



Legal and Social
Justice Services

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26 October 2023

NLAP

Email: submissions@nlapreview.com.au

Re: The Independent Review of the NLAP

About TASC National Limited

TASC Legal and Social Justice Services is a not-for-profit organisation that serves over 3000 people per year across more than 400,000 square kilometers of Ipswich and South West Queensland. TASC is led by Chief Executive Officer, Frances Klaassen OAM with support from TASC Principal Solicitor David Manwaring and Acting Principal Solicitor Elijah Edwards. Now in our 41st year, TASC has developed from a small community legal center to a committed provider of high quality legal advice, social justice and advocacy services. TASC is one of the largest regional community legal and advocacy services in Queensland, where the community and staff work together in partnership to continue to enable justice and change lives.

We are focused on social justice and support, and advocate for our clients, who are culturally and linguistically diverse, and come from the most vulnerable and marginalized sectors of our community. They include First Nation people, refugees and those with disabilities, mental illness and financial disadvantage. We do our best to support the community we work with to promote, protect and preserve their legal and human rights.

1. How does workforce supply and remuneration impact on the provision of legal assistance services?

LAC Grants of Aid

A reoccurring issue with Commonwealth funding is that LAC grants of aid do not adequately reflect the complexities of matters. This is particularly apparent in family law matters such as parenting and property matters, where grants of aid are dependent on where a matter is at from a court stage, rather than reflecting the amount of work undertaken to reach the next stage in a matter. Furthermore, we also note that such issues with grants of aid are not just limited to family law but also extend to other areas such as criminal law, youth justice and domestic violence¹.

For example, Legal Aid Queensland will only give a grant of aid to a maximum of \$2,240.00 for a standard Initiating Application or Response to Initiating Application in a Family Law matter with this fee to cover drafting, phone calls with clients, negotiating with other parties and attendance in Court for interim hearings until interim orders are made². Presuming the average lawyer will charge \$400.00 an hour, then that would mean that said lawyer would only be paid for 5.6 hours of their time, whilst the vast majority of Family Law matters which are litigated take significantly more time than this. This is especially apparent when the Federal Circuit and Family Court of Australia Central Practice Direction indicates that at least two appearances will be required before interim orders will be made³, and in the experience of this organisation it is a common occurrence for more than two appearances to be required before interim orders are made. Therefore, the grant of aid given to practitioners for the amount of work completed is woefully insufficient and this submissions makes the following recommendations:-

¹Julius Dennis, *Lawyers for Legal Aid Queensland say declining pay is leading to an exodus and 'huge injustices in the legal system*, 2022

² Legal Aid Queensland, Clause Code FM2A, Initiate / respond to proceedings for interim and final orders until a substantive interim order is made. <https://www.legalaid.qld.gov.au/Listings/Clause-Codes/FM2A>

³ Federal Circuit and Family Court of Australia Central Practice Direction; 13



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1. That grants of aid be increased significantly;
2. That the structure of grants and funding agreements be altered to expressively allow access to funds for reports, assessment and subpoenas without a grant of aid for the legal work.

Whilst TASC does not receive LAC grants of aid for Family Law matters, it is this office's position that reforms for grants of aid would encourage more Solicitors to take on Legal Aid work rather than focusing their business on the more lucrative private legal work. In addition to this TASC recognises the benefit if partial grants of aid were made available to Community Legal for reports and subpoenas.

Current Employment Arrangements

A recent study has reported that the number one reason why lawyers leave employment is they are seeking a higher salary⁴, which of course is something Community Legal Centres cannot compete with, especially when LSCs or Private Practice (2 PAE+) offer more competitive salaries compared to wages offered to Solicitors under the *Social, Community, Home Care and Disability Services Industry Award* ("the Award"). For example, Brisbane Mid-tier firms offer on average \$105,000.00 per annum for a 2 year PAE Solicitor⁵, whilst at a Community Legal Centre a lawyer at the same level would only likely achieve a salary of approximately \$94,000.00⁶ with the gap only widening as a Solicitor gains more experience. Once a Solicitor achieves 5 year PAE at a mid-tier firm they will earn on average approximately \$144,000.00 whilst a Community Legal Centre maximum salary on offer will be approximately \$115,500.00 with this being for a Principal Solicitor⁷ and subject to available funding sources. Whilst it is theoretically possible for a Community Legal to employee Solicitors at a greater salary than that offered by the Award; such offerings are subject to funding, and the added complexities employing

⁴ Queensland Legal Salary Survey 2023, Queensland Young Lawyers; 7

⁵ Private Practice Salary & Market Report, Beacon Legal Special Legal Recruitment; p 14

⁶ *Social, Community, Home Care and Disability Services Industry Award, Social and community services employee level 5.1*

⁷ *Social, Community, Home Care and Disability Services Industry Award, Social and community services employee level 7.3*

Solicitors outside the Award, which is often outside of the resources of a Community Legal Centre.

The simplest solutions to increasing staff retention and recruitment in the Community Legal Centre is to increase funding levels in next NLAP funding agreements, and by maintaining higher levels of indexation for funding increases whilst not overtly increasing the providing of Legal Services. Additional solutions involve amendments to the Award to allow for higher wages to be given such as increasing level base rates and/or adding additional Solicitor Levels.

2. To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?

One of the key restrictions on the provision of legal services is how these services are recorded and reported to our funders. The key KPI for many Community Legal Centres is how many legal services, legal tasks, referrals, informations, representations and law reforms activities are undertaken by that Community Legal Centre. This by all means is an effective way to calculate the reach of a program, but the real question is whether it demonstrates the effectiveness of a program.

The literature with respect to measurement on the effectiveness of legal services, proposes effective means of evaluation are measuring the aims of the program against desired outcomes⁸ and the quality of the service being provided⁹. As it is the key metric for most services provided by Community Legal Centres is that of reach and not the measurement tools just mentioned. This submission does not seek to critique how Community Legal Centres are reporting their data, but rather identify that a reoccurring

⁸ Effectiveness of public legal assistance services: a discussion paper, Justice issues paper 16, Erol Digiusto, Law and Justice Foundation of NSW, Sydney , 2012.

⁹ Curran, Liz; Crockett, Andrew --- "Measuring Legal Services: A Practical Methodology for Measuring the Quality and Outcomes of Legal Assistance Services" [2013] UTasLawRw 4; (2013) 32(1) University of Tasmania Law Review 70

issue is that the metrics outlined in NLAP funding agreements is that of measuring numbers in most instances rather than outcomes.

Other issues, which have been identified is that of the restricted nature of funding agreements and failure of agreements to adequately cover costs of ongoing representations. TASC has identified that often clients will seek our services but due to the limitations imposed by funding agreements, they cannot be serviced due to geographical location, or that the service does not technically provide assistance to them despite need being identified. Whilst it is acknowledged that a cut off must exist at some point, TASC submits that future funding agreements should allow for more flexibility for these matters. Such flexibility is important when considering the shared objective also includes the objective of providing services *“in a high quality and culturally appropriate manner”* not just in a manner which is *“maximising service delivery”*.

With regards to ongoing representations, TASC has identified that funding often fails to sufficiently allow for the obtaining of reports or subpoenas. This limitation affects the overall effectiveness of the service and TASC proposes that future funding agreements allow for additional funding for reports and subpoenas, with such funding being quarantined for this purpose only. TASC also proposes that greater flexibility be given to Community Legal Centres to take on more ongoing representations. Increased flexibility may be obtained by giving Community Legal Centres multiple ways to reach funder targets. For example, for each ongoing representation achieved by a Community Legal Centre this would be given greater weight when considering whether a centre has reached its targets in comparison to other services such as advices or tasks.

3. How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?

It is uncontroversial that legal assistance activities at an early stage reduce or prevent future legal need. An excellent example of early intervention have positive impact on dispute is the wide spread use of mediation or alternative dispute resolution service, in

which parties avoid costly litigation in favour of settling their matters out of court. Literature reporting on mediation has reported success rates of 60-85% for Federal Court matters and for other jurisdictions up to 60%¹⁰. Similar success rates apply other areas of the law where legal assistance is required, such as domestic violence duty lawyer services¹¹, where clients are provided services which assist them in navigating the legal system.

TASC continues to provide ongoing legal education and information to clients and stakeholders on the principle that the providing of these services will be of significant benefit to the client and the efficiency of the legal system. There may be potential for a saturation point to be reached in the providing of these services, where there may be an over focus on the proviso of preventative services instead of services such as ongoing legal representation, however, we see no signs of this saturation point being reached. However, what TASC has identified is that there does continue to be a need for more frontline legal services for clients on an ongoing basis.

Clients are appreciative to receive early stage advice and support services and in many instances positive outcomes are achieved. However, it is regularly identified by our team that there are clients who need legal representation. These clients do often have too much money to access Legal Aid, but do not have capacity to effectively self-represent themselves in Court proceedings, even with legal assistance from Community Legal Centres such as TASC. As to how this issue may be addressed, we refer to points 1 and 2 of this submission.

¹⁰ Julie Ruffin, 2021, Mandatory mediation: Is it really a contradiction in terms?, QLS Proctor.

¹¹ Productivity Commission Enquiry Report, 5 September 2014, *Access to justice arrangements - Appendix K Measuring the benefits of legal assistance services*, 5 September 2014; 1059 – 1060.

4. What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

Costs of Regional and Remote Services

TASC submits that a review into how funding is calculated for regional and remote services is needed. Regional and remote funding is an issue of ongoing concern for community legal centres who provide remote and regional services because it costs more to provide legal services in rural and regional areas in comparison to metropolitan areas and capital cities such as Brisbane¹². Such concerns are not new and continue to frustrate the provision of legal services to the regional and remote areas. TASC submits that for future funding tenders that a regional loading be added to the projected funding target without it impacting service targets. Should such a regional loading be successful then there could also be future scope for it to be expanded to LAC funded matters so as to better incentivise regional and remote solicitors becoming Legal Aid Preferred Suppliers.

Reactive v Proactive Funding

Throughout Australia's history a continuing theme of governments is their reactive rather than proactive approach to issues. This was seen in the COVID pandemic where most Australian Governments were slow to take action on an evolving situation and failed to have a national strategy on how to address the issue and instead a reactive approach was taken¹³. COVID is not a unique example of how Governments respond to matters of importance and urgency. The Australian Government's 2007 *The Northern Territory 'Emergency Response' Intervention* (NT Intervention) is a prime example of Government taking a reactive rather than proactive response. The Government's response did not consider the long term or short term effects of the NT Intervention or the involvement of Aboriginal peoples in the design and intervention measures¹⁴.

¹² Giddings, Jeff; Hook, Barbara; Nielsen, Jennifer --- " Legal services in rural communities: Issues for clients and lawyers" [2001] AltLawJl 19; (2001) 26(2) Alternative Law Journal 57;

Rice, Simon --- "Access to a Lawyer in Rural Australia: Thoughts on the Evidence We Need" [2011] DeakinLawRw 3; (2011) 16(1) Deakin Law Review 13

¹³ Stobart A, Duckett S. Australia's Response to COVID-19. Health Econ Policy Law. 2022 Jan;17(1):95-106

¹⁴ Social Justice Report 2007 - Chapter 3: The Northern Territory 'Emergency Response' intervention.

Similar instances of reactive approaches by government have been identified by TASC during its' operation. Funding renewal for programs are often given with very short notice and are often based off reactive responses by government, such responses make it incredibly difficult to retain staff due to staff facing uncertainty as to whether they will continue to have employment. These employment uncertainties in turn affect the viability and efficiency of frontline services. In addition to this, TASC has identified instances where funding becomes available with very little notice and a short time frame to apply for said funding.

Moving forward decisions with regards to funding should, where possible, be made well before their expiration date and the service provider informed. Earlier decisions will allow for better future planning on how to continue to the service and allow for better staff retention.



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