



Tasmanian Council of Social Service Inc.

Submission to the Evaluation of the Tasmanian Legal Assistance Sector Consultation Paper

July 2018



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

Access to justice is fundamental to a fair and inclusive society and a central tenet in addressing disadvantage and inequality. Inadequate protection of human rights, poor access to legal services and other inequities in the legal system can have far-reaching consequences for people who are already experiencing disadvantage or in crisis.

There is a close relationship between disadvantage, criminal justice and incarceration in Tasmania. Aboriginal Tasmanians are almost four times as likely to be imprisoned, per population, than non-Aboriginal Tasmanians.¹ The prison population has repeated experiences with the justice system, each deepening a cycle of disadvantage; 61.2% of Tasmanian prisoners had been imprisoned previous to their current sentence.²

While the total offender rate in Tasmania fell more than 32% between 2008-09 and 2016-17,³ our prison population is at an historic high of 596 people in 2017.⁴ The prisoner population has increased by 32% since 2014, following a decade of steady decline.

Legal aid services in Tasmania are meeting a high need, as Tasmanians are among the least able of all Australians to pay for private legal services. Tasmanians have the lowest median household incomes and the lowest median household wealth of the residents of any state or territory, besides the NT.⁵ People in Tasmania are more likely to depend on government payments for the majority of their income than in any other state or territory.⁶

Executive Summary

TasCOSS welcomes a strategy to better meet the legal needs of Tasmanians alongside measures to ensure that legal assistance services are adequately resourced to deliver timely and effective services around the state.

In providing this submission, TasCOSS notes that the “evaluation” paper is not comprehensive and does not provide the necessary evidence base required to make long term, informed and strategic decisions. An evaluation with an appropriate methodology, and which considers need, the current response to need, gap analysis, geographic or demographic profiles and future

¹ Productivity Commission. (2018). Report on government services: Chapter 8.

² ABS. (2017). Prisoners in Australia, 2017 [State and Territory profiles – Tasmania].

³ ABS. (2018). Recorded Crime – Offenders, Australia, 2016–17

⁴ ABS. (2017). Prisoners in Australia, 2017

⁵ ABS. (2017). Household income and wealth, Australia, 2015-16.

⁶ PHIDU. (2018). Social health atlas of Australia.

projections, should be undertaken prior to any decision making relating to changes to the legal assistance sector in Tasmania.

While TasCOSS acknowledges the importance of collaboration across the legal assistance sector and the need for recognised entry-points for Tasmanians seeking legal information, advice and representation, any changes to the sector's structure or funding should not be made without the necessary evidence base. This evidence base should include key gaps in the Tasmanian legal assistance sector relative to other states to ensure that any proposals for changes take into account the ability to address these gaps.

We therefore submit our response with the caveat that it has been developed in the absence of a comprehensive evidence base to enable informed responses, and is therefore based predominantly on the experiences of the legal assistance providers.

TasCOSS is also concerned that this review is being undertaken with limited recognition of the context that the legal assistance providers have been operating in over a number of years. This context is one of consistent uncertainty in terms of funding and potential structural changes. This level of uncertainty has contributed to an overall sense of frustration by the providers and has had an impact on a committed professional workforce.

The Government response to the review of funded legal assistance providers must take into account the balanced mix of services provided by the Community Legal Centres across geographic areas, for general advice and for specialist advocacy and representation. There is a need to retain these place-based, community-led, independent services around the State who provide different and complementary legal assistance to that provided by the Legal Aid Commission of Tasmania.

Responses to Questions in the Consultation Paper

Chapter 2 – Legal Need in Tasmania

2.1. NA

2.2. TasCOSS submits that the legal needs mapping in Tasmania to inform the delivery of legal services state-wide is a shared responsibility and should be carried out by an independent organisation such as a university/research institution. Where there is data required from legal assistance providers, the collection and reporting should be coordinated in a way that reduces the administrative burden on services to ensure that resources can be channeled into client contact and advice.

2.3. There are complex and intersecting barriers that may prevent Tasmanians attempting to access legal services, particularly in relation to transport disadvantage and low levels of literacy. These barriers

would arguably be exacerbated by a gateway service and reduced funding to existing community and place-based providers.

2.4. While the name and brand recognition of the Legal Aid Commission is high, TasCOSS submits that many clients do not differentiate between any of the free legal services, usually calling any free advice or representation 'aid'. There is an opportunity for this review to recommend additional funding that helps connect Tasmanians to place-based, specialist and generalist legal advice through the Community Legal Centres and through Legal Aid, depending on their particular needs. Funding for promotion of legal assistance services should not result in any reduction to funding for legal assistance for clients.

Chapter 3 – Service Providers

3.1. Members reported that the CLCs should continue to offer place-based and outreach services as well as support in areas of legal assistance not provided by legal aid. TasCOSS members suggest the roles of legal assistance providers have traditionally been well defined and that the LACT should retain a focus on court representation and advice for criminal and family matters while allowing the CLCs to continue to provide advice on other matters or for clients ineligible for legal aid.

3.2. TasCOSS in principle supports the view that client needs (and capability) should inform the way services are delivered by legal assistance providers so that funding and delivery maintain a client-centred approach. Members reported that they tailor and nuance their assistance to individuals and communities in which they work to ensure they are fully accessible.

3.3. TasCOSS submits that some 'duplication' of legal services is necessary to ensure that the needs of women and Aboriginal Tasmanians are met, to manage potential conflicts between legal assistance providers and to deliver outreach around the state. Where there is 'duplication' of services this is arguably due to increasing client legal needs. As stated in the response to 3.1 above, Members have indicated that the best approach is to refine the LACT focus on criminal and family matters and court representation, allowing other providers to manage civil and administrative law, minor criminal matters and other matters as required on a case by case basis.

3.4. TasCOSS submits that Tasmanians should have access to face-to-face advice both through the LACT and through the CLCs. These advice services are arguably different given the different focus of the providers as outlined in responses to 3.1 and 3.3, however all services should be able to offer face-to-face advice and provide referrals to other legal assistance providers if a client presents with a matter that may be better dealt with by a different provider. For example, if a client presents to the LACT seeking advice about an environmental matter, the LACT advice session can ensure a supported referral through to the Environment Defender's Office.

Where a service offers holistic and/or specialist advice for women, for Aboriginal Tasmanians, for workers, for refugees, for tenants and for prisoners for example, these services should retain their own advice services.

3.5 TasCOSS submits that there is a need for greater funding for duty lawyer and representation services. Members have reported that cuts to legal aid funding have resulted in significant unmet legal need and resulted in more criminal and family matters filtering into their services. Duplication is not the issue; rather a larger investment is required to ensure existing services are able to increase their representation services.

Through our broad membership, TasCOSS is aware of countless examples of individuals who are facing complex legal matters with no representation due to the tight guidelines/criteria relating to access to legal aid. This has a significant flow on impact across all domains of an individual's life and ultimately may result in increased costs to government and community services.

3.6 TasCOSS Members have indicated there are limited resources available for CLE but did note a preference for the LACT to focus their resources on representation and advice in criminal and family law while allowing the CLCs to deliver CLE across other areas of the law.

3.7. TasCOSS submits that addressing the funding shortfall while also looking at more inclusive eligibility criteria would better meet the legal needs of Tasmanians. TasCOSS also notes people with legal needs often have complex and intersecting matters that do not fit within a strict application of guidelines for aid from one part of their life to another. Clients for example may be eligible for aid for one part of a family matter or one criminal charge and remain unrepresented and supported for a fines enforcement issue or child safety matter, all of which affect their lives in complex and intersecting ways. Where Tasmanians are denied or ineligible for aid for summary matters in the criminal system, this places them at an even greater risk of spiraling through the system. In the long term this results in higher levels of need and interventions across a range of government and community services and has a high impact on the individual and the overall total funding required.

3.8 Members have indicated that the CLC guidelines should remain at the discretion of the service providers, noting that their focus is supporting Tasmanians who are financially disadvantaged or experiencing other extenuating circumstances. TasCOSS submits that clients with legal needs who are unable to access a private practitioner due to financial or other barriers should still be able to receive support on a case by case basis from the CLCs.

3.9. TasCOSS submits that explicitly writing eligibility into grant deeds and agreements removes the autonomy and ability of service providers to work on a case by case basis and assess eligibility according to client needs. Recent work undertaken in the DHHS relating to a 'joined up services' model finds that this kind of tight eligibility requirement results in clients having multiple case workers and is a more expensive model overall. Ensuring there is trust by government funders that a service provider can make a sound judgement based on their specialist knowledge and experience is a more human-centred approach to providing for the needs of vulnerable Tasmanians.

3.10. TasCOSS submits the CLCs Tasmania as the sector peak is a body through which coordination of outreach activities among providers can occur. Members have reported that the geographic mix of services combined with further outreach enables place-based service delivery within current funding constraints.

3.11. With further funding, existing providers could expand and coordinate outreach and/or have an actual or satellite presence into rural and remote communities.

3.12. TasCOSS submits that the limited resources of providers is more of an issue than whether specific legal areas require greater focus. The sector needs greater investment and certainty of funding in order to deliver the required increased level of service. Overall, to ascertain whether specific legal areas require greater focus will require the commitment to establish a comprehensive evidence base that includes quantitative as well as qualitative data collection and analysis.

3.13. Refer back to 3.1, 3.3 and 3.4.

3.14. NA

3.15. TasCOSS recommends using accessible English and plain English documents.

3.16. No further comments.

3.17. Self-funded and self-represented litigants could be better assisted by increased funding of the duty lawyer system and the provision of accessible information sheets. The legal system is complex and not easy to navigate. The issues faced by self-represented litigants are not just something the legal assistance sector can alleviate; there needs to be further consideration given to the ability of courts and tribunals to also respond to the needs of all system users.

3.18. Yes. Any measures that may be used should be co-designed between funding providers, service providers and service users.

3.19. NA

3.20. NA

3.21. NA

3.22. Members reported these meetings were useful and valuable.

3.23. NA

3.24. The forums are extremely useful for TasCOSS to stay up to date with issues affecting the legal assistance sector, as well as to hear the relevant work the Department of Justice is doing.

Chapter 4 – Referral Pathways

4.1. Members have reported that referral pathways are working well and that the training day was a useful networking event where staff from across the state and the services could build relationships.

4.2. NA

4.3. TasCOSS maintains a directory of Members but is not often required to filter referrals to legal assistance providers.

4.4. While there is a range of factors that may impact on how a person seeking legal assistance can access the right service, Members have reported that the current system of referrals is working well.

4.5. Members also reported broad support for the concept that there is ‘no wrong door’ and have expressed concern about moves towards a streamlined point of entry.

4.6. Members indicated that the training day alongside the status quo arrangements (subject to additional funding) is the best way to facilitate access to legal assistance.

4.7. Members did not report that clients were experiencing ‘referral fatigue’. They noted, rather, that the major issues facing clients were cuts to legal aid funding which meant that their matters could not be completed, and they are therefore forced increasingly to seek assistance elsewhere.

Chapter 5 – Funding Streams

5.1. There should be local and co-designed funding principles developed for State Government funding rather than aligning with the National Strategic Framework. These localised principles should be co-designed and follow the independent mapping of legal needs in the State.

5.2. As outlined in 5.1, state funding principles should have regard to the guidelines but also be developed in line with the legal needs of Tasmanians.

5.3. Reviews of priority clients conducted in other states and territories demonstrates that some population groups do require priority in gaining access to legal assistance. This, again, highlights the need for a comprehensive mapping exercise to determine the levels and areas of need in the Tasmanian community, and whether existing legal assistance services are meeting those needs.

5.4. TasCOSS submits that the projected funding shortfall will have a devastating effect on legal assistance providers, most notably the CLCs and ultimately on vulnerable Tasmanians with legal needs. The State could choose to continue to fund the shortfall through the Budget. Reducing services is not an option while legal need remains high and providers are already operating with limited resources. If the funding shortfall is not replaced, many vulnerable Tasmanians will be adversely affected because they

will not receive the legal assistance they require. This could result in people going to prison simply because they lack representation – a high cost both to that person and to the State. Every person has the right to equality before the law, but this principle only has meaning if a person is able to exercise that right. People from disadvantaged backgrounds– and/or for example, those with very low levels of functional literacy – may require legal representation to exercise that right.

5.5. TasCOSS submits that the SGF should be focused on project specific grants and not used to fund shortfalls in government support for legal assistance services. TasCOSS submits that funding applications and grants through the SGF would be enhanced by greater transparency and recommends an independent board/body be established to determine new guidelines for grants from the SGF and to administer applications.

5.6. TasCOSS submits that funding insecurity among legal assistance providers thwarts the ability of services to work collaboratively and to meet the legal needs of Tasmanians. Funding arrangements with providers should be for a minimum of three years.

5.7. TasCOSS submits it is unsustainable for legal assistance service funding shortfalls to be met through the SGF surplus. In addition to greater transparency and guidelines in the administration of SGF grants, a longer-term solution to the funding shortfall for the sector is required.

5.8. Refer to 5.5. In addition, TasCOSS submits that a client perspective should be included on the panel.

5.9. Refer to 5.5.

5.10. Refer to 5.5

5.11. TasCOSS submits that reducing the reporting burden on Members is important, however would prefer to review changes to the reporting framework before commenting further on any changes.

Chapter 6 – Governance

6.1. NA

6.2. NA

6.3. TasCOSS supports outcomes-based reporting. TasCOSS is also conscious that many smaller organisations have limited resources to conduct outcomes-based reporting and that there are methods and processes that can make it efficient and not burdensome.

TasCOSS has previously been funded by DHHS to provide capacity building for organisations that have moved from an outputs to an outcomes based reporting process. TasCOSS recommends that any move to outcomes-based reporting is resourced to ensure both the department and the organisations have a shared understanding and shared approach to developing and implementing these changes.

6.4. TasCOSS Members report that they are already, where practical and appropriate, co-located to offer the most efficient service delivery to Tasmanians.

6.5. TasCOSS submits that there is limited evidence to suggest that in Tasmania there would be service improvements through service mergers. As has been consistently stated in responses to these questions, Members report that the geographic, generalist and specialist mix of services is working well within limited resources to meet the legal needs of Tasmanians.

6.6. See 6.4 and 6.5.

Chapter 7 – Funding Methodology

7.1. TasCOSS members support the status quo.

7.2. TasCOSS submits that a tender or grants model is not to be recommended.

Conclusion

TasCOSS wishes to underscore the importance of conducting a mapping exercise to determine the levels and areas of legal need in this State. We also wish to emphasise the importance of place-based, community-led independent services in Tasmania, which provide different and complementary legal assistance to that provided by the Legal Aid Commission of Tasmania.

TasCOSS welcomes the opportunity to meet with the Review Steering Committee to discuss this submission further.