

Submission to the Department of Attorney General and Justice regarding the Review of the Delivery of Legal Assistance Services to the NSW community



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Council of Social Service of NSW (NCOSS)
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1. ABOUT NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW. It was established in 1935 and is part of a national network of Councils of Social Service, which operate in each State and Territory and at the Commonwealth level.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms. It is the major coordinator for non-government social and community services in NSW.

Background to the not-for-profit sector

Not-for-profit social service organisations provide a broad range of front line, advocacy, coordination and policy services, ranging from treatment services to systemic advocacy. In many cases, they provide services which have not historically and would not be provided by public sector providers. The services arise from needs identified by:

- local communities;
- government agencies;
- larger charitable organisations and research bodies; and
- learning from existing projects and programs.

Most organisations (there are exceptions for some large faith based organisations) are governed by volunteer committees of management drawn from the community of interest and from individuals with relevant management skills. Community participation in planning and evaluation of services is a defining characteristic of community based services. The majority (60%) have a turnover of less than \$150,000.¹

The not-for-profit sector is a large, diverse and growing one. Taken as a whole, the sector includes social service organisations, sporting groups, professional associations, special interest and faith based organisations, among many others. The Productivity Commission estimated that there are more than 600,000 Australian not-for-profit organisations, with one in ten being considered as economically significant by the Australian Bureau of Statistics. The economic scale of the sector is considerable and comparable to many of Australia's key industries. The sector contributed \$43 billion to Australia's GDP in 2006–7 and employed eight per cent of the Australian workforce. The sector mobilise 4.6 million volunteers with a wage equivalent value of \$15 billion.²

2. INTRODUCTION

NCOSS welcomes the opportunity to comment on the provision of legal services in NSW.

The Law and Justice Foundation found that about 74 percent of people make their first inquiry about legal needs, not to a solicitor but to a member of the community they trust.³ This includes front-line workers such as health workers, teachers, drivers, support assistants, home

aids, youth workers, or one of the many other workers in the community sector delivering services. Legal needs are often identified by community workers when undertaking assessments of a client's needs, particularly for services with a client-centred philosophy. Social service workers could act as a gateway to an appropriate legal referral but they and their organisations need support to learn how to recognise a legal problem and make the most effective referral.

Communities also require viable organisations for community members to engage in the development and delivery of local services and actively participate in civil society. The environment in which community organisations operate is increasingly complex due to new standards of accountability and greater contracting of services from government to the not-for-profit sector. The risks to the community if an organisation fails can result in the loss of local control and life supporting services to its clients. Governments also bear the cost of resolving contractual issues and re-establishing a service if it ceases operation. This submission makes the link between a strong social service sector and meeting the legal needs of the most vulnerable.

This submission also considers the funding levels of the community legal centre sector. The review should consider the issue of funding, otherwise recommendations will be built on an inadequate funding base and replicate the mistakes of the past where underfunded services are expected to meet service gaps or emerging community needs. Inadequate funding levels lead to a series of viability issues beyond that of not meeting demand. These include poor premises, inadequate information technology and resources, lack of funding for training for staff and management committees and lack of administrative resources. Attempting to meet legal needs in rapidly growing metropolitan and coastal centres by shifting resources will dilute the services currently in stress. Such an approach meets a small segment of need in new areas at the expense of communities currently being serviced. Equity is not achieved by one community in need losing a service so that it can be transferred to another group of people in need in another geographic location.

This submission supports the need:

- for growth in specialist community legal services;
- to support coordination and input from the private sector; and
- for innovation in the delivery of legal services to small community organisations that support vulnerable members of the community.

The extremely short time-frame for this submission did not allow for adequate consultation with the social service sector, therefore this submission provides a general overview and focuses on the principles that should apply in the delivery of services to disadvantaged groups. NCOS is open to further consultations with the Attorney-General's office and will expand on issues raised in this submission during the review process as resources allow.

3. RESPONSE TO THE TERMS OF REFERENCE

3.1 Consider whether there is evidence of unmet legal needs in the community, particularly in rural and regional areas and for vulnerable or disadvantaged groups

Unmet legal needs for disadvantaged populations

The recent Australia Council of Social Service (ACOSS) survey of community services for 2009-2010 found legal services provided 36,200 services and turned away 5,302 requests for assistance. Of those turned away, 34 percent had a high need and 36 percent had a medium need for legal services. Community legal services had a higher unmet need than housing, domestic violence support services and residential aged care.⁴

This submission will not detail the evidence of unmet need, instead NCOSS refers the review committee to the Law and Justice Foundation reports on the NSW legal needs surveys for detailed data on legal needs of disadvantaged populations.⁵ The finding of the Law and Justice surveys that those with chronic illnesses and disability had more legal problems and the least likely to have them resolved is of particular concern to NCOSS. The report data supports NCOSS position that specialist services are required and more should be done to integrate referral networks within the community sector.

There is also a significant unmet legal need for prisoners and ex-prisoners – as the Law and Justice Foundation points out in its specific report.⁶ The legal needs go beyond the services available by the Legal Aid Commission prisoner legal service, the combination and range of legal issues such as family law, care and protection, access to children, debt and fines is one that requires a dedicated service.

Legal services for youth could also benefit from a State-wide community legal service as currently there is no properly funded state-wide children and young people's Community Legal Centre (CLC). Shopfront, the Children's solicitor at Marrickville Legal Centre and the National Children's and Youth Legal Centre all provide some services in this area. They would be more effective if supported by a CLC specific service.

NCOSS notes that the NSW Law Reform Commission is currently preparing its report on an inquiry into people with cognitive and mental health impairments in the criminal justice system. Law reform in this area could impact on the delivery of legal services to this population group.

Meeting the legal needs of the community sector

Organisations working with vulnerable and marginalised people and communities have an obligation to minimise the risk to clients. It is incumbent on organisations to maintain the highest standards of probity with respect to boards, management, staff and volunteers. To maintain standards of probity across the sector there must be continuous education, skills development and support, this includes ensuring legal literacy and advice.

The important role that Boards or Management Committees play in the sector differentiates this set of volunteers from others in an organisation. Board members are legally liable for the

organisation. They make the strategic decisions which lead the organisation. They are ultimately responsible for the finances of the organisation, how it handles difficult problems such as serious staff misconduct and organisational reputation. They require specific training to meet their needs for legal knowledge. The Australian Institute of Company Directors recent survey of not-for-profit Board Directors found that legal skills were the least likely skills that Directors bring to not-for-profit Boards.⁷

The Productivity Commission considered the regulatory framework for Not-For-Profits (NFP) to be too complex and lacking in coherence.⁸ This environment and the number of funders and the changing nature of the relationship between NFP organisations and their donors add to this complexity. Entering into social ventures, the increasing use by donors of investment frameworks to channel their funding and support, the use of debt finance and innovative financial mechanisms, as well as the increasing sophistication of donor investment decision-making frameworks, all provide an increased need for independent legal advice.

Large organisations may buy in legal advice or have in-house legal teams. The profile of large community organisations also lend itself to attracting pro bono legal services or legal professionals to their boards. Smaller organisations have administrative budgets that rarely meet the costs of service delivery, and if they operate services within a disadvantaged community, the opportunity for fundraising is extremely limited. The lack of timely and appropriate legal advice for small to medium community organisations can:

- disadvantage it in negotiating contracts;
- lead to missed opportunities in diversifying its income base;
- lead to unreasonable or misunderstood contractual obligations;
- reduce accountability and transparency to the community; and
- add additional costs or threaten viability if legal issues are not considered in its risk assesment and planning.

NCOSS has a Management Services Unit (MSU) that provides research, development and services to improve the sustainability of the community sector. In the time available, it was not possible to study the data collected on NCOSS inquiries to determine the exact percentage that required a legal referral. Based on the specific inquiries about the application of legislation, there are about 15 inquiries each month for assistance. Requests include assistance with interpretation of contracts, negotiating contracts, requirements of association and company legislation, employment law and insurance and conflict of interest issues. NCOSS is not equipped to provide this advice and has limited referral options, particularly if advice is needed urgently.

NCOSS provides information fact sheets on its website about the most commonly requested information, including obligations under company and association legislation. NCOSS works in partnership with the Public Interest Legal Clearing House (PILCH) to conduct workshops for the sector and to refer matters for pro bono legal assistance. In 2010, the most common inquiry for information was about obligations under incorporated association legislation, NCOSS in cooperation with PILCH conducted three workshops about the *NSW Associations Incorporations Act*, well short of demand. In the experience of NCOSS small to medium community organisations need access to legal advice in a timely way as well as free training

located in regional and Sydney metropolitan areas. Community workers and Boards of management need assistance to:

- identify legal issues and make appropriate referrals;
- access legal advice on a range of management and contract issues; and
- recruit legal advisers to volunteer management committees

Relying on pro bono legal advice has not provided an adequate service to the sector. It is possible access could be improved by establishing a community funded organisation that coordinated pro bono services. One that did not require a cost to enter into the scheme and flexibility in the type and timing of pro bono services firms could offer.

The gaps in the provision of community legal education and legal training for community services requires further investigation. For example, training for boards is often on a cost - recovery basis, creating a barrier to a significant portion of the community sector relying on volunteer boards.

A legal training framework should be developed in consultation with the community sector and social service sector training bodies to integrate legal issues into vocational training. Funding bodies should fund the training for workers, volunteers and Boards in the sector to implement a program that will assist them to improve legal literacy about pathways for legal resolution as part of the person-centred care now expected from services. Based on the highest needs described by the Law and Justice Foundation surveys, this should start with services that provide support to people with disability or chronic illnesses.⁹

In delivering legal services, community services find telephone advice services such as Law Access of limited value if not complemented by community legal education, community development projects and outreach programs for face-to-face service delivery. Video conferencing should be one form of service delivery that should be expanded, the latest national developments of broadband should assist in the development of comprehensive state-wide network of facilities for use by NGO human service providers and CLCs. Video conferencing could complement fact to face outreach work by CLCs and Legal Aid.

3.2 Consider whether current legal assistance services adequately meet community needs

In general terms the structure the Community Legal Centre network, the Legal Aid Commission, the Aboriginal Legal Service and pro bono services is sound. To fully support the community, resources are needed to broaden the reach of these services, meet gaps in service delivery and build capacity of the social service sector. In reviewing the needs of the community sector, NCOSS finds no evidence to abandon or radically change any of the current structures. There is evidence that the community legal sector should be supported to provide greater access for communities most in needs such as ex-prisoners, people with mental health issues, young people and the homeless with specialist state-wide legal services.

Special consideration should be given to the populations in regional and rural NSW. NCOSS submits that the review should expand and explore the following barriers experienced by people accessing services in rural areas:

- long distances to the nearest service for face-to-face assistance;
- services available on an irregular basis through outreach or not at all;
- services that cannot assist with representation;
- conflicts of interest within small communities;
- lack of access to pro bono assistance;
- small pool of suitable volunteers;
- lack of culturally appropriate services (eg lack of interpreting services);
- lack of ancillary services such as psychologist or specialist medical reports; and
- the impact of service gaps in non-legal services on access to justice, for example, transport is limited or very expensive preventing attendance at central service hubs.

Community Legal Centres

Community Legal Centres (CLCs) are independent community-based organisations that provide free legal advice, casework and education to disadvantaged people. Population groups that CLCs typically serve are people with a disability (22.8%), Aboriginal people (11.7%), jobless (37.7%), single parents (27%) and women (61.5%). Around 80 percent of their clients receive a social security payment as part or all of their income. A study of the economic value of community legal centres found that for every \$1 spent on CLCs, the government saves a minimum of \$100.00 through their early intervention work that helps avoid ongoing costs to police, courts and community.¹⁰

Funding of CLCs is the most effective way to increase legal services to targeted population groups, including people living with mental health and cognitive disabilities, ex-prisoners, domestic violence victims and families experienced mortgage hardship, care and protection legal services and older people. For example, the Homeless Persons Legal Service (HPLS) has provided a useful model for reaching a hard to reach group and accessing additional legal resources. In its current form it is limited in its scale and geographic location. As the Law and Justice Foundation found, barriers to accessing legal services include the lack of local or accessible services. The HPLS is a good example of a service that people can access in an environment in which they are familiar, in homeless support services. Establishing the HPLS as a stand-alone service with a recurrent budget could improve access to the service across the State. A State-wide HPLS could combine access to legal staff and coordinate pro bono services in regional areas in NSW.

Technology can improve access and the reach of services but it cannot take the place of a properly funded network of legal services. Services must provide a visible presence in the community to establish trust and cooperative relationships with other human service providers. Technology cannot replace face to face contact with clients, and places clients who cannot access or use technology at a disadvantage.

Despite the demonstrated value for money, CLCs cannot meet increasing demand and insecure funding continues to be a barrier to attracting and retaining staff. The ACROSS survey

reported that CLCs had a staff turnover of 23 percent, the majority of services said that salary, job security and lack of training and development opportunities were a barrier to attracting and maintaining staff. For example, in 2011 a solicitor in a CLC could earn \$53,896 while a solicitor at the same grade in Legal Aid would receive a salary of \$82,670. Many small CLCs were historically underfunded and struggle to stay viable as indexation has also not kept pace with increases in costs.¹¹ Change- over of staff is not just about recruitment costs, it creates interruptions to service delivery, continuity of casework and development of trust in the community, maintenance of networks and fostering relationships with the client community.

3. CONCLUSION

The diversity of population and the types of legal problems they experience requires a multi-faceted approach to identify and meet legal needs for disadvantaged communities. When legal issues are handled early it prevents more expensive and time consuming procedures for the individual, community services and justice system. Community Legal services are an important element in the delivery of community services in NSW, it is important they continue to provide a range of services including:

- legal representation in the courts;
- advice and information services;
- community legal education; and
- contribute to policy and law reform.

The roles the CLC has in the community, including law reform and community legal education need to be recognised and protected. Moving away from these roles rather than enhancing them would be counterproductive to the service that attracts volunteers on the basis of its role in social justice within a community development framework.

They must also retain autonomy to identify the needs of its community and adopt an appropriate mix of core services and their own eligibility criteria. CLCs play an important role in ensuring an equitable and fair justice system and in maintaining public confidence in our legal institutions. It is fundamentally a sound program that requires consolidation and planned growth.

Legal services should be part of a coordinated approach that provides housing, health, legal and other assistance to clients with complex needs, for example homeless people with cognitive or mental health disorders.

4. RECOMMENDATIONS

1. Retain and build upon the Community Legal Centre network of services, funding should reflect the actual cost of service delivery, it should allow for differences between centres and the populations they cover and type of legal work undertaken.
2. Improve the capacity of the CLC sector by:
 - establishing new services targeting specific population groups;
 - increasing community legal education for specific groups and sectors;

- building capacity to improve communication channels within and between community organisations to better integrate legal services;
 - resourcing and making better use of the social service sector as part of the referral network;
 - individual centres adopting their own mix of core services to meet the identified needs of their community; and
 - developing a workforce strategy to develop career pathways for solicitors.
3. Develop a program for members of the legal profession take up positions on community management committees and boards.
 4. Improve access to independent legal advice for small to medium community organisations.
 5. Funding for new growth areas should not be at the expense of funding for existing areas. Additional funding is required to address the problem of lack of legal and related services in rural, regional, remote and high growth areas.
 6. Provide recurrent funding for the administration of a service for homeless people in the CLC sector to ensure to meet the multiple and complex needs of that community across NSW.
 7. Establish dedicated funded services for populations with specific needs. Services for homeless people and another for ex-prisoners that can meet the range of legal issues should be a priority.
 8. Establish a taskforce of key stakeholders across higher education, vocational training providers, and industry peaks to develop a plan to integrate legal training into vocational social service courses. This should begin with services that support people with disability and chronic illnesses.
 9. Integrate legal referral networks into the assessment and delivery of community services by the community sector.
 10. Continue to fund Domestic Violence Court Assistance Schemes to provide additional expert legal and non-legal services, including family violence applicant workers, outreach workers and police prosecutors.

¹ Productivity Commission, 2010, Contribution of the Not-For-Profit Sector, Canberra

² Ibid.

³ Coumarelos, C, Wei, Z & Zhou, AH 2006, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, Law and Justice Foundation of NSW, Sydney

⁴ ACOSS, *Australian Community Sector Survey*, (2011) Paper 173, Vol 3, NSW.

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- ⁵ Coumarelos, C, Wei , Z & Zhou, AH 2006, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, Law and Justice Foundation of NSW, Sydney
- ⁶ Grunseit, A, Forell, S & McCarron, E 2008, *Taking justice into custody: the legal needs of prisoners*, Law and Justice Foundation of NSW, Sydney
- ⁷ Australian Institute of Company Directors, *Directors Social Impact Study* 2011, 15.
- ⁸ Productivity Commission, 2010, *Contribution of the Not-For-Profit Sector*, Canberra
- ⁹ Coumarelos, C, Wei , Z & Zhou, AH 2006, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, Law and Justice Foundation of NSW, Sydney
- ¹⁰ Institute of Sustainable Futures, UTS, 2006, *The Economic Value of Community Legal Centres*.
- ¹¹ ACOSS, *Australian Community Sector Survey*, (2011) Paper 173, Vol 3, NSW.