



## **Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into Australia's judicial system, the role of judges and access to justice.**

**Dated - 29 April 2009**

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Suncoast Community Legal Service Inc would like to thank the Committee for the opportunity to comment on the Inquiry into access to justice.

As a regional Community Legal Centre based in Maroochydore on the Sunshine Coast in Queensland, the main terms of reference in which we wish to comment relate generally to part (f) with inference to parts (a) (b) and (c).

### **Background to the Sunshine Coast Region**

The Sunshine Coast is a large geographical area of over 3,100 sqkms with a population of over 300,000 people. Recent amalgamation of the Caloundra, Noosa and Maroochy local Councils has seen the Sunshine Coast slowly assume its identity as a region in itself. Community centralisation has largely centered on the coastal districts, including Caloundra, Maroochydore and Noosa. Other large community areas are present inland in the hinterland areas, including Maleny, Cooroy, Nambour, Landsborough and Beerwah.

### **History and Development of the Suncoast Community Legal Service**

The Suncoast Community Legal Service Inc has been in operation for over 25 years founded by the some local lawyers who recognized a need for the Service in the community. The Service operated from the local Maroochy Neighbourhood Centre with skeleton funding and a generous team of volunteers for over 23 years.

Despite being the third Community Legal Centre (CLC) to be established in Queensland, it was only two years ago, in 2007, that the Service received enough government funding to operate its own office premises and employ administration staff as well as its first Principal Solicitor who is employed four days a week. The Service still relies primarily on the generosity of its volunteers, which currently total 51 legal volunteers and 23 admin volunteers.

Advice sessions operate from the Maroochydore office on Monday and Tuesday evenings staffed by two volunteer lawyers and Wednesday lunch times staffed by one volunteer lawyer. Appointments

are 15 minutes in length and due to timing and funding restraints, the Service is a brief advice and referral service only. SCLS is not means tested but aims to assist people “at a disadvantage” which is usually people that fit between the gap of legal aid and private practice. The Service provides advice on both family law and general law. General law is also known within the community legal sector as “community law” – the specialty area of law which includes neighbourhood disputes, debt advice, small claims and the like – essentially everything for which a client cannot get legal aid funding and which private lawyers are unwilling to touch due to their commercial imperatives.

As the only solicitor of the Service, the Principal Solicitor offers longer appointments to select clients, very limited case work and no court representation. The Service’s preference would be to represent clients in Court if required, however with the limited funding available currently it has been necessary to use the time of the Principal solicitor for the benefit of many rather than few.

### **Outreach Project Initiative – A way of addressing Access to Justice in Regional Areas**

Initially, the provision of community legal advice by the Service has been centralised in the business area of Maroochydore. Phone-out services were offered to those unable to attend in person for reasons of disability, child care or for those living in more remote areas. However, there are a number of recurrent criticisms of the phone out service including the effectiveness of the phone advice being given, accuracy and quality of advice given when lawyers are trying to assist with documents they do not have in front of them and professional indemnity insurance issues.

The access to justice concerns for those living in the more remote parts of this region are as follows;

- Access to face-to-face lawyer contact was only available by travelling to Maroochydore.
- Phone out services were inadequate
- The distances and lack of adequate public transport in the region were discouraging people from seeking any legal help
- Elderly clients, people with a disability were at a distinct disadvantage in these areas due to the need to travel long distances.
- Remoteness of their location meant they weren’t aware of the services available to them

In response to these concerns, in 2004, the Suncoast Community Legal Service established its first Outreach service in the Noosa/Tewantin area of the Coast. This Outreach was largely initiated by volunteer lawyers who recognized both themselves and their clients were driving up to an hour return trip to attend 15 minute advice sessions in Maroochydore.

This Outreach currently operates weekly providing six 15 minute appointments every Thursday evening on family and general law matters. It is funded through the Service’s recurrent funding budget and is staffed by volunteer lawyers and admin volunteers. Admin support from the Maroochydore office for bookings is provided.

This Outreach initiative has been highly successful in servicing the needs of this community. Statistics

collected in-house for the Attorney General's department show an increase in persons from the Northern area of the Sunshine Coast utilising the Service since the Outreach has been established. On a practical level, the increase is obvious with appointments for this Service booked out weeks in advance. It is highly possible that the increase in numbers are people now using a local and readily accessible Outreach service whom would previously have foregone seeking legal advice, put off by the inconvenience of an hour round trip by car or more time if using public transport.

The need for phone out services from clients in this region has also been reduced as a result of the Noosa Outreach.

In 2008, one off funding was obtained from LPITAF (Legal Practitioners Interest on Trust Accounts Fund) to expand the current Outreach program. The 12 month funding grant was for the establishment of an Outreach Service in Caloundra and two other regions. These two other regions were to be determined after community consultation in a number of communities as well as statistical analysis and research. The Noosa Outreach model was to be used as the foundation for the development of all the new Outreaches on the basis that it is a proven model and would save money in implementation and ongoing administration costs.

During the data analysis and research phase, it was identified that four regions were in need of a community legal service in addition to Caloundra and those regions already serviced. These were located in the hinterland communities of the region. One of the areas identified was Nambour, a significant regional services town with a population close to 14,000 and a noted demographic of persons "at a disadvantage". Nambour has its own Court House, many local lawyers and as yet, no community legal services. Other areas were the Northern Hinterland, Southern Hinterland and Blackall Range districts.

Since February 2009, the Caloundra Outreach service has operated weekly at the local Community Centre. Bookings and admin support is managed by staff in the central Maroochydore office. Support for the service from the community, community groups, Legal Aid Queensland, local magistrates and State MPs has been overwhelming and bookings are filling up to three weeks in advance.

The Southern Hinterland Outreach incorporates the towns of Landsborough, Beerwah, Mooloolah and the Glass House Mountains Country. This is a wide spread geographical area with a low socio-economic demographic, high rates of crime, substance abuse and domestic violence with an obvious need for a community legal service. This service will be operational from a Landsborough Neighbourhood Centre fortnightly from the 11<sup>th</sup> of May 2009.

The Blackall Range Outreach will operate from the Maleny Neighbourhood Centre from 1<sup>st</sup> June 2009. This service will operate fortnightly on the opposite Monday evening to the Southern Hinterland Outreach.

Previously, the only regular legal service options available to potential clients in both the Southern Hinterland and the Blackall Range areas were at least a 50 kilometre drive to Maroochydore by car or a phone-out service. It is important to note that very limited or no public transport exists in these regions.

The Service has made an additional application for another round of LPITAF funding for 2009-10 to

develop the weekly Nambour Outreach and the remaining Northern hinterland location on a fortnightly basis.

Ongoing assessment of whether the frequency of all the Outreach services is adequately meeting community need will be undertaken and changes implemented where possible. However, as these services are all provided by volunteers, frequency is determined largely by the availability and generosity of volunteer lawyers and the admin volunteers who assist them. The total number of hours currently being offered to the community by our volunteers is 13 hours per week. In today's legal market where a base hourly rate is \$300 per hour, our volunteer Service and the generosity of our volunteer lawyers are providing in excess of \$200,000 per annum worth of legal advice to the community for free. Once all outreaches are operational and a total of 18 hours per week is being provided by volunteers, this figure will be closer to \$300,000 per annum. These figures do not take account of the integral work of the admin volunteers who also give their time and support to the service.

In the interests of providing 'real' access to justice, the Service would like to provide the outreach locations with at least the equivalent services to those currently offered in Maroochydore, ie longer appointments and limited case work. It seems terribly unfair that those in more remote regions who have private transport are able to access the Maroochydore service yet those that can't afford transport or are at some other disadvantage, miss out on these services, when they are often the ones that need it most.

As the Service currently only has one solicitor employed four days per week, provision of equivalent service delivery in the outreach locations is currently unachievable. 'Real' access to justice would require more employed solicitors to provide longer consultations in the outreach locations as well as manage case loads for clients in these specified regions.

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## **Concerns and Recommendations**

### *Funding for in house lawyers for CLC's*

- While SCLS offers a substantial advice service to the community then, as it continues to expand this service geographically and more effectively reaches its target group of disadvantaged people, the demand for services going beyond mere advice and referral has become increasingly obvious. While many clients benefit from simply being told what to do next, there is a large group for whom writing a letter, drafting a document or making approaches to another party for example, are actions quite beyond their capacity. Provision of more intensive legal services such as these are generally beyond what can be expected of volunteer lawyers and realistically require attention from a solicitor employed by the Service, presently that means the Principal Solicitor. The Principal Solicitor has five longer appointments a week for matters which require more attention and generally is undertaking 'brief assistance' casework on up to twenty files for persons from a genuine situation of disadvantage. Even this small amount of casework often creates significant clashes with his other responsibilities in managing the volunteer advice service, providing advice, undertaking community legal education and overseeing the running of the organisation. It is clear that in order to provide any substantial such service to people who fall into the gap between Legal Aid funding and the private profession, dedicated case-work lawyers and additional administrative support for those positions are required.
- Additionally, no individual court representation is able to be undertaken by SCLS due to these resource constraints on the principal solicitor and clients often have no choice but to arrive at Court unrepresented. This places considerable strain on the time and resources of the Courts and raises questions about effective access to justice for those who cannot afford a private lawyer but do not qualify for legal aid.

### *Transparency of Funding*

- That a region with the population of the Sunshine Coast which has had a community legal service in place from the mid-80's onwards only received funding to employ a principal solicitor and full-time coordinator as late as 2007 speaks volumes as to the lack of transparency and equity in how funding is apportioned in the sector. While by their very nature CLC's need to be community-based and grow from the community's desire for a service and the local legal profession's desire to 'give back' to the community, where there is a functioning CLC in a town or region with a particular population, one would expect that it would be broadly funded to the same level of service as a CLC in another region or town of similar population, with some adjustment for particularly wealthy or particularly disadvantaged demographics.
- In Queensland and throughout Australia this is clearly not the reality. The tendency to encourage additional underfunded services in new communities rather than properly funding those services that are already running only adds to this problem. The Queensland Association of Independent Legal Services (QAIS) takes the position that all existing services should be funded to a sustainable level before more services are established. What the appropriate level is would be calculated with regard both to the population of an area (CLC

staff per capita or similar) and the relative degree of disadvantage in the area. Considerations as to what is the minimum size for an effective organisation with regard to the burdens of regulation (calculated by QAILS as 6 full-time equivalent staff) will also be relevant.

*Role of CLC's in the provision of Community Legal Education*

- The provision of CLE is a preventative approach to legal issues rather than one which is reactive. Education and information allow people to make the right choices and raise awareness of rights and responsibilities before the law. This fits in well with the advice and referral model which realistically works best in a preventative role and is less effective when legal problems have already begun to become serious. CLC's are well positioned to provide CLE services with access to the varying expertise of often large volunteer bases and strong networks within the community. Suncoast CLS presently conducts up to 12 education sessions a year, often in council libraries throughout the region. It is suggested that for CLE to ever receive priority in CLC's when demand for advice and brief assistance casework constantly outstrips supply, a specific allocation of additional funding should be allocated. Ideally specialist CLE workers would be tasked with organizing education in various formats.

*Problems with funding new legal initiatives and their long term sustainability.*

- The SCLS Outreach program which aims to improve access to justice in regional areas is subject to an annual grant process which is highly unpredictable. Funding is only available through one off funding grants which makes it difficult to guarantee the long term future of Outreach community legal services in the areas where they are most needed. Remote communities whose access to legal advice is already diminished due to their geographical location are further disadvantaged by the uncertainty of services in their locations being subject to the whims of grant funding applications.
- The experience of the Outreach project exemplifies the flawed rationale for provision of funding which is perceived to be prevalent in government, ie that statistical evidence of a demonstrated need must be established before recurrent funding will be granted. A fairer and more equitable approach might be to use demographic information and anecdotal evidence from community stakeholders to ascertain need. Where need is identified lasting commitments should be made on their strength for periods long enough to fully explore opportunities in the identified region.

Julian Porter  
Principal Solicitor  
Suncoast Community Legal Service Inc

Endorsed by the Management Committee of Suncoast Community Legal Service Inc