

COMMUNITY LEGAL CENTRES TASMANIA

23 August 2019

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Director, Strategic Legislation and Policy

via email: haveyoursay@justice.tas.gov.au

Dear Brooke,

Re: *Legal Profession Act Amendment (Validation) Bill 2019*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Legal Profession Act Amendment (Validation) Bill 2019* ('the Draft Bill').

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Currently, the *Legal Profession Act 2007* (Tas) ('the Act') creates a Solicitors' Guarantee Fund which consists of the interest generated in legal practitioners' trust funds. In accordance with the Act, the SGF is used to compensate clients of legal practitioners who have defaulted on their fiduciary duties and to cover the costs of the operation of the Legal Profession Board and the Legal Profession Disciplinary Tribunal.¹

Relevantly, when more than \$8.7 million is held in the SGF,² the Minister may invite the Legal Aid Commission of Tasmania, the Law Foundation of Tasmania, such other legal assistance scheme and any other person to make an application for a grant of money for the SGF.³ The Act is silent on the criteria for grants although in the past invitees have been advised that priority would be given to applications that addressed any of the following outcomes:

¹ Section 358 of the *Legal Profession Act 2007* (Tas).

² Regulation 67A of the *Legal Profession Regulations 2008* (Tas).

³ Section 361 of the *Legal Profession Act 2007* (Tas).

- An increase in the number of people receiving free or low cost legal services;
- An improvement in the quality of legal services provided to the public;
- An improvement in the range of legal services provided to the public;
- An improvement in the operation of the justice system; and
- An increase in community awareness of the law, legal services or the justice system, including the provision of education and training.

Over the years, invitations to apply for a SGF grant have been at the discretion of the Minister, meaning that there has either been an open invitation in which invitations have been elicited following advertisements placed in Tasmania's three major newspapers, or closed, with the Minister specifically targeting a limited number of organisations.

- ***The Draft Bill***

As one of the pillars of the legal assistance sector, we believe that community legal centres should be expressly listed along with the Legal Aid Commission of Tasmania and the Law Foundation of Tasmania. In our opinion, this could be done by amending section 361(2)(a) of the Act to read as follows:

361. Application to Minister for payment from Guarantee Fund

(1) If the Guarantee Fund exceeds the amount of \$3.5 million or such amount as may be prescribed, taking into account ascertained and contingent liabilities, the Trust must advise the Minister that the Guarantee Fund has exceeded that amount.

(2) On receipt of advice from the Trust under subsection (1), the Minister may invite -

(a) the Legal Aid Commission of Tasmania, any community legal centre accredited by the National Association of Community Legal Centres and operating in Tasmania or such other legal assistance scheme as the Minister may approve; and

(b) the Law Foundation of Tasmania; and

(c) any other person -

to make application for a grant of money from the Guarantee Fund.

As well, we strongly believe that SGF funding should be restricted to those working in the legal assistance sector, namely the Legal Aid Commission of Tasmania, the Law Foundation of Tasmania and any community legal centre. This is based in the acknowledgement that in 2014 the Productivity Commission's review of the legal assistance sector found that nationally, there was a \$200 million shortfall in funding provided to the sector from both the Federal and State Governments.⁴ Additionally, the *Evaluation of the Tasmanian Legal Assistance Sector* found that some organisations in the Tasmanian legal assistance sector are relying on SGF funding

⁴ Productivity Commission, *Access to Justice Arrangements*, Volume 2 (September 2014) at 738-739.

for core services.⁵ Finally, there is a concern expressed by many in the legal community that SGF funds will be reduced in future years as more transactions are completed electronically, resulting in less interest being accrued in legal practitioners' trust funds.

In our opinion, government departments and judicial bodies such as courts and tribunals should not be able to access funds through the SGF. Funding requests by these bodies should be sought through the usual budgetary process. As well, whilst we recognise that both the Tasmania Law Reform Institute (TLRI) and the Sentencing Advisory Council (SAC) undertake important law reform work that often has a beneficial impact on our clients, we believe that their funding should come from recurrent funding and allocated as part of the Budget. This position is reinforced in the acknowledgement that Government referrals comprise the bulk of work undertaken by the TLRI and SAC.

As a result, we believe that subsection 361(2)(c) of the Act should be removed, to make clear that only the Legal Aid Commission of Tasmania, community legal centres and the Law Foundation of Tasmania may apply for funding.

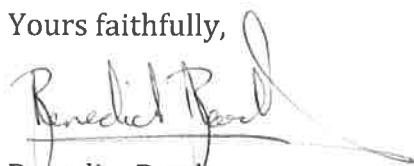
Finally, we are concerned that the Government has only sought to clarify the range and type of persons and organisations that the Minister can invite to make application for grants of money from the SGF. In our opinion, the draft Bill is an opportunity to address the concerns of many stakeholders at the lack of transparency in the SGF process. As was recently recommended by the legal assistance sector and noted in the *Evaluation of the Tasmanian Legal Assistance Sector*⁶ formal guidelines should be published which would address:

- What purposes grants should address;
- The process for applying for a grant;
- How it will be assessed
- The decision-making process and how that will be communicated;
- The role of the applicant in the process.

In our opinion, reference to these guidelines should be included in the Act.⁷

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁵ Department of Justice, *Evaluation of the Tasmanian Legal Assistance Sector Final Report* (December 2010) at 37.

⁶ Department of Justice, *Evaluation of the Tasmanian Legal Assistance Sector Final Report* (December 2010) at 40-41.

⁷ See, for example, section 27 of the *Legal Aid Commission Act 1990* (Tas).