Productivity Commission – Access to Justice Arrangements

Post-draft submission from the Attorney-General's Department

Introduction

As the Productivity Commission suggests, the cost of accessing justice services and securing legal representation can prevent many Australians from gaining effective access to the justice system. A well-functioning justice system should provide timely and affordable justice. This means delivering fair and equitable outcomes as efficiently as possible and resolving disputes early, expeditiously and at the most appropriate level. A system wide approach to tackling access to justice in Australia must take into account the different capacity of Australians to solve their own legal problems.

The Attorney-General's Department is broadly in support of many of the recommendations set out by the Productivity Commission in its draft report. Many of the issues raised in the report align with the Department's understanding of access to justice issues and with the findings of other work such as the review of the National Partnership Agreement on Legal Assistance Services (NPA), the LAW Survey and the forthcoming Law and Justice Foundation's (LJF) report 'Reshaping legal services: building on the evidence base', due to be released in May.

The Department's comments on the Draft Report's recommendations and information requests are below. This submission also includes input from the Department of the Prime Minister and Cabinet (PM&C) with relation to Indigenous legal assistance services, as PM&C administers the FVPLS program.

Responses to draft recommendations and information requests

Chapter 5: Understanding and navigating the system

Recommendation 5.1

> All states and territories should rationalise existing services to establish a widely recognised single contact point for legal assistance and referral. The service should be responsible for providing telephone and web-based legal information, and should have the capacity to provide basic advice for more straightforward matters and to refer clients to other appropriate legal services. The LawAccess model in NSW provides a working template.
>
> Single-entry point information and referral services should be funded by state and territory governments in partnership with the Commonwealth. The legal professions in each state and territory should also contribute to the development of these services. Efforts should be made to reduce costs by encouraging greater co-operation between jurisdictions.

The Attorney-General's Department agrees that Law Access NSW is an excellent model for the provision of early advice and information to all Australians. Such a service can assist disadvantaged people, as well as those more capable of helping themselves by providing information about how to resolve their legal problems without the need for more intensive assistance. The Law Access model also allows for the provision of urgent over-the-phone advice to intervene in matters before they become harder to resolve. This department intends to explore the issue with states and territories as part of its legal assistance reforms to determine whether, and if so how, this recommendation can be implemented in each jurisdiction.

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Information request 5.1

> The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependent on income support. Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks. What role should non-legal agencies that have regular contact with disadvantaged clients play? Do these organisations need to be funded separately to undertake legal health checks?

As stated in the Draft Report, studies into the effectiveness of legal health checks are relatively limited and tend to be qualitative in nature. With that in mind, the limited evidence available suggests that legal health checks can be a useful resource in the early intervention and prevention of legal problems for individuals. They are best when non-legal professionals use legal health checks as screening tools to identify legal problems or to tailor legal advice. Legal health checks are designed to better facilitate the early identification of legal risk. If not identified early, there is a higher probability that legal problems will escalate, becoming more difficult and expensive to resolve. This is particularly the case for those groups identified by the LAW Survey as being unlikely to seek assistance until their problems reach crisis-point.

The Attorney-General Department's Access to Justice Taskforce of 2009 recommended a 'no wrong number, no wrong door' best practice protocol that promotes warm referral and accurate and relevant information to build trust between the public and service providers, and to prevent people falling out of the system. This would ensure that no matter which information provider, legal assistance or related service a person approaches, a referral system is in place to help connect them with the most appropriate service. However, this approach requires a significant development of infrastructure, problem identification protocols and referral paths. In addition, appropriate methods for further triage or referral to the most appropriate or specialist legal service provider for the particular legal issue at hand would also be needed.

The LAW Survey highlighted that those experiencing civil justice problems have needs in areas beyond legal support and reinforce the need for increased connectivity between access to justice and human services. Therefore, harnessing non-legal workers that have regular contact with vulnerable groups as gateways to legal services through the use of health checks and referrals is likely to be the most suitable option for responsibility. However, this would be feasible only if the methods employed are simple and not overly onerous on non-legal workers, who have their own professional priorities.

Information request 5.2

> Information is sought on the costs and benefits of adopting the legal problem identification training module (being developed by the Commonwealth Attorney-General's Department and Department of Human Services) more widely among non-legal workers who provide services to disadvantaged groups. Feedback is also sought on which agencies' staff should receive this training and whether funding should be provided to cover training costs.

As the legal identification training module is still in the very early stages of development, the Attorney-General's Department recommends that the Productivity Commission look at pre-existing legal problem identification tools to better determine the likely costs and benefits of such programmes. Many

legal assistance service providers – Queensland Public Interest Law Clearing House (QPILCH), Legal Aid New South Wales and the Legal Aid Commission of Tasmania - already use legal health check tools and work with community services to identify legal problems and encourage warm referrals.

Information request 5.3

> The Commission seeks feedback on how best to facilitate effective referrals for legal assistance between organisations responsible for human service delivery, and, where appropriate, greater information sharing across departments and agencies.

The Attorney-General Department notes that the Commission's recommendation 5.1 proposes the establishment of a central point in each state and territory for providers of human services to refer clients requiring legal assistance.

The Department notes that the expertise of LawAccess NSW differs from non-legal organisations with responsibility for human service delivery. However, the Productivity Commission could explore whether the methods used by LawAccess NSW to reduce referral fatigue could be adopted by non-legal organisations.

The Department also notes that ongoing collaboration and information sharing exists between legal assistance service providers and the Department of Human Services in recognition of their shared client base. The Department believes that collaboration and information sharing is best achieved through multi-agency and multi-legal assistance service attendance at jurisdictional forum meetings, which currently occur at least once a year in each jurisdiction.

Chapter 6: Information and redress for consumers

Information request 6.4

> The Commission is seeking further evidence regarding the effectiveness of complaints bodies. Specifically, is there available evidence regarding whether:
>
> - consumers are aware of complaints avenues and using them
> - resolution of disputes and investigations is timely and the sanctions imposed proportionate
> - consumers and lawyers are satisfied with the outcomes of complaints processes.

Under the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*, all accredited family dispute resolution (FDR) practitioners must have access to a 'suitable' complaints mechanism that covers the FDR services they provide. For those working for government-funded services this is an internal complaint process, with an external review of the complaint undertaken by the Department of Social Services' (DSS) National Office Complaints Team if required. For private practitioners, this is usually through membership with a professional organisation, such as a mediation body or oversight from a legal services commission. The intention of a complaints mechanism is to provide a process which is independent from the practitioner to deal with complaints if a client is not satisfied with the FDR service provided. The Department does not collect statistics on complaints.

The Regulations also require all accredited practitioners to provide information regarding their complaints process to clients before any services are provided. The severity of any breach will determine the possible sanction imposed, which is a matter for the complaints body to determine. An FDR practitioner may be

counselled and directed to amend his/her practices to ensure the breach does not occur again. Under the Regulations, FDR practitioners can be either suspended or cancelled on certain grounds including:

- failing to comply with the *Family Law Act 1975* or any obligation imposed on the practitioner by the Act
- engaging in conduct that is likely to bring FDR into disrepute
- being prohibited under a law of a State or Territory from working with children, or
- been convicted of an offence the substance of which is a failure by the practitioner to comply with a law of a State or Territory relating to employment of persons working with children.

The Department is currently considering the complaints bodies used by private practitioners to reassess the suitability of their complaints mechanisms.

Chapter 8: Alternative dispute resolution

Information request 8.1

The Commission seeks feedback on the value of extending requirements to undertake ADR in a wider variety of family law disputes.

The requirement under the *Family Law Act 1975* for individuals to make a genuine effort to resolve child-related disputes by family dispute resolution before making an application for a parenting order under Part VII of the Act has been in place since 2006. The evaluation of the 2006 reforms undertaken by the Australian Institute of Family Studies found that FDR has assisted many Australian families and children.

The Department considers there is a good case for extending a requirement to undertake ADR to family law property matters.

The Department has previously considered whether there was a need for competency units for property and spousal maintenance to be included in the Vocational Graduate Diploma of Family Dispute Resolution. In March 2012 the Department commissioned the Community Services and Health Industry Skills Council to conduct a scoping study into this issue. Its October 2012 report is available on the departmental website. The recommendation to develop a unit of competency for property and spousal maintenance has not been progressed at this time.

However, a 'streamlining project' being conducted by the Skills Council is intended to review and strengthen existing property references in the qualification and fix any other areas of inconsistency. The streamlining project is expected to commence again in mid-2014. It is anticipated that the endorsement date for any changes to the qualification will be December 2015.

Ontario Mandatory Mediation Program

The Department suggests that the Productivity Commission may be interested in analysing the Ontario Mandatory Mediation Program as an example of a successful model of targeted referral and alternative dispute resolution processes that could be extended to other types of civil matters.

The Ontario Mandatory Mediation Program in Canada started on 4 January 1999 in Toronto and Ottawa, and in Windsor on 31 December 2002. Under the Program, all non-family related civil cases are referred to

mandatory mediation sessions early in the litigation process to give parties an opportunity to discuss the issues in dispute. Cases are managed through court supervision which impose strict timelines on their movement through the pre-trial and trial process.

An evaluation of the Program in 2001 indicated that mandatory mediation resulted in significant reductions in the time taken for the court to dispose of matters. In Ottawa and Toronto, for example, approximately four out of every ten matters were completely settled at or within seven days of mediation. Responses from litigants indicated that in 85% of cases, mediation was assessed as having a positive impact on reducing costs to litigants, and in 57% of cases, a 'major' positive impact. Lawyers estimated the amount of savings in legal costs to litigants that in over a third of cases, the cost savings were in excess of $10,000 (including 8% estimated at over $30,000). In another third, savings were estimated at $5,000 or less.

The Program has also resulted in a positive impact on the court. The Ontario Superior Court of Justice has reported that, as a result of the mediation referral process, backlogs are now non-existent and referral to mediation is firmly entrenched in the local legal culture.

Chapter 14: Self-represented litigants

Information request 14.1

> What is the most effective and efficient way of assisting self-represented litigants to understand their rights and obligations at law? How can the growing complexity in the law best be addressed?

The Department notes the Draft Report's reference to the Self-Representation Service (SRS) in the Brisbane Registry of the (then) Federal Magistrates Court and Federal Court. The June 2012 evaluation of the SRS by Dr Cate Banks demonstrated that ongoing funding and expansion into other jurisdictions could assist in creating both immediate and longer term cost-savings for the federal courts. This led to the Commonwealth Government investing $4 million over four years to enable the national rollout of the SRS.

The SRS is now being provided across eight jurisdictions by the following four providers: QPILCH (Queensland), Legal Aid Western Australia (Western Australia), JusticeNet SA (South Australia and Northern Territory), and Justice Connect (Australian Capital Territory, New South Wales, Victoria and Tasmania).

The Department looks forward to the Productivity Commission's findings in the final report and will consider any recommendations that relate to improving the effectiveness of methods to assist self-represented litigants.

Information request 14.3

> How widespread are problems around conflicts of interest for providers offering unbundled services? Do provisions that deal with conflicts of interest need to be refined so as not to prevent people benefitting from discrete, one-off forms of advice from assistance services and if so, how might this best be done?

The Department notes that some Commonwealth funded legal assistance service providers already offer some unbundled services for their clients. The Department supports the concept of unbundled services in

principle, noting that the more unbundled the legal service, the more that obtaining an effective outcome depends upon personal and legal capability.

The private legal services market could offer a greater range of unbundled products in order to enable those individuals ineligible for publicly funded legal assistance to purchase entire services or part services at a reasonable cost. Some private legal operators, such as Nest Legal, are providing e-assisted legal services as part of unbundled methods of service delivery. These electronic services typically include template letters, guidance on legal processes and 'self-help' legal toolkits produced with the intent of providing guidance to enable individuals to handle their legal problems alone..

Chapter 19: Bridging the gap

Information request 19.2

> The Commission seeks feedback on the strength of the case for a Legal Expenses Contribution Scheme and views on any relevant design features, including what legal expenses should be covered and whether it should be limited to particular matters.

The Department expresses in-principle support to the Productivity Commission further researching the concept of a Legal Expenses Contribution Scheme (LECS).

A recent report by RMIT's Centre for Innovative Justice in Melbourne found that the majority of the population is 'sandwiched between eligibility for public assistance and a realistic capacity to meet the costs of the private legal market' (RMIT, 2013). They found that a LECS could be offered to those who find themselves 'sandwiched' in this way. Raising the minimum earning requirements to gain Commonwealth financial support under LECS may remove consumer pressure placed on legal assistance services that have only a limited pool of funding. This would ensure that legal assistance services continue to be provided to the most disadvantaged members of the community while still enabling governments to reduce unmet legal need.

If the Productivity Commission proceeds to research a LECS, it may wish to examine the feasibility of a LECS being offered to individuals whose legal matters are considered in the Draft Report to be 'thinly covered by legal assistance', such as small family law property matters.

Chapter 21: Reforming legal assistance services

In conjunction with analysing the findings of the recent review of the NPA conducted by ACIL Allen Consulting, the Department is considering a number of key reforms in light of the Productivity Commission's inquiry into access to justice arrangements. These reviews will assist the Department in developing future funding arrangements for the legal assistance sector.

Proposals from the draft report currently being considered include but are not limited to:

- The establishment of a widely recognised single contact point for legal assistance and referral, similar to that of the LawAccess model in NSW.

- Ways to manage civil law matters separately from criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.
- Aligning eligibility criteria for legal aid commissions and community legal centres under the NPA.
- Considering how CLSP funding is distributed across states and territories, and the best funding model to do so. This applies especially in the context of identifying areas of 'highest need' within jurisdictions.

The Department will give further consideration to the Productivity Commission's full list of recommendations in the final report.

Chapter 22: Assistance for Aboriginal and Torres Strait Islander people

The Department notes the Draft Report's consideration of legal assistance provisions for Indigenous Australians and its finding that specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified. The Department is currently working with the Aboriginal and Torres Strait Islander Legal Services (ATSILS) to address some of the issues highlighted in the report including:

- Reducing the reporting burden through risk assessments and short form/long form contracts.
- Ensuring appropriate governance structures are in place, in line with Commonwealth Government requirements for Indigenous organisations and programmes.
- Improving benchmark performance by requiring ATSILS to conduct a specified amount of case work in a twelve month period.
- Using a funding allocation model to ensure funding is allocated to the areas of highest need.

After release of the final recommendations, the Department will consider the following actions to improve access to justice for Aboriginal and Torres Strait Islander people.

1. Changing programme guidelines to reflect that funding will be allocated based on demonstrated levels of need and reviewing the existing funding allocation model to ensure that it is consistent with current research and demonstrated areas of need.
2. Supporting the continuation of the Indigenous Interpreter Services programme.
3. Drafting an Indigenous specific section for inclusion in the Alternative Dispute Resolution Guidelines, and/or commence the process to draft national family dispute resolution guidelines which includes a part on culturally appropriate, Indigenous specific practices.
4. Taking opportunities to encourage state and territory governments to include culturally appropriate courts in their justice systems.

It is important to note that ATSILS and Family Violence Prevention Legal Service (FVPLS) units operate under two completely separate programmes. Legal service provision represents only one aspect of the FVPLS units. FVPLS units provide holistic and culturally sensitive assistance to Indigenous victim-survivors of family violence and sexual assault. FVPLS functions include the provision of legal assistance, casework and court support to victim-survivors of family violence or sexual assault. The activities of the FVPLS units may include the provision of counselling, court support and assistance, representation and support in child protection and family court matters, information and referral services,

community engagement, early intervention and prevention services and community legal education. FVPLS units are located close to identified and agreed high need communities and there are currently fourteen FVPLS units located across Australia servicing thirty one high-need areas.

ATSILS' primary role is to deliver culturally sensitive, equitable and effective legal assistance and related legal services to Indigenous Australians so that they can fully exercise their legal rights as Australian citizens. ATSILS is limited only to legal assistance and related legal services. ATSILS primary client base are Indigenous Australians involved in criminal law matters. These clients can and sometimes do include alleged perpetrators of family violence matters. ATSILS currently have a state-based service delivery model: eight ATSILS, one in each state, and two in the Northern Territory (North and South Zones) and one combined service in NSW/ACT.

Both ATSILS and FVPLS units receive funding through direct funding agreements with the Commonwealth, with PM&C administering the FVPLS units and this department administering the ATSILS programme.

Department of the Prime Minister and Cabinet comments

PM&C considers that the following references to the FVPLS programme require further clarification:

1. References to FVPLS providers focusing solely on family violence matters (pages 573, 588, 628, 678).

PM&C notes that FVPLS clients are victims of family violence or sexual assault. FVPLS services are not limited to family violence work, but include a variety of civil law work for clients, for example tenancy matters, consumer law and credit and debt issues to provide a holistic response to their circumstances.

2. References to FVPLS' involvement in criminal law, including '…the bulk of ATSILS' and FVPLS' resources is dedicated towards criminal and to a lesser extent family violence matters…' at p678.

PM&C notes that FVPLS' only participate in criminal matters through court support. The majority of FVPLS resources are directed to family and civil matters.

3. References to the reasons for targeting particular geographic areas over others and the funding model being unclear (pages 35 and 697).

PM&C confirms that an analysis of high need areas was undertaken when the programme expanded in 2004-05. This analysis determined the current thirty one service areas. The 2013 Nous report provided an analysis of high need areas, with many of the highest need areas reflecting current service areas. A funding round has not been held since the 2013 needs analysis was undertaken. PM&C will consider the findings of the Nous report as it works to implement the government's policy priorities as articulated in its recently announced Indigenous Advancement Strategy.

In relation to the existing funding model, PM&C notes that, since 1998, the equal distribution model has been slightly modified to take account of the resources required for appropriate service delivery levels. The existing funding model has continued to adapt to meet the demands associated with regionalisation and

changing needs in communities in the general vicinity of FVPLS unit locations. Changes to the communities serviced have been identified by service providers.

PM&C also notes the comment made on page 682 of the draft report that FVPLS coverage in some remote areas is very limited and serviced through long-distance outreach areas. PM&C accepts this comment, but notes that the Nous report is making a case for how important FVPLS services are in these locations as there are no other alternatives, rather than criticising FVPLS' limited investment in the subject regions. PM&C notes that recruitment of lawyers to very remote communities is challenging and those lawyers are required to traverse large geographical areas. FVPLS funding enables travel to these communities to deliver important services. PM&C notes the FVPLS providers regularly attend circuit and bush courts in these very remote communities and provide additional outreach work as needed.

4. Reference to the FVPLS funding model funding the core positions of coordinator, two solicitors and one Aboriginal support worker or counsellor (page 600).

PM&C clarifies that since 2004-05 FVPLS providers have developed their models to reflect the needs of the areas they service and the availability of suitably qualified and experienced staff. This has resulted in many FVPLS providers relying on other service providers for counselling assistance.

5. References to FVPLS providers offering counselling for the victims of sexual assault (pages 577 and 591).

   PM&C notes that counselling is not limited to victims of sexual assault, and all FVPLS clients may access counselling services if required. As the funding model has evolved, counselling services are generally no longer provided in-house. FVPLS' arrange and will fund counselling services if required.

6. Reference to only one or two departmental programme managers being able to 'make sense' of existing FVPLS data (page 695).

PM&C clarifies that all staff working on the FVPLS programme can access and interpret CLSIS data although it recognises there are inconsistencies in how legal assistance providers record data.

7. Figure 7 of the draft report suggested that FVPLS funding commenced in 2004-05 (page 31).

PM&C recommends that the figure is clarified to identify that FVPLS funding commenced in 1998.

Information Request 22.5

> The Commission seeks information on the cost of culturally appropriate Indigenous specific ADR (including FDR) services, particularly in high need areas. Views on the appropriate engagement model and governance arrangements are also sought.

Current Commonwealth funded alternative dispute resolution (including family dispute resolution) is available to all Australians, including Indigenous persons. The Attorney-General's Department notes the

importance of culturally appropriate service provision, and supports Indigenous-specific alternative dispute resolution in principle.

The Attorney-General's Department is unable to provide information on the cost of culturally appropriate Indigenous specific ADR (including FDR) services or information on associated governance arrangements. However, the Department can provide information about engagement with Aboriginal and Torres Strait Islander people from a family services perspective.

In line with the Operational Framework for Family Relationship Centres (FRCs), FRCs provide flexible, culturally sensitive and accessible service delivery models and practices to Indigenous clients in their area, and have strategies in place to achieve this by including the following:

- providing services at culturally appropriate sites that are welcoming for Indigenous families
- recruiting Indigenous staff
- arranging outreach visits to communities in their catchment areas
- forming linkages with Indigenous communities and agencies servicing those communities
- networking with other providers of family services to Indigenous people, and
- providing Indigenous interpreter services where needed.

In areas identified as high need or with significant Indigenous communities, additional funding has been granted to twelve FRCs to ensure that Indigenous clients are serviced effectively. Those FRCs are: Cairns, Rockhampton, Townsville (Mt Isa satellite site), Lismore, Nowra, Dubbo, Port Augusta, Mildura, Darwin (Alice Springs satellite site), Geraldton and the Kimberley. The additional funding enables those FRCs to engage Indigenous Advisers. Of particular note, some FRCs have also employed such advisers without special funding allowances including in Blacktown, Bundaberg, Bunbury, Adelaide and Perth.

The Indigenous Advisers assist Indigenous people in each region to access FRCs and other services, and to develop the capacity of FRCs to provide effective services to Indigenous families. Indigenous Advisers are engaged directly by the FRC or by arrangement with another organisation with experience and credibility in the delivery of services to Indigenous families. Advisers contribute to the development of effective services to Indigenous families across the whole network of FRCs.

The functions of the Indigenous Advisers include:

- helping the FRCs to develop innovative and effective approaches to delivering the FRC services to Indigenous families
- conducting community education to Indigenous communities about FRCs and services
- liaising with Indigenous communities in their areas and with other agencies servicing those communities (including Indigenous Family Liaison Officers in the Family Court of Australia and Family Violence Prevention Legal Services)
- coordinating arrangements for service delivery (eg arranging visits by FRC staff to communities), and
- providing cultural advice and training to FRC staff.

In its February 2012 report *Improving the family law system for Aboriginal and Torres Strait Islander clients*, the Family Law Council indicated that some of the twelve FRCs have both formal and informal mechanisms for seeking specific advice from Aboriginal and Torres Strait Islander peoples on Indigenous issues, including Aboriginal staffing, reference groups and community outreach. The report also indicated that not all FRCs have accredited Aboriginal and Torres Strait Islander FDR practitioners on staff and FRCs repeatedly highlighted the difficulty in recruitment. FRCs indicated that some FRCs offer programs tailored

from Aboriginal and Torres Strait Islander clients and cultural competency training for staff, while others have collaborative service delivery arrangements with Aboriginal organisations.

The Family Law Council further noted one of the barriers to recruiting Aboriginal and Torres Strait Islander staff has been the relatively small number of Aboriginal and Torres Strait Islander professionals with legal and social science qualifications. However, the Council indicated that there have been a small number of successful initiatives that provide Aboriginal and Torres Strait Islander students and professionals with scholarships to gain qualifications in FDR and counselling.

One of these initiatives includes a scholarships pilot program funded by the Department for people from Aboriginal and Torres Strait Islander and culturally and linguistically diverse heritage to obtain qualifications in FDR. The program is currently being administered by Family and Relationship Services Australia and began in 2012 and is due to conclude in September 2014. The program aims to increase the number of FDR practitioners from these backgrounds, building workforce diversity and the capacity of the service sector to respond appropriately to community needs. Thirty three scholarships have been awarded in total with twenty two students from CALD backgrounds and eleven from Indigenous backgrounds.

The Attorney-General's Department has received positive feedback about the impact of these scholarships, with one scholarship recipient pointing to the value of understanding both culturally traditional mediation and Australia's FDR and their ability to encourage families to use FDR effectively.

Also of note, the Department provided funding in May 2012 to Interrelate Family Centres to undertake train-the-trainer programs in the delivery of the Aboriginal Building Connections program in each state and territory. The training program was constructed within a partnership framework with the aim of enhancing the skills and expertise of family law system professionals that will advance the development of cultural competency and a shared understanding of the post separation needs of Indigenous families across services and communities.

PM&C also provides the following case studies in support of culturally appropriate alternative dispute resolution.

Mornington Island Restorative Justice (MIRJ) Project (North Queensland)

> Nowadays people just go and go. A big crowd will stand and watch. Who knows where it ends up – fighting for a week – it spreads – people go to jail – no one to stop it (Mornington Island Elder).

The MIRJ Project and its evaluation is relevant to the Productivity Commission's inquiry into civil dispute resolution. The approach has been designed specifically for Indigenous Australians to provide a 'grassroots' alternative dispute resolution process to directly address the critical issue of escalating community violence. The objectives of the project include:

- enhancing the capacity of the local Indigenous community to manage their own disputes
- developing community ownership of the project
- reducing adverse contact with the criminal justice system, and
- improving the responsiveness of the justice system to the needs of the community.

The MIRJ Project has been jointly funded by the Department of the Prime Minister and Cabinet and the Queensland Department of Justice and Attorney-General's (DJAG). It was developed and implemented by DJAG's Dispute Resolution Branch in partnership with Mornington Island Elders.

The MIRJ Project commenced in 2008. It took fifteen months to consult with the community, including building a working alliance with the Mornington Island Elders, and develop the peacemaking model that underpins the approach. The model, termed kinship consultation, includes an eight step process, and Elders rules for mediation. The dispute resolution interventions within the model also include circle conferencing, conflict coaching and shuttle diplomacy to address the likelihood of escalating violence.

The mediations commenced in 2009 and by mid-2012, 149 of the 157 accepted referrals were successfully resolved (95%). The majority of referrals, in a fairly equal distribution, have come from the local Indigenous community, the police and the court. Local Elders and some emerging younger leaders now conduct the mediations. It is estimated that the Island's entire adult population of 1 200 have been involved in the mediation process in different capacities such as victim, offender, Elder, mediator or support person.

The effectiveness of the model has led to the introduction of peacemaking in the local school known as the Banbaji School Programme. It is led by highly respected local youth as mediators. The school principal reports this as a factor in reducing school bullying as well as an increase in school attendance. Banbaji was recognised in the 2013 Australian Crime and Violence Prevention Awards.

In the initial stage of the mediation service from October 2009 to September 2011, mediations were facilitated by project staff and Elder mediators. From October 2011 the service began transitioning to local management by the local Community Justice Group, Junkuri Laka. This transition was completed and formalised through a service delivery agreement in February 2012.

The focus of the MIRJ Project over the past two years has been on supporting Junkuri Laka to deliver a responsive service and gain greater family acceptance of the process. The aim is to make mediation a community norm in resolving conflict. On average two to three peacemaking interventions are held each week. While there is a core group of Elder mediators, it remains an ongoing challenge to strengthen local ownership with participation by a wider group of Indigenous Elders, including women Elders and emerging young leaders.

An independent evaluation expected to be completed in 2014 is currently being undertaken to assess the development, implementation and transition of the MIRJ Project to community management, and to test the outcomes.

Potential benefits

Subject to confirmation through the independent evaluation, and based on the evidence to date, the MIRJ Project appears to have provided a local early dispute intervention service that has:

- reduced disputes in the community
- reduced escalation and the duration of disputes to prevent the involvement of the justice system, either as victims or offenders

- reduced involvement of the local health and other emergency services
- enhanced community safety, and
- increased community governance and social capital with a decreased reliance on police intervention.

Operationally, it appears to be supporting and empowering this disadvantaged community to take some ownership and responsibility for peace-making, as well as peace-keeping, in their families and community.

Cost

The MIRJ Project has taken considerable development and has entailed significant financial and other in-kind investment costs. Allowance for these costs is essential to provide adequate time for consultation and establishment that is culturally appropriate, thereby maximising the utilisation of the mediation services. It is estimated that between 2008 and 2014 the Commonwealth Government and DJAG provided around $1.2 million to establish the project.

Once established, local management costs for the ongoing delivery of the service are modest, with expenditure of $107 000 for the 2012-13 financial year.

Yuendumu Mediation and Family Violence Service

The Yuendumu Mediation and Family Violence Project commenced in 2007 and is funded under the Department of the Prime Minister and Cabinet's Indigenous Family Safety Programme. The project provides a peace and mediation group and domestic violence education service for Indigenous people and communities who are at risk of experiencing family violence.

The project aims to make Yuendumu a safer place for individuals and families and promotes community development towards the prevention of family violence. Since the project commenced, 310 individuals have been assisted. The project is led by the Yuendumu Mediation and Justice Committee which is made up of elders from the Yuendumu community and a full time coordinator/mediator. The mediator and Committee are very active in the community showing leadership and have a hands on role in providing mediation in the community for conflict as it arises. Elders and community leaders have proactively been working towards an ongoing resolution.

Committee members have received training and support from the NT Government Community Justice Centre with a variety of training and education opportunities, from accredited mediation training through to Continuing Mediation Development workshops and Group Practice sessions.

Activities that the Committee undertakes include:

- school visits where children are encouraged to attend and leave their conflict outside the school gates
- designing and distributing posters and flyers encouraging all community members and visitors to support the peace process
- publishing a 'Peace Calendar' identifying the number of conflict free days achieved in the community including a community celebration after milestones achieved
- participating in the local bush court as well as the Elders Visiting Program at both Alice Springs and Darwin Correction Centres in order to encourage inmates to stay out of trouble both during their prison term and on their release, and

- Elders facilitating community events like Yuendumu Sports Weekend and Yuendumu Career Expo.

The Committee developed a Warlpiri Mediation Manual launched on 16 August 2013. The Manual assists Warlpiri people wherever they live to understand their individual and collective roles in resolving, building and maintaining peace in the community.

The project received $226,245.92 in 2013-14 to deliver the mediation service. This funding supports the engagement of a Mediation Coordinator and part time Mediators that work in Yuendumu, Willowra and Alice Springs.

Chapter 24: Data and evaluation

Recommendation 24.1

All governments should work together and with the legal services sector as a whole to develop and implement reforms to collect and report data (the detail of which is outlined in this report).

To maximise the usefulness of legal services data sets, reform in the collection and reporting of data should be implemented through:

- adopting common definitions, measures and collection protocols
- linking databases and investing in de-identification of new data sets
- developing, where practicable, outcomes based data standards as a better measure of service effectiveness.

Research findings on the legal services sector, including evaluations undertaken by government departments, should be made public and released in a timely manner.

The Attorney-General's Department acknowledges that the legal industry, consumers and the government alike would benefit greatly from the standardisation of data. The Department is currently working towards the standardisation of data reporting across all Commonwealth funded legal assistance services. This work is being conducted in consultation with legal assistance service providers, with the likely implementation date to coincide with the future agreement on legal assistance services from 1 July 2015. PM&C is working closely with the Attorney-General's Department on these matters.

Furthermore, the Department has commenced a long-term project to develop the architecture necessary to underpin a strong, consistent evidence base across the civil justice system more broadly. This project, the Civil Justice Evidence Base Project, is currently focusing on the collection of consistent data within the federal jurisdiction, integrating information from the Legal Assistance Services Data Reporting Standards. To this end, the Department is working with the Australian Bureau of Statistics to undertake a data gap analysis in the Administrative Appeals Tribunal.

Further information about the project is available on the Department's website at - http://www.ag.gov.au/LegalSystem/Pages/Anevidencebaseforthecivilj usticesystem.aspx.

Productivity Commission – Access to Justice Arrangements

Post-draft submission from the Attorney-General's Department

Information request 24.1

> The Commission seeks feedback on where a data clearinghouse for data on legal services should be located. Such a clearinghouse needs to be able to coordinate data collection from multiple civil justice stakeholders and disseminate the information in a timely fashion. It should also have some expertise in linking, using and presenting data, especially administrative data. Ideally, the clearinghouse should also have experience in liaising with legal service providers and different levels of government, have an understanding of the operation of the civil justice system and understand the principles behind benchmarking.

The Department notes that data collection and dissemination arrangements for the criminal justice system are relatively well-developed. The National Centre for Crime and Justice Statistics within the Australian Bureau of Statistics leads national statistical activity aimed at developing, improving and disseminating information about the Australian criminal justice system. Governance arrangements are also in place. The Department suggests that the Commission consider similar data collection and dissemination arrangements for the civil justice system more broadly, that is, not limited to legal services.