

Our ref: MLC: submissions/leg/aid

5th August 2003

The Secretary,
AUSTRALIAN SENATE
LEGAL AND CONSTITUTIONAL
REFERENCE COMMITTEE
PARLIAMENT HOUSE
CANBERRA ACT 2600



Dear Sir/Madam

RE: Inquiry Into Current Legal Aid and Justice Arrangements

The staff of Macquarie Legal Centre are pleased to provide submissions in relation to this matter as requested in your letter dated 14th July 2003.

Submissions will be divided into two categories;

1. Legal Aid Issues
2. Access to Justice Issues.

Macquarie Legal Centre is a Community Legal Centre established in 1978 to provide legal assistance to the socially and economically disadvantaged members of our community living in the Western Suburbs of Sydney. We employ three full-time solicitors and rely on volunteer assistance on a regular basis from numerous volunteer law students and private solicitors. We are pleased to advise that notwithstanding the limited funding we receive, Macquarie Legal Centre has been able to provide an extensive advice service and casework representation to thousands of clients over the years. We enclose a copy of our Annual Report for 2001/2002 which contains statistics about the level of assistance provided.

1. LEGAL AID ISSUES

Over the last few years we have noticed a large increase in demand for our services. In particular we comment on the following trends:-

a. **Large increase in the number of unrepresented litigants**

In the last few years we have received many requests for assistance from unrepresented litigants either facing court action or unable to commence court action because they are not able to obtain representation. In particular we have noticed that many clients have been requesting that we assist them to fill out

lengthy and complex court documents including Form 3 or Form 8 applications in Family Law matters, affidavits, subpoenae etc.

Many of these clients are clearly unable to afford private representation. Many of them have approached the traditional legal aid providers for legal aid assistance and have been refused legal aid or have been told that they will not obtain a grant of legal aid if they apply. These clients face drastic hardship if they are unable to obtain representation. Many of them are unable to help themselves because of their own cultural, language, social, economic disadvantages and are therefore unable to help themselves if we are unable to represent them because of our own severe funding and resource restrictions.

b. **High Rate of Refusal or Non Assistance In Areas of Law covered by Legal Aid.**

Many clients approach us for assistance in relation to areas of law traditionally covered by the legal aid system e.g Residence/Contact Disputes, Civil matters etc. They claim that they have been told they do not qualify for legal aid assistance either due to their not satisfying the legal aid means test or not satisfying the strict legal aid guide lines for assistance e.g the "Dispute" requirement for Residence matters. At first glance some of these clients appear to at least prima facie satisfy the general guidelines of the Legal Aid Commission in these matters.

c. **Areas of Law Not Covered by Legal Aid.**

There is a dramatic increase in the number of clients approaching our Centre for assistance in areas which are not generally covered by the legal aid system. The main areas are in relation to Employment Law, Motor Vehicle Property Damage matters and in particular Property Settlements relating to marriages and de facto relationships. We note in many of these matters the result, if legal representation can not be obtained on a private basis, is devastating and impacts not only on the clients but on their immediate families. The absence of real legal aid coverage in Property Settlement matters needs to be addressed.

d. **The majority of private firms in Western Sydney no longer do any Legal Aid Work.**

Many of these clients when asked whether they have approached private solicitors to apply for legal aid on their behalf, state that they are not able to find one. This is for a good reason because many private firms in the western suburbs of Sydney are no longer prepared to act in legal aid matters. In Merrylands itself, we note that no local firms do regular legal aid work. In the surrounding districts only a few firms choose to continue in the legal aid system. The effect of this lack of funding is devastating on the clients. The electronic lodgment of legal aid

application forms has done little to alleviate this hardship. Urgent measures are required to entice the private profession back into the legal aid system.

e. **Means Test Issues,**

We observe there is an ever increasing gap between those who satisfying the strict legal aid means test and those who are genuinely able to afford the cost of private representation. Once again, we are faced with a big dilemma of turning away those who desparately need legal representation because our own funding is severely limited and our resources are already stretched beyond breaking point. We anticipate that this trend will continue in the area we service unless there is an immediate improvement in funding not only for legal aid but for community legal centres.

While the staff of Macquarie Legal Centre and our volunteers provide invaluable assistance and work very hard in pressurised circumstances, we do not have anywhere near the resources to cover all of those who approach us in need of assistance to the level they require. We consider that the role of Community Legal Centres should be to complement existing legal aid services, not to replace them. If anything, the demand and desperation of those who approach us for assistance seems to be increasing with each passing year and unless urgent measures are taken will continue to increase in the future.

2. ACCESS TO JUSTICE ISSUES

a. **Cultural and linguistic diversity - Access to interpreters**

Our service operates in an area of great cultural and linguistic diversity.

Many of our clients are from Non-English speaking backgrounds and are best assisted by using interpreters. We strongly believe that access to interpreter service is the gateway to access to other service; without access to interpreter service many people can not obtain the legal services that they need.

There are a number of problems our service has experienced in obtaining adequate interpreters for our clients.

Rate of usage

In 2001/ 2002, Macquarie Legal Centre used 102 interpreters, the majority were provided by the NSW Community Relations Commission (CRC) and a smaller number by the Commonwealth Translation and Interpreter Service (TIS).

To assist our clients adequately we need reliable interpreter services. We believe clients are disadvantaged when we can not obtain the interpreter services we request.

Exemption policies

At the outset we should acknowledge that both the state and federal governments have exemption policies that allow community legal centres to obtain free interpreter services within an undisclosed quota.

We are very appreciative of these exemption policies as they recognise our non-profit status and the difficulty our clients would have if they were required to meet the costs of interpreter services. However we believe that access for our clients to interpreter services needs to improve.

Below we summarise the main problem areas our service has experienced with interpreter services.

I. *Determining a state or federal areas of law*

The CRC booking form requires us to specify either, that:

- ◆ We know the state area of law (that the client needs assistance with) or
- ◆ We are conducting a 'preliminary interview to establish jurisdiction'.

Some times clients do not know how to describe their legal problem or what the relevant area of law is. It is often difficult to categorise a client's legal problem before we conduct an initial interview with an interpreter present.

We do not see the merit of requiring us to specify the area of law before the interview has taken place.

We believe we should be allowed to at least conduct a preliminary interview before we determine what law applies to the matters the client wants to deal with.

The distinctions drawn are sometimes very subtle. For example we are able to book an interview with CRC for a legal interview about separation but not for general family law advice (because family law is federal law).

II. *Federal areas of law*

The CRC specifies in its guidelines that it does not provide interpreters for areas of law that are the federal government's responsibility such as family law and social security matters. For these and other federal laws we need to book interpreter through TIS.

We think this division is artificial; some client's legal problems involve both state and federal areas of law.

With the current policies any client who contacts us with a federal legal issue is less likely to have their request for an interpreter satisfied.

We believe it would be better to have a 'one stop shop' that dealt with all interpreter services.

III. *The need for a 'preliminary interview'*

In many instances we send an interpreter booking to the CRC and we specify that we wish to conduct a 'preliminary interview'.

When we lodge such requests we are frequently contacted by CRC staff and asked can we get more information from the client to help determine the area of law before the interview takes place.

We question the effectiveness of this process. If we had more information we would provide it at the time of booking. The fact that we are requesting an interpreter means we need language assistance for our client.

IV. *Quota system*

Both interpreter services operate a quota system for free interpreter services with interpreters allocated to the first services to make a booking.

Our experience of TIS this year is that the majority of our requests to TIS have been knocked back on the grounds that the quota is full.

We question the need for a quota system. However if there are to be quotas we need to know: How are the quotas developed? and how and by what processes are quotas changed?

V. *Restricting on hours*

A major drawback with TIS is that we can only book interpreters for face-to-face appointment in the daytime. In contrast CRC interpreters are available for evening appointments.

One of our popular services is a weekly evening advice service. With the current restrictions on booking TIS interpreters clients with federal legal issues are disadvantaged.

If a client can only attend an evening appointment and they have a federal legal issue we are required to use telephone interpreters.

Using telephone interpreters can be difficult especially for a lengthy legal interview; the lack of face-to-face contact can make the process seem remote. Many clients express a preference to bring a relative or friend rather than use a telephone interpreter. We generally discourage clients using a relative or friend to interpret because of issues of privacy and confidentiality.

VI. *Time taken to book*

Our experience with TIS is that we need a longer time between the booking and the time the interview is to take place. The time necessary to book TIS interpreters makes it more difficult to offer services to clients with federal legal problems.

VII. *Fees paid to interpreter services*

Interpreters are paid different rates by the state and federal governments.

The CRC paying a much higher rate to its interpreters than TIS. This pay differential makes it more likely that interpreters would prefer to work for CRC than TIS. This can be another factor affecting services to clients with federal legal problems.

Options for improving the service

1. *Replace the exemption policies*

As we noted earlier the exemption policies were designed to give non-profit services and low-income clients access to free interpreters.

However one option for improving service delivery to non-profit organisations would be to replace the exemption system with a funding program so that non-profit services can pay for interpreters.

2. *'One stop shop'*

We believe it would be better to have a 'one stop shop' that dealt with all interpreter services. The current system is fragmented and leads to difficulties for services and clients.

Such a service could be jointly funded by the state and federal governments but operated as one organisation.

b. Cultural and linguistic diversity - Legal Information

We believe new legal information strategies need to be developed in conjunction with people from diverse cultures and language groups and disseminated.

A common way for legal information to be provided is for standard leaflets to be translated into languages other than English. The number of people in a language group is a factor in determining whether translated information is produced.

The development of multi-lingual brochure and flyers gives recognition of the many language groups in Australia.

However, translated materials are not sufficient for a number of reasons including:

Small language groups: There will always be some groups that are not considered large enough for service providers to translate information for them,

Levels of literacy in the language: There are many individuals whose level of literacy in their first language is not sufficient for them to use special language publication.

Where information is provided: Multi-lingual materials are often placed in mainstream services they are not well used by people from diverse cultures and language groups.

Traditional ways of getting advice: Newly emerging communities are likely to seek information from informal networks such as family, friends and other people in their communities (and are not used to seeking advice outside their communities).

New approaches to providing legal information

We have been involved in a number of projects that have sought new ways to provide legal information particularly to small language groups and newly emerging communities.

In these projects the communities had significant input in all stages of the projects (from initial design to implementation). The target communities had limited knowledge and access to the legal system in part because of the lack of culturally appropriate resources.

'Focus on Women'

In 1997 Campbelltown Legal Centre (now Macarthur Legal Centre) and the Macarthur Migrant Resource Centre obtained funding from the NSW Department for Women to conduct the 'Focus on Women' project with Arabic, Filipino and Pacific Islander women in the Macarthur area of south west Sydney.

The project conducted focus groups with seventy-eight women and sought their views on credit and debt, specifically, what information participants had about credit and debt, how they obtained information and how they preferred information to be provided to them.

The main findings were that the women had low levels of awareness of consumer finance and where to get legal help. Most participants reported that (prior to the project) they had no contact with legal services or consumer advice agencies.

The participants presented many ideas for information dissemination including:

- Radio programs and interviews,
- Seminars and workshops,
- Comics,
- Posters,
- Wallet-size cards.

The women suggested doctor's surgeries and medical centres, churches and ethno-specific community as the most appropriate places for information to be distributed.

Kurdish radio project and Ethiopian women's Information Group

In 1997 Macquarie Legal Centre and the Immigrant Women's Speakout obtained funded from the NSW Department for Women to undertake projects with the Kurdish and Ethiopian women.

The target communities were chosen on the basis that they were two newly emerging communities in western Sydney which had limited access to legal information in their languages.

The Kurdish women chose radio plays as a preferred means of information dissemination; radio was deemed particularly suitable because many women were at home either with children or because they could not find employment.

A series of eight plays were produced in Kurmanci and Sornai on domestic violence, immigration, divorce, separation, financial and property settlement. Each play ran for 2-4 minutes after which contact phone numbers and referral information was provided.

The plays were aired on SBS radio as well as being compiled on cassettes and distributed to community organisations.

The Ethiopian community took a different approach. After consultation a project was designed to train Ethiopian women as legal resource people for their community and to produce a legal information manual.

The series of eight workshops were held with a group of eleven women. The topics covered were, legal help, immigration, social security, domestic violence, housing, consumer rights, employment and work and youth. As well as the workshops material on each of these topics was collated into a manual and presented in both English and Amharic.

Summary of issues

These projects demonstrate that some communities are not catered for with current information strategies and that without specially designed strategies their access to information and services will be limited.

Unfortunately there are limited funds available to run special projects such as the ones mentioned above. All the projects were funded as one off projects.

I believe government needed to commit resources to information strategies to communities not catered for by translated information. Funding also should be provided at a grass-roots level for agencies to assist in local information strategies such as the projects mentioned.

Conclusion

In this submission we have only touched upon a number barriers to justice. Thank you for the opportunity to provide these submissions. While they are general in nature we can obtain statistics to give weight to some of our observations if you request.

In conclusion, we hope that your Committee assists the Government to refocus on the continuing problems related to adequate legal aid funding and providing effective measures to ensure the disadvantaged members of the community have proper access to justice, and that the government will take real and urgent measures to alleviate the hardship suffered by the disadvantaged members of our community in obtaining proper legal assistance in the future.

If further information is required please contact one of the authors at Macquarie Legal Centre on (02) 9760-2211.

Yours faithfully,



for Clare Mangiokas
Robert Patane
Solicitors
Macquarie Legal Centre