situations were not disadvantaged.

The next case study, below, demonstrate how the merit test applied by LAC can disadvantage women who are victims of domestic or family violence by failing to take into account the complex and intersecting nature of domestic or family violence.

Box 6

Michelle separated from her partner of 4 years as a result of domestic violence. There is one 3 year old child , Cleo, from the relationship. After separation Garry had been sending abusive messages to Michelle. Some of these messages included threats to permanently remove Cleo from her care and threat to physically harm Michelle. Michelle went to the local police station to ask help. The police told her that they were unable to issue an intervention order because she could not prove that the messages were actually sent by Garry himself even though the phone was registered in his name. Michelle was also not able to rely on Facebook messages sent to a mutual friend. In these messages Garry told the friend that he wanted to cause physical harm to Cleo and Michelle. Michelle was told that as the messages were not sent to her she could not use them to obtain an intervention order. Soon after the visit to the local police station Garry commenced mediation to discuss arrangement for Cleo. Michelle attended the shuttle mediation session. Halfway through the mediation, the session was terminated by the facilitator who told Michelle she needed to get urgent legal advice. The mediator also told Michelle, that she could not disclose what the other party had said during mediation because of confidentiality. Michelle was scared because she sees that the mediator was frightened by the interaction with Garry as her hands were shaking whilst she is speaking to Michelle. The mediator also insisted on walking Michelle to her car after Michelle confirmed that she was unable to organise for someone to come to the mediation centre to pick her up. Michelle applied for legal aid as she did not want Garry to run off with Cleo or cause harm to Cleo. Michelle was also worried that Garry would try to take Cleo from the local childcare centre. Legal aid is refused on the grounds of merit as it was deemed that there was no urgency to the application as Cleo was in the care of Michelle and therefore not at 'risk'.

In this case study despite a detailed application form being lodged with a supporting letter outlining the background to the matter and the grounds on which legal aid should be granted, Michelle was not able to overcome the merit component of the LAC eligibility criteria. Whereas Women's Legal Service (SA) Inc. has the ability to look at a matter in its entirety while ensuring that there is legal merit. Many community legal centres and in particular specialist women's legal services work to fill in the gaps left by the application LAC legal aid guidelines. Any eligibility guidelines need to be responsive and flexible enough to respond to individual cases whilst providing an overarching framework.

Draft 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.*

Draft Recommendations 21.5

The Commonwealth and the state and territory governments should renegotiate the National Partnership Agreement on Legal Assistance Services (following the current one expiring) and seek agreement on national core priorities, priority clients and aligned eligibility tests across legal assistance providers.

Whilst Women's Legal Service (SA) Inc. is supportive of the broad framework provided by the National Partnership Agreement on Legal Assistance Services, Women's Legal Service (SA) Inc. agrees with the submissions made by WLSA with regards to the inclusion of women in domestic or family violence situations being included as a priority group. We also agree with Women's Legal Services Australia that gender desegregated data should be collected with respect to the provision of legal assistance funds. Women's Legal Service (SA) Inc. also supports the position submitted by NACLC in its submission to the Commission at pages 29 to 39 of the submission.