

Pro Bono in the NT: what is the way forward?

In early May 2005 a Territory legal aid service providers and pro bono conference was held in Darwin. The conference was organised by the NT Legal Aid Commission and the Law Society NT and funded by the Law Society Public Purposes Trust.

The conference aimed to discuss unmet legal needs and potential solutions to those needs. Attendees included the NT Legal Aid Commission's regional offices, Community Legal Centres, Aboriginal and Torres Strait Islander legal services and Family Violence Prevention Units, the Law Society Northern Territory (LSNT), the National Pro Bono Resource Centre, several local firms and national pro bono providers Clayton Utz, Gilbert & Tobin and Blake Dawson Waldron.

The first day of the meeting involved all of the legal aid service providers identifying unmet legal needs, challenges and any overlaps in services throughout the NT and then identifying a wide range of solutions which would go some way to meeting those needs through better cooperative arrangements between service providers and through an expansion of the services provided by particular agencies. However, there remained many unmet legal needs which could not be provided through existing resources.

The second day of the meeting was devoted to whether pro bono arrangements may provide a solution to some of the identified unmet needs. There was discussion about how to get greater involvement of NT law firms in a more systemic approach to the provision of pro bono services and recognition that many local firms are already providing as

much pro bono assistance as they can manage so pro bono solutions to many of the unmet needs could only be provided by national firms with established pro bono programs.

Unmet legal needs

The following unmet legal needs were identified:

Community Legal Education

Outside of the Darwin region, there is almost no community legal education being conducted, although some services have now received funding to provide some community legal education in regional areas.

Law Reform & Policy

There is a limited response or proactive position taken by legal aid service providers to law reform and policy issues. There is limited cooperation between services in this area.

Civil matters

While advice is available in the major centres regarding civil legal rights, there is limited availability for representation in civil matters across the NT, particularly in cases where the likely damages will be less than \$50,000 and private lawyers are unlikely to be prepared to do these matters on a speculative basis. There is also very limited civil legal advice being provided in regional areas. Also, where there may be no or limited damages provided at the end of a matter, there is almost no representation assistance available,

for example, human rights issues, tenancy, employment law, some civil litigation matters etc.

Crime Victims Assistance matters
There has been a reduction in the number of firms prepared to do this work across the NT and there is limited assistance available in regional areas in these matters. Legal aid agencies are struggling to provide assistance in this area.

Family law

Apart from legal assistance in domestic violence matters, there is almost no family law advice and assistance provided in regional areas in the NT where requests for assistance in this area from indigenous people are increasing. In Alice Springs and Katherine, the limited number of private practitioners means that it is difficult to provide services where existing service providers have conflicts.

Criminal law

This is an ever-expanding area of need. There are difficulties providing representation and assistance in regional areas for non-indigenous people or indigenous people where the ATSILS are conflicted. In Katherine and Alice Springs there are limited numbers of practitioners with relevant expertise to take referrals. Brief-out budgets of ATSILS are limited and in cases involving multiple accused, briefing matters is very costly. In the Miwatj region, there is

CDU produces award-winning students cont...

demonstrated outstanding professional promise through scholarship, character and leadership.

Kathleen was also awarded prizes for professional responsibility, corporations law, and intellectual property law.

Other prizes were awarded in 23

subject areas.

"I congratulate all who achieved these high standards, as well as the lecturers and tutors at CDU for nurturing such talent," Dr Toyne said.

The awards were announced at a CDU prize ceremony held at the Supreme Court in May.

Other prize winners were Ivana Biorci (three), Ian McMinn (two), Victoria Hirst (two), Annette Tabke (two), Damien Jones (two), David Thomas, Karl Hell, Ann Holland, Simon Wiese, Rachael Schaefer, Philip Storey, Melanie Warbrooke, Travis Wurst, Gregory Betts, Deborah Hewitt and Iain Summers.①

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only one and sometimes two lawyers to provide services to overwhelming numbers of people appearing in court.

Domestic Violence

There are still many communities where family violence prevention units and women's legal services are unable to attend to provide assistance. In these communities, there is no assistance or advice available for victims of domestic violence. Specialist domestic violence legal services are funded to provide assistance in Alice Springs and Darwin only – there are no resources to extend the services beyond those areas.

Sexual Assault

Several family violence prevention units have now been funded to provide assistance for victims of sexual assault. However, this is a whole new area of service provision which will be difficult to provide, particularly to indigenous people in remote communities.

Who is missing out?

Particular groups who are missing out on legal services include:

- * People who do not qualify for legal aid but cannot afford private lawyers;
- * People who do not meet the guidelines of service providers for assistance but have meritorious cases;
- * Prisoners – no general advice or assistance schemes provided to prisoners who do not have ongoing legal matters or who request assistance, particularly in Alice Springs;
- * Tenants - limited assistance available;
- * Youth – need for specific outreach legal services to provide assistance to young people;
- * Indigenous people – commercial legal advice for establishing new businesses;
- * Remote communities where there are no bush courts – no visiting legal services at all;

- * Tennant Creek – limited services provided on a visiting basis;
- * Mental health advocacy services – representation is provided to people appearing before the Tribunal but there is no general advocacy service available to people with mental health problems;
- * Crimes forfeiture matters – growing area but limited assistance available; and
- * Test cases – limited funds available for any legal aid service provider.

Challenges identified

Some of the challenges identified for service providers were:

- * Limited library and IT resources;
- * Needs and costs are growing but the funding provided is diminishing;
- * The reporting requirements of funding bodies are increasing without any increase in resources – accounting for funds and activities as well as searching for additional funds reduces the services that can be provided. The same reporting requirements are imposed on services with one staff member as are imposed on services with ten staff members;
- * Tenders – being able to prepare and respond to tenders for the provision of services is an area which requires extensive experience and resources. Most service providers in the NT do not have the capacity or resources to address tender responses properly;
- * Finding appropriate firms to accept referral from legal aid providers, particularly in civil matters, is time-consuming and difficult;
- * Retaining and attracting staff and minimising burn-out, particularly in remote areas, is becoming increasingly difficult;
- * Lack of qualified indigenous interpreters in many areas; and
- * Some services do not have ongoing funding for full-time staff,

eg. KWILS.

Overlaps

There was a strong view that while there were some similar services operating, this does not mean that the existing level of resources was not needed. There were however some areas where there could be improvement:

Similar services in the same area present difficulties for clients in working out which service to approach in which circumstances

Some services may be able to work better with similar services to reduce costs to each service, for example, CAWLS and CAFLU, KWILS and KAFSU, NTLAC and ATSILS

Solutions from within

Some of the suggested solutions from within were:

Civil law generally

NTLAC to review guidelines regarding the provision of legal aid in civil matters generally in light of the changes in legislation. It may also be necessary to lobby for law reform in this area. It was also suggested that the NTLAC legislation should be amended to allow grants of legal aid to be provided to other legal aid service providers.

Crimes Victim Assistance matters

A survey of practitioners to be conducted as to whether there has been a reduction in the number of firms undertaking CVAC matters and if so, why. It is likely that this will result in identifying the need to lobby for law reform in this area. NTLAC to consider a subsidisation scheme for fees to be paid in this area. Possibly kits could be provided to assist legal aid agencies and their clients.

Criminal law

Better cooperative working relationships required between NTLAC and ATSILS, for example, an arrangement needs to be negotiated between NTLAC and specific ATSILS to enable ATSILS do work for non-indigenous clients on NTLAC's behalf in remote communities. It was

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recognised that this may require constitutional changes for some of the ATSILS.

Family law

NTLAC's new duty lawyer service and increased fees to family law practitioners may improve the number of people receiving assistance and the number of practitioners prepared to do legal aid work. Services may need to establish and have approved "creative" Chinese walls to enable them to provide services to more people by avoiding conflicts. Existing service providers will need to expand services to remote communities and there should be coordination between services to ensure that as many communities are provided with assistance as possible and duplications are avoided.

Domestic violence in remote communities

As outlined for family law services, legal aid service providers need to coordinate how to expand services to remote communities, eg. one service to attend one community (eg., Tennant Creek) which would enable another service to attend another community.

CLE

Need greater coordination and communication between agencies to expand the amount of CLE being provided outside of the Darwin region. The Law Society may need to re-examine the operation of the Public Purposes Trust Fund in light of reports that many service providers are being rejected for funding for CLE projects. Funds may also be available from Commonwealth AG's, (as outlined by John Boersig), to expand CLE in Indigenous communities. More kits could be produced to assist people acting for themselves in particular areas or to assist agencies without expertise in particular areas to take initial instructions, particularly in remote communities.

Avoiding client confusion about services

Agencies should have similar

eligibility conditions to ensure consistency and referrals should be done by appointment rather than sending people off to other agencies who may not be able to help. Service providers may need to cooperatively publish advertising material about the most appropriate service for particular needs in each region.

Library resources

Legal aid service providers in particular areas should share and contribute to a pool of library resources to be used by all services

Law reform and policy

Need greater coordination and communication between agencies in the different regions to ensure that not just the legal issues are being addressed by the service providers

Available firms to do particular legal work

The Law Society NT should coordinate lists of practitioners prepared to undertake particular types of work.

Pro Bono Solutions

The meeting was attended by the national pro bono coordinators of Gilbert & Tobin, Clayton Utz and Blake Dawson Waldron. Freehills and Allens Arthur Helmsley sent their apologies but expressed an interest in being kept informed of the outcomes.

Representatives from the National Pro Bono Centre attended the conference and discussed various models for the provision of pro bono services, along with the various advantages and disadvantages. There was one practitioner from Alice Springs, Sam Salmon, and Darwin firms Cridlands, Clayton Utz, Halfpennys and Minter Ellison were represented.

NT Firms – pro bono scheme

There was discussion regarding whether there was a need for a pro bono clearing house in the Territory to coordinate pro bono initiatives and firms willing to undertake pro bono and if so, in which areas.

There was, however, also recognition that while encouraging NT firms to do more, there were few local firms large enough to undertake any comprehensive pro bono program in the NT and that any pro bono initiatives would need to be supplemented by the national firms.

There were many suggestions that the LSNT should explore the potential and interest of NT firms to provide pro bono and the extent of any pro bono work. It was also suggested that the Law Society should prepare a statement to encourage practitioners to undertake pro bono work and coordinate efforts in this area.

National pro bono firms

The national pro bono providers suggested that of the many unmet needs there was a range of areas where they could provide assistance, namely:

1. Assistance with library resources;
2. Law reform and policy submissions with adequate input on NT legislation and issues;
3. Preparation of CLE materials and do-it-yourself kits;
4. Secondments to legal aid organisations, however, this was a large financial commitment for firms and may not always be possible for pro bono firms to provide. These are also harder to organise and take some time to establish the need and how it will work;
5. Crime Victims Assistance matters – Clayton Utz advised that they would be prepared to look at providing services in this area;
6. Civil litigation advice and assistance in terms of prospects of a case and the best way to run a case;
7. Commercial advice for Indigenous people establishing businesses; and
8. Family law, domestic violence and criminal law were problem areas for many pro bono firms as their area of expertise was more in the area of civil assistance.

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The national pro bono providers made it clear that they were happy to be contacted directly regarding any requests for pro bono and that if their firm was unable to assist, they would be happy to refer people to firms that may be able to help. They also made it clear that whether requests for assistance were met by firms was often a question of timing and depended on the number and extent of other requests received at the time.

Other solutions from without

There was broad discussion about other potential funding sources for legal aid service providers and methods to reduce costs. The following points were made:

1. There is limited funding provided by the NT for legal aid services other than to the NT Legal Aid Commission and Domestic Violence Legal Services;
2. The Law Society should consider not requiring interstate counsel and lawyers to pay for practising certificates and insurance to reduce costs to legal aid services;
3. Crime prevention was a potential source of funding, both at NT and Federal level;
4. Grant programs are available that may not be strictly legal but could supplement funding, for example, mutual responsibility in remote communities, Department of Transport and Regional Services etc;
5. Need to ensure that more funds from the Public Purpose Trust are available for CLE;
6. Trade unions may be able to assist with employment law initiatives;
7. Local businesses may be able to sponsor some initiatives;
8. Forming cross-sector partnerships to apply for

ALRC turns 30

One of Australia's leading legal institutions, the Australian Law Reform Commission (ALRC), celebrated its 30th anniversary in June.

"Over the past 30 years, the ALRC has initiated community debate and provided advice to Government on issues as diverse as drink driving, Aboriginal customary laws, human tissue transplants, maritime law, sentencing, and protecting classified and security sensitive information," ALRC President Professor David Weisbrot said.

"The work ranges from the modernisation of old laws to 'over the horizon' projects like gene patenting and the protection of human genetic information.

"Often this involves breaking new ground internationally.

"Given the range and complexity of the ALRC's inquiries, it is remarkable that 84 percent of our reports have been substantially or partially implemented.

"This success has no doubt been assisted by the fact that we are careful to provide advice that is practical, and that the ALRC has always attracted some of Australia's best legal minds."

funding is popular among Commonwealth funding bodies;

9. Estate planning may be a potential source of funds; and
10. Funding submissions and searching for funding sources is resource intensive and many services are unable to find resources to undertake this work. Pro bono assistance may be available to assist with preparation of funding submissions.

Conclusion

The meeting was very successful with many creative solutions identified from within existing resources, largely through better cooperation and communication between legal aid service providers in the NT. From this

The first Commission in 1975 was chaired by Michael Kirby (now a High Court Justice) and included Sir Gerard Brennan (later the Chief Justice of the High Court), Gareth Evans (later Foreign Minister and federal Attorney-General) and John Cain (later Victorian Premier).

The ALRC has always maintained a deep commitment to community consultation, giving the general public a say in how the law should be reformed.

Things that are considered standard practice today - the use of public meetings and surveys; engaging the media to stimulate public debate; the use of honorary experts from a range of disciplines; and the distribution of free consultation papers - were methods pioneered by the ALRC.

"The next 30 years will provide a series of new challenges caused by the continued growth in electronic communications, rapid developments in science and technology, enormous demographic changes and the evolution of the global economy," Prof Weisbrot said.

"The ALRC will continue to provide the community with workable solutions to the challenges these changes will present." ①

aspect alone, it was agreed that there should be regular meetings of NT legal aid service providers to ensure that the communication and cooperation continues to improve. The meeting also produced some very positive responses from both NT firms and national pro bono firms about what is possible and available in terms of pro bono.

It was agreed that the Law Society's Legal Aid and Pro Bono Committee was the appropriate forum to follow-up the issues from the meeting and to work on implementing some of the suggestions and exploring whether there may be other solutions available.

There is a need for further meetings on an annual basis.①