



National Association of Community Legal Centres Inc (NACLC)

Tel: 61 2 9264 9595

Fax: 61 2 9264 9594

Email: naclc@clc.net.au

Mail: PO Box A2245 Sydney South NSW 1235 Australia

NACLC COMMENTS ON DRAFT OF THE NATIONAL CONGRESS OF AUSTRALIA'S FIRST PEOPLES NATIONAL JUSTICE POLICY

November 2012

Introduction

NACLC thanks the National Congress for providing us with the opportunity to comment on the draft Policy.

By way of background, please note that it is a key goal of NACLC's that Aboriginal and Torres Strait Islander people have equitable access to culturally appropriate legal services, and that wherever possible these should be provided by dedicated services staffed and managed by Aboriginal and Torres Strait Islander people. This commitment is stated in, among other places, NACLC's Reconciliation Action Plan, which says:

We recognise the unique role of Aboriginal and Torres Strait Islander legal services as specialist and culturally appropriate legal service providers for Aboriginal and Torres Strait Islander peoples. We are committed to maintaining and developing mutually supportive relationships with Aboriginal and Torres Strait Islander legal services, giving us greater strength to pursue our shared goals.

NACLC recognises that there may be occasions when an Aboriginal and Torres Strait Islander person may not wish or is unable to obtain legal assistance from the Aboriginal and Torres Strait Islander legal services, for example because of possible or real conflict, or the services inaccessibility or lack of resources.

To ensure that Aboriginal and Torres Strait Islander people have available an appropriate choice of service provider in these situations, NACLC is committed to supporting community legal centres to be service provider organisations that are culturally secure for Aboriginal and Torres Strait Islander people.

Our comments

NACLC is in broad strong agreement with the Policy and with its recommendations. We make the following comments for your consideration and use as the Congress sees fit.

Principles

NACLC supports the Principles contained in the draft paper.

NACLC agrees that access to justice is a human right and we agree with the importance of Principle 6 that “Governments must be held accountable for progress...” (page 8).

1. Justice targets

NACLC strongly agrees that it is appropriate and critical to have nationally agreed and specific targets to drive coordinated government action in this area. In our view, those targets should be required to be achieved by government, at both national and state/territory levels.

While it is critical that the states/territories and Commonwealth agree and work together to this end, we submit that if any one or more states/territories decline at first to participate, the remainder should proceed: that is, the absence of one party should not remove responsibility from or delay action on the part of the others. Continuing pressure should be applied to any party who does not ‘sign up’.

NACLC supports the recommendation that the Australian Government, in agreement with the state and territory governments, adopt Closing the Gap target number seven, and the targets of each of the key indicators listed in 1.2.1-1.2.6, *for themselves*. It is important that it be made very clear that these are targets that apply to government agencies, and not to service providers.

We have seen examples where government has required or sought to include in a partnership (funding) agreement a reduced rate of recidivism or incarceration of clients as a KPI for a legal service provider. The reality is that many considerations affect these rates, and many of them are likely to be outside of the control of the legal service provider. Obvious examples are ‘three strikes’ state/territory laws, bail laws, and prosecutorial policy and practices.

Thus, NACLC generally agrees with recommendation 1.3, that National Agreements and National Partnership Agreements be reviewed so as to incorporate actions and performance indicators to contribute to the achievement of these targets, but how these are drafted must not allow government to avoid its responsibilities for the adverse effect their actions have on Aboriginal and Torres Strait Islander people; nor to impose an inappropriate or impossible burden or responsibility on service providers.

NACLC has a concern with recommendation 1.2 regarding the adoption of Closing the Gap target number eight and with recommendation 5.1(ii), which refers to the performance target of halving “the rate at which Aboriginal and Torres Strait Islander people report having experienced physical or threatened violence ... in the past 12 months.”

We believe that a better wording would be “to halve the rate at which Aboriginal and Torres Strait Islander people experience physical or

threatened violence...” This places the onus on government to consult Aboriginal and Torres Strait Islander people about their experiences, and proactively ascertain and monitor Aboriginal and Torres Strait Islander people’s health, safety and well-being.

In our view government should be engaged in a two pronged campaign to reduce violence in Aboriginal and Torres Strait Islander communities: first, by devising and supporting strategies to reduce the levels of violence - including all the strategies of building Safe Communities – and by strategies to ensure that victims of violence feel able, confident and willing to report violence.

While violence is still occurring, high levels of reporting can be a positive sign – it may show that more Aboriginal and Torres Strait Islander people are aware of their rights, feel confident in approaching the legal system for support and the protection of their legal rights and that the legal service provider and system is providing them with a culturally secure service.

One type of measure we suggest is qualitative, that is the experiences and perceptions – especially the confidence felt – by Aboriginal and Torres Strait Islander people in accessing and utilising the legal and justice systems.

At this stage, having a target for reporting rates to drop may hide or even encourage a tendency in government to ignore the causes of high rates of violence in communities.

2. Funding for Aboriginal Justice NGOS

NACLC agrees that the need to adequately fund dedicated Aboriginal and Torres Strait Islander legal services (as far as possible managed and staffed by Aboriginal and Torres Strait Islander people) should be the primary goal. We suggest that the point could also be made that Government should actively support the other publicly funded legal assistance providers, the Legal Aid Commissions and Community Legal Centres, to be available as culturally secure alternative legal service providers for Aboriginal and Torres Strait Islander people for occasions when the Aboriginal and Torres Strait Islander services are not available or appropriate.

We agree that the family law and other civil law needs of Aboriginal and Torres Strait Islander people is one of the biggest areas of unmet legal need in Australia and should be the highest priority area for further funding in legal assistance provision.

While the ultimate goal is to achieve Aboriginal and Torres Strait Islander legal services providing services in all areas of law, as a practical, medium-term interim measure, it may work to suggest that government fund dedicated Aboriginal and Torres Strait Islander positions and programs in existing specialist services, for example, Community Legal Centres specialising in consumer credit and debt, or employment law. This would offer the benefit of leveraging off those services’ infrastructure and expertise while developing Aboriginal and Torres Strait Islander specialist experience in these areas. In

due course, as resources and expertise were developed and the need for these services confirmed by evidence, separate Aboriginal and Torres Strait Islander organisations or programs within existing Aboriginal and Torres Strait Islander services could be established.

NACLC strongly agrees with the criticism of government providing insufficient funding for prevention, early intervention and diversion services, and for law reform and community legal education. Community Legal Centres have undertaken these activities for decades because they are effective preventative and early interventions strategies. The importance of these strategies is recognised in the Australian Government's own Strategic Framework for Access to Justice policy. It is therefore not excusable for the Australian Government, through lack of funding, to exclude Aboriginal and Torres Strait Islander people from these types of services – services which its own policy recognises as cost effective, efficient and equitable.

Early intervention and prevention programs can be more equitable in that they can be targeted to all groups in the community. The existing inadequate funding inevitably goes as a priority to people appearing or at risk of appearing in court, particularly those facing criminal charges – which is only a proportion of Aboriginal and Torres Strait Islander people, the majority of whom are men.

To ensure equitable distribution of limited funding, we suggest that there be a recommendation about government monitoring and reporting on the gender and age profile of those assisted by the publicly funded legal assistance services.

NACLC strongly supports recommendation 2.5 that the FVPLS Program be funded to deliver services to women and children in urban and larger regional centres, and for an ongoing FVPLS secretariat. We note that NACLC has consistently supported the inclusion of the FVPLS secretariat on the Australian Legal Assistance Forum, of which it is a member, and is pleased that an invitation has recently been extended to the FVPLS.

NACLC believes that the need, identified on page 22 of the draft paper, for adequate funding to ensure that all Aboriginal and Torres Strait Islander people who need them have access to interpreters, is a basic human right that government is obliged to protect. We understand from our own work that this need often goes unmet. This should be a funding priority.

We suggest that in relation to the extent of unmet legal needs, it may be helpful to refer to the recently launched *Legal Australia-Wide Survey: Legal Need in Australia* to provide further supportive research.¹ The national and state reports are available on the NSW Law & Justice Foundation's website.

¹ Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney, accessible at <http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>

3. Prevention, early intervention and diversion

As mentioned above, NACLC strongly supports the importance of government funding these types of services for Aboriginal and Torres Strait Islander people.

In relation to recommendation 3.4, NACLC submits that it is essential that any NPA that covers the performance of legal services for Aboriginal and Torres Strait Islander people should be consistent and complementary to the Safe Communities NPA that is referred to in recommendation 5.1.

In relation to recommendation 3.5, that government commit to pilots of Justice Reinvestment strategies in a number of prioritised communities, NACLC suggests that it could go further and say that, upon positive evaluations of those pilots, those strategies should be funded on an ongoing basis and expanded to other communities (priority areas to be decided in consultation with Aboriginal and Torres Strait Islander communities/representatives).

4. Conditions in detention

NACLC strongly supports the human rights based approach used in this section and agrees with the importance of the recommendations included.

NACLC suggests:

- inclusion of a recommendation that unimplemented recommendations of the Royal Commission into Aboriginal Deaths in Custody be implemented; and
- inclusion of a recommendation that Government should actively support and fund Aboriginal and Torres Strait Islander Healing programs and models such as those outlined in Chapter 4 of the *Social Justice Report 2008*².

5. A National Partnership Agreement for Safe Communities

As you are aware, there is currently a National Review of the four legal assistance providers funded by the Australian Government: the Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services, Legal Aid Commissions and the Community Legal Centres.³ The first part of this Review concerns an assessment of performance of the Legal Aid Commissions under the National Partnership Agreement with the Commonwealth; the second part looks towards establishing a National Partnership Agreement that will cover all four legal assistance providers. Data analysis and report is due by 30 June 2013.

In NACLC's submission, it is essential that any NPA that covers the

² http://humanrights.gov.au/social_justice/sj_report/sjreport08/chap4.html#ch4_2_7

³ www.ag.gov.au/ReviewofNPAonLegalAssistance

performance of legal services for Aboriginal and Torres Strait Islander people should be complementary to the Safe Communities NPA that is referred to in recommendation 5.1.

We refer to our comments in section 1 above about the recommendations 5.1(i) and 5.1(ii).

We believe that a commitment to funding Healing programs would also assist with the strategies set out in recommendation 5.4, and suggest its inclusion.