



THE LAW SOCIETY
OF NEW SOUTH WALES

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17 June 2015

The Hon Senator George Brandis QC
Attorney-General
PO Box 6100
Senate, Parliament House
Canberra ACT 2600

By email: senator.brandis@aph.gov.au

Dear Attorney-General,

Commonwealth legal assistance funding: community legal centres

I am writing to you on behalf of the Indigenous Issues Committee of the Law Society of NSW ("Committee"). The Committee represents the Law Society on Indigenous issues as they relate to the legal needs of people in NSW and includes experts drawn from the ranks of the Law Society's membership.

The Committee thanks Mr Paul O'Sullivan for his letter dated 3 June 2015, provided in response to the Committee's letter of 18 February 2015. The Committee notes Mr O'Sullivan's advice that the Government is negotiating a five-year national partnership agreement with states and territories to deliver funding for legal aid commissions and community legal centres ("CLCs") from 1 July 2015.

The Committee acknowledges the advice of Mr O'Sullivan that the "Government will continue to be the primary funder of Indigenous legal services and is committed to improving law and justice outcomes for Indigenous Australians." However, the Committee understands that from 2017-2018, CLCs nationally face a Commonwealth funding cut of 30%.¹ Further, the Committee understands that restriction on the use of Commonwealth funding for policy, advocacy and law reform work is likely to continue under the new national partnership agreement.²

The Committee writes to you to express its concerns about the impact such funding cuts might have, particularly on Indigenous people. The Committee continues to be concerned also about the restrictions on the use of Commonwealth funding for policy, advocacy and law reform work.

The Committee submits that CLCs provide a distinct contribution to meeting gaps in legal assistance, and that the Government should ensure that the funding provided to

¹ National Association of Community Legal Centres, "Leading community legal centre representatives from across Australia say funding cuts risk lives," 1 June 2015 media release, available online: http://www.naclc.org.au/cb_pages/files/Media%20Releases/NACLCLC%20MR%20AC%20Communique%201%20June%2015.pdf (accessed 17 June 2015).

² Ibid.

CLCs should ensure that CLCs are able to provide services to clients most in need. The Committee further submits that Government should ensure that it does not lose the efficiencies that can arise from considering policy and advocacy as an extension of casework, and as a way to efficiently identify and address systemic issues for improvement. The Committee's views are set out in more detail below.

1. Role of CLCs

The Committee submits that CLCs play a distinct role in the provision of legal services. Each CLC is independent, and a firm unto itself. As such, conflict of interest issues are not as likely to be an impediment to the provision of services. The Committee's view is that CLCs are an essential alternative free legal service that is part of the suite of legal assistance services directed at disadvantaged people, including in the more remote areas of NSW. The services provided by CLCs are particularly important in service delivery in the areas of family law and care and protection. The distinct features of CLCs are summarised below:

- community legal centres operate with a strong connection to their local or client community and prioritise a community development approach. This increases access to legal help among disadvantaged members of the target community and also means community legal centres can identify emerging issues and formulate targeted responses to meet community need;
- community legal centres are relatively small and flexible organisations, meaning they can move swiftly to adjust resource allocation and service delivery approach in response to changing need;
- community legal centres' size and flexibility also means they develop innovative and creative responses to addressing legal need;
- community legal centres' client work combined with their community development approach means they are especially well placed to identify unfair laws and policies and work to change them;
- community legal centres' status as independent organisations mean that they can work to change unfair laws, policies and practices even when this involves advocating for change to a government policy;
- community legal centres attract substantial volunteer and pro bono contribution;
- as independent, not for profit organisations, community legal centres can also attract philanthropic funding; and
- community legal centre efforts to address gaps in legal need have meant centres have developed specialisations in areas of law that other legal assistance providers do not practise in as well as expertise in working with clients with complex needs.³

The Committee's view is that it would be inefficient to lose this expertise, both from the casework and advocacy perspectives.

2. Funding cuts

The Committee notes that the funding cut is likely to impact on the ability of CLCs to provide legal assistance and to meet unmet legal needs. As noted in the Committee's letter of February 2015, there is particular need in Aboriginal communities for legal assistance in care and protection matters. The Committee reiterates that the Productivity Commission found that there is a growing "justice gap" for the disadvantaged, and that:

³ Federation of Community Legal Centres (Victoria) Inc, "Response to the Productivity Commission Draft Report: Access to Justice Arrangements," May 2014, submission available online: http://www.pc.gov.au/data/assets/pdf_file/0008/137285/subdr226-access-justice.pdf (accessed 16 June 2015).



the nature of matters that fall in the gap is particularly concerning. Assistance with family law matters, including domestic violence and care and protection of children, is not comprehensive in its coverage.⁴

The Committee submits that these are issues that disproportionately affect Indigenous people. As noted in the Committee's submission of 18 February 2015, family violence is an issue that particularly affects Indigenous people.⁵ The Committee understands that nationally, Indigenous women are hospitalised for non-fatal family violence assaults at 31.4 times the rate of other women. In addition, family violence is the key contributor to the over-representation of Indigenous children in the child protection system, and to homelessness among Aboriginal and Torres Strait Islander women.⁶

Further, the rates of removal of Indigenous children have reached the point where they exceed previously recorded numbers at any time in the 20th century. This includes the removal of Indigenous children from their families under previous government policies now generally referred to as the Stolen Generations.⁷ As at 2012-2013, in NSW, Aboriginal and Torres Strait Islander children are 11.8 times more likely to be removed than non-Indigenous children (at a rate of 68.3 per 1,000 children for Indigenous children, compared to a rate of 7.2 per 1,000 children for non-Indigenous children).⁸ The Committee reiterates also that while the issue of child care and protection is a State issue, the Royal Commission into Aboriginal Deaths in Custody found that 43 of the 99 Aboriginal deaths in custody involved a person who had been separated by welfare policies from their families when they were young.⁹

To provide an example of the potential impact of the funding cuts on frontline services, the Committee notes that in NSW, CLCs have received funding from the Department of Family and Community Services to provide complementary services in respect of care and protection (separate from those provided under the national partnership agreement). These services are aimed at the early intervention stage, consistent with the National Framework for Protecting Australia's Children 2009–2020¹⁰ which states:

⁴ Productivity Commission, *Report on Access to Justice Arrangements: Overview*, No. 72, 5 September 2014, at 26, available online: http://www.pc.gov.au/data/assets/pdf_file/0016/145402/access-justice-overview.pdf (accessed 9 February 2015) (referred to as the "Access to Justice report overview"), at 30. Further, the Committee understands that as a result of cuts announced in the 2013 MYEFO, Legal Aid NSW is no longer able to fund divorce, contravention or enforcement in family law matters. In NSW, legal aid is also only available for Hague Convention Matters in exceptional circumstances.

⁵ Mick Gooda, "Social Justice – better outcomes for family violence prevention," speech delivered at the *Closing the Gap on Family Violence National Conference*, 4 May 2010, available online: <https://www.humanrights.gov.au/news/speeches/family-violence-prevention-legal-services> (accessed 27 January 2015).

⁶ Australian Legal Assistance Forum, "ALAF statement of support – Continuation of direct funding for the National Family Violence Prevention Legal Services (FVPLS) program", media release, 21 August 2014, available online: http://www.naclc.org.au/cb_pages/files/Media%20Releases/ALAFMR-FVPLS-08-14.pdf (accessed 27 January 2015).

⁷ See Australian Human Rights Commission, "Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families," August 1995, available online (https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf) (accessed 16 February 2015).

⁸ Australian Institute of Family Studies, "Child protection and Aboriginal and Torres Strait Islander children," fact sheet available online: <https://www3.aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-c> (accessed 16 February 2015).

⁹ The Hon Geoff Eames QC, "The Royal Commission into Aboriginal Deaths in Custody – 20 years on", *Exchanging Ideas II – conference sponsored by the Ngara Yura Committee, Judicial Commission of NSW* (September 2011) 14.

¹⁰ Commonwealth Department of Social Services, *National Framework for Protecting Australia's Children 2009–2020*, June 2009, available online: <https://www.dss.gov.au/our-responsibilities/families->



The basic assumption of a public health approach to protecting children is that by providing the right services at the right time vulnerable families can be supported, child abuse and neglect can be prevented, and the effects of trauma and harm can be reduced.

Providing the right supports at the right time will also ultimately reduce demand on State and Territory child protection systems, allowing them to improve their capacity to perform specific statutory functions and better support children at-risk.¹¹

However, if primary funding for CLCs is insecure, CLCs may no longer be in the position to deliver these complementary services (in addition to the services provided under the national partnership agreement). The Committee submits that this is very likely to increase the gap in legal assistance available for the most marginalised in the community, including Indigenous people, with adverse outcomes. Further, cutting the primary funding is likely to result in losing the efficiencies that currently exist by having the primary funding stream enhanced by complementary funding.

3. Advocacy as an extension of case work

The Committee notes the view of the Productivity Commission, which recommended that:

Frontline service delivery should be prioritised, along with advocacy work where it efficiently and effectively solves systemic issues which would otherwise necessitate more extensive individualised service provision.¹²

The National Congress also noted in its *National Justice Policy* that law reform and policy work is proven to act as a preventative measure and can contribute to reducing the rate of incarceration.

The Committee echoes these views and submits that policy and advocacy should be considered an extension of case work, and is an efficient means by which unmet legal needs can be resolved. In the Committee's view, restricting the ability of legal assistance providers to undertake advocacy work informed by valuable case work experience fails to capture the full value of case work, and that the ability of CLCs to make valuable contributions to law reform and advocacy should be recognised and supported by funding.

4. Committee's submissions

The Committee respectfully submits that CLCs should receive adequate funding in order to be able to provide services to clients most in need, and to contribute to improving outcomes for the community through law reform and advocacy work.

The Committee's view is that consideration should be given to ensuring that Indigenous-specific CLCs, as well as CLCs that deliver Indigenous-staffed programs, receive adequate funding. The Committee notes that Wirringa Baiya Aboriginal Women's Legal Service is one NSW example of an Indigenous-specific CLC (though the Committee understands it does not currently receive Commonwealth funding). The Committee's view is based on the fact that Indigenous peoples are still among

[and-children/publications-articles/protecting-children-is-everyones-business?HTML](#) (accessed 16 June 2015).

¹¹ Ibid.


¹² Access to Justice report overview, note 4 at 31.



the worst affected groups experiencing unmet legal need,¹³ and that Indigenous people are more likely to access services that are provided by Indigenous people.¹⁴

Thank you for considering these submissions. The Committee seeks your urgent advice on these issues. Any questions may be directed to Vicky Kuek, policy lawyer for the Committee, on 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,



John F Eades
President

¹³ The Committee notes the finding in the Legal Australia-Wide Survey of legal needs in Australia that "In Australia, regressions by Coumarelos et al. (2006) indicated that Indigenous respondents had similar overall rates of legal problems to non-Indigenous respondents but had higher rates of credit/debt, employment and family legal events." Christine Coumarelos, Deborah Macourt, Julie People, Hugh M McDonald, Zhigang Wei, Reiny Iriana & Stephanie Ramsey, *Legal Australia-Wide Survey: Legal Needs in Australia*, August 2012, Law and Justice Foundation, at 24 available online: [http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/\\$file/LAW_Survey_NSW.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/$file/LAW_Survey_NSW.pdf) (accessed 17 June 2015).

¹⁴ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011, *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, at 210-211, available online: http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/sentencing/report.htm (accessed 17 June 2015).