



QUEENSLAND PUBLIC INTEREST LAW CLEARING HOUSE INCORPORATED

SUBMISSION TO LEGAL AID QUEENSLAND'S REVIEW OF CIVIL LAW SERVICES

INTRODUCTION

What is QPILCH?

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) is a non-profit community based legal service that coordinates the provision of pro bono legal services in public interest matters. QPILCH also provides some direct services through targeted projects, including the Homeless Persons' Legal Clinic, the Administrative Law Clinic, the Refugee and Immigration Legal Support Project and the Consumer Law Advice Clinic.

Why did QPILCH prepare this submission?

Clients of our referral services and clinics who suffer disadvantage regularly need to access legal aid. In addition, Legal Aid Queensland regularly refers matters to QPILCH where applicants are ineligible for aid. QPILCH only assists in civil law matters. While QPILCH is able to provide advice and minor extended assistance through the clinics and refers cases to member firms for representation, we are not a substitute for legal aid. Rather, we only assist applicants who are ineligible for legal aid. We support all attempts to increase access to the legal system.

INITIAL RESPONSE TO DISCUSSION PAPER

We commend Legal Aid Queensland for taking the initiative in inviting public comment on its consultation paper. However, we are of the view that much more can and should be done to understand current civil law services, particularly those provided by LAQ, community legal services (CLCs) and pro bono law schemes (coordinated and informal), and armed with that information, enhance services through greater cooperation and coordination.

Before commenting on the specific issues and recommendations raised in the consultation paper, there are three issues which QPILCH suggests are of utmost importance in the consideration of civil law services, namely:

- the importance of statistical data and research to give a true picture of the extent of demand and legal need in the delivery of all free and low cost civil law services in Queensland
- the value of coordination of free and low cost civil law services to ensure efficiency and effectiveness, and
- the role of CLLAS in increasing civil law services.

These issues are referred to in the consultation paper but are not specifically addressed.



Given that a stated purpose of the paper is to consider "whether there is scope for the provision of additional services in civil law", particularly in view of current (and insufficient) resourcing in the area, we highlight these crucial issues. While CLLAS is the subject of another though soon to be released review, we consider that it is essential to consider it in conjunction with this review of civil law services, or an extended review, rather than as a standalone service.

RESEARCH AND DATA

The consultation paper laments that "[t]here is no empirical data or research which gives a clear picture of the need for civil law services by disadvantaged clients in Queensland" (p.6).

In its report *Managing Justice: a review of the federal civil justice system* (ALRC 89, 2000), the Australian Law Reform Commission recommended:

Recommendation 1. In view of the need for civil justice policy making and reform to be informed by empirical research, stakeholders such as courts, tribunals, law firms, legal professional associations, law reform agencies, universities, research centres, and legal and consumer interest groups should seek opportunities for undertaking collaborative research, including through the Strategic Partnerships with Industry -- Research and Training (SPIRT) grants scheme.

The report of the National Pro Bono Task Force appointed following the first National Pro Bono Conference in 2000 and restated at the second National Pro Bono Conference in 2004 stated:

The provision of pro bono services should not be driven by what lawyers are prepared to offer. Rather, there is an urgent need to 'map client needs' and if corresponding resources are not available, then there should be a concerted effort to recruit and/or equip lawyers with the necessary skills and expertise, and provide the necessary back-up support (14 June 2001).

In 2004, LAQ engaged Colmar Brunton to develop a framework for measuring access and equity in the provision of LAQ services (page 22 of consultation paper). Such research has been recommended in a number of other forums.

In response to these recommendations, the QLS andQPILCH have commissioned QUT to conduct research into legal need in Queensland. The National Pro Bono Resource Centre is conducting similar research.

However, there is a wealth of information already available - through LAQ's own data, from the CLC NIS and CLSIS databases, through CLLAS data and from a variety of ad hoc studies done by the Office of Economic and Statistical Review of Queensland Treasury (at least in relation to disadvantage). In 2003, LAQ commenced a Service Delivery Profile project which may have gathered additional information.

Accordingly, it is our view that this review is premature because a review of Legal Aid Queensland's civil law services should not be reviewed in isolation from other such services in Queensland and should not be considered without adequate data to properly model and map existing services and need.

In our view, LAQ cannot hope to expand civil law services in any significant way simply by targeting its services (which will divert resources from other civil law services) and efficiency gains. The purpose of this review should be to make an appreciable impact on the delivery of civil law services in Queensland.

COORDINATION

We believe that civil law services can be improved and extended through greater communication and cooperation between LAQ and other agencies that provide services (legal and non-legal) in the area.

The LAQ website states that CLCs "work in partnership with Legal Aid Queensland to provide a range of legal services to the people of Queensland".

While there are individuals within CLCs and LAQ who work closely together, there needs to be institutional links and support at the highest levels of LAQ and formal mechanisms for ensuring communication and coordination. To a certain extent, LAQ has been active on the one hand in competing with CLCs and on the other criticising CLCs for lacking direction, rather than providing leadership in the coordination of services.

Throughout the consultation paper, we comment on specific issues with a view to developing more routine and effective communication between stakeholders with a view to enhancing coordination of services, and at the end of the submission recommend the establishment of an overarching coordination mechanism.

In summary, it is our view that the best way for LAQ to effectively target its services (as recommended in the paper) is through access to research and improved coordination.

CLLAS

LAQ is currently developing a consultation paper to review the Civil Law Legal Aid Scheme (CLLAS).

References to CLLAS in the consultation paper are only passing. Yet CLLAS offers an opportunity to enhance civil law casework if it is managed to best effect.

The paper recognises that CLLAS is underutilised and speculative work generally is decreasing, which suggests that it is an issue worthy of closer and more detailed examination if the aim is to enhance civil law services.

In our view, however, CLLAS is so integral to consideration of civil law services, it should be considered with the other issues raised in the paper. This reinforces our view that the paper is premature.

We make specific reference in our comments to how CLLAS could operate more broadly.

COMMENTARY ON THE CONSULTATION PAPER

The consultation paper is in 4 sections:

- Section 1. Provides background and describes current legal aid services in civil law and the scope of this review
- Section 2 Outlines a proposed approach to the future delivery of civil legal aid services
- Section 3 Makes specific recommendations for changes to state funding priorities and guidelines
- Section 4 Makes specific recommendations for changes to the civil law services offered by LAQ's in house civil practice.

Our comments follow this scheme.

Section 1. Background

Current LAQ civil law services

The focus in this part is to give a snapshot of current LAQ civil law services. However the paper does not provide enough information to give a full picture of current services and consequently any insight into civil law need.

The information provided only relates to numbers and percentage relative to overall LAQ services without looking more deeply at the nature of the service areas and client types and at civil law services provided across the spectrum.

To this extent then, the small amount of data provided in relation to the LAQ services outlined below is insufficient to permit a clear understanding of need and how to address it efficiently and effectively through targeting or other means.

The paper includes basic information in the following areas.

- legal information
- legal advice
- minor assistance
- representation, and
- CLLAS.

Legal Information

The data here would be more meaningful if a greater breakdown of the type of information was provided and data was also included to give a picture of the legal information requested of and provided by CLCs.

Legal Advice and minor assistance

Of the most common matter types outlined - domestic violence and consumer and debt – advice and minor assistance are also provided discretely by the Women's legal Service (DV) and QPILCH (consumer and debt matters). Other CLCs also assist on an ad hoc basis.

The paper mentions that advice requests in some other common civil areas (tenancy, social security and immigration) are referred to CLCs, but referrals are also made in the areas where LAQ has a specific interest. For example, consumer and debt matters are referred to QPILCH.

The paper states that other common areas such as real property and PI are referred to private solicitors. Some are also referred to CLCs and some as part of the CLLAS scheme.

This information gives no meaningful picture of LAQ's workload, unmet need or issue profile, and more importantly, the overall provision of civil law advice and minor assistance. We are apprised only that work is undertaken according to the guidelines.

Legal Representation

In our view, LAQ's strength lies in its ability to resource representation. Casework provides the greatest opportunity for clients' rights to be protected and to access the justice system. CLCs have less opportunity to assist in matters to their conclusion and are well placed to provide information, advice and limited services.

Casework is generally undertaken in matters where a court does not have power to award costs. Presumably this is because CLLAS assists where costs can be awarded. Otherwise, it is assumed people will be able to obtain assistance from a private lawyer on a speculative basis.

The paper states that:

Civil Law Casework services comprise a small but increasing part of LAQ business...

It provides some data on casework, but again this is insufficient to gain a clear perspective of the service or an insight into need:

Civil law % of total	2003	10.3%	03/04	11.4
Expenditure % of total		8.3%		9.7%
In house %		9		12

For example, there is no breakdown of the veterans' work or the legal representation conducted by the specialist units.

We would also question the inclusion within this review of child protection and DV (which comprise 70% of all civil law work undertaken in house) and confiscation of proceeds of crime and dangerous prisoners' applications which are handled within the family law practice and criminal law practice respectively. While we acknowledge that they are strictly civil law, its size skews the civil law area and they could just as easily be seen as integral parts of the family and criminal law areas.

While detailed information is not provided, it is also difficult to understand why some services are not provided. There is no background provided, for example, to the reason migration law (a Commonwealth priority), is left almost exclusively to SBICLS and QPILCH's RAILS project.

Background to current mix of civil law services

The paper states that the current mix of civil law services is not the result of analysis of legal needs but is the result of funding restrictions (p. 5) and adds:

Where other agencies existed to provide services, LAQ withdrew from those services.

The paper continues that in the mid 1990s, it returned to work in house in some areas. However, this occurred in areas which were also undertaken by CLCs. LAQ in fact competed for CLC funding for women's services and continued or expanded into areas where specialist CLCs operated, such as prisoners (PLS), youth (YAC), consumer (FCS), and administrative appeals (WRC).

We support the notion of diverse service providers to provide consumer choice but believe that such an approach requires coordination. The delivery of services in a coordinated and targeted way is likely to maximise scant resources available to civil law services.

Changing Environment

It is true that the legal environment is fluid for the reasons outlined in the paper.

The paper states simply that “[t]here are significant issues impacting on access to civil justice.”

The paper notes that law reform is a factor leading to new demands, for example in Guardianship and Administration Tribunal matters. However, LAQ is not able to respond as quickly as organisations such as CLCs. Caxton Legal Centre, QAI and non legal mental health services have formed a coordinated response to this issue, undertaking some casework and referring a number of cases to QPILCH. Other centres also do ad hoc GAAT work. QPILCH is developing a GAAT panel and training to increase the pool of private practitioners who can assist. This is not to say that QPILCH and other CLCs are a substitute for Legal Aid. Rather Legal Aid needs to focus its resources where they are most useful and facilitate responses to issues in a coordinated way.

In addition, some areas of need are readily identifiable. There has been ample data for example on homelessness in Australia for many years. In 2002, in QPILCH's first year of operation, we identified the need for specialist outreach services for the homeless.

LAQ recently established a homeless service in the Magistrates Court but after a six month trial period will not continue it because, as we understand it, there are insufficient funds available.

Most large bureaucracies are slow to respond to emerging need in an innovative way. As the Task Force on Pro Bono commented:

... pro bono schemes have a number of benefits that are not always possible through legal aid schemes, such as:

- Choice/diversity
- Flexibility
- Motivation
- Ability to tap specialist expertise of leading practitioners
- Ability to tap the resources/infrastructure of major law firms, the Bar and the legal academy.

This notion also applies more readily to CLCs which though resource shy, are often the first to be contacted by people with emerging problems and the first to identify issues of concern, because, for a variety of reasons LAQ cannot assist.

Ideally, all services should work together to determine the best way of responding to need.

Scope of Review – assumptions which can be made

LAQ states that it is “mindful of external constraints” but again does not appear to be mindful of opportunities which could enhance access to justice through better coordination of services.

The review proceeds on the basis that:

- LAQ will not, in the foreseeable future, be in a position to fund casework services in general civil matters in the courts
- Any alteration to Commonwealth funding priorities for civil law matters would involve extensive consultation between all Legal Aid Commissions and the Commonwealth. Any substantial changes to Commonwealth Funding Priorities in civil law matters would need to be a long term project jointly supported by all Legal Aid Commissions.
- Demand for casework services in Child Protection and Domestic Violence matters is likely to continue to increase and put pressure on the availability of state funds for other civil casework.
- There is no empirical data or research which gives a clear picture of the need for civil law services by disadvantaged clients in Queensland.

In relation to these points we comment as follows:

- We would like to see more discussion of what "general civil matters" entails, particularly in the light of research into emerging need, before the door is fully closed.
- We urge all Legal Aid Commissions to examine comprehensive data and embark on such an exercise sooner rather than later if it is found that the current priorities do not accord with need.
- We would expect that a coordinated approach to these issues may be able to gain efficiencies, target services and pressure government to increase funding to keep pace with an increasing workload. If it can be demonstrably justified, the chance of increasing funding in these areas will be enhanced.
- If there is no or limited empirical data, it should be obtained as soon as possible. Without a full understanding of need, is not this review premature? We would suggest that there is need for research as a priority before any assumptions are made.

Section 2 Approach to delivery of civil legal aid services

This section starts:

This review takes as a starting point the proposition that LAQ is not able to resource the provision of general civil casework services in the courts. It is, however, able to make a significant contribution to access to justice in the area of “poverty law”.

The paper then outlines LAQ’s understanding of the concept of poverty law and quotes favourably the UK Department of Constitutional Affairs and the Law Centres Federation as follows:

Conceived in the context of policies on social inclusion and regeneration, the main focus ... is to tackle the problems that most impact on people’s daily lives. This means advice and help on a range of areas of law such as:

- *Housing*

- *Debt*
- *Welfare benefits*
- *Employment*
- *Education*
- *Community care*
- *Immigration*
- *Mental health.*

The paper then states:

Within this framework the direction forward for civil legal aid services is to focus on the provision of targeted legal services to targeted client groups.

We support this approach.

The general focus on poverty law is applicable to civil claims because of the nature of many claimants. In our experience:

- manual work leads to a high incidence of accidents
- there is a major impact on claimant’s financial position if they are unable to work
- this often leads to the sale of home and/or assets, and
- there is a heavy reliance on social security and the public health system.

At present, the need for legal assistance in these areas cannot be met by either Legal Aid or community legal centres.

Of course, CLCs have attempted to follow the suggested approach for many years but have usually been hampered, like LAQ, by inflexible government work priorities and limited resources. Nonetheless, CLCs with some discretionary funding have ventured into projects targeting special need.

For example:

- Caxton, QAI others have developed a response to the increasing need for people in GAAT proceedings for advice and representation, and
- QPILCH has established projects targeted at: particularly disadvantaged groups - the homeless and refugees; at areas of law - consumer law and administrative law; and at geographical areas - we are soon to establish a clinic in conjunction with the Inala “Pathways to Prevention” project.

However, the ideas discussed in sections 3 and 4 below will only be meaningful if based on sound information and well coordinated as outlined earlier.

The value of coordination is underlined by the fact that, of the list of areas of law quoted above from the UK, CLCs have long had a considerable formal role in some and a more ad hoc role in others in addition to LAQ's:

- Housing - Tenants Union and the HPLC have a specific housing focus
- Debt – QPILCH’s CLAC is a direct consumer and debt law service
- Welfare benefits – Welfare Rights Centre
- Employment – Caxton, regional CLCs, QPILCH make an ad hoc contribution
- Education
- Community care – most CLCs do some work in this area.

- Immigration - SBICLS and RAILS
- Mental health – QAI and PLS.

While we support LAQ’s suggested approach of a poverty law focus, we contend that it can only do so effectively if all civil law services are coordinated and alternative ways of doing things such as discrete task services are considered in depth.

Section 3 Priorities and guidelines for funding civil law matters

In this part, we make some specific suggestions for developing cooperative and targeted projects in civil law and comment on the recommendations.

Commonwealth priorities and guidelines

The paper states that these areas are beyond the scope of the review.

However, the guidelines state:

If Legal Aid Queensland wishes to expend Commonwealth funds on a grant of legal assistance in any individual case which does not fall within the stated priorities, it may not do so unless:

- there are Commonwealth funds available; and
- Legal Aid Queensland’s proposal to spend Commonwealth funds on that category of case has been approved by the Commonwealth in writing before the grant of legal assistance is made (Policy Manual, 30 June 2003).

If this guideline is still operative, it would be of value to have information about its use over time.

It is also important to note that while migration law is a Commonwealth priority, LAQ has done little work in the area, leaving it to funded specialist centres like SBICLS, other centres that do it within their general work without specific funding, or QPILCH’s RAILS project.

State priorities and guidelines

Recommendation 1 provides:

**That the State priorities be amended to include the following:
Such other matters where the interests of justice require that legal representation should be provided.**

A legal matter that is not a State Priority is taken to be a State Priority if:

- **The matter is a State Law matter**
- **There are State Legal Aid monies to provide legal aid services, and**
- **There is a special circumstance.**

A special circumstance is any of the following:

- **The applicant has a language or literacy problem**
- **The applicant has an intellectual, psychiatric or physical disability**
- **It is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location**
- **The applicant is a child**

We support this recommendation. However, to make it absolutely clear if it is not already the case, we are of the view that it should include another clause that gives LAQ

discretion to take on matters that the limited special circumstance clause does not permit. This clause could be expressed as a third dot point before “There is a special circumstance”:

- There are other circumstances where it is warranted in the interests of justice.

This can ensure that other issues, either emerging or not otherwise assisted (see also at the end of this submission) can be aided. This would give LAQ some flexibility.

Recommendation 2 provides:

**That the State priorities be amended to include:
A decision by the State in relation to a person that has a real prospect of affecting the person’s liberty or the person’s capacity to continue in his or her usual occupation.**

We support recommendation 2. However are of the view that LAQ should work with the Prisoners Legal Service and QPILCH’s Administrative Law Clinic in determining how best to coordinate services in this area that result from change to this priority.

Child protection

We support recommendations 3 and 4, so long as the new guideline outlined above for greater flexibility in assisting *in the interests of justice* is adopted.

Domestic violence

We support recommendation 5 with the same qualification as above.

Peace and Good Behaviour

We support recommendation 6.

Criminal Injury Compensation

There is no good reason why criminal compensation should not be excluded from funding altogether in line with personal injury claims. Damages are recoverable and private solicitors are prepared to conduct criminal compensation claims on a speculative basis. Issues about funding of medical reports etc could be covered by the CLLAS Scheme.

If a grant of aid is retained however, we support a tightening of the guidelines as contained in recommendations 7 and 8, and are of the view that as far as possible, these matters should be referred to the private profession for assistance on a speculative basis (and see our later recommendation regarding review of speculative law services).

Mental Health

The paper states that there is no access strategy for clients with disabilities.

Recommendations 9 and 10 provide:

Recommendation 9

The current guideline in relation to Mental Health [Review Tribunal] should be retained.

Recommendation 10



Consideration should be given to strategies to ensure that LAQ is accessible to clients who may have matters before the Mental Health Review Tribunal including

- **the reestablishment of a visiting “duty lawyer” service to mental health units**
- **liaison with community mental health workers to improve awareness of legal aid services.**

We support these recommendations. However, we also recommend that a strategy be developed in conjunction with QAI, the PLS and other legal and non-legal agencies with an interest in mental health and disability issues to develop an overarching approach to people with intellectual disabilities and strategies for the effective coordination and optimum delivery of legal services in the area.

The consultation paper states:

The Guardianship and Administration Tribunal determines whether a person retains the right to administer their own affairs and make their own decisions. Legal representation before that tribunal is not routine and the processes of the Tribunal have been developed so that it is not necessary in the majority of cases. There has been no grant of legal aid for that tribunal.

However, applications by others to manage the financial affairs of a person with impaired capacity are not always brought in the best interests of the person with the impaired capacity. The availability of legal aid for this Tribunal could play an important role in safeguarding the rights of an extremely vulnerable group.

The paper recommends:

Recommendation 11

That legal aid be available to a person in respect of whom:

- **there is an application before the Guardianship and Administration Tribunal to appoint a guardian or administrator and**
- **it appears that the person has reasonable prospects of success of opposing or substantially limiting the appointment of a guardian or administrator.**

People affected by the legislation are generally vulnerable, both financially and socially.

There is certainly a need to safeguard the interests of a vulnerable group. However, this is not just restricted to administration applications. It applies just as much to guardianship applications.

We are not convinced that it is right to say that legal representation is not needed in the majority of cases. Not only do legal issues arise from time to time, but effective advocacy is often required. Ability to understand financial issues is also required in administration applications.

There is no potential for private lawyers to act on a speculative basis because damages are not in issue and costs orders are not available (or even appropriate in most cases).

However, medical evidence is often vital in these applications. We recommend provision of funding for medical reports under the CLLAS scheme, even though no cost orders are available (this fits well with the involvement of the Public Trustee in the funding of the scheme).

The recommendation in the consultation paper refers to a person having reasonable prospects of opposing an application or limiting appointment of a guardian or administrator. We are of the view that such an assessment would be extremely difficult to make on the face of the application, and we are not sure that there should be such a restriction in any event.

If a person wants to put their case before the Guardianship and Administration Tribunal, but is prevented from doing so or is at a disadvantage of some sort, they should be able to seek representation even if their position seems unlikely to be upheld.

Earlier in the section “Changing Environment” we outlined the CLCs that were also active in this area. As mentioned, QPILCH has referred a number of GAAT matters through our Administrative Law Clinic and we are in the process of developing a GAAT panel of lawyers and an on-going training regime. We believe there is value in looking at mental health and the role of the GAAT comprehensively.

We support the first part of recommendation 11 subject to adopting a coordinated approach with CLCs and QPILCH. We suggest instituting other changes, such as improved funding of outlays (including counsel’s fees) either directly through grants of aid to private practitioners and CLCs or through CLLAS.

Workers Compensation

On page 8 of the paper, employment is stated as a major issue is poverty law. In recommendation 2, a persons’ capacity to continue in his or her usual occupation is stated as an important issue in administrative law practice.

In this section, it is said that in the area of workers compensation, which is becoming increasingly complex, LAQ does not have capacity to extend funding to cover all workers compensation matters. The response to underutilisation of this grant of aid is to recommend its removal from the state funding priorities.

The likely reason for rare access to legal aid for MAT and Industrial Magistrate Court appeals is the lack of awareness by lawyers of the availability of funding.

Workers’ claims (both statutory and common law) could be lost as a result of decisions by both the Medical Assessment Tribunal and the Industrial Magistrates Court. It is therefore important for representation to be available.

Accordingly, we recommend that funding be maintained.

We suggest that a condition of funding could be imposed that, if a common law claim is pursued or a significant statutory lump sum offer is accepted, funding could be refunded to Legal Aid.

We also suggest that a better approach in this area is to work with CLCs and others to:

1. undertake research into need and to understand this complex issue as a whole
2. determine what aspects the various services should target
3. develop this as an area of expertise, and
4. explore the possibility of finding funding for a new specialist CLC in employment law for disadvantaged workers.

Inquests

The current guideline, which the paper recommends should be retained, provides:

Aid may be granted:

- (i) where the outcome could affect a potentially substantial civil claim; or
- (ii) where there is a substantial public interest element; or
- (iii) where the inquest has the character of a committal; or
- (iv) where an applicant is a relative of an Aboriginal and Torres Strait Islander who died in custody seeks representation at an inquest.

The Royal Commission into Aboriginal Deaths in Custody recommended that:

- No inquest should proceed in the absence of appearance for or on behalf of the family of the deceased except in certain circumstances; and
- The family of the deceased should be entitled to legal representation at the inquest provided through legal aid.

Accordingly, while we support recommendation 13, we believe that in relation to point (iv), all applications from family members of Indigenous deceased should be assisted.

In addition, we understand that grants of aid are not often given. We believe there is need to consider ways to broaden access to assistance with this issue. QPILCH is finalising a lawyers' guide to inquests.

Discrimination

The current guideline is:

Aid may be granted for equal opportunity/discrimination cases where there are strong prospects of substantial benefit being gained by the applicant and also by the public or any section of the public.

Recommendation 14 provides:

The current guideline in relation to discrimination and the current interpretation of that guideline should remain.

We believe that this is an area that should be expanded within LAQ so that more representation can be undertaken in this important area.

QPILCH receives a significant number of applications for assistance with discrimination complaints, a number of which we cannot place. A significant proportion of applications are received from representative groups. As we understand it, aid for organisations is only provided where all the members of the group would meet the means test and show why they could not raise the funds for their legal fees, yet representative groups are often essential for advancing the interests of their members.

Ways need to be found to provide greater resources at LAQ to undertake casework in discrimination matters both for individuals and representative groups. We recommend that the guideline should be amended to give greater flexibility in taking on discrimination matters.

Consumer Protection

We refer to our discussion earlier regarding the need for greater coordination in this area.

We note that consumer protection is a state and Commonwealth priority. In addition to the position at LAQ, there was a position for a litigation solicitor at the Financial Counselling Service (FCS). This position was lost and the Commonwealth funding diverted when the FCS closed down. A concerted approach by LAQ and others may be able to resuscitate the position in the longer term through funding under the CLC program. Now that QPILCH is working in this area, there is value in our organisations developing a more coordinated approach to this issue, including developing a proposal to establish a consumer law centre.

Civil confiscation of profits

We support the view that work in this area should be subject to means and merit testing.

Administrative Law

We support recommendations 16 and 17, subject to our earlier qualification to recommendation 1.

Civil Actions

We support recommendation 18 which provides:

The current guideline in relation to civil actions be replaced by the following which make clear the different requirements for Commonwealth and State namely:

Commonwealth

Limited Initial assistance

The Commission may make a limited Grant of Legal Assistance to an applicant for assistance in a civil law matter for

- (a) an investigation into and report on the merits of a case, or**
- (b) the mediation of a dispute.**

Assistance for damages actions

Where a civil law action may result in the applicant for assistance receiving an award of damages or property, the Commission may make a Grant of Legal Assistance if the Commission is satisfied from the material provided to it that

- (a) the applicant is likely to receive damages or property if the action is successful**
- (b) the action could not reasonably be expected to be conducted under a conditional costs agreement or similar arrangement with a private legal practitioner, and**
- (c) the applicant for assistance cannot obtain appropriate legal assistance from another source.**

State

In State matters claiming an award of damages or property, the matter should be referred to the Civil Law Legal Aid Scheme (CLLAS). CLLAS is administered by Legal Aid Queensland and funded by the Public Trustee.

We also recommend that a review of speculative law services and CLLAS as part of a more comprehensive review of the civil law system be conducted.

Section 4 In house civil justice practice

Poverty law practice

Legal Advice Service

We support recommendation 19 which provides:

Minor assistance in civil law matters should only be provided if:

- **the client appears to be financially eligible for legal aid services, and**
- **the matter is one which has a serious impact on the client's financial or social circumstances.**

Access strategies

We support recommendations 20, 21, 22 and 23.

However, we urge LAQ to consult with CLCs about how we can work closer and more effectively in addressing the needs of rural and regional areas. QPILCH has commenced a Rural Regional Remote Project to promote pro bono services in outlying areas. It is also important in our view that LAQ is mindful that an extension of its rural and remote services could result in more referrals to regional and Brisbane CLCs with a possible impact on CLC resources.

Recommendation 23 provides:

Recommendation 23

LAQ should establish an access strategy to ensure that LAQ's services are accessible to people with a psychiatric or intellectual disability and to focus on the civil legal needs of people with a psychiatric or intellectual disability.

We confirm our earlier recommendation about consulting and coordinating with relevant CLCs.

At the same time, however, we are concerned that LAQ is not continuing with funding for its homeless project in the Magistrates Court because of insufficient funding. Many homeless people have psychiatric and intellectual disabilities.

Civil Justice Brief Services Unit

Recommendation 24 provides:

LAQ should establish a Civil Justice Brief Services Unit which would be based within the Civil Justice practice in the Brisbane office and would provide support to clients of regional offices and access strategies.

Criteria for access to the services of this unit will include:

- **financial disadvantage**
- **special circumstances of client including:**
 - **Language or literacy problem**
 - **Intellectual, psychiatric or physical disability**
 - **Remote location**
 - **Child**
- **Seriousness of consequence to the client of the legal matter**
- **Lack of availability of alternate legal service.**

Such a unit should be jointly funded by the State and Commonwealth and able to provide assistance in the range of poverty law matters including:

- **housing,**

- **debt and consumer issues**
 - **welfare benefits**
 - **employment,**
- access to community services including health and education.**

As stated previously, we applaud diversity and variety in the availability of free and low cost legal services and a unit such as this is likely to impact positively on the bush. However, in light of the above, we consider that before establishing such a unit within LAQ, CLCs should be consulted and greater research should be conducted into areas of need and likely involvement. Instead of creating a new unit of lawyers, other ways may work better to coordinate and deliver minor assistance. This recommendation requires more consideration.

QPILCH'S FINAL REMARKS AND SUGGESTIONS

In our view, the recommended changes need greater consideration, particularly in relation to resourcing of services to address greatest need. For example, recommendation 10 provides for the reactivation of duty lawyers at mental health facilities and recommendation 20, 21 and 24 will entail the provision of new funding to those activities. However, the paper provides no financial information, no assessment of emerging need and little assessment of priority for new resources or reallocation of existing resources. We believe a more comprehensive review is required.

LAQ currently holds an accumulated cash surplus of more than \$35M. As this considerable cash surplus continues to accumulate, it indicates that the amount of legal services provided at present is beneath the amount of services Legal Aid Queensland is funded to provide.

It would appear that LAQ's income in 2005-06 will be in the order of the previous year. In 2003-04, LAQ received \$21M directly from the Grants Fund and a further \$728,000 from the Grants Committee. There is nothing to indicate that LAQ's funding over the forthcoming years will be any less from the "interest on solicitors' trust funds" source or from any other source.

Accordingly, it is difficult to see, without further information, how the current surplus will be depleted through normal operations and there is nothing in the consultation paper that explains LAQ's plans for the surplus or its likely fate.

We believe that constructive and innovation approaches should be adopted in relation to the surplus, even if LAQ has unpublished plans for its use, such as an increase in services, increase in wages for staff or payments to firms, or new infrastructure. The opportunity provided by this surplus should not be lost by creating something new that can overtime put civil law services (both within and external to LAQ) on a more solid footing in the absence of more Commonwealth or State input.

We recommended earlier that recommendation 1 should be expanded to give LAQ greater flexibility in what it takes on. Of course, this would have to occur within its budget, but some discretion, supported by new resourcing, will help to address particular injustices or help in important areas not otherwise addressed.

In addition, the surplus should seed innovation in CLCs, in project work, casework and in operational ways so that new approaches to service delivery can be encouraged. Evaluation of services should be a key aspect of this process and only successful programs should be continued where funding is available.

Finally, environmental protection is an area with perhaps the least resourcing made available to it, yet a range of environmental issues can have as much impact on the disadvantaged as consumer issues for example. The poorly funded EDO is called upon to provide the lion's share of assistance, otherwise most environmental work is undertaken by a small group of firms and barristers on a pro bono basis. From time to time, environmental cases of state and national significance arise which should be litigated and funded by LAQ. Below we suggest how this and other issues could be funded.

However, we restate our view that any new allocation of recurrent resources requires more consideration.

Drawing together these ideas, we suggest that consideration be given to the following:

- Appointment of a standing committee of representatives of LAQ, CLCs (with separate representation by QPILCH) and Indigenous legal services and the state government with the specific function of coordinating all free and low cost civil legal services in Queensland.
- Developing consultation groups on a range of issues as recommended in this submission comprising LAQ, relevant CLCs, community interest and specialist organisations to develop and coordinate strategic approaches to the issue in the delivery of free legal services.
- These committees/groups should be resourced and supported by LAQ.
- The first task of the committee and groups would be to identify existing research and data on all civil law services, emerging need and innovative schemes and projects and plan new research projects to gather necessary data where gaps are identified.
- Conduct a study of other mechanisms for delivering effective legal services at low cost to consumers, including discrete services and pro bono panels etc.
- Undertake a study of speculative services and barriers to them in conjunction with a review of CLLAS and, armed with new research, conduct a more comprehensive review of civil law services in Queensland.
- Identify other potential sources of funding for:
 - Coordination of services
 - Corporate sponsorship of low level services such as provision of information and telephone services
 - Research funding (universities and SPIRT)
 - Infrastructure.
- Creation of two new funds:
 1. A \$5M fund, allocated from the current LAQ surplus, with the interest to be used for special public interest cases (that don't comply with CLLAS guidelines) or which can act to rectify hardship (such as assisting defendants in civil disputes in the interests of justice) and innovative service delivery projects, with a small percentage of the interest being reinvested annually so that the fund is increased over time, returning greater amounts for cases and projects and to protect against periods of low interest.
 2. A \$1M fund, allocated from the current LAQ surplus, and augmented annually by the State Government in the amount of \$500,000, to fund important public interest environmental cases.

Each of these funds should be overseen by a committee comprised of representatives of LAQ, CLCs, government and other relevant interests to ensure that it is actively and efficiently managed.

- Explore the potential and develop proposals for the creation of new specialist community legal services in civil law areas such as in consumer law and employment law.

CONCLUSION

In summary, we stress that more information is needed to properly respond to this consultation paper. In our view decisions in civil law depend on a holistic understanding and strategic approach in the context of financial and substantive data. In addition, in our view, it is not enough for the surplus to be corralled solely on the basis that it must be allocated according to its source and used overtime for unspecified reasons.

Despite these concerns, we believe that steps can be taken now to ensure that a future review of civil law services is holistic, structured and strategically planned.