

Queensland Family and Child Commission

Submission

To: Parliament of Australia, Senate Finance and Public Administration References Committee

Topic: *Access to legal assistance services - Aboriginal and Torres Strait Islander experience of law enforcement and justice services*

Date: 30 April 2015

Submission summary:

This submission provides information on the current Queensland initiatives associated with access to legal assistance services for Aboriginal and Torres Strait Islander people and outlines brief recommendations for consideration regarding identified funding.

Submission recommendations:

- The QFCC recommends the continuation of Commonwealth Government funding for legal assistance services for Aboriginal and Torres Strait Islander families, children and young people.
- The References Committee note the findings and recommendations of the Queensland Child Protection Commission of Inquiry and consider their potential relevance to the terms of reference of its own inquiry.
- The References Committee consider the potential for supplementary funding for legal representation in child protection matters.

Queensland Family and Child Commission

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The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Senate Finance and Public Administration References Committee regarding access to legal assistance services.

NOTE: The QFCC has a legislated responsibility to advocate for children (0-18 years) and young people transitioning from the child protection system (18-21 years), particularly those who are most vulnerable. To reflect the QFCC functions, this submission will focus, where necessary, on addressing particular issues and concerns for children and young people only.

Queensland Family and Child Commission (QFCC)

The QFCC was established on 1 July 2014 to ensure all Queensland children and young people are cared for, protected, safe and able to reach their full potential. To achieve this the QFCC functions include, though are not exclusively limited to, the following:

- The promotion and advocacy of the shared responsibility of families and communities to ensure the protection and care for children and young people.
- Educating parents, families, communities and professionals and providing information on services available that will strengthen and support the family unit.
- Collaborating with government, non-government, tertiary and vocational education and training partners to develop the capability and capacity of the child protection workforce and to improve the services provided to children and their families.
- Providing oversight of the Queensland child protection system.
- Development and coordination of a multidisciplinary research program to inform policies and practices, in consultation with stakeholders and relevant agencies.
- Adequately and appropriately representing the interests of Aboriginal and Torres Strait Islanders.
- Promoting and respecting the role of Aboriginal and Torres Strait Islander service providers in supporting Aboriginal and Torres Strait Islander communities to care and protect their children and young people.¹

Legal assistance access in Queensland

(Reference a. the extent to which Aboriginal and Torres Strait Islander Australians have access to legal assistance services)

Recommendation

The QFCC recommends the continuation of Commonwealth Government funding for legal assistance services for Aboriginal and Torres Strait Islander families, children and young people.

In 2012-13 the Australian Institute of Health and Welfare released a number of concerning statistics regarding the youth justice system in Australia. In 2012-13, on an average day a young person, aged 10-17:

- if from the areas of lowest socioeconomic status, was 5 times more likely to be under community-based supervision than those young people within areas of the highest economic status.

¹ *Family and Child Commission Act 2014* (Qld), section 9 and 23.

- if from very remote areas, was 6 times more likely to be under community-based supervision than his/her metro area peers.
- if Aboriginal and Torres Strait Islander, was 17 times more likely to be under community-based supervision than his/her non-Indigenous peers.²

Many people and families who come into contact with a court or tribunal process possess one or more characteristics of social disadvantage or vulnerability which is often compounded by their inability or lack of knowledge to obtain sufficient legal representation, from the initial stages of engagement, with the court process.³ For young people living within rural and remote communities, particularly discrete⁴ Aboriginal and Torres Strait Islander communities, the demographic location and isolation creates an additional barrier for having knowledge of or accessing legal assistance services, than those facing young people in metropolitan areas.

In Queensland, funds invested to support the delivery of legal assistance, legal profession regulation and law library services are sourced from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) and the Queensland Government State Budget. Legal assistance services are either free or provided at a low cost to eligible clients, and the Queensland Government invests in services by Legal Aid Queensland (LAQ) and other Community Organisations⁵. The Commonwealth Government also provides (either part or majority) funding to a number of Queensland legal service providers who offer legal services to Aboriginal and Torres Strait Islander families, adults, children and young people.

LAQ operates an Indigenous Information Line which provides Aboriginal and Torres Strait Islanders in all areas of Queensland with access to legal information, advice and referral for the cost of a local phone call. The initial contact via the information line is with a non-lawyer who is able to listen to the caller's concerns and provide an overview of the services offered by LAQ, the law in general and refer the caller to a more appropriate service or transfer more serious concerns to a lawyer or arrange for a lawyer to make contact. In terms of advocacy for children and young people, LAQ is able to provide services for both family and children's court matters. While legal representation for court proceedings is means tested, children under the age of 17 are not required to meet the means testing requirements, however other criteria may be applied.⁶

The LAQ Annual Report 2013-14, reported that LAQ has progressed a number of community based opportunities to raise the profile of LAQ and to promote legal assistance services access to Aboriginal and Torres Strait Islander people. Including:

- Providing funding to the Aboriginal and Torres Strait Islander Legal Services (ATSILS) to provide duty lawyer services in the Gulf of Carpentaria and Cape York.
- Disbursing funding for initiatives such as counsel for ATSILS clients in criminal law and other matters.
- Promoting the benefits of the Indigenous Information Hotline.
- Providing outreach to remote and discrete Aboriginal and Torres Strait Islander communities to help ensure that face-to-face contact for legal services was available.

² Australian Institute for Health and Wellbeing, *Youth Justice*, <http://www.aihw.gov.au/youth-justice/>, Accessed 24 April 2015.

³ Queensland Child Protection Commission of Inquiry (2013). *Taking Responsibility: A roadmap for Queensland Child Protection*.

⁴ *Discrete communities are communities in a specific geographic location mainly inhabited by Aboriginal or Torres Strait Islander people where infrastructure is usually either owned or managed on a community basis*. Queensland Child Protection Commission of Inquiry (2013). *Taking Responsibility: A roadmap for Queensland Child Protection*.

⁵ Department of Justice and Attorney General (2014), *Annual Report 2013-14*, Queensland Government.

⁶ Legal Aid Queensland (Accessed 24 April 2015), *Need legal help? (Indigenous Queenslanders)*, <http://www.legalaid.qld.gov.au/publications/Factsheets-and-guides/Factsheets/Pages/Need-legal-help-Indigenous.aspx>.

- Maintaining best practice guidelines and documentation for in-house and private lawyers on providing culturally appropriate and sensitive legal services to Aboriginal and Torres Strait Islander people.⁷

The Commonwealth Attorney-General's Department also contracts the services (and is the majority funding body), under the Indigenous Legal Assistance Reform Program, of the Aboriginal and Torres Strait Islander Legal Services (ATSILS). ATSILS provides culturally appropriate services to support legal case work including (not limited to children and young people):

- *Legal assistance (advice; minor assistance; duty lawyer and casework)*
- *Indigenous test cases*
- *Prevention and intervention initiatives*
- *Community legal education*
- *Prisoner through care*
- *Death in custody monitoring (Coronial and public sector monitoring)*
- *24 hour criminal law assistance.*⁸

While both services offer a critical service to Aboriginal and Torres Strait Islander families, and vulnerable children, funding is a critical component which determines their ongoing success.

Jurisdictional matters – legal representation funding for child protection matters (Reference I. any other relevant matters)

Recommendation

The QFCC recommends that the Finance and Public Administration References Committee:

- Note the findings and recommendations of the Queensland Child Protection Commission of Inquiry and consider their potential relevance to the terms of reference of its own inquiry.
- Consider the potential for supplementary funding for legal representation in child protection matters.

In June 2013, the Queensland Child Protection Commission of Inquiry (the Queensland Inquiry) released a findings and recommendations report, *"Taking responsibility: a roadmap for Queensland Child Protection"* following an extensive review of all aspects of the child protection system in Queensland. This included the review and investigation of "children and the legal system". While the process of implementing change and responding to the recommendations of the report is both long term and complex⁹, the QFCC sees the information regarding legal representation or aspects of the child protection process as being of relevance and interest to the Finance and Public Administration References Committee (References Committee) Inquiry into accessing legal services.

The Queensland Inquiry identified a number of issues regarding legal representation of children and young people (including Aboriginal and Torres Strait Islander children and young people), in particular the limitations of legal representation funding for child protection related matters:

⁷ Legal Aid Queensland (2014), *Annual Report 2013-14* (p27).

⁸ Aboriginal and Torres Strait Islander Legal Services Queensland Ltd (2014), *Annual Report 2013/14* (p7).

⁹ Department of Justice and Attorney General (2014), *Annual Report 2013-14*, Queensland Government.

- Many submissions to the Inquiry stated that a *“great improvement to the system would be to provide appropriate legal representation of the parties at pivotal stages in the process”*. This finding reconfirms the importance of both allocating appropriate levels of funding for legal representation for all parties to proceedings, as well as identifies a need to increased promotion of existing legal assistance support.
- LAQ submission to the Inquiry stated, *“although the Commonwealth’s priorities for family matters include state matters where a child’s health or safety is at risk, currently all Commonwealth funding is used for family law matters”*. However other major areas of state law covered by LAQs state funding include criminal law and domestic violence.¹⁰
- The Queensland Law Society expressed similar concern regarding *“insufficient levels of legal aid funding from both the perspective of a parent and a child arguing that the costs borne in other parts of the system from the lack of representation are disproportionate to a grant of legal aid”*.¹¹
- The Queensland Inquiry echoed these concerns and recognised the critical importance and impact of Children’s Court (and Queensland Civil and Administrative Tribunal) decisions on children’s lives and stated *“this area of law (child protection) does not currently have the status, jurisprudence or legal aid funding that is afforded to federally funded private family matters involving disputes between private individuals”*. In response to these concerns, the Queensland Inquiry recommended:
 - State government review funding provided to LAQ to ensure that increased funding is applied for the representation of vulnerable children, parents and other parties in child protection court and tribunal proceedings. This recommendation was accepted by the Queensland Government.¹²
 - LAQ review expenditure and identify where Australian Government funding could be used for child protection matters. This recommendation was accepted by the Queensland Government.¹³

Through the development and implementation of the Stronger Families Reform Program, the Queensland child protection sector has started the complex process of actioning the recommendations of the Queensland Inquiry and improving the experiences of children, young people and families in the child protection system.

Conclusion

In keeping with the advocacy and promotion functions of the QFCC, future inclusion in discussion or development activities regarding the legal assistance function, particularly in regards to child protection proceedings, is welcomed.

¹⁰ Queensland Child Protection Commission of Inquiry (2013). *Taking Responsibility: A roadmap for Queensland Child Protection* (p471).

¹¹ Queensland Child Protection Commission of Inquiry (2013). *Taking Responsibility: A roadmap for Queensland Child Protection* (p471).

¹² Queensland Child Protection Commission of Inquiry (2013). *Taking Responsibility: A roadmap for Queensland Child Protection* (pxli).

¹³ Queensland Child Protection Commission of Inquiry (2013). *Taking Responsibility: A roadmap for Queensland Child Protection* (pxli).