

Thirty years on

FIONA HUSSIN Deputy Director, Northern Territory Legal Aid Commission

2020 will be the 30th anniversary of the *Legal Aid Act* in the NT.

The NT Legal Aid Commission (the Commission) would like to inform the legal profession more broadly about the Commission and its activities. This is the first of the series of publications about the Commission and will be focussed on the statutory, governance and structural foundations of the Commission. Later pieces will focus on particular initiatives of the Commission which legal practitioners may not be aware of.

Origins of legal aid

The history of legal aid in Australia has been well recorded by none other than the first Director of the Commission, Richard Coates.¹ As Coates outlines, legal aid and legal assistance services in Australia have evolved and emerged from a chequered set of circumstances, due to legislative links to the UK and fluctuations in government policy in relation to 'welfare'. Until the 1970s the availability and extent of legal assistance in the NT predominantly relied on the good will of pro bono legal practitioners.²

Community legal centres and Aboriginal and Torres Strait Islander legal services also began to emerge in the 70s largely reliant on volunteers from the legal profession.

A Legal Aid Review Committee which reported to government in 1974 found that most legal aid

facilities were inadequate, under financed and inaccessible to many.³ In 1973 the Australian government committed to establish The Australian Legal Aid Office (ALAO). In 1974 ALAO offices were established in towns and cities across Australia, including Darwin. A review of the ALAO structure occurred in the mid 1970s leading to Commonwealth *Legal Aid Commission Act* of 1977 which set in train the establishment of legal aid commissions across Australia in each state and territory over time, taking over the operation and staff of existing ALAOs.⁴

About NT Legal Aid

The Commission was established in 1990 as an independent statutory Commission established under the *Legal Aid Act NT* (the Act). The Act establishes the governance structure under which a board of Commissioners appointed by the NT Attorney-General governs the Commission. Among the Board members are a Chair and representatives of the NT Law Society, the Community, employees of the Commission and Treasury. The Director is an ex-officio member of the Board. The inaugural Chair of the Commission was the Honourable Sally Thomas AC, followed by the late David Farquhar.

Under s9 of the Act, one of the functions of the Commission is to provide legal assistance by arranging for the services of private legal practitioners to be made available at the expense of the Commission or by making available the services of officers



of the Commission. This is sometimes referred to as the 'mixed model' arrangement. The Act establishes processes for facilitating arrangements for the services of private legal practitioners to be made available to legally assisted persons. The Act requires the remuneration of private legal practitioners undertaking legal aid work to be lower than commercial rates, and a formula was established for this. Since the Act commenced, the Commission has acknowledged that this rate has not kept in step with CPI and has raised the matter as a serious funding issue.

The Commission was initially funded under an agreement between the NT and commonwealth governments for a five-year period. Since this time there have been a range of funding arrangements in place. Currently the Commission is funded under a National Partnership Agreement on Legal Assistance Services between the Prime Minister and the Premiers and Chief Ministers of each state and territory in Australia. Under this Agreement, the Commission also provides early intervention and prevention services. These services include legal information, education, referral, advice, advocacy and minor assistance.

The Commission is required under the Act to establish and publish guidelines to be applied in considering applications for legal assistance and in making decisions. These guidelines are available on the Commission's website.

The Act determines the structure for the reconsideration and review of decisions in relation to a grant of aid. Where a decision is confirmed or varied following reconsideration by staff of the Commission, the person affected may request that the decision be referred to a Review Committee. The Review Committee consists of an officer of the Commission, a private legal practitioner and an independent person from the community appointed by the Board. External review committee members volunteer their time to perform this function.

Geographic and demographic reach

The Commission is a NT-wide legal service provider with offices across the NT and fits within a matrix of legal and related service providers in the NT. The Commission's head office is in Darwin, with regional offices located in Palmerston, Alice Springs, Katherine and Tennant Creek. The Katherine office was established in 1995. In 2003 the same year Domestic Violence Legal Services were assumed by the Commission in its Darwin office. The Tennant Creek office was established in 2006 following the report, Justice Too Far Away in 2003. The Domestic Violence Legal Service was established in a separate location as part of the Nichols Place Court complex in 2008.

The Commission provides services at locations away from its offices, including Court, prison, in partnership with other community organisations and in Indigenous communities.



The Commission's client base is approximately 37% Indigenous; this is broadly in line with the Indigenous population in the NT. The clients of the Commission also reflect the diverse NT population as 18% of clients are born in a country other than Australia.

Due to the high levels of geographic remoteness in the NT, many people in the NT are not able to access the Commission services in person. Outreach, CLE and telephone services go some way to addressing this. A high number of people in the NT do not speak English as a first language and 8% of clients in 2017/18 were provided with assistance from an interpreter.



Legal services provided

Representation

The Commission provides representation services in-house through its own employed solicitors, as well as funding private practitioners to provide legal assistance.

Clients must qualify under the Commission guidelines, including under the Commission's means test, to receive casework representation. Clients must contribute a minimum initial contribution of \$110 unless the client is a juvenile or remanded in custody.

The Commission administers the Contingency Legal Aid Fund (the Fund). If private practitioners are prepared to speculate their professional fees, clients can apply for financial assistance for disbursement →

only grants from the Fund to enable their legal matter to continue. The merit is assessed for each application by an independent committee. At the conclusion of the matter, if the client is successful and receives a settlement, they are required to repay the Fund the amount advanced plus interest. The Fund is self-sustaining and provides an important mechanism to access justice in civil matters in the NT.

Duty lawyer services

Duty lawyer services are provided in relation to criminal law, child protection, family law, domestic violence and mental health review matters. This service comprises 14% of total legal aid services and is important to assist parties presenting to court unrepresented to obtain advice in relation to their matter, be referred to appropriate services and assist in communicating with the court in relation to their matter which is listed on that day. Duty lawyer services are free and are not means tested.

Legal advice

Legal advice clinics are held in the matters of civil law, criminal law, family law (including child protection) and domestic violence law. These clinics are provided either in person, video link or phone. These services comprise 19% of the Commission total services and are free and are not means tested.

Family dispute resolution services

The Commission commenced Family Law Conferencing services in 2004 and these services are very much in demand. The Darwin and Alice Springs offices of the Commission have purpose-built secure facilities to hold family dispute resolution conferences. This service has a consistent high rate of full settlement or partial settlement above 80%.

Community Legal Education

Community Legal Education (CLE) is a function of the Commission established under the Act. The CLE section undertakes a wide range of activities to assist the public to have access to good quality and appropriate information about legal rights and responsibilities.



Legal information and referral

The Legal Aid Helpline provides assistance to people who have a legal problem. The service operates during business hours and is accessible to anyone throughout Australia. Callers to the service are able to speak with a paralegal to discuss their problem and obtain information, receive referral to other helpful services and if required, make an appointment to obtain free legal advice. Legal information and referral comprises 58% of the Commissions services.

Working collaboratively

Funding limitations, the challenges of remoteness and client demographics in the NT demand a great emphasis on collaborative approaches to service delivery. The Commission places a high premium on working collaboratively and is pleased to demonstrate this by the following examples.

A NT Legal Assistance Forum (NTLAF) was established in 2012. The NTLAF comprises legal services in the NT and related peak bodies such as the NT Council of Social Services. NTLAF focuses on improving access to legal services across the NT and information sharing about emerging legal need, service pressures and policy and legal changes. The participants at NTLAF discuss collaborative approaches in relation to issues of joint concern, including:

- Working collaboratively
- Arrangements under the National Partnership Agreement
- Policy and law reform
- Unmet legal needs and service gaps
- Changes in service demands.

The Commission plays an important role in ensuring that access to justice is accessible in the NT. Legal practitioners in the NT are crucial to the smooth operations of the Commission and their contribution to the service is very much appreciated. Practitioners who are interested in joining the panel of lawyers who undertake legal aid work can do so by contacting the Commission.

By providing legal aid services to those that are most disadvantaged, whether through poverty, mental or physical disability or circumstance are better able to exercise those rights. The Commission provides a service to enable their voices to be heard and is an important cornerstone in ensuring equality before the law. ■

1. Coates, R, *A History of Legal Aid in Australia*, <http://jca.asn.au/wp-content/uploads/2013/11/CoatesPaper.pdf>
2. Coates, *Ibid* p 2
3. Coates, *Ibid*, p 11
4. Coates, *ibid*, p 13