

Justice for everyday problems: Civil Justice in NSW

Introduction

This submission on behalf of the Regional, Rural and Remote Network of Community Legal Centres in NSW. We welcome the opportunity to provide comments that reflect the experience and expertise of our partners and their clients living in regional, rural and remote (RRR) NSW.

Access to justice in regional, rural and remote NSW

This submission provides a particular focus on how civil justice issues impact on our clients in regional, rural and remote (RRR) communities.

Our view is that any civil justice reforms and initiatives should take notice of the particular issues arising in RRR communities, noting that some Government planning and legislative reforms may have an unintended disproportionate or discriminatory impact on these communities. Our RRR partners sometimes refer to an approach to reform that support a mindset and/or process that includes “regional and remote impact assessments” of new initiatives, in effect to “rural proof” programs & services.

We know from the Law & Justice Foundation of NSW (the LJF) that some people (people with a disability, single parents, unemployed people, people in disadvantaged housing and Aboriginal people) have an increased vulnerability to legal problems¹.

The LJF research also found that disadvantaged groups are likely to experience high numbers of legal problems that often cluster with some problems triggering other problems, a wide range of legal problems, substantial and enduring legal problems and less success in resolving their legal problems.

We also know this cohort:

- have comparatively poor legal knowledge
- be more likely to ignore their legal problems
- be more likely to achieve poor outcomes on their own
- tend not to benefit from self-help strategies
- have a variety of related non-legal needs (eg health, housing, employment and family issues)
- have lower legal “capacity” or legal literacy and be more likely to need help from legal and non-legal services
- require high levels of quality face to face advice to achieve a beneficial legal outcome

These findings tell us that in designing services or initiatives for vulnerable and disadvantaged people, we need to be mindful of this cohort’s particular capabilities, noting in particular that they are less likely to actively seek assistance and/or are less able to access services.

All disadvantaged people face issues accessing justice. However, disadvantaged people RRR NSW face unique barriers that impact on their well-being and need for justice support. These barriers include:

- Poor public and private transport options
- Some agencies are funded to service very large catchment areas
- Less employment opportunities, greater employment decline and more under-employment in regional populations
- Poor internet/telco access
- High rates of illiteracy, in particular in remote communities

¹ The Law & Justice Foundation of NSW’s *Legal Australia Wide Survey* (2012)

² We refer to recent research from the United Kingdom on “digital democracy” that found “*Many initiatives exist simply as an app, or web page,*

- Relative lack of affordable housing, health services, childcare and child contact services
- Problems attracting and retaining professionals including lawyers
- Relative lack of awareness of available services and resources
- An ageing population
- A reliance on fly-in, fly-out services at the expense of supporting local, sustainable services
- The particular impact of cross-border issues in cross-border communities, meaning both consumers and legal service providers need to be on top of dual jurisdictions' laws and remedies.

Using technology to provide legal information & expand availability of self-help tools

The Consultation paper contains a number of suggestions that involve providing legal information to consumers using technology and internet platforms. We applaud the use of technology but note that there are examples where technology alone has not been able to meet areas of unmet legal need. The effectiveness of these types of solutions also relies on people having some capacity to use legal information to solve their problem, as well as access to technology which is not equal across the regional and rural areas of NSW. We also know from LJF research that access to good legal information may not, in and of itself, guarantee that people will be able to identify and solve their legal issues.

We agree that there may be technological/digital solutions, we also support a cautious and considered use of digital solutions where the technology dictates the product, rather than the product being directed by actual need or capabilities.² Any online tools/initiatives need to build an evidence base to determine whether and how people with different levels of legal capability, and people living in different areas (urban, rural and regional) use these tools to identify and solve their legal problems.

A case study by Victoria Legal Aid on the use of a mobile phone application to provide legal information to young people is an example of what can go awry when planning and implementing a digital CLE tool. The *"Below the Belt"* app was developed to provide information to young people about sexting, cyber bullying and consent. The app was discontinued two years after its release because of low install rates and high uninstall rates, and the evaluation pointed to assumptions about useability.³

The case study below of Bowenfels, a particularly disadvantaged part of Lithgow, illustrates the regional disparity that may bear on peoples' legal capabilities and resources.⁴ It is unlikely that technological solutions to address legal problems will as much benefit to people living in Bowenfels as much as high levels of quality face to face assistance.

Regional community case study – Bowenfels

Referring to the indicators noted by the LJF above, Bowenfels is a community that has comparative high rates of low legal capability, extremely low income, high rates of disability, fines debt and unemployment and very low rates of internet access.

² We refer to recent research from the United Kingdom on "digital democracy" that found *"Many initiatives exist simply as an app, or web page, driven by what the technology can do, rather than by what the need is"* See Julie Simon, Theo Bass, Victoria Boelman and Geoff Mulgan *Digital Democracy: the Tools transforming political engagement* at <http://www.nesta.org.uk/publications/digital-democracy-tools-transforming-political-engagement>

³ See <http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-case-study-below-the-belt-phone-app.pdf>. The VLA's publicly available evaluation is a useful tool for others. It concluded that the project was based on assumptions that young people have the capacity to resolve legal problems if they have correct information, and that young people will use an app to obtain legal information. However, research indicated that young people prefer to get legal information from friends and peers, or through a google search. The project also had significant technical problems; the app was developed for Android operating systems only, and did not work successfully all versions of that operating system.

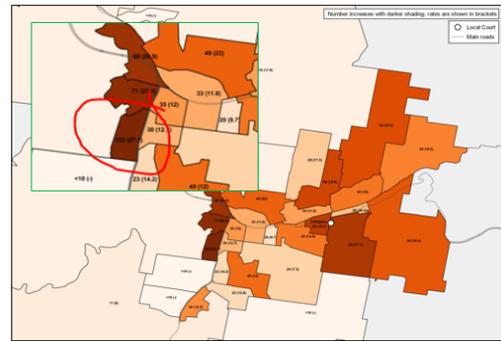
⁴ This analysis comes from the strategic planning undertaken through the Cooperative Legal Service Delivery (CLSD) Program which many RRR CLCs participate in.



what's going on in Bowenfels, Lithgow?

INDICE/INDICATOR	Number or \$	Bowenfels %	Compared to NSW
Renting – social housing		59.6 %	4.9 %
Fully owned house		10.2 %	31.9 %
Need for assistance (disability)		8.9 %	4.9 %
Males aged 15 to 24		8.0 %	6.6 %
Disengaged youth		26.1 %	5.8 %
Indigenous		10.9 %	2.5 %
No internet connection		38.2 %	19.4 %
Lowest household income quartile unemployed		51.2 %	25.5 %
Mean SDR debt in Bowenfels compared to NSW	\$2876		\$1694
Index of Relative Socio-economic Disadvantage (low income, education, unemployment, dwellings without motor vehicles)	569		996
Index of Economic Resources (income, housing expenditure and household assets)	684		997

NLAS(Capability P) Lithgow



Number (rate per 100)
 ABS Census 2011: People aged 15-64 years and over with a personal income of less than \$400 per week or \$20,000 per year, whose highest education achievement is below Year 12, are not currently studying and do not have post-school qualifications.
 The counts on these maps should be treated as minimum counts of persons only.

Access to the internet and the CLE solution

Internet-based tools and dispute resolution solutions need to be cautious in their assumptions about RRR people's access to and use of the internet. This is particularly the case in remote communities.⁵ We refer also to the "digital divide" in recent research by LJF which points to the segregation by location, age and competency in relation to access to technology to solve legal problems.⁶

While CLE and more online resources in relation to dispute resolution are useful, relying on information and CLE will not necessarily assist our vulnerable legal assistance sector clients. As noted by the LFJ, while CLE:

*"undoubtedly plays a vital role in increasing access to justice, and practitioners can point to examples of significant difference being made, it is not a one-shot magic bullet which can, alone, replace the need for more intensive services, nor can it meet the needs of all clients. Rather, it is an integral part of a 'kitbag' of legal assistance tools that might more effectively and efficiently be deployed for particular purposes, and in combination with other strategies."*⁷

The role of regulation

We understand that the Civil Justice System team is initially looking at initiatives that may not require a major legislative reform agenda. Some of the self-help and technology based solutions that will be useful for more technologically savvy people, and may put less pressure on the legal assistance sector to help people who are capable of helping themselves. However, some will be beyond the capacity of vulnerable consumers in RRR NSW. For this group, face to face assistance and protective legislation is important.

Frontline service providers believe in the role and importance of front-end regulatory responses and solutions and the continued need for laws and regulations to protect consumers from unfair and high pressure sales tactics, particularly for vulnerable and disadvantaged people in regional areas where there is relative lack of access to support including legal advice and financial counselling.

The following scenario raised at a recent regional CLSD Program meeting, illustrates this point.

⁵ see for example: <http://www.abc.net.au/news/2016-12-07/regional-australia-crying-out-for-equitable-access-to-broadband/8099708>

⁶ See Forell, S & McDonald, HM 2015, *Beyond great expectations: modest, meaningful and measurable community legal education and information*, Justice Issues paper 21, (Law and Justice Foundation of NSW, Sydney) at p 3.

⁷ See Forell, S & McDonald, HM 2015, *Beyond great expectations: modest, meaningful and measurable community legal education and information*, Justice Issues paper 21, (Law and Justice Foundation of NSW, Sydney) at p 9.

A young mum with limited education and low literacy is shopping in the local mall in a regional town with her restless baby. She is approached by a “glamour photography” company that has popped up in the mall, and the pushy sales person signs her up to a contract. Her baby was restless at the time, and she was unfocused, and did not understand the terms of the contract she now wants to get out of. The company is no longer at the mall and she doesn’t know what to do. She does not have a computer, nor does she have access to the internet. Using online information strategies as suggested in the Consultation Paper may not be of any help to someone in her position. What she needs is:

- *Timely, targeted and appropriate face to face legal advice on her rights on the contract*
- *To be joined up to a financial counsellor to assist her, and ground any financial hardship remedies.*
- *Ability to invoke appropriate legal/statutory protections, such as cooling off periods, legal remedies for unconscionable conduct, unfair and high-pressure sales tactics.*

Avoiding Common Problems and dealing with problems early

Better and easier-to-navigate information to avoid common problems has a role, but it is not a one-size-fits-all solution. Solutions like a pre-decision or pre-purchase checklist are good ideas, but will only benefit people who are more legally competent. Some people with compromised legal capability living in RRR locations may not be able to access, use or understand technology based solutions. Most of our service initiatives and collaborative projects incorporate face-to-face contact with service providers because of this reality.

Providing and using data and technology to get information before problems occur is based on a theory that most people act rationally in their decision-making.⁸

Many vulnerable people make poor decisions that are influenced by stresses including relationship breakdown and family violence, debt, gambling, alcohol and other drug dependencies, unstable housing, health and mental health issues and trauma as well as coercion and sharp practices from unscrupulous traders. Protective regulation and access to legal and support services (counselling, drug & alcohol services etc.) will be most beneficial for this cohort. If we want to do early intervention and avoid problems early, we need to be working in partnership with agencies that help people address these related non-legal problems, at an early stage.

CLCs in RRR NSW, as well as the CLSD Program partnerships in regional NSW do this as a matter of course by identifying emerging, systemic or unmet legal needs and working collaboratively and locally to try to deal with problems early. This is largely about integrated service delivery.

Examples of collaborative projects and initiatives that deal with problems at an early stage:

- Bourke and Brewarrina Law Week outreach. This is an annual event that facilitates face to face contact with all legal assistance services including the Western NSW CLC, Legal Aid NSW, the local Aboriginal Legal Service, pro bono solicitors (doing wills and other planning ahead documents), the local Family Violence Prevention Legal Service, as well as government services including Centrelink, and Office of State Revenue, Victim’s Services and Births, Deaths & Marriages as well as Regulators (Fair Trading NSW, ASIC) and dispute resolution services including the Energy & Water Ombudsman and the Anti-Discrimination Board. The services are available for a few days in each community, with the capacity to walk people through a number of services on the spot. During the week the services may also do CLE. This has included CLE for young people in local schools (on things like sexting and cyberbullying) or housing sessions for local tenants.
- Joint services legal advice clinic at Bathurst and Lithgow with lawyers from Legal Aid NSW, Elizabeth Evatt CLC and local pro bono lawyers to provide a general advice clinic in neighbourhood centres in Lithgow and Bathurst.

⁸ See, for example, some of the resources at <https://www.dpmc.gov.au/domestic-policy/behavioural-economics>

- A number of our justice sector partnerships report significant waiting periods (of up to six weeks) for clients to see a financial counsellor. With the Northern Rivers CLSD partnership, we are supporting the development of a Budget Education Kit linked in with a law check-up mechanism that will expand the capacity of community workers and the range of financial counselling resources in the Northern Rivers region. This will include the Northern Rivers CLC, Legal Aid Lismore office and local financial counselling services.
- *Bring your Bills Days* – informal drop-in or pop-up clinics in areas where there is high disadvantage, for people with debts with a range of services participating including legal assistance services, financial counsellors, EWON, State Debt Recovery and Fair Trading.
- Targeted community legal education and advice clinics in regional areas where there is high youth unemployment and /or exploitation by employers. CLE is provided by Community Legal Centre and Legal Aid NSW lawyers in partnership with local schools, TAFEs or migrant support services.

We note ideas in the Consultation Paper to help people get the right information. While we agree that many of these are useful for people with relatively high legal capacity, we make the following observations, based on our experience working in RRR NSW.

- We welcome the development of a trusted and dynamic online platform and information but caution against overstating its capacity to assist all legal consumers who have varying legal capabilities. We need to tailor different solutions for those with low literacy and capacity, but fundamentally these clients will benefit most from swift access to face to face legal assistance (for example, advice on housing terminations, problems with policing or family violence).
- We are concerned about the possible proliferation of platforms, apps, self-help tools, online tools and networks that may overlap or duplicate each other. We know that if people are presented with too many choices, they are likely to do nothing, or will not necessarily act in their own best interests. Well-meaning regulators and service providers risk creating confusion if there are too many platforms, apps, networks to help them.

Getting help to solve a problem

Gaps in services

The following civil law gaps are regularly reported through our interagency (including CLSD Program partnerships), many of which are likely precursors to criminal law problems.

- Insufficient resources to provide face to face legal advice, assistance and representation for highly disadvantaged people, particularly in regional and remote communities, particularly in tenancy, debt, and consumer law issues.
- The decline in private lawyers, especially those willing to do legal aid work in remote NSW.
- Financial hardship and poverty underscores many peoples' legal problems. There is an acute lack of financial counsellors and many services have very long wait lists.
- Problems with cost and access to identity documents for Aboriginal people – which leads to driving offences, fines and imprisonment.
- The impact of gambling debt is a growing area, and we note that 7 of the top 10 Local Government Areas for poker machine turnover are in regional and remote NSW.⁹ The idea of a special purpose, therapeutic Court for gambling may be useful to explore.¹⁰

⁹ See poker machine turnover data by LGA for 2016 in <http://www.dailytelegraph.com.au/newslocal/hornsby-advocate/poker-machine-spins-on-a-roll-in-sydney-and-central-coast-for-record-billion-dollar-playing-action/news-story/92047198b9a6bc52f2b712f315fbc367>

¹⁰ See, for example, the therapeutic model of the Gambling Court in New York, www.gamblingcourt.org/

- Closure and restricted operating hours of Local Court registries; also withdrawal of NCAT sittings from some Local Courts. We have reports that many people do not turn up for NCAT phone hearings. Further, tenancy advocates who otherwise may have provided an NCAT “duty” service have no notice of the hearings and cannot assist.
- While these matters are heard in the Local Court crime divisions, the relative lack of legal assistance and representation for defendants in AVOs and traffic matters has direct and causal impact on their civil law issues including housing, employment and fines debt. Siloing people’s legal problems is not helpful – and an effective justice strategy should proactively embrace the interrelationships and complex of issues. Explorations to enhance the role of the “generalist” solicitor in RRR NSW are encouraging.

Wait times, no telephone or online access

- Wait lists are a particular issue for financial counsellors.
- Most people in regional and remote NSW only have mobile phones on timed-call plans. While LawAccess offers a great service, and they offer a call-back service, calling LawAccess from a mobile can be a disincentive.
- As noted earlier, some remote communities have no access to telephony in any form.

Housing issues in RRR NSW

CASE STUDY

A team of legal and related non-legal service providers were doing some work in a remote Aboriginal community. At the outreach the team were approached by anxious tenants concerned about terminations. The team found that there was a group NCAT hearing being convened in the Court House in the next town for about 30 tenants in a few weeks’ time. Most tenants did not understand what was going on. Many had substantial repairs and maintenance problems with their houses, many of which were serious. Many of the tenants had stopped paying rent.

Upon taking instructions from various tenants, the team found that:

- *Many tenants did not have formal notices of the NCAT proceedings – there is no postal delivery in the town. Residents have to get to the next town (about 20 minutes’ drive) to pick up mail from a part time Post Office.*
- *The tenants had no paper records of their rental ledgers, nor their arrears*
- *The social housing provider’s office was based 4 hours away. Tenants were expected to submit concerns about repairs online with the social housing provider. However, there was little or no internet access, very few people had computers, and a substantial proportion of tenants had low or no literacy. No tenants had submitted requests for repairs online.*
- *Tenants did not know that they had a right to lodge their own applications at NCAT.*
- *There is no public transport to the town where NCAT was sitting. Not many people in the town had a license or a registered vehicle.*
- *A number of affected tenants had serious health including mental health issues which meant access to the NCAT sitting was not possible.*

Most matters were put onto orders to pay rent and arrears, some tenants were evicted. Eventually the housing provider resigned and the legal matters are dormant.

This is one of many similar scenarios in Aboriginal housing across remote NSW.

What does this case study suggest?

- While the provider had online platforms to resolve legal issues (repairs), they were of no practical benefit to these tenants.

- The current process of legal enforcing rent payments, arrears and repairs/maintenance in Aboriginal housing is having very little beneficial impact on all parties. This is a cycle that is being repeated across regional and remote NSW, and causing ongoing hardship and stress.
- We need to develop a less coercive and stressful and culturally specific dispute resolution model for Aboriginal housing. The over-use of NCAT is unsustainable and causing hardship and stress for vulnerable tenants.¹¹

Resolving housing disputes and NCAT

Our RRR colleagues have consistently noted that housing providers are quick to use NCAT to resolve disputes, rather than using less coercive dispute negotiations. While we believe that access to a tenancy EDR scheme is likely to assist people in regional areas to have better access to dispute resolution for repairs and arrears issues, there is scope to consider how housing providers/landlords and NCAT communicates with people who are served with applications, particularly applications to terminate tenancy for unpaid rent.

Tenancy advocates are recently reporting that an increasing number of tenants are not turning up to NCAT hearings, or seeking advice prior to NCAT hearings, observing tenants are increasingly experiencing financial hardship, mental or physical health problems that affects their capacity to attend NCAT and missing the opportunity NCAT may provide to negotiate a payment plan and avoid eviction.

It may be that landlord communications and NCAT forms and notices include contact information about local advice services, and NCAT could send text messages to tenants just prior to the scheduled hearing to encourage attendance, and include local advocacy services' contact details.

Local Council/rates matters

We note the high rate of Local Council matters before the Local Courts. We note the Local Council practice of filing proceedings in Sydney, which often results in default judgment and accrual of fees, interest and legal costs.

We support the introduction of consistent hardship policies for Local Councils and pre-Court dispute resolution processes for rates and water matters. We suggest that any ADR scheme have a specific remit to actively work in regional locations. With its in-house expertise on EDR schemes in the financial services sector, Legal Aid NSW's Civil Law Division would be well-placed to consult on models.

Enhancing EDR schemes and EDR outreach to regional and remote NSW

Our RRR partners support the development of ADR schemes as outlined in the Consultation Paper but we want ADR schemes to enhance their regional and remote reach, for example by using ADR scheme engagement officers who actively participate in outreach activities to build engagements with ADR services. A good example of this is the Aboriginal Engagement Officer employed by the Energy and Water Ombudsman of NSW (EWON). The EWON Officer regularly participates in joint service outreach activities with RRR CLC and Legal Aid solicitors. This is very useful for our clients, and also saves time for our solicitors who can focus on the legal issues and divert clients with non-legal but related financial hardship for ADR assistance.

It would be good if national EDR schemes such as TIO, CIO and FOS would also extend their regional presence and replicate EWON's good practice by employing outreach officers. It may be useful to explore the option of funding joint-EDR scheme engagement officers, perhaps piloting this in NSW where there is an appetite and established outreach services infrastructure to support this work.

¹¹ The local school pointed to the high stress that these cyclical proceedings cause the community, including a direct impact on school attendance.

Enforcing judgments and orders

Enforcing NCAT orders

A number of our RRR regional partners have documented problems with tenants obtaining and enforcing NCAT remedies for repairs and maintenance from the full spectrum of housing providers/managers

Working with Local Courts

We also note the importance of local collaboration between Local Court Registries, Sheriffs, legal assistance services and State Debt Recovery particularly where property seizure orders are issued. Local service collaboration at this point can divert disadvantaged people to use alternatives to address the debt such as Work and Development Orders, and assistance to write offs, particularly for people with mental health and cognitive impairment. We note that access to local court registry staff in remote areas who have strong contacts with local services can be an important safety net, and is possibly an untapped resource.

Arlia Fleming
Managing Principal Solicitor
Elizabeth Evatt Community Legal Centre
Convenor Community Legal Centre Rural, Regional, Remote Network

Contact details:
Phone: (02) 4782 4155
Email: arlia@eeclc.org.au