



Mr Matt Minogue
Access to Justice Taskforce
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

Dear Mr ~~Minogue~~ *Matt*

Access to Justice Consultations

Thank you for meeting with NLA F on 30 October 2009, to discuss the report *A Strategic Framework for Access to Justice in the Federal Civil Justice System*.

NLA F is a coalition of peak and State-wide legal service delivery organisations, working to improve access to justice for socially and economically disadvantaged people in New South Wales. The members of NLA F are:

- Legal Aid NSW;
- the Law Society of NSW;
- the NSW Bar Association;
- Community Legal Centres NSW;
- the Aboriginal Legal Service (NSW/ACT);
- the Law and Justice Foundation of NSW;
- the Public Interest Law Clearing House NSW;
- the NSW Department of Justice and Attorney General; and
- LawAccess NSW.

Further information on the work of NLA F is available at www.nlaf.org.au.

A number of NLA F members will make detailed submissions in response to the report, either individually or through peak organisations. This submission does not seek to duplicate or summarise those submissions. Rather, it seeks to address three overarching issues, in relation to which NLA F is uniquely qualified to comment: the allocation of funding, the coordination of legal service delivery, and referral databases.

Allocation of funding

NLA F has demonstrated a strong commitment to collaboration around planning and funding decisions, with a view to ensuring that finite funding for legal assistance is used as effectively as possible, that duplication of effort is avoided, and that funding decisions are informed by evidence. A number of projects that are now funded—such as the Mental Health Legal

Services Project auspiced by the Public Interest Advocacy Centre, and the Commonwealth-funded research into recruitment and retention of lawyers in rural, regional and remote areas of New South Wales—have developed out of NLAF initiatives. In addition, several members of NLAF play a role in the distribution of funding, and involvement in NLAF helps to inform funding decisions.

While NLAF members welcome the additional one-off funding for legal assistance that has been provided by the Commonwealth in recent years, the manner in which funding decisions have been made has not been consistent with the Access to Justice Framework.

In some cases, significant State-wide projects have been funded without any advance notice, creating the risk of duplication of funding by another funding agency. In other cases, funding has been provided for very specific projects, for which the service provider has not sought funding. This creates the risk that there might not be a very good match between the funded project and evidence about legal need, as well as the risk that the organisation might not be well prepared to deliver the project that has been unexpectedly funded.

This is inconsistent with the Access to Justice principle of *Effectiveness*, and with the spirit of a number of recommendations in the report (including recommendations 6.7, 11.1, 11.2 and 11.7).

We recommend that processes for allocation of one-off funding be reviewed in light of the Access to Justice report, with a view to ensuring that funding is better targeted, is consistent with the interests of service providers, takes into account the capacity of a service provider to manage an additional project, and reflects evidence of legal need.

We understand that due to the nature of one-off funding, decisions about the allocation of funding sometimes need to be made within a short timeframe, towards the end of the financial year. Total funding for each State and Territory could, however, be allocated to a funding agency prior to 30 June, allowing for a brief period of consultation prior to determining funding allocations to particular agencies. This would be consistent with the process adopted in 2009 for funding partnerships between Family Relationship Centres and community legal centres, where funding was allocated on block to funding agencies in June, with funding allocations to be determined later in 2009.

Coordination of legal service delivery

We note recommendation 11.1, which proposes the establishment of 'a national coordination group to facilitate strategic decision making across the legal assistance system'.

We question the degree to which coordination of legal assistance can be effective at the national level, given the considerable differences between States and Territories. These include significant differences in relation to:

- the scope and role of legal aid;
- the nature of the community legal centre sector;
- the role of Aboriginal and Torres Strait Islander legal services;
- the level of State/Territory government funding for legal assistance; and
- the degree to which coordinating bodies, such as NLAF, exist.

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Given these significant differences, it will be difficult to make effective decisions about coordination at the national level. Dialogue about coordination of legal services is much more effectively held at the State level, through bodies such as NLAF, or indeed at the regional level, which is possible in New South Wales through the Cooperative Legal Service Delivery (CLSD) Program.

While there is some value in consultation and collaboration at the national level, the amount that can be achieved should not be overestimated, and in seeking to advance access to justice, more might be gained through stronger Commonwealth engagement with bodies such as NLAF, and through enhanced support for regional coordination mechanisms such as CLSD.

Referral database

The issue of whether the Commonwealth was proposing to develop a new national legal referral database was discussed at some length in our meeting on 30 October. While we were assured that this was not the Commonwealth's intention, Recommendation 6.3 of the report refers to the establishment of consultation process about consolidation of information 'on a common referral database'. We reiterate the concerns expressed in our meeting about the considerable amount of work involved in establishing accurate referral databases and keeping them up to date. There is a risk that considerable resources could be invested in such an exercise, with no significant gain to service users.

Should you require further information in relation to these issues, please feel free to contact me on 9219 5925.

Yours sincerely



Alan Kirkland
Chair

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