

Justice

Introduction

Fair and equal access to the justice system is a fundamental right and the cornerstone of a just and civil society. But, as we learnt in our community consultations, many people experiencing disadvantage are denied this right because of inherent barriers in the system.

In our consultations, we heard that Aboriginal people, people with mental health conditions, and people with cognitive disability are particularly vulnerable to legal issues and face significant challenges when trying to access help to solve their legal problems. In turn, the services providing this legal help are stretched and under-resourced, impacting on their ability to meet the needs of their clients.

Our members also told us more needs to be invested in services and programs that divert Aboriginal people at every point in the justice process, from contact with the police, to attending court, to entering and exiting custody. They told us these programs are urgently needed in rural communities where a high proportion of Aboriginal people live and access to these programs is limited.

What can you do?

Across NSW we heard about the types of things that would make a difference in our communities. If you have any other ideas or want to get involved in our work in the below areas, please contact Ben Folino (Policy Officer for Justice, Employment, Empowering the West and Tax) on 02 8960 7905 or ben@ncoss.org.au.

Access to justice for people with complex needs

What we heard

It is generally acknowledged that people facing disadvantage experience higher levels of legal need and legal problems than their counterparts. This was confirmed in our consultations.

For instance, we heard that people with a disability and mental health conditions are vulnerable to numerous disadvantages such as poverty and social isolation, and that these disadvantages not only affect their ability to access justice but also increase their likelihood of coming into contact with the system as victims, defendants, or offenders.

They also face several barriers to accessing justice, including lack of physical access, and lack of support and adjustments (such as an Auslan interpreter). There is also a lack of information in accessible formats about their legal rights, what to expect in court, and conditions of an order.

In consultations, we were reminded of how far we have come and how far we still have to go in closing the gap for Aboriginal people in the areas of health, education, housing, employment, and of course, justice. We heard the disadvantages many Aboriginal people face in these areas are likely to compound their need for and problems with accessing help from the legal system. And these barriers come in the form of challenges around literacy, hearing problems, disability, mental health issues, drug and alcohol dependencies and poverty.

Our members told us Aboriginal people are likely to have complex legal needs that stem from various causes involving family or other trauma, disability, conflict and isolation, and that addressing these needs requires special care, extra resources and legal providers with a wide range of skills and cross-cultural sensitivity. We heard unmet legal needs can contribute to social problems like poverty, homelessness and unemployment, and if left unaddressed may escalate to criminal issues. For example, failure to resolve a debt-related issue can lead to larger fines or imprisonment.

Finally, communities in Western NSW and the Far West told us remoteness and geographical isolation act

as particular barriers to accessing legal help in these regions. We heard these barriers stem from a lack of affordable and reliable transportation, staff shortages, and cultural barriers.

What our members told us would make a difference

We heard from our members that meeting the legal needs of disadvantaged groups has to be a major priority of justice policy in NSW, given that a substantial proportion of legal matters are concentrated within these groups. We also heard the most effective way to target unmet legal need is through a combination of direct services (advice and self-help) and strategic activity (education, advocacy and law reform), that includes:

- A well-invested wrap-around legal services system that delivers intensive case management and addresses multiple interrelated problems.
- More highly targeted services to allow for more intensive and specialist support for the most vulnerable clients. This includes investment in the Aboriginal Legal Access Program to enable community and Aboriginal legal services to increase access and provide effective culturally appropriate legal services to Aboriginal people.
- An expansion of civil law outreach programs to communities of high need especially in regional and remote locations.
- More funding and support for targeted, culturally appropriate community legal education to vulnerable people and communities, particularly for Aboriginal people in remote communities.
- Greater support for the appropriate use of pro bono services to complement government-funded legal assistance.

Next steps

As a first step, our [Pre-Budget Submission 2018/19](#) is calling for the NSW Government to boost investment in culturally appropriate, community-based legal assistance services for Aboriginal people.

We are also calling for the Government to continue funding disability advocacy services that provide vital support to people with disability, and help them to safeguard and exercise their rights.

We need to mobilise our communities for this change to happen. NCOSS will be lobbying the NSW Government to adopt these recommendations and has also prepared an [advocacy kit](#) for members to use to lobby their local MP.

NCOSS is also keen to start a conversation about promoting research into unmet legal needs and will look for opportunities to advocate for a 'mixed model' approach that provides assistance to people across a large geographical area who have a broad range of legal problems, different capabilities, and are experiencing varying levels and types of disadvantage.

Services are stretched, costly and can't cope with demand

What we heard

Our members told us that the justice system needs to do more to respond to and address the legal needs of people facing disadvantage. We heard that Aboriginal people and people with mental health conditions are particularly vulnerable to falling through the gaps in the justice system and ending up in the wrong parts of it, like prison. We heard one of the reasons this is happening is because services providing legal assistance are stretched, under-resourced and can't cope with demand.

Communities are concerned that the government will no longer fund the Disability Justice Support Program because of reforms to advocacy services in NSW, meaning people with a disability will not be properly supported when they need help with their legal problems. This is problematic when we hear about carers already being left covering debilitating legal expenses for situations occurring during critical states of vulnerability for their loved one.

We also heard Aboriginal and community legal services in Far West NSW face challenges regarding their

ability to attract and retain staff because of high living costs, limited suitable housing, and isolation. They must also deal with unpredictable funding streams that may lead to employment contracts not being renewed. Unsurprisingly, these realities undermine the effectiveness of these services.

We heard Aboriginal legal services and other legal assistance services do not have the capacity to address the multitude of legal needs with which Aboriginal people present. We heard they have to prioritise criminal matters out of necessity, leading to significant gaps in service provision for other areas of law, such as family and civil law. We heard these gaps are particularly acute in remote areas where a higher vulnerability to legal problems is prevalent.

The burden of demand also means solicitors in legal aid services have a limited amount of time to gather information about a person's case, which may not be enough when working with people with a mental illness. In many cases they are only able to spend as little as 20 minutes.

We also heard concerns about the lack of court support services, and the shortage of Aboriginal language interpreters and Mental Health Court Liaison Officers as of the most pressing gaps affecting access to justice.

What our members told us would make a difference

There are lots of things government and the community services and groups can do to make the justice system more responsive to the needs of vulnerable people. The following are some suggestions from our members:

- Provide legal assistance services with funding to meet the civil, family and criminal legal needs of vulnerable people.
- Continue to fund the Disability Justice Support Program and advocacy services to enable people with intellectual disability and mental health conditions to be properly supported in the justice system.
- Increase funding for specialist Aboriginal women's programs within mainstream specialist women's legal services.
- Develop a workforce plan that will enable state-wide coverage of legal assistance services. This plan should include incentives to attract and retain solicitors in areas experiencing difficulties recruiting solicitors.
- Fund the expansion of court support services such as Mental Health Court Liaison Officers and language interpreters.

Next steps

Our advocacy work in the next 12 months will focus on urging the government to invest more in legal assistance services and programs to help vulnerable communities reduce contact with the justice system, including on the recommendations in our [Pre-Budget Submission](#).

Aboriginal people need more help to reduce contact with the system

What we heard

While we heard stories of hope and resilience when people talked to us about the progress being made in important areas of Aboriginal health, housing and education, we heard a different tale in relation to their level and rate of imprisonment. We heard Aboriginal people are being incarcerated at ever increasing rates, and the justice system seems to have no answers for it.

Communities told us the criminal justice system is increasingly and inappropriately being used to deal with people with drug and alcohol and housing problems because of a specific lack of culturally appropriate support services to meet the unique needs of Aboriginal people.

In Aboriginal communities, we heard that sending more of their young people to jail is not helping those

Regional spotlight: [Regional Youth Support Service](#)

Regional Youth Support Service (RYSS) in Gosford runs the Indigenous Justice Program to provide intensive casework (and in some cases, housing) to young Aboriginal men and women between 14 and 18 years of age who are in contact or at risk of coming into contact with the juvenile justice system.

people, nor is it acting as a deterrent to discourage other young people from getting involved in crime. We were told the lack of appropriate housing for Aboriginal people exiting prison was the most significant reason why they reoffend. Many said former inmates were being released into homelessness, sleeping rough, in hostels or into over-crowded houses with people who were still engaged in drug-taking or criminal activity. Members also described a distinct lack of support both immediately prior to release and after being released from prison. They said that support, targeted to the individual's needs, along with secure housing, was a missing element in their experience and is critical to breaking the cycle of recidivism.

What our members told us would make a difference

Evidence shows that prisons are the most expensive response we have to criminal behaviour. There are cheaper and more effective ways to respond to these challenges. All levels of government must do better in this regard. At the very least, communities told us the NSW Government should:

- Explore justice re-investment approaches that divert money and resources from prisons and punitive measures to strategies and solutions that are community-led and break the cycle of Aboriginal imprisonment. These should include:
 - Implementing a throughcare model of post-release support aimed at supporting integration and reducing re-offending. This includes investment in housing and intensive casework.
 - Taking steps to reduce the imposition of short custodial sentences by increasing the availability of alternative community-based sentencing orders
- Set a justice target that closes the gap in the imprisonment rate of Aboriginal people.
- Invest increased resources into services and programs that strengthen communities and address the underlying causes of crime, leading to lower rates of imprisonment and less money being spent on prisons.
- Invest in culturally responsive and appropriate drug and alcohol treatment programs to address addiction and one of the major causes of imprisonment among Aboriginal people living in rural and remote communities.

Next steps

Our [Pre-Budget Submission](#) is also calling for the NSW Government to invest in diversionary programs to reduce young Aboriginal people's contact with the justice system, and in post-release programs that focus on continuity of support.

NCOSS also works in various committees and working groups that focus on reducing Aboriginal people's contact with the justice system. These include the Juvenile Justice Committee, the Youth Justice Coalition, Justice Health Community Reference Group, and the Traffic Fines and Infringements Working Group. We will use the collective knowledge and strength of these groups to influence change in the area of Aboriginal people's involvement in the justice system.

NCOSS will also be holding a New Perspectives Forum in November with organisations involved in reducing Aboriginal imprisonment rates using a justice reinvestment framework. The justice reinvestment projects in Bourke and Cowra will be showcased to our members with the aim of gaining valuable insights for future policy development and advocacy in this area.

Regional spotlight: [Just Reinvest](#)

A Justice Reinvestment approach is being trialled in Bourke and Cowra with the aim of gaining insights into the complex issue of incarceration and its associated impacts on small and remote communities.

The evidence-based project aims to show that strong and healthy families are the best way to prevent crime, build healthy communities and save on building prisons.