

## Legal Affairs and Community Safety Committee

**Submission: Justice and Other Legislation Amendment Bill 2014**

This submission concerns the Justice and Other Legislation Amendment Bill 2014 ('Bill'). It specifically addresses clause 80 of the Bill, proposing an amendment to s289(1)(h) of the *Legal Profession Act 2007* (Qld) ('LPA').

**1. Background**

- 1.1. Under s289(1)(h) of the LPA the Minister may approve grants for the purpose, amongst other things, of 'the advancement of law reform.'
- 1.2. Grants come from the Legal Practitioner Interest on Trust Accounts Fund ('LPITAF').
- 1.3. In 2012 the Attorney-General ordered a review of the application of these funds ('LPITAF Review'). The focus of the review was the alignment of fund distribution with the government's strategic objectives of 'front line' service delivery.
- 1.4. Clause 80 of the Bill seeks to amend s289(1)(h). The proposal is that funds may be applied under this subsection only for the purpose of:

'facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community.'

- 1.5. This captures many of the previous purposes of the grants, but not the advancement of law reform.
- 1.6. The Bill states that this amendment

'reflect[s] changes as a result of the *implementation of recommendations resulting from the Review* of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund.'  
(emphasis added)

**2. LPITAF Review Recommendations**

- 2.1. The LPITAF Review did not explicitly recommend removing law reform from the purview of the fund.
- 2.2. Even if it did so, this amendment ignores substantial evidence about the strategic nature of investment in law reform work in the efficient and effective delivery of justice, particularly to economically and socially disadvantaged members of the community.
- 2.3. In other words, the proposed amendment contradicts the government's stated strategic objectives as outlined in the LPITAF Review and the recommendations themselves.
- 2.4. The frame of thought surrounding the LPITAF Review and therefore the proposed amendments, appears to have been based upon 'frontline services', or services delivered directly to Queenslanders.
- 2.5. The fact of the proposed amendment indicates that law reform activities seem implicitly to have been distinguished from 'case work', although this is not expressly indicated in the LPITAF Review.
- 2.6. Law reform work, however, *is* frontline legal service.
- 2.7. On this basis the suggested amendment should be omitted from the Bill.

### 3. Law reform is integral to efficient delivery of frontline services

3.1. Community Legal Services NSW has recently published a report providing evidence as to the public value of community legal centres' (CLCs) engagement in the advancement of law reform. The report commences:

‘Community legal centres...have historically undertaken policy and law reform as part of *an integrated suite of services* designed to meet the legal needs of those disadvantaged socially and economically, and to improve access to the legal system and to justice for such individuals and groups.’ (emphasis added) <sup>1</sup>

3.2. It establishes that ‘law reform and systemic advocacy activities were a more efficient use of resources than case work alone.’<sup>2</sup>

3.3. While the report uses both the terms ‘frontline legal services’ and ‘law reform’, it presents the two as part of the *integrated services* of a CLC to achieve the desired outcomes of ‘equitable access to the legal system and ... to justice, ... cost efficiency and the ... scale of benefits to the community.’<sup>3</sup>

3.4. This aspect of community legal work has been omitted from the consideration of the LPITAF Review proposed in the Bill, despite its demonstrated capacity for efficient and effective service delivery and its alignment with the Queensland Government’s strategic goals outlined in the LPITAF Review.

### 4. Advancement of law reform directly serves vulnerable groups

4.1. Clients of CLCs, principally those who are socially or economically disadvantaged, are less likely to have their voices heard than others who are better able to lobby or advocate for their positions. This is recognised in the LPITAF Review, which identifies 'high prevalence vulnerable client groups' who are likely to require specialist legal services and who may suffer complex legal problems.

4.2. Complex legal problems experienced by such groups often arise as a consequence of the operation of the law or the justice system itself. In this case, the best and most efficient way to meet their legal needs is through advancing law reform.

### 5. All legal advocacy advances law reform but takes different forms

5.1. Law reform may occur through a test case, through singular advocacy or through contribution to a broader debate around the law in question, including through media. In each case, advancing law reform is a frontline service to the clients involved, delivered in recognition of client need.

5.2. In private sector delivery of legal services, clients are free to retain their lawyers to advocate on their behalf - including in advancing law reform. This has occurred notably in the case of asbestos regulation.

5.3. All legal advocacy is law reform in one way or another, and is therefore integral to the delivery of frontline legal services regardless of the form it takes. A system that denies this aspect of frontline delivery to clients who

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<sup>1</sup> Community Legal Services New South Wales, *Adding Public Value: The integration of frontline services & law reform in the NSW Community Legal Sector* (4 August 2014), 1.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, 2.

suffer social and economic disadvantage is failing in the administration of justice.

## **6. Examples of advancement of law reform serving the under-served community**

- 6.1. There are many examples of laws that have been reformed as a response to advocacy by the community legal sector - enhancing access to justice and an improved and responsive legal system.
- 6.2. The expertise of the sector, and notably of specialist service providers as acknowledged in the LPITAF Review, is a vital resource of data on the efficacy of existing laws and the operation of the legal system.
- 6.3. For example in 1993, Zoe Rathus of the Women's Legal Service Queensland, authored the seminal report *Rougher than Usual Handling: Women and the Criminal Justice System*. Based on the knowledge of women's experiences before the law accrued from experience in the community legal sector, this report made an invaluable contribution to the reform of Queensland criminal law.
- 6.4. The community legal sector in Queensland has advocated in numerous other contexts, including:
  - successfully arguing that a person who had suffered from domestic violence at the hands of their partner should not be treated as part of a couple in relation to their social security payments;
  - the introduction of the *Domestic Violence (Family Protection) Act 1989*;
  - changes to the *Coroners Act*, to allow Coroners to investigate systemic issues, including the requirement that any death in an institution be investigated;
  - actively advocating for police to investigate various criminal acts going on in hostels, including suspicious deaths, theft, torture and people being forced to work and being used as sex slaves;
  - submissions to various inquiries associated with the Queensland floods, resulting in recommendations to improve consumer protection in relation to insurance;
  - see also examples cited in Productivity Commission Report.<sup>4</sup>

## **7. Advancing law reform is frontline access to justice**

- 7.1. Advancing law reform is recognised as a cost effective way of delivering access to justice.
- 7.2. The 2014 Productivity Commission Report *Access to Justice Arrangements* identifies that 'legal assistance lawyers ... are uniquely placed to identify systemic issues, particularly those affecting disadvantaged Australians.'<sup>5</sup> This provides an efficient means, through broad advocacy, to deliver frontline legal services to groups of people.
- 7.3. While the LPITAF Review identifies the importance of ongoing delivery of legal advice and case-work, the Productivity Commission observes that there is not always sufficient funding to support individual representation for all cases that come before legal services. In this respect, advocacy and advancing

<sup>4</sup> Productivity Commission, *Access to Justice Arrangements* Report No 72, 5 September 2014, 710.

<sup>5</sup> *Ibid*, section 21.1.

law reform complements other forms of frontline service and ‘stretches the funding dollar.’

## **8. Relationship with Department of Justice and Attorney General (‘DJAG’)**

- 8.1. The LPITAF Review identifies the importance of maintaining excellent working relationship between the community legal sector and DJAG, including the application of LPITAF to that end.
- 8.2. Indeed the Review is premised on the DJAG having access to information about ‘geographical gaps and evidence about where service is needed.’ This same information is that which informs the advocacy and advancement of law reform of the community legal sector. The ‘gaps’ in ‘service’ may well be identified ‘gaps’ within the fabric of the law itself. Communication with the DJAG is itself a component of law reform – excluded by the Parliament’s own proposals.
- 8.3. This acknowledged role of the sector and the recommended application of the LPITAF supports the advancement of law reform as a strategic objective implicit in the Review’s recommendations.
- 8.4. Through the aggregation of their experiences and collaborative state-wide approach, the community legal sector is well placed to alert government to unmet needs in the community and how they can best be met. To the extent that this involves contribution to a broader discussion about advancing law reform to meet such community need, this is a frontline service. It aligns directly with the strategic objectives of the DJAG and the Queensland government.

## **9. Summary**

9.1. The proposed amendment to s289(h)(1) of the *Legal Profession Act 2007* (Qld) should be removed because the advancement of law reform:

- is a frontline legal service
- aligns with the government’s strategic objectives
- aligns with the objectives of the DJAG
- is not precluded by the LPITAF Review
- supports the LPITAF Review recommendations
- enhances access to justice particularly of economically and socially vulnerable groups in the community
- is an efficient application of funding to support access to justice



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18 December 2014