

Quarterly Highlights Report March to June 2018

New Chair of NLAF

In March 2018, we farewelled Richard Funston as Chair of NLAF. On behalf of all the NLAF members, we thank Richard Funston for his contribution to the Forum over the years, and congratulate him on his appointment to the bench.

We are pleased to announce that **Brendan Thomas, CEO of Legal Aid NSW**, has been elected as the new Chair of NLAF. We would also like to thank Geoff Mulherin, the Director of Law and Justice Foundation NSW and Deputy Chair of NLAF, for serving as the Acting Chair over the past few months to ensure a smooth transition.

Guest Speakers at the Plenary Group Meeting

National Disability Insurance Scheme (NDIS)

Members heard from the following guest speakers who presented their respective views of the NDIS

- Dr Megan Clement-Couzner, Senior Policy Officer, People with Disability Australia (PWDA)
- Ms Jackie Finlay, Senior Solicitor, Legal Aid NSW
- Ms Frances Foster Thorpe, Director, and Audrey Maag, Principal Policy Officer, NDIS Reform Group of the Department of Premier and Cabinet.

Dr Clement-Couzner and Ms Finlay raised several common key challenges faced by people with disability in accessing the NDIS, including:

- delays in accessing the NDIS
- narrow definition of disability
- lack of reasonable justification for discontinuing NDIS funding on review
- inconsistency of decisions
- delays in appeals
- lack of accountability following AAT decisions

The representatives of the Department of Premier and Cabinet listened and acknowledged these challenges, and offered to continue to engage with NLAF members and other advocacy services.

Commonwealth Attorney-General's Office

Carolyn Howard of the Commonwealth Attorney-General's Office provided the following updates:

- A new *Federal Circuit and Family Court of Australia* will be established through the amalgamation of existing Family Court of Australia and the Federal Circuit Court of Australia:
 - This amalgamation is expected to take place from 1 January 2019;

- A new *Family Law Appeal Division* will be established in the Federal Court of Australia, and it will hear all appeals from the new Federal Circuit and Family Court of Australia in family law matters.
- Reviews and evaluations:
 - National Partnership Agreement (NPA) and Indigenous Legal Assistance Program (ILAP) reviews
 - Details can be found on the [Commonwealth Attorney General's Department's website](#).
 - Domestic Violence Unit Pilot Program evaluation
 - The department has contracted Social Compass to conduct the evaluation of the Domestic Violence Unit Pilot Program. The evaluation is due to complete in August 2018.
 - Family Advocacy and Support Services evaluation
 - This evaluation has commenced and site visits have been conducted. The evaluation is due to complete by September 2018.
 - Family Violence Prevention Legal Services evaluation
 - The Commonwealth Department of Prime Minister and Cabinet engaged Charles Darwin University to undertake an impact evaluation of the FVPLS activity. Please contact the NLAf Project Manager for further information.
 - Australian Law Reform Commission (ALRC) Review of the Family Law System
 - The reporting date of the ALRC review is 31 March 2019. A discussion Paper will be released in September 2018 and there will be a call for submissions.
- On 20 February 2018, the Commonwealth Attorney-General announced the Council of Attorneys-General will work together to develop a National Plan to address elder abuse. A CAG Working Group on Protecting the Rights of Older Australians has been established. State and Territory Governments will lead engagements with existing forums for elder abuse and ageing policy, and the Commonwealth Government will conduct several focused consultations, including with the Australian Guardianship and Administration Council, and the banking sector, in June, July and August.

Key NLAf Issues

Indigenous Incarcerations

In response to the recent Australian Law Reform Commission *Pathways to Justice* report, which highlighted the staggering rates of indigenous incarcerations, NLAf is drafting a Terms of Reference for a new Working Group that focuses on this issue.

Collaborative Service Planning

Under the *National Partnership Agreement on Legal Assistance Services 2015-20*, states are required to undertake collaborative service planning, including meetings with the legal assistance sector, to improve coordination between service providers in the planning and delivery of services. As part of their Strategic Plan 2018-23, Legal Aid NSW will work with NLAf members to establish a more detailed framework for collaborative service planning in NSW. NLAf has agreed to establish a new Working Group which will focus on collaborative service planning. Legal Aid will chair this Working Group and is in the process of drafting the Terms of Reference.

Working Group Reports

Fines and Traffic Law Working Group

Fairer Penalty Notice System (FPNS) & Issuing Authorities

The FPNS is a joint project of Revenue NSW and Department of Finance, Services and Innovation (DFSI) to recommend measures that will reduce the disproportionate impact and social cost of the fines system on vulnerable people. NLAf engaged with DFSI and Revenue NSW to provide input prior to cabinet submissions being made. Unfortunately, the practices of issuing agencies, including the failure to use cautions on children, were outside the scope of the FPNS. NLAf will continue to work with DFSI to find ways to address this issue.

Driver Disqualification Reform Implementation

NLAf received an update from Legal Aid's Driver Disqualification Reform Implementation Team, who has identified two key legal challenges:

(1) In relation to applications to quash Habitual Traffic Offender declarations, some courts accept applications on the basis that the Savings and Transitional provision in the Act which preserves the courts' power to quash declarations applies to new applications being made. While other courts refuse to consider these applications because they interpret the same provision as only preserving the courts' power to quash applications that were on foot' as of 28 October 2017, but not thereafter. It was anticipated that this issue would be clarified through regulation, but no timetable for when that regulation might arrive.

(2) There have been varying interpretations of the legislation about when the offence-free period is taken to have commenced. Legal Aid takes the view that the period commences from the date of the last offence, whereas the Roads and Maritime Services are of the view that it commences from the date the conviction was imposed for their last offence.

Prisoners Forum

Patient Health Survey Reports 2015

The theme of this quarter was Prisoners Health. The Forum heard from representatives of the Research and Evaluation Service from Justice Health and Forensic Mental Health Network (Justice Health) who presented the results of the three surveys on Patient Health, Aboriginal Health, and Young People in Custody Health (2015).

Some notable statistics and issues include:

- Adult prisoners have a high rate of homelessness prior to incarceration, and high levels of chronic disease;
- Young people in prison have a high prevalence of a past head injury and psychological conditions, and tended to under-report health conditions.

Victims Restitution Orders (VRO) and Work Development Orders (WDO) in Prison

Following reforms to the *Fines Act 1996* (NSW) in March 2017, unpaid VRO debts are now enforced through Revenue NSW, which means that individuals may now owe very large amounts to Revenue NSW. This also means that if they meet specific criteria, individuals can undertake a WDO to pay off a VRO. Corrective Services NSW (as a WDO Sponsor) imposed a policy that excluded prisoners from undertaking a WDO to pay off a VRO debt. A prisoner, however, could never accrue a VRO debt, and therefore undertake a WDO, for the offence for which the prisoner is currently serving a sentence. NLAf, through members of both the Prisoners Forum and the Fines and Traffic Law Working Group, wrote to the Commissioner of Corrective Services. We are pleased to advise that Corrective Services NSW, upon reviewing the situation, has agreed to allow prisoners to undertake a WDO to pay off a VRO debt.

Other Groups reporting to NLAF

Cooperative Legal Services Delivery (CLSD) Program operated by Legal Aid NSW

There was a discussion at the Plenary meeting about the issue of suspensions from schools due to behavioural problems, which could be considered as unlawful discrimination. The NLAF members are aware of the Victorian Equal Opportunity and Human Rights Commission's report "[Held Back: The experiences of students with disabilities in Victorian schools](#)" (Sept 2012) which featured prominently the use of restraint and seclusion in schools. There may be similar work being done in NSW. Legal Aid's Civil Law Division takes on these cases but they tend to settle. NLAF will get data on school suspensions, "partial" suspensions and expulsions from the Department of education.

More information about the Cooperative Legal Service Delivery Program and the location of/contacts for regional networks can be found at: <http://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/cooperative-legal-services-delivery-clsd-program>.

NLAF Website (nlaf.org.au)

Quarterly working group reports tabled at the NLAF meetings and NLAF Highlight Reports are posted on our website. In addition, the NLAF News page is updated weekly with links to NLAF member updates and news items.

Lillian Leigh
NLAF Project Manager
July 2018