



Submission to the Productivity Commission Inquiry into Access to Justice Arrangements

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Contents

Executive Summary.....	3
Introduction and Scope of this Submission	4
The Central Australian Context.....	5
The Importance of Access to Justice in Central Australia	6
About CAALAS	7
Demand for CAALAS services.....	8
Culturally appropriate services	8
CAALAS' civil legal services	9
Outreach work	10
Barriers to service delivery – remoteness	11
Barriers to service delivery – capacity	12
Other legal services in Central Australia.....	12
Northern Territory Legal Aid Commission	12
Central Australian Women's Legal Service	13
Central Australian Aboriginal Family Violence Unit.....	13
Private Legal Sector.....	13
Legal Need in Central Australia.....	14
Recent research on legal need in the Northern Territory	14
Housing	15
Victims Compensation	17
Social Security	18
Credit, Debt and Consumer Law	19

Child protection and Family Law.....	19
Small commercial matters	20
The role of legal assistance services in improving access to justice	20
Service gaps in Central Australia.....	21
Remote Communities	21
Individuals who fall outside legal assistance service guidelines.....	22
Prisoners eligible for parole	22
Other service gaps	22
CAALAS' role in assisting people with complex needs and improving access to justice for particular groups	23
Attracting and recruiting staff.....	23
Incentives to work in Alice Springs	23
Aboriginal law graduates	24
Effectiveness of the National Partnership Agreement	24
Legal Assistance Service Funding.....	24
Distribution of funding between criminal and civil matters	24
Current funding arrangements	24
Non-legal casework and support services	25
Changes in Territory law and policy.....	25
Costs of external expert services	26
Increase the duration of funding grants	26
Increase funding of legal aid and community legal services	26
Pro bono assistance	27
Mechanisms to improve equity and access to justice	27
Early intervention measures	27
Alternative dispute resolution mechanisms	27
Models of legal aid assistance	27
Specialist courts and tribunals	27
The importance of legal representation in Central Australia	28
Use of technology	28
Ombudsmen.....	29
List of Recommendations	30

Appendix

Executive Summary

As the first Aboriginal organisation in Alice Springs, founded in 1973, the Central Australian Aboriginal Legal Aid Service (**CAALAS**) has a long history of advocating for the rights of Aboriginal people and providing high quality, culturally appropriate legal advice and representation in Central Australia.

CAALAS strives to achieve its vision statement of “Justice, dignity and equal rights and treatment before the law for Aboriginal people in Central Australia” through its service provision across a remote area spanning approximately 90,000 square kilometres of the Northern Territory. We are the largest and oldest law firm in this area, and provide a range of civil law, family law and outreach services to clients who fall within our guidelines for aid.

We operate in a context marked by challenges including the vast overrepresentation of Aboriginal people in the criminal justice system, persistent social disadvantage, and geographic remoteness. In our experience, many people in Central Australia, particularly Aboriginal people living in remote communities, are unable to access and fully participate in the civil justice system. This submission describes the extent of this gap in Central Australia, and considers possible mechanisms to improve equity and access to justice in remote settings.

Recent research has identified that there is significant need for civil legal services in Central Australia. This research does not comprehensively account for the experience of Aboriginal communities, where the extent of legal need is even greater. Consistent with our observations and service data, we submit that the civil legal system is significantly underutilised by Aboriginal people. This is due to barriers to accessing the civil law system, gaps in service provision and resource constraints on existing providers.

Key barriers to access for Aboriginal people include low levels of awareness about civil law processes and difficulties accessing those processes in remote settings. These barriers may be overcome through the provision of culturally and linguistically appropriate outreach and legal services, such as those provided by CAALAS.

Our outreach services have demonstrated considerable success raising awareness of the civil legal system, assisting individuals to identify legal issues, and facilitating access to appropriate advice and dispute resolution mechanisms. This work generates significant demand for our legal casework service, which assists clients to navigate civil law systems and resolve issues efficiently and effectively. However, given the very high rates of previously unaddressed need, the potential demand for civil legal greatly exceeds our current capacity.

We therefore **recommend** that funding to legal assistance services be increased to allow the expansion of civil legal service provision across Central Australia. We also **recommend** that funding be increased to Aboriginal and Torres Strait Islander Legal Services, in particular, to account for the unmet need for culturally and linguistically appropriate outreach and legal services.

Improved access to civil legal services and systems would contribute to improved outcomes for Aboriginal people, and would have broader social and economic benefits for the community as a whole.

Introduction and Scope of this Submission

CAALAS has prepared this submission in response to an invitation from the Productivity Commission to contribute to its Inquiry into Access to Justice Arrangements.

The Productivity Commission's Inquiry into Access to Justice Arrangements is to "examine the current costs of accessing justice services and securing legal representation, and the impact of these costs on access to, and quality of justice", and is to make recommendations "on the best way to improve access to the justice system and equity of representation including, but not limited to, the funding of legal assistance services".

CAALAS's response is largely focused on the following terms of reference:

- (2) an assessment of the level of demand for legal services;
- (5) the impact of the costs of accessing justice services, and securing legal representation, on the effectiveness of these services, including analysis of:
 - (a) the ability of disadvantaged parties, including persons for whom English is a second language, to effectively self-represent, and
 - (b) the extent to which considerable resource disparity impacts on the effectiveness of the adversarial system and court processes;
- (6) the economic and social impact of the costs of accessing justice services, and securing legal representation;
- (8) alternative mechanisms to improve equity and access to justice and achieve lower cost civil dispute resolution, in both metropolitan areas and regional and remote communities, and the costs and benefits of these, including analysis of the extent to which the following could contribute to addressing cost pressures:
 - (a) early intervention measures
 - (b) models of alternative dispute resolution
 - (c) models of legal aid assistance
 - (d) specialist courts or alternative processes, such as community conferencing
 - (e) use of technology.

Reflecting our expertise, this submission addresses access to justice issues in Central Australia, with a particular focus on the legal needs of Aboriginal people in this area. Central Australia is defined as the remote and very remote southern zone of the Northern Territory served by CAALAS. A map of our service area is attached as an Appendix to this submission.

CAALAS' response has also been guided by the detailed discussion in the Access to Justice Arrangements Issues Paper released by the Productivity Commission in September 2013, and the

submission prepared by the National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**), of which CAALAS is a member. We endorse the NATSILS submission.

The Central Australian Context

Central Australia presents unique and complex challenges in legal service delivery because of geographic, linguistic and cultural barriers, entrenched and enduring social and economic disadvantage and marginalisation of Aboriginal people, and the region's complex political and social history.

The largest towns in Central Australia are Alice Springs and Tennant Creek, and the region is dotted with remote and very remote Aboriginal communities including Kintore, Haasts Bluff, Papunya, Yuendumu, Mutitjulu, Docker River and Lake Nash.

These communities are extremely isolated because of their significant distance from major towns and the complete absence of public transport between the communities and the closest major towns. Most of the communities are only accessible via corrugated dirt roads, which are generally in poor condition and become impassable during periods of heavy rain. Service delivery and community access are also challenging because of the severe and inhospitable desert climate of Central Australia, where temperatures typically exceed 45 degrees in summer and drop below zero in winter.



A community visit after rain

The Aboriginal community comprises a relatively large proportion of the total population of Central Australia. This group is culturally and linguistically diverse, with 16 major language groups and many distinct dialects. Many Aboriginal people speak English only as a second, third or fourth language, and English literacy is very low compared to the general population.

Rich and complex systems of traditional culture and law continue to play an important role in daily life in many remote communities. The maintenance of culture and language in Central Australia is a real source of strength and empowerment for Aboriginal people. Unfortunately, the legal system largely fails to recognise and cater for this diversity.

Central Australian practice is also marked by a high level of social and economic disadvantage, particularly outside Alice Springs. A number of reports, including the Closing the Gap Reports and the Productivity Commission's Staff Working Paper on Deep and Persistent Disadvantage,¹ present data indicating a high level of social disadvantage in the Northern Territory generally. The Northern Territory has an incarceration rate which is five times the national average and the highest in the country.² It also has the highest rate of child protection proceedings lodgements of any jurisdiction,³ the highest number of children on care and protection orders,⁴ and the highest homelessness rate.⁵

While the level of social and economic disadvantage is high across the Northern Territory, some types of disadvantage are even more entrenched in Central Australia than in other parts of the Northern Territory. For example, crime, justice and health data indicates that there is a significantly higher proportion of domestic violence related violent crime than the Darwin region.⁶

As will be discussed in more detail later in this submission, high rates of disadvantage are often linked to a high prevalence of legal issues, and recent research certainly indicates that is the case in the Northern Territory. The multiple and complex disadvantages faced by our client group also pose real barriers to accessing services that can assist them to resolve disputes.

Finally, communities in Central Australia have been greatly affected by the Federal Government's Northern Territory Emergency Response (also called "the intervention") and the subsequent rollout of programs under the banner of Stronger Futures. Increased policing and changes to arrangements for alcohol regulation, remote housing, and social security provision, including the imposition of income management, have significantly increased demand for legal assistance among the Aboriginal population generally, and in very remote communities. At the time of writing, the future structure and scope of these programs is uncertain, although we anticipate that continuing policy changes and potential funding variations will produce increased demand for legal advice and assistance.

The Importance of Access to Justice in Central Australia

As stated in the Issues Paper, "the ability of parties to access appropriate, timely and efficient dispute resolution pathways is important from both an individual and societal perspective".⁷ The importance of access to justice is even more pronounced in Central Australia, where early resolution of disputes and access to civil legal processes can play a critical role assisting individuals to overcome disadvantage and participate fully in economic and social life. Positive contact with the mainstream

¹ Rosalie McLachlan, Geoff Gilfillan, Jenny Gordon, *Deep and Persistent and Disadvantage in Australia: Productivity Commission Staff Working Paper*, Productivity Commission, (2013).

² Australian Bureau of Statistics, *Corrective Services, Australia, June Quarter 2013*, cat. no. 4152.0, Table 3 - Imprisonment Rates, (2013).

³ Productivity Commission, *Report on Government Services*, Court Administration Attachment: Table 7A.4 - Lodgments, civil, per 100 000 people, (2012).

⁴ Australian Institute of Health and Welfare, *Child Protection Australia 2010-11: Child Welfare Series*, no. 53, Cat. no. CWS 41, p. 30.

⁵ Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness, 2011*, cat. no. 2049.0, (2012).

⁶ Department of the Attorney-General and Justice, *Northern Territory Quarterly Crime Statistics – June Quarter 2013*, (23 August 2013).

⁷ Productivity Commission, *Access to Justice Arrangements: Productivity Commission Issues Paper*, September 2013, 4.

legal system also empowers communities to maintain and improve stability and social cohesion, and to engage effectively with the wider Australian community.

As we will discuss throughout this submission, by ensuring that individuals can access justice easily, effectively, and affordably civil disputes can be resolved more efficiently and with higher quality outcomes. This can produce savings in the justice system and within other areas of government service provision. Accordingly, CAALAS advocates strongly for services, programs and policies that can improve access to justice for our client base: Aboriginal people in Central Australia.

About CAALAS

CAALAS is an Aboriginal Legal Aid service and the largest law firm in Central Australia. Led by an elected Aboriginal Board, we are funded by the Commonwealth Attorney-General's Department under the National Partnership Agreement for Legal Assistance Services to operate two permanent offices (in Alice Springs and Tennant Creek), attend eight regular bush court circuits and conduct a range of outreach trips and clinics across Central Australia.

Our organisation is structured around the provision of legal advice and assistance across four practice groups. These services are supported by a team of Aboriginal Legal Support Officers, an administration staff, and an advocacy and policy projects team that provides community legal education, research and data collection, and expertise in law reform and policy development. We also provide casework services to youth interacting with the justice system and provide assistance to prisoners and their families to support reintegration into the community, although these projects will cease on 31 December 2013 due to a lack of funding.

Across all areas of our work, we advocate for the rights of Aboriginal peoples, improved social justice outcomes and equality before the law through the provision of accessible, culturally appropriate and expert legal advice and representation.



CAALAS outreach clinic in Mt Liebig (250km west of Alice Springs)

Demand for CAALAS services

We run a busy practice. In our two most recent annual reporting periods, CAALAS provided legal advice and representation in a high volume of matters, as set out in the table below.

Area of practice	Type of assistance	2011–12	2012–13	Increase from 2011–12 to 2012–13 (%)
All practice areas	Initial legal assistance (preliminary advice or referrals only)	2593	1944	-25
Criminal matters	Duty lawyer assistance	2356	2187	-7
	Legal casework	4333	6383	47
	Total criminal casework	6689	8570	28
Civil matters	Civil legal casework, including welfare rights and child protection casework	619	1093	77
	Family legal casework	151	218	44
	Total civil casework	770	1311	70

All of our services are provided at no cost to our clients, and are necessarily constrained by available funding. Like other legal aid services, our guidelines for a grant of legal aid restrict service provision according to criteria including merit, individual need and the availability of other legal services. Our capacity to provide civil legal services is also limited by continuing and increasing demand for criminal legal services, which is our primary priority under the terms of our funding agreement.

Despite these constraints, we have seen a significant increase in demand for civil legal services in recent years. As shown in the table above, our total provision of civil legal casework increased by 70% in 2012–13 compared with the previous year. A key factor in this increase has been an expansion of our outreach service, which has resulted in greater awareness of the civil legal system and improved identification of legal issues.

However, we cannot assist every client who seeks our help, nor can we meet the high demand for community legal education and legal outreach services. As discussed further below, the demand for civil legal services significantly exceeds our capacity, and that of other legal service providers in Central Australia.

Culturally appropriate services

Our service is Aboriginal controlled and owned, employs a large number of local Aboriginal staff, including eight Aboriginal Legal Support Officers and an Aboriginal Community Legal Education lawyer, and we have worked with communities in Central Australia for 40 years. Our ability to provide a culturally appropriate service provides a critical point of access to justice for Aboriginal people in Central Australia. All our staff members receive training in cultural awareness and interpreter use. Given the cultural and linguistic diversity in Aboriginal communities in Central Australia, and the central role traditional culture plays in our clients' lives, our service is uniquely

equipped to support Aboriginal people to utilise the civil justice system and receive equal treatment within that system.

CAALAS currently employs eight Aboriginal Liaison Support Officers, who are integral to the delivery of a high-quality and culturally appropriate legal service in Central Australia. The Aboriginal Legal Support Officers are local Aboriginal people who understand the social and cultural dimensions of our client's legal issues. Some of our Aboriginal Legal Support Officers are accredited interpreters with knowledge of several Aboriginal languages.

Our Aboriginal Legal Support Officers provide cultural advice and education to lawyers and other staff, assist in organising and running outreach trips, conduct interviews with clients, explain CAALAS' service and the legal process in accessible terms, liaise with family and communities, and locate and transport clients. They play a key role in the delivery of efficient and effective Aboriginal legal aid services.



CAALAS Aboriginal Legal Support Officer drives out bush to give client documents

CAALAS' civil legal services

Given the unique challenges in Central Australia and the high level of legal need, CAALAS plays a critical role enabling access to the civil justice system. By providing high quality, culturally appropriate advice and representation to Aboriginal people living in our service area, we assist our clients to overcome the multiple barriers to accessing the civil justice system. Importantly, we seek to advance the rights of Aboriginal people through law reform advocacy that informs governments of community concerns and seeks to reduce the unintended consequences of policy initiatives. We also provide successful community legal education and outreach services to support the prevention and early resolution of civil disputes and improve access to the civil justice system.

The CAALAS civil practice spans three practice groups, including a generalist civil practice, a welfare rights team with expertise in remote housing and social security law, and a family law and child protection team. We currently provide civil legal services from our permanent offices at Alice Springs and Tennant Creek, and through remote clinics and outreach services.

Under the guidance of our Principal Legal Officer, civil legal services are provided by:

- 4 civil law solicitors, including a senior civil lawyer;
- 2 family and child protection solicitors, including a senior family lawyer, who also deal with mental health and guardianship matters;
- 1 community legal education lawyer;
- 2 welfare rights solicitors; and
- 1 legal officer based at our Tennant Creek, who also provides criminal legal assistance.

We also employ eight culturally and linguistically skilled Aboriginal Legal Support Officers. These officers provide support and guidance to both criminal and civil lawyers in the delivery of a culturally appropriate and effective service. At present one of these officers works exclusively with our civil team, and a second provides support in both civil and criminal matters from our Tennant Creek office.

Key areas of focus for our civil practice include mental health, guardianship, employment, housing, motor vehicle accidents, victims' compensation, debt and consumer law, welfare rights, child protection and family law. We represent clients in internal and external administrative review matters, before the Local and Supreme Court and before the Family Court and Federal Circuit Court. Our civil lawyers are all experienced practitioners and have developed a strong understanding of cultural dimensions of legal service delivery in Central Australia.

We also help Aboriginal people to interface effectively with government service providers including Centrelink and Territory Housing, and play an important role educating clients about their rights and responsibilities, helping to avoid preventable disputes. We also enable Aboriginal people, including those in remote communities, to seek legal advice and representation when a dispute does arise so that the matter can be resolved efficiently and effectively.

Outreach work

We have recently increased our focus on the provision of community legal education and outreach services to enable early intervention and resolution of civil disputes. Our generalist civil lawyers conduct regular outreach work, visiting very remote communities including Mutitjulu (450km south of Alice Springs), Docker River (670km southwest of Alice Springs) and Lake Nash (approx 1100km northeast of Alice Springs). During these visits, lawyers and Aboriginal Legal Support Officers provide community legal education, run civil advice drop in clinics, meet face to face with existing clients to discuss their matters and initiate new case work matters.

The welfare rights lawyers, family lawyers and community legal education lawyer travel regularly to remote communities to provide community legal education and legal advice and assistance, and develop community legal education resources. For example, this year we produced a remote

tenancy educational DVD in collaboration with the Northern Territory Legal Aid Commission, the North Australian Aboriginal Justice Agency and Darwin Community Legal Service.

Our community legal education lawyer is a local Aboriginal woman, and has played a key role establishing relationships with communities and local organisations. She has developed and implemented a range of culturally appropriate and engaging programs and workshops in Alice Springs and in other remote communities. She visits schools, health services, the Alice Springs Detention Centre and residential alcohol treatment services to educate staff and clients about key legal issues, and to raise awareness of available legal services. We regularly conduct workshops in remote communities and organise community events, while also developing accessible resources and materials.



CAALAS stall at the Alice Springs show

All our outreach services have demonstrated a high level of success increasing the level of legal knowledge and understanding within Central Australian communities, and raising awareness about CAALAS and the role we can play in resolving disputes early for clients. As a result, they have also significantly increased demand for our legal casework services.

Barriers to service delivery – remoteness

In most cases, we rely on improvised facilities to deliver civil legal services in communities. Drop in clinics and outreach services are offered from a table outside the community store or on the veranda of a service provider's office. While the use of public space can help us to be visible in a small community, working conditions are extremely poor, particularly during periods of extreme weather. The absence of private office space also means that it can be difficult to provide confidential and private legal advice in community.

In addition, none of the remote communities outside of Alice Springs and Tennant Creek have a community based legal service. As a result, we are unable to refer clients elsewhere if we are unable

to act due to a conflict. Furthermore, there is limited access to the network of supporting services that contribute to the good functioning of the civil legal system in more developed areas. For example, not all communities have a police presence or a permanent health service. Thus, we are often unable to refer clients to appropriate non-legal services.



CAALAS drop-in clinic in community

Barriers to service delivery – capacity

While our outreach and community legal education work has been successful in raising awareness of the civil legal system, there are limited services available to meet the resulting demand for civil legal case work. As discussed below, there are effectively no private legal service providers outside Alice Springs, and very few Government-funded legal assistance providers.

CAALAS is the only legal service able to provide civil assistance in many of the communities we visit. Despite increasing demand for civil legal services, we are unable to increase our service provision due to limited funding and the need to prioritise requests for criminal legal assistance.

Other legal services in Central Australia

Northern Territory Legal Aid Commission

The Northern Territory Legal Aid Commission has an office in Alice Springs, and also operates an outreach service in Tennant Creek staffed by one solicitor and a field officer. It provides advice and representation in criminal and some family law matters. Whilst it provides initial advice in civil law matters, its capacity to take on casework is very limited.

The Northern Territory Legal Aid Commission also operates a Territory-wide helpline staffed by paralegals. Based in Palmerston (in Darwin), the helpline provides general legal information and referrals.

CAALAS often refers criminal and family law clients to the Northern Territory Legal Aid Commission when we have a conflict of interest.

Central Australian Women's Legal Service

The Central Australian Women's Legal Service is a community legal centre providing legal advice to women in Central Australia. The service is funded to provide a specialist domestic violence service and advice and representation in family law, child protection, housing and employment matters. The service also carries out law reform activities, provides some outreach services and will soon start operating a community legal education program for women.

CAALAS refers female clients with family, child protection and civil law matters to the Central Australian Women's Legal Service when we have a conflict of interest.

Central Australian Aboriginal Family Violence Unit

The Central Australian Aboriginal Family Violence Unit provides legal advice and casework assistance to Aboriginal women, children, and men who are victims of family violence. The Central Australian Aboriginal Family Violence Unit also provides related services including initial counselling, support and referrals. The service provides some outreach services to a few of the larger communities in Central Australia and engages in some law reform activities.

Private Legal Sector

The private legal sector in Central Australia is quite small. None of the firms have a presence outside of Alice Springs, and most provide limited (or no) pro bono assistance. As a result of both distance and cost, most people residing in very remote communities have no opportunity to access private legal services.

As discussed below, there is a high demand in Central Australia for assistance in relation to non-compensation claim cases including tenancy disputes, social security issues, victims compensation, small consumer law and debt issues. The cost of seeking private assistance in relation to these types of matters is prohibitive for many Aboriginal people in Central Australia.

In limited circumstances low income individuals in Alice Springs may be able to access private legal services on a speculative basis for some types of compensation claims. Recently CAALAS came to an arrangement with one local firm for the referral of medical negligence matters for an initial assessment of merit with some prospect of ongoing assistance.

This is a beneficial arrangement but essentially the avenues for pro bono "on spec" assistance are extremely limited in Central Australia. Even where a potential compensation payment may cover the cost of legal services, matters can be time consuming and many Aboriginal clients require an intensive level of support and assistance to engage with legal services, for example requiring assistance with transport or access to an interpreter. Private lawyers may be ill-equipped to provide this assistance, or may determine that the cost of additional time and disbursements may not justify the potential financial gain.

Legal Need in Central Australia

The Productivity Commission seeks feedback on the type and degree of unmet legal need, to enable it to assess cost-effective options to improve access to the civil justice system. Having regard to our experience as the largest legal service provider in Central Australia, and recent research on legal need in the Northern Territory, we consider that the level of unmet legal need in Central Australia is high, particularly in relation to issues around housing, social security, victims compensation, debt and consumer law, and family law and child protection. As we discuss further below, there is also considerable unmet legal need generally in remote communities in Central Australia.

Recent research on legal need in the Northern Territory

Two recent projects have attempted to identify and analyse the extent and the type of legal need in Central Australia: the 2012 Indigenous Legal Needs Project in the Northern Territory conducted by James Cook University and the 2012 Legal Australia-Wide Survey conducted by the Law and Justice Foundation.

The aim of the Indigenous Legal Needs Project in the Northern Territory was to identify and analyse non-criminal law legal need in Indigenous communities and identify ways to deliver legal services more effectively to meet these needs.⁸ The Project carried out focus groups in a number of communities, and raised a number of specific civil issues, but did not raise matters relating to police complaints, native title or intellectual property.⁹ The Indigenous Legal Needs Project identified housing and social security law as areas of significant legal need, and discussed some of the barriers to delivery of effective legal services.

The Law and Justice Foundation's Legal Australia-Wide Survey of Legal Need in the Northern Territory, which surveyed both criminal and civil legal need, adopted a different approach. It carried out telephone interviews of 2096 Northern Territorians with quota controls to achieve a demographic profile in the sample that reflected the population profile, including Indigenous status. However, the quotas for Indigenous status were adjusted to take into account landline availability. Because landline use can be very low for some Aboriginal people in some areas, particularly in remote communities in the Northern Territory, the Law and Justice Foundation considered it "unrealistic to attempt to achieve Indigenous numbers in proportion to the population in these areas."¹⁰ No provision was made to conduct interviews in Aboriginal languages.¹¹ Accordingly, it is likely that the survey was not representative of Aboriginal people's legal needs in the Northern Territory.

Notwithstanding these limitations, the Legal Need in the Northern Territory Survey found that, compared with other jurisdictions, the Northern Territory had the highest prevalence of legal problems, which is consistent with the higher level of social disadvantage in the Northern Territory.¹²

⁸ Fiona Allison, Chris Cunneen, Melanie Schwartz and Larissa Behrendt, *Indigenous Legal Needs Project: NT Report*, (2012), 8.

⁹ Ibid.

¹⁰ Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in the Northern Territory*, Law and Justice Foundation, (2012), 52, 54.

¹¹ Ibid 52–4.

¹² Ibid 154.

The Northern Territory is classified as the most disadvantaged of all jurisdictions, and the top 20 most disadvantaged areas in Australia are located in Queensland and the Northern Territory.¹³ The Legal Need in the Northern Territory Survey contributes to existing evidence showing a link between social disadvantage and legal problems.¹⁴

The Law and Justice Foundation report estimated that, of the 233,000 people living in the Northern Territory,¹⁵ approximately 80,000 people aged 15 years or over in the Northern Territory experience a legal problems within a 12 month period, and that 18,000 experience two problems, and 41,000 experience three or more problems.¹⁶ Given the lack of representation of Aboriginal people from remote communities in this survey, we believe these figures under-represent the number of people who experience legal problems.

We note that our civil clients, including our family law clients, often have multiple legal needs. Many have multiple civil legal problems, or potential civil legal problems, and many have also had contact with the criminal justice system. Our experience is consistent with the findings of the Legal Australia Wide Survey, which found that, in each jurisdiction, roughly one-third of respondents reported at least two legal problems over a year.¹⁷ In the Northern Territory, crime, housing, and consumer issues tended to cluster together, as did credit/debt, employment, government and money issues.¹⁸

Drawing on existing research and our experience providing frontline services in remote and very remote communities, we have identified a number of specific areas of unmet legal need in Central Australia. These are set out below.

Housing

The Indigenous Legal Needs Project found that the predominant legal issue identified through focus groups was housing (and tenancy in particular). Fifty percent of men and women involved in the focus groups stated that they have had problems with housing issues. This is consistent with our experience, and with data indicating that Central Australia has the highest rate of homelessness in the Northern Territory.

Housing disputes often have very significant consequences for Aboriginal people living in Central Australia. The Legal Australia-Wide survey found that living in housing classified as disadvantaged was one of the strongest predictors of multiple legal problems. Significantly, as the Indigenous Legal Needs Project recognised, Aboriginal people evicted from public housing, or unable to access public housing, generally have limited access to the private rental market. In our experience, if a client cannot access public housing, or is evicted from public housing, the client will become homeless. Often this results in the client staying with extended family, which contributes to overcrowding and exacerbates the risk that family members may also be evicted. Sometimes clients will have nowhere to stay and will end up sleeping rough in a park or riverbed.

¹³ Ibid 159.

¹⁴ Ibid 159.

¹⁵ ABS 2011 census data

¹⁶ Coumarelos et al, above n 10, 57.

¹⁷ Ibid 155.

¹⁸ Ibid 156–8.

A number of participants in the Indigenous Legal Needs Project identified the lack of access to legal services to assist with housing issues, and the importance of obtaining legal access, as major issues. This is a clear area of unmet need in Central Australia, and there is a particular need for education, outreach and early intervention legal services and social support services to assist people to successfully sustain tenancies, deal with problems early, and avoid crisis situations. Unfortunately, due to low rates of awareness and limited access to outreach services, many clients do not approach our service until they have received an eviction notice. In our experience, dealing with a tenancy dispute at this late stage is extremely resource intensive and distressing for clients. By contrast, matters may be resolved relatively efficiently and effectively when we are able to assist clients to respond to a warning regarding a breach of tenancy at an earlier stage.

Other services

There is no legal service specifically funded to deal with these issues in Central Australia, although the Darwin Community Legal Service does have a Territory-wide tenancy service that is able to provide some limited assistance by phone. This service is unable to provide casework services to people living in Central Australia and does not have the resources to conduct outreach work.¹⁹

CAALAS and the Central Australian Women's Legal Service are the only services based in Central Australia that provide advice and representation to individuals with public housing tenancy issues. CAALAS can only assist Aboriginal people falling within its guidelines, and has limited capacity to take on housing matters. The Central Australian Women's Legal Service can only assist women falling within its guidelines.

The Northern Territory Legal Aid Commission is not funded to take on housing matters. Private legal practices are unlikely to take on public housing tenancy disputes, and clients with such disputes are highly unlikely to be able to afford the assistance of a private practitioner.

CAALAS services

Our civil team assists clients with urban public housing tenancy issues (ie, those arising in Alice Springs and Tennant Creek), while our two welfare rights solicitors provide advice and casework to clients in town camps and remote tenancies. Our community legal education and outreach work also seeks to provide information to assist communities to identify and address tenancy issues at an early stage. With our current resources, CAALAS cannot meet the level of need for legal assistance for housing problems existing in Aboriginal communities in Central Australia.

Demand for our services significantly exceeds our capacity. We cannot reach all communities in Central Australia on a regular basis, and our capacity to provide advice and casework to clients who directly contact us for assistance is limited by the total level of demand on our services at any given time.

Following the introduction of a Public Housing Safety Strategy by the Northern Territory Department of Housing in December 2012, we experienced a significant increase in requests for legal advice and assistance relating to tenancies in Alice Springs and Tennant Creek. Other changes in public housing practice and policy over the past year have seen a steady increase in requests for assistance throughout 2013.

¹⁹ Allison et al, above n 8, 55.

Often clients present at crisis point, after an eviction notice has been issued by the Department of Housing or on the day of a hearing before the Commissioner of Tenancies. While we prioritise crisis cases and particularly clients at imminent risk of homelessness, we are unable to respond to all requests for assistance. Responding to these housing matters, which are often complex and time consuming, also adds to the considerable pressure on our service and limits our capacity to respond to other matters.

The cost of poor access to housing legal services

We consider that increasing funding for legal services to provide assistance in relation to housing and tenancy matters would produce significant cost savings.

Where we have been able to identify early intervention opportunities, either through our outreach and education services or through self referrals, we have generally been able to assist clients to resolve their housing matter relatively quickly and effectively.

Case study: early intervention leads to early resolution

We advocated for a client who had received a number of warning letters about the need to remove rubbish in the front yard and an eviction warning. We provided advice to the client and negotiated with the Department of Housing to allow the client more time to save money to pay for a rubbish removal service. The negotiation was quite straightforward, and the client was able to deal with the problem without facing a costly and stressful eviction process.

Conversely, when we receive a matter just prior to an eviction hearing, or after an eviction notice has been issued, we must commit significant resources to the matter. In our experience, it can be extremely difficult to resolve matters at this stage, although we may be able to delay an eviction or negotiate alternative accommodation arrangements with the Department of Housing. Dealing with an eviction places a significant burden on the resources of legal services and the Department of Housing, and thus imposes additional costs on the wider community. As noted above, most people become homeless following an eviction, resulting in poorer outcomes for health, family well being and participation in education and employment.

We note that legal services are only one part of a network of supports that can assist in preventing housing problems. Inadequate resourcing of support services, and the absence of such services outside Alice Springs and Tennant Creek, contributes to continuing and increasing demand for legal services.

Victims Compensation

Given the high rates of violence in Central Australia, there is significant demand for legal services to assist people to access victims compensation. The Northern Territory has the highest victimisation rate for sexual assault and the highest victimisation rate for homicide and related offences in Australia.²⁰ Data compiled by the Northern Territory Attorney-General's Department indicates that domestic violence is also prevalent. In Alice Springs, about two thirds of assaults recorded by Police

²⁰ Australian Bureau of Statistics, *4510.0 - Recorded Crime - Victims, Australia, 2012*, Victims of Crime, Selected states and territories, Table 1, (2013).

involved domestic violence, and about three quarters of assaults in Tennant Creek involved domestic violence.²¹

CAALAS, the Central Australian Women's Legal Service and the Central Australian Aboriginal Family Violence Unit provide assistance to victims of crime who wish to seek compensation. All services struggle to meet demand. Whilst the actual legal process is quite straightforward, obtaining documentation and instructions can be a time consuming process, given the sensitive nature of the work and geographical and language barriers. Furthermore, even though three services provide assistance with victims compensation, it can still be difficult to find a referral for a client when a conflict of interest arises, particularly when the violence involved multiple parties.

Changes to the legal cost recovery process under the Northern Territory's victims' compensation scheme has limited access to legal services to obtain victims' compensation. Under the former scheme, some of the legal costs associated with making an application could be recovered from the Northern Territory Government. The Northern Territory Government removed this provision following major changes to the victims' compensation scheme as a whole. The Attorney-General stated, in the second reading speech to the bill introducing the new scheme, that "the application process will be simplified to such an extent that legal assistance will not be necessary".²²

However, without legal assistance, many people in Central Australia would be unable to properly access the scheme which is still quite complex. To navigate the process, an individual requires a high level of English literacy, good access to services, including telephone and internet services, and some understanding of administrative processes. This renders the scheme inaccessible to most Aboriginal people in remote communities.

The removal of the scheme for payment of legal costs has restricted access to justice and consumer choice, by limiting the number of legal firms and practitioners available to assist applicants. This means that people may not access the scheme, and the financial and emotional support that can be accessed through the scheme, because they have not been able to obtain the legal assistance required.

Social Security

There is a high demand for assistance with social security issues in Central Australia. The social security system is very complex and is very difficult for most people to navigate. The Indigenous Legal Needs Project identified problems relating to Centrelink as a priority legal issue in the NT.

Many issues relate to income management, and the need for increased legal education around income management. About three quarters of the participants in the Indigenous Legal Needs Project in the NT were in receipt of a social security payment, and about 30% reported that they had experienced a problem with Centrelink payments.²³ The most common problems were problems

²¹ Northern Territory Department of the Attorney-General and Justice, *Northern Territory Quarterly Crime Statistics – June Quarter 2013*, (23 August 2013).

²² Parliament of the Northern Territory, *Hansard*, Victims of Crime Assistance Bill 2006.

²³ Allison et al, above n 8, 85.

with the Basics Card and other issues relating to income management, under-payment and debt or overpayment.²⁴

Our Welfare Rights Outreach Project provides community legal education and outreach services to Aboriginal communities in Central Australia in relation to social security issues and remote housing. Its staff regularly travel to remote communities. This Project has been very well-received by remote communities, and it often results in the early identification of issues with income management and the overpayment or underpayment of Centrelink, many of which are a consequences of poor communication and client engagement practices within Centrelink.²⁵ By identifying these issues early we can successfully advocate for our clients directly with Centrelink, thus avoiding costly proceedings for debt-recovery.

Credit, Debt and Consumer Law

We continue to experience significant demand for our services in relation to credit, debt and consumer law issues, particularly in the areas of motor vehicle purchases and financing, mobile phone contracts, and unfair contracts. Language and cultural barriers, and a lack of legal knowledge, mean that many of our clients are vulnerable to unscrupulous sales practices and pressure to enter into unfair contracts. Indeed, some remote communities are specifically targeted by vendors looking for an easy sale.

These issues were also identified in the Indigenous Legal Needs Project as an area of unidentified legal need.²⁶ As the Indigenous Legal Needs Project observed, often these issues are not identified as legal issues by individuals, because of a low level of legal understanding. The Indigenous Legal Needs Project stated:

Taking into account the low levels of knowledge around civil law, it is clear that legal education around civil law issues is a priority both as direct community legal education, and also for Aboriginal service providers who take a role in advising or advocating for community members who may themselves have limited knowledge of civil and family law.²⁷

We also note that there is unmet legal need in relation to superannuation issues. CAALAS is unable to assist individuals with superannuation issues, yet this is a frequently requested service, particularly during outreach trips.

Child protection and Family Law

There is some evidence to suggest a high prevalence of legal issues relating to child protection and/or family law in Central Australia. The Northern Territory has the highest rate of child protection lodgments in Australia, and a high rate of children in care, indicating a high demand for legal services relating to child protection. However, in our experience, there is a low level of understanding in Central Australia about the child protection and family law system. This prevents people from accessing early intervention services available, both legal and non-legal, to assist them to deal with issues before they reach crisis point. It also hinders engagement with the legal process when it commences.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid 16–18.

²⁷ Ibid.

The absence of a specialist children's court clinic places an added burden on our service to acquire specialist reports or further information that might be useful to our clients. The additional costs of obtaining such reports places further strain on our limited resources, and contributes to overall pressure on our capacity.

Research carried out by the Indigenous Legal Needs Project in the Northern Territory supports our observation that the family law system is under-utilised by people living in remote communities,²⁸ and a poor fit for the needs of those communities. Existing mediation processes were identified as being especially ill-suited to the needs of some people living in remote communities.

It is our experience that large service providers generally do not tailor their service to overcome the geographical and language barriers Aboriginal people in Central Australia face, and often do not deliver services in a culturally appropriate manner or provide adequate outreach services to remote communities. There is only a limited Family Law Court presence in Central Australia and no Family Court registry. Many matters are dealt with by way of telephone conferences. Our clients, particularly those who do not speak English as a first language, experience telephone conferences as difficult to follow, alienating and frustrating.

Similarly, our solicitors have been required to conduct some mediations by telephone because the mediator or another party is located outside of Alice Springs and there have not been resources or facilities available to enable a face to face mediation. This compromises the quality of the mediation and places additional stress on clients. It is very important that funding is provided to facilitate face to face mediations, preferably in clients' communities.

Small commercial matters

There is very limited access to legal services in relation to small commercial matters. None of the legal aid services or community legal services provide casework services for small civil claims, nor do they provide advice in relation to legal issues encountered by small businesses or small associations. Private legal representation may not be available or viable, depending on the type of legal problem encountered.

The role of legal assistance services in improving access to justice

The Productivity Commission seeks feedback in relation to the work carried out by legal assistance services, which include legal aid commissions, Aboriginal and Torres Strait Islander Services, Family Violence Prevention Legal Services and community legal centres. It is particularly interested in service gaps, and the effectiveness of these services in enabling access to justice.

CAALAS submits that all legal assistance services play an important role in the delivery of effective and efficient legal services to a range of people, particularly people who experience multiple disadvantage and who present with high and complex needs. As an Aboriginal and Torres Strait Islander Service, CAALAS has particular expertise in delivering legal services in a culturally appropriate and effective manner, as discussed above.

²⁸ Ibid 89–91.

Service gaps in Central Australia

Legal aid and community legal services in Central Australia seek to address service gaps through both formal and informal service arrangements. In this way, we seek to develop a “holistic approach to the delivery of legal assistance services”²⁹ and carry out complementary work. We note that a certain level of service duplication is important and necessary in the legal sector to ensure that a service can refer a client to another service when conflicts of interest arise, as is frequently the case in small towns like Alice Springs and Tennant Creek.

Unfortunately, despite these arrangements, there are still significant gaps in legal service provision in Central Australia. These are discussed below.

Remote Communities

There is significant unmet need for legal services in remote communities. CAALAS operates a successful community legal education and outreach service to seek to address this issue and identify priority areas for future service provision.

Our community legal education lawyer is a local Aboriginal woman with considerable expertise in the delivery of culturally appropriate legal education. She has developed and implemented an impressive community legal education program and regularly organises outreach trips in collaboration with other solicitors, including our Welfare Rights Outreach Project solicitors and civil lawyers. We ensure that Aboriginal Legal Support Officers who understand the needs of the communities we visit accompany our lawyers on community visits, and we arrange interpreters to support our outreach service as required.

In our experience, the level of legal understanding in remote communities is generally very low, yet there is usually a high level of unmet legal need. Community and client feedback indicates that issues relating to housing, child protection, victims’ compensation, domestic violence, motor vehicle accident compensation and social security payments are prevalent. We frequently receive invitations from communities to visit the community and speak about specific issues of interest, and we receive a high volume of self-referrals from community members when we provide drop in clinics.

Case study: outreach trip

CAALAS has organised a number of visits to a remote community near the Western Australian border to deliver community legal education and outreach services. When CAALAS contacted the community to arrange a further visit, the community asked CAALAS to also send a prison support social worker so that the community could learn about parole and what a person needs to do comply with a parole order.

CAALAS sent a Welfare Rights Legal Officer to run community legal education with the community on remote housing issues, a civil lawyer to provide an outreach civil law service, a prison support social worker to speak to the community about parole, and an Aboriginal Legal Support Officer who can speak a number of Aboriginal languages to assist the team. The workshops and outreach sessions were well attended and the community was very engaged.

²⁹ Productivity Commission, *Access to Justice Arrangements: Productivity Commission Issues Papers*, September 2013, 33.

Whilst the high volume of requests for assistance and further information following our visits to communities indicates that our community legal education and outreach program has been successful in improving access to legal assistance for Aboriginal people living in remote communities, we are unable to visit every remote community, and we are unable to visit the remote communities we do reach as frequently as needed.

Our service area covers a vast geographical area of 90,000 square kilometres and sixteen language groups, yet we have very limited resources. Workload pressures affect the availability of solicitors and Aboriginal Legal Support staff to attend community trips.

We are also unable to provide follow-through casework in all potential matters identified during community visits. As discussed throughout this submission, this constraint is the result of limited funding, criminal legal casework pressures, and the high demand placed on our service by walk-in and existing clients in Alice Springs and Tennant Creek.

Other legal assistance services experience similar challenges. We work closely with the Northern Territory Legal Aid Service, for example, to coordinate our community legal education and outreach programs, reduce duplication, maximise resources, and reach as many communities as possible. However, there are still a number of communities that do not receive outreach services as frequently as requested, and some that cannot be reached.

Individuals who fall outside legal assistance service guidelines

When an individual does not fall within any of the legal assistance services' guidelines, or cannot access a service because of a conflict of interest, the individual may have no recourse unless he or she can afford private legal representation.

In Central Australia, for example, there is no legal assistance service that provides civil legal advice and assistance to low income men who are not Aboriginal. CAALAS can only provide assistance to Aboriginal clients and we can only provide that assistance if there is no conflict of interest. The Northern Territory Legal Aid Service in Alice Springs does not provide ongoing legal assistance in relation to civil matters, the Central Australian Women's Legal Service only assists women, and the Central Australian Aboriginal Family Violence Unit is only funded to provide assistance in relation to domestic violence matters.

This gap would be at least partially addressed through the provision of adequate funding to allow the Northern Territory Legal Aid Commission to deliver civil legal casework, or by the establishment of a generalist Community Legal Centre based in Central Australia.

Prisoners eligible for parole

CAALAS has historically provided education and advocacy for prisoners at Alice Springs Detention Centre who become eligible for parole. The administrative system of parole can be very difficult for prisoners to navigate. Given the high rates of incarceration in the Northern Territory, and the overrepresentation of Aboriginal people in prison, we consider that the absence of a parole advocacy service is a significant service gap in Central Australia.

Other service gaps

Other significant service gaps relate to specific areas of law, rather than specific groups of people. For example, there is a significant service gap in the provision of housing advice because there is no

dedicated tenancy advice service in Central Australia. We have discussed this issue, and we have outlined other areas of unmet legal need, in detail above.

CAALAS' role in assisting people with complex needs and improving access to justice for particular groups

The structure of our service, and our expertise improving access to justice for Aboriginal people, including through the provision of a culturally appropriate service, is described above.

Other key ways we improve access to justice for Aboriginal people in Central Australia include:

- Expertise in assisting people with complex needs: our service works closely and effectively with other services in Central Australia to provide appropriate referrals, assist clients to resolve disputes more quickly, and prevent future legal issues from arising.
- Ability to assist with multiple legal issues: many of our clients have had multiple legal problems. Because we have a broad generalist practice, we can often assist clients to identify and resolve these problems together, often with the assistance of a single lawyer. This allows us to develop strong relationships with our clients, and is more efficient than requiring a client to seek help from a number of different legal services.
- Community legal education and outreach: as discussed above, we run a successful community legal education and outreach service. While we are not in a position to carry out a comprehensive cost analysis of community legal education and outreach intervention, in our experience early intervention, indirectly or directly through our outreach services, often leads to the early resolution of a problem because we can provide practical advice or a referral to a client before the issue escalates.
- Law reform and policy work: our law reform and policy section seeks to improve equity within, and access to, the civil justice system for Aboriginal people in Central Australia by advocating for effective law reform and policy development. Drawing on the casework carried out by our team of lawyers and Aboriginal Legal Support Officers, the law reform and policy section carries out research, reviews and evaluates legislation and policies affecting our clients. We also advocate for systemic improvements through submissions, meetings with stakeholders and media engagement. This function is vital given the dearth of formal research addressing the needs of Aboriginal people and communities in Central Australia. Our service enables governments to receive policy and law reform input that draws on our expertise working on the ground with a large number of clients. We are also able to voice the concerns of the Aboriginal communities, supporting community consultation, reducing the unintended consequences of law reform and policy decisions, and improving engagement in civic life.

Attracting and recruiting staff

Incentives to work in Alice Springs

Alice Springs has a limited pool of legal professionals, which means that we usually need to recruit lawyers from interstate or Darwin. To provide an incentive to relocate to Alice Springs, and retain staff in a challenging remote work environment, we offer staff financial and other incentives, such as extra annual leave, relocation costs and a competitive salary. This means the cost of delivering legal services in remote communities can be quite high.

Aboriginal law graduates

There is a lack of graduate pathways for Aboriginal law students interested in pursuing a career in legal aid and community legal services. Existing Aboriginal staff members have identified this as a significant obstacle to attracting and retaining Aboriginal lawyers and staff. Specific funding to enable Aboriginal Legal Aid services to employ and support Aboriginal graduates would assist under-resourced services such as CAALAS to take on more Aboriginal law graduates and junior solicitors and provide them with an appropriate level of training and support.

Effectiveness of the National Partnership Agreement

The National Partnership Agreement has provided CAALAS with the opportunity to work more closely and collaboratively with other legal services, including Aboriginal and Torres Strait Islander Legal Services and particularly other legal services in the Northern Territory.

Our membership of the National Aboriginal Torres Strait Islander Legal Services (**NATSILS**), and our collaboration with NATSILS on a broad range of internal and external issues, has also led to improvements in CAALAS' in-house resources, policies and practices.

Legal aid and community legal services in Central Australia seek to address service gaps through both formal and informal service arrangements. For example, we participate in quarterly meetings of the Northern Territory Legal Assistance Forum, and six monthly Jurisdictional Forum meetings between all agencies funded under the National Partnership Agreement for Legal Assistance Forums.

Legal Assistance Service Funding

Distribution of funding between criminal and civil matters

There is a continuous tension between the requirement to prioritise criminal matters, and the need to allocate adequate funds to provide a family and civil law practice. The demand for legal services for criminal law matters is extremely high, and continues to grow, reducing the pool of money available to deal with non-criminal matters.

The Northern Territory has the highest imprisonment rate in Australia, and crime rates continue to increase. This trend has been fuelled by 'law and order' policies at the NT Government level, legislative initiatives such as mandatory minimum sentencing, a broad failures to tackle recidivism and invest in preventative programs. This has a significant impact on our service. As noted above, in the 2011–12 financial year, our team of 13 criminal lawyers dealt with 6689 total matters. In 2012–13 this figure increased to 8570 total matters. We anticipate that demand will continue to increase.

At the same time, our civil practice has also grown. In 2011–12 we assisted in a total of 770 civil law matters, and in 2012–13 that figure had grown to 1311.

Current funding arrangements

As noted above, the demand for our services exceeds our capacity, and could not be fully met without a significant increase in funding and resources. This impacts directly and indirectly on access to justice for Aboriginal people in Central Australia.

Given low rates of legal understanding in remote communities, and the current absence of any service in some communities, demand is elastic. An increase in staffing levels and outreach work would help raise awareness, which would in turn lead to greater demand. At present funding levels, we would be unable to meet that increased demand.

Despite our own limited capacity, we believe that expanded access to civil justice would be of significant benefit to communities in Central Australia, and would meet a real need that is currently under serviced.

Recommendations

1. That civil law services be funded at a sufficient level to allow for the provision of outreach services in remote areas; and
2. That specific funding be allocated for legal casework that stems from needs identified in the course of outreach work.

Non-legal casework and support services

As noted above, CAALAS will shortly cease operating two non-legal casework programs. One of these assists prisoners to navigate the parole system and provides support with reintegration in the community. The other supports Aboriginal children and youth involved in the criminal justice system to address the causes of their offending behaviour and successfully reintegrate into the community. These programs improved access to the civil justice system by providing parole advocacy and appropriate legal referrals.

Importantly, these programs have also supported clients to address complex issues such as family breakdown, family violence and mental health. By addressing these issues, the services can prevent civil law matters from arising, or can assist in resolving these issues more quickly.

Recommendation

3. That civil law services be complemented by appropriate non-legal casework services, to support access to justice for individuals with high and complex needs.

Changes in Territory law and policy

Changes in Northern Territory law and policy have impacted our practice, but have not been supported by additional resources for legal assistance services. For example, the Northern Territory government recently introduced an alcohol mandatory treatment scheme which confers power on a Tribunal to, among other things, detain a person in a residential alcohol treatment facility to receive mandatory treatment. The Territory government did not provide funding to any legal assistance service in the Northern Territory to advise and represent people appearing before the Tribunal, which has meant that none of the legal assistance services in Central Australia have been able to represent people brought before the Tribunal (see discussion below).

Similarly, recent changes in the Department of Housing's tenancy maintenance and eviction policies have also resulted in a sharp increase in demand for our service, which has effectively meant that we

have had to reduce our intake of other matters. However, we have not received any additional funding to meet this increase in demand.

Costs of external expert services

CAALAS is committed to securing expert services, such as counsel, medical assessments and other expert reports, which can be critically important for vulnerable clients, particularly in mental health and guardianship matters. However, the cost of such services can be extremely high.

Further, while we have an arrangement with the Aboriginal Interpreter Service to provide access to interpreters for Aboriginal languages spoken in the Northern Territory, we must independently fund specialist interpreters, including sign language interpreters. The high rates of hearing loss in the Aboriginal population are well-documented. While sign language interpreting is an essential service for hearing impaired clients, most deaf and hearing impaired individuals in remote communities use home sign rather than Auslan. A sign language interpreter must therefore devote several days to language development to communicate effectively with these clients. There are currently no sign language interpreters based in Central Australia and, even when a suitable interpreter can be located, the associated costs can be prohibitive.

We note that this gap in non-legal service provision also presents a significant barrier to accessing justice for a small but very disadvantaged group.

Recommendation

4. That funding be increased for disbursements related to civil and family law matters, including for the cost of obtaining independent medical assessments, expert evidence, and specialised interpreters.

Increase the duration of funding grants

Funding grants are often provided on a short term basis. This affects the ability of legal assistance services to develop innovative programs, demonstrate success over time, and sustain services in the longer term. Short term funding and uncertainty also impacts on our ability to attract and retain skilled staff. Longer term funding would allow our service to work towards longer term outcomes for the communities we serve.

Increase funding of legal aid and community legal services

It is also important that other legal assistance services in Central Australia are adequately funded to enable the effective delivery of legal services to those most in need in the region. As discussed above, to ensure that referrals can be made to another service when conflicts of interest arise, and to improve outreach services in Central Australia, it is important that there are a number of services funded to provide legal assistance.

Pro bono assistance

Whilst CAALAS has benefited from pro bono assistance provided by large interstate firms from time to time, large corporate practices do not have expertise in core areas of Aboriginal legal aid work. Furthermore, the type of legal assistance larger firms can provide is limited by the requirement that services be delivered remotely. Thus, unlike legal assistance services in metropolitan areas, we cannot draw on the expertise and resources of pro bono partnerships to meet demand for client services.

Mechanisms to improve equity and access to justice

The terms of reference requires the Productivity Commission to consider how alternative mechanisms, such as early intervention measures, alternative dispute resolution mechanisms, models of legal aid assistance, specialist courts and the use of technology, can improve equity and access to justice and achieve lower cost civil dispute resolution. Mechanisms which might be effective in improving access to justice in metropolitan areas, such as the development of online outreach services, would often not be accessible for most of our client group. We discuss some of the challenges below, and identify measures which could assist in improving access to justice in Central Australia.

Early intervention measures

In our experience, one of the most effective early intervention measures in Central Australia is the delivery of community legal education and outreach services in a culturally appropriate manner. This view is supported by both the Indigenous Legal Needs Project and the Legal Need in the Northern Territory studies, which identified the need for increased early intervention and community legal education funding to address the low level of legal understanding in the community and to encourage people to seek assistance prior to crisis point.

As we discuss above, we run a successful community legal education and outreach service, but because of funding constraints, the program is limited.

Alternative dispute resolution mechanisms

CAALAS endorses the National Aboriginal and Torres Strait Islander Services' discussion and research on the need for more culturally appropriate alternative dispute resolution mechanism.

Models of legal aid assistance

As discussed in detail above, the chronic underfunding of legal aid assistance, gaps in funding, and the constant uncertainty surrounding funding grants and the sustainability of programs, hinder access to justice and lower cost civil dispute resolution.

Specialist courts and tribunals

The absence of an administrative decisions tribunal scheme in the Northern Territory means that it can be difficult for people to access cheap and quick resolution of civil disputes, particularly disputes involving government agencies. The Local Court has jurisdiction to carry out merit reviews and hear

appeals of some types of government decisions, such as certain Department of Housing decisions. However, this is a formal, costly and time consuming process, and is therefore underutilised.

Whilst the need for an administrative decisions tribunal is an issue currently under review by the Northern Territory Government, it is currently a significant gap in the civil justice system in the Northern Territory.

The importance of legal representation in Central Australia

Tribunals may offer a relatively more efficient mechanism for resolving some types of civil disputes, but the effectiveness of the dispute resolution process, and the fairness of that process, is likely to be compromised in the Central Australian context if there is no provision for legal representation. Most of our clientele would be unlikely to access dispute resolution through a Tribunal without our assistance, and would struggle to self-represent before the Tribunal, particularly if they do not speak English as a first language or come from a remote community and cannot access a landline and internet services.

Case study: Alcohol Mandatory Treatment Tribunal

The Northern Territory Government recently introduced the Alcohol Mandatory Treatment Act which sets out a scheme for the mandatory treatment of people with alcohol problems. The Alcohol Mandatory Treatment Act also established the Alcohol Mandatory Treatment Tribunal, which has the power to make, among other things, an order detaining a person in a residential alcohol treatment facility to undergo mandatory alcohol rehabilitation. None of the legal assistance service providers in Central Australia have been funded to provide representation before the Tribunal, despite a statutory entitlement to representation before the Tribunal.

A number of Aboriginal people have been brought before the Tribunal without legal representation and have been ordered into detention to receive mandatory treatment. In one case, an Aboriginal woman from a very remote community with low level English skill was detained following proceedings without an interpreter, without a legal representative and without any safeguards in place to ensure that the evidence presented before the Tribunal was accurate and fair. There was no process to ensure that the woman's views were fully articulated and represented or that the Tribunal followed proper procedure and acted within its powers.

Anecdotal evidence suggests that this situation was not unique. However, because no service provides representation to people brought before the Tribunal, and hearings are not open to the public, there is no data on the number of individuals who may have had similar experiences.

Accordingly, we would argue that whilst Tribunals can play an important role in improving access to justice in some areas of law, disadvantaged and vulnerable parties must be able to access legal representation.

Use of technology

The Issues Paper discusses the way in which advances in technology can improve the reach and efficiency of legal service delivery. In particular, it describes the manner in which technology is being used to streamline court services, to enable mediation to occur with people living in rural and

remote areas via telephone or video conference, to better coordinate services and to transform the way in which legal practices operate. The Productivity Commission poses a range of questions in relation to these issues, including whether funding is a barrier to the greater use of technology, whether technology can improve the scope and efficiency of service delivery, and whether technology offers opportunities to expand services in regional and remote Australia.

CAALAS considers that there is some scope to utilise technology to improve legal service delivery in Central Australia. An increase in funding to enable the upgrade of legal practice technology would be beneficial in improving CAALAS' efficiency; however, it would not be practicable to increase the reach of legal services through online service delivery.

Further, in an area such as Central Australia, face-to-face service delivery is critically important and cannot be replaced by telephone or online service delivery. Cultural, language and literacy barriers are exacerbated by paper-based service provision, and can be very difficult to overcome in telephone and video-conference service delivery arrangements. The limitations of telephone mediations, for example, are discussed above under the heading "Unmet Legal Need: Family law and Child Protection". For these reasons, CAALAS prioritises face to face service delivery, and we use telephone or video conference service delivery as a last resort.

Furthermore, the capacity of legal aid and community legal services and courts and tribunals to rely on technology to deliver services is hindered by the lack of telecommunications infrastructure in remote many areas, especially very remote Aboriginal communities. Most remote communities do not have a reliable and fast internet connection, and many people living in remote communities do not have access to a personal phone. Given the uncertain future of the National Broadband Network, this situation may not change in the foreseeable future.

Increased funding to support in-house legal practice software, however, would assist in improving CAALAS' efficiency and the quality of the service it provides. The software CAALAS relies on is rudimentary, is not legal specific and does not adequately meet the needs of a large, diverse and very busy legal practice. However, without specific funding to allow CAALAS to upgrade its software, we are not in a position to allocate significant resources to improved in-house technology.

Ombudsmen

Whilst not strictly an "alternative dispute resolution" service, CAALAS considers that, when adequately resourced, Ombudsmen can play a critical role in facilitating the early resolution of matters, and advocating for systemic changes to improve the effectiveness of the civil justice system.

For example, we have referred a number of matters involving disputes over car loans to the Financial Services Ombudsman. The Ombudsman responded quickly, appropriately and effectively, and assisted in resolving the matter as efficiently and cheaply.

Reports and investigations carried out by an Ombudsman into systemic issues can be an extremely valuable policy development and advocacy resource. The Commonwealth Ombudsman completed a comprehensive report on remote housing in the Northern Territory, which service-providers in the Northern Territory have used to raise awareness about the problems with remote housing and to support advocacy for systemic changes.

List of Recommendations

CAALAS recommends that:

1. Funding to legal assistance services be increased to allow the expansion of civil legal service provision across Central Australia; and
2. Funding be increased to Aboriginal and Torres Strait Islander Legal Services, in particular, to account for the unmet need for culturally and linguistically appropriate outreach and legal services.

In relation to specific funding allocations, CAALAS recommends that:

1. Civil law services be funded at a sufficient level to allow for the provision of outreach services in remote areas;
2. Additional funds be provided for casework services that stem from needs identified in the course of outreach work;
3. Civil law services be complemented by appropriate non-legal casework services, to support access to justice for individuals with high and complex needs; and
4. Funding be increased for disbursements related to civil and family law matters, including the cost of obtaining independent medical assessments and expert evidence.

In addition, CAALAS endorses the recommendations contained in the submission of the National Aboriginal and Torres Strait Islander Legal Services.