Overview of the proposals for funding

Tenancy WA

Consumer Protection has a current Service Agreement in place with Tenancy WA to provide tenancy advice and education services throughout WA as the Central Resource Unit of the Tenancy Network. Law reform and policy recommendations to government form part of Tenancy WA’s Service Agreement; however because funding to Tenancy WA was reduced by 25 per cent in 2016-17, its ability to undertake law reform was reduced.

Tenancy WA is seeking $169,000 to bring it closer into line with the funding it was previously receiving. This funding request reflects the high level of statutory review work expected in the coming year affecting different groups of tenants and marginal renters. The funding would cover the cost of a full time senior solicitor to work on preparing submissions for law and policy reform for 12 months. Over the 12-month period, Tenancy WA will be able to undertake the necessary research to prepare law reform submissions for the statutory review of the Residential Tenancies Act 1987 (RTA), which will include boarders and lodgers reform.

CCLSWA

Consumer Protection does not currently fund the CCLSWA, and it has no specific funding attributable to consumer law policy reform. As identified in previous briefings on the CL Account, there is currently a gap in WA in the provision of consumer law services, including community based consumer law policy reform. Unlike a number of other jurisdictions, including Victoria and New South Wales, WA does not have a funding program dedicated to consumer law services.

The CCLSWA is at the front line of consumer law issues which are brought to their attention on a daily basis through the operation of their telephone advice line. This puts them in a unique position to be able to feed new and emerging issues back to DMIRS through policy submissions.

The CCLSWA has a vulnerable funding supply and cannot currently meet demand for its services. It currently has no specific funding attributable to consumer law policy reform. If provided with state funding, it would be able to broaden the scope of its submissions and carry out further and more in depth research, community education and valuable law reform work. Additional funding may also be directed to developing its Community Legal Education program, in line with their guiding principle of empowering consumers so they know their legal rights and can make informed decisions about financial and consumer products and services.

ELC

From 1 July 2017, the State Government restored funding to the ELC for three years. The Private Sector Labour Relations Division (PSD) of DMIRS currently funds the ELC $330,000 per annum for the provision of legal and support services to state industrial relations system employees. PSD manages the ELC funding agreement. The ELC provides telephone and face-to-face legal advice to clients but it is not funded to undertake law reform and policy recommendations under this funding agreement.

The ELC’s funding proposal suggests there is a critical need to properly resource research, education and law reform in employment law-related areas, such as
modern slavery, including forced labour and human trafficking; gig economy workers; and the outcomes from the Ministerial Review of the State Industrial Relations System (the Review). The Final Report of the Review is currently under consideration. As such, it would be premature to provide resourcing to the ELC in 2018-19 to examine outcomes of the Review.

DMIRS is not of the view there is currently a need for additional funding to be provided to the ELC for the education activities focused on vulnerable workers. There are however, a number of research and law reform policy issues relating to vulnerable workers on which the ELC could make a contribution in 2018-19.

With $65,000 in funding, the ELC would be able to employ a staff member on a part-time basis to develop partnerships with industry and community stakeholders, conduct research on some of the key law reform policy issues, and provide potential strategies for Government, stakeholders and the community which would improve working arrangements for Western Australian workers.

Law reform priorities in each of the specialist areas

Tenancy

RTA Review

The key law reform priority for Tenancy WA will be the statutory review of the RTA which will commence later this year with a Consultation Paper expected to be released in February 2019. The review of the RTA is intended to address key issues such as termination of tenancies without grounds, security of tenure and minimum property standards. The review will also consider statutory protections for boarders and lodgers, who currently rely on common law with statutory protections only in place around public health and planning laws.

Consumer Protection intends to actively engage with the community in consultation processes during 2018-19, and Tenancy WA can have a pivotal role in this process. In many ways, Tenancy WA is better placed than government to actively network with the community and bring together the relevant stakeholders who can contribute to the review in a meaningful way. Through its Cross-Sector Boarder and Lodger Working Group with Shelter WA, Tenancy WA has brought together community housing providers, university accommodation providers, private lodging developers, support services and local government, to develop a consensus recommendation for laws to ensure protection for boarders and lodgers in WA.

The impact to the community if this law reform does not proceed is potentially substantial and would be a missed opportunity to effectively review the RTA using the information and data that has been collected over the last four years of practice by Tenancy WA. Tenancy WA is able to provide details of decisions, inconsistencies in law and potential solutions as they relate to this area of law reform.

Residential Parks Amendment Bill 2018

Tenancy WA is one of the stakeholders who will be consulted as part of drafting and implementation of the Regulations. In this regard, Tenancy WA is well positioned to provide a voice to marginal and largely older renters in residential parks to ensure their interests are considered in the new regulations. Consumer Protection is currently finalising the drafting of the Residential Parks Amendment Bill 2018 (the Bill) and working towards having the Bill ready for introduction when Parliament resumes after the winter recess. Given it is one of your priorities, the Bill is expected to be considered and passed by Parliament during the first half of 2018-19. Once the
Bill is passed, amendments to the Residential Parks (Long-stay Tenants) Regulations 2007 (the Regulations) will also need to be drafted, most likely following passage of the Bill.

Employment Law
As noted above in paragraph 19, there are a number of research and law reform policy issues relating to vulnerable workers on which the ELC could make a contribution to in 2018-19.

Gig Economy
There has been extensive research into the issues associated with gig economy work in Australia and internationally in recent years. It may be beneficial for the ELC to focus on identifying specific policy or educational strategies which could be adopted to improve workplace arrangements and understanding of workplace rights for gig economy workers in WA, having regard to the interaction between the State and national systems of industrial relations in WA.

Modern Slavery
The issue of modern slavery was considered by a recent Federal Parliamentary inquiry into establishing a Modern Slavery Act in Australia. The resulting report, 'Hidden in Plain Sight', was released on 7 December 2017 and contains a number of recommendations. It may be useful to examine the relevance of these recommendations to WA and the scope for the State Government to contribute to the fight against modern slavery.

Casual work
The PSD is aware you have recently received a considerable number of enquiries from constituents expressing concerns about the increasing use of casual and insecure working arrangements. These anecdotal reports are supported by recent research published by the Australia Institute's Centre for Future Work and the Australian Council of Trade Unions. Given that insecure employment undermines community standards and adversely affects workers, their families and the wider economy, it may be valuable for the ELC to examine strategies which could potentially be adopted to reduce the negative impacts of casual and other insecure employment arrangements.

Candidate databases
Another emerging issue is that of private databases which are apparently used by some employers to assess prospective candidates for employment. Concerns have been raised by individuals and unions that these databases effectively serve as a 'blacklist' which can prevent a person with a negative rating from obtaining work, and that individuals who believe they are affected have been unable to access or challenge the information which is stored about them. It would be useful to have more information about the extent of this issue and the possible scope for law reform in this area.

1 Available at: www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Modern_Slavery/Final_report
3 Australian Council of Trade Unions, Australia's insecure work crisis: Fixing it for the future, 2018.
Consumer Law

The CCLSWA has identified four key law reform priorities for 2018-19 outlined below in order of priority.

1. Elder abuse, in particular provisions relating to retirement villages.
2. Changes to the Australian Consumer Law and its possible impact on consumers in areas such as:
   a. lemon laws (new cars experiencing problems);
   b. purchasing motor vehicles (including cooling off periods, add on products and extended warranties); and
   c. consumer guarantees.
3. Investigating the court system for achieving satisfactory outcomes for consumers.
4. Consumer contracts (including gym memberships).

If the CCLSWA did not receive this funding it would be unable to undertake this work which would be detrimental to both the CLC network and the community. Given there is currently no specific funding attributable to consumer law services in WA, Consumer Protection considers it important that expertise and capacity is built in the area of consumer law reform.

Options for provision of funding in 2018-19

Consumer Protection’s recommended option for the provision of funding in 2018-19 is by way of a grant to each of the specialist CLCs.

Grants to the community services sector are a form of funding arrangement made for a specific purpose where an organisation requires one-off subsidies, top-ups, seed funding, or funding for a discrete project. Grants may be an appropriate funding arrangement where the grant is for a discrete project, and the grant does not constitute the entire financial base of an organisation.

Unlike grants, service agreements are a form of contracting for services through a procurement process. Service agreements are generally established where a public authority enters into a fee for service arrangement to purchase a service from an organisation for its own benefit or is contracting with an organisation to provide a service to a third party to whom the public authority has undertaken to provide a service.

Establishing a grant agreement for 2018-19 is preferred and recommended because:

- Law reform activities, particularly to support a statutory review of legislation, can generally be completed within 12 months.
- A grant agreement is easy to establish, generally with less oversight, reporting and documentation, so the 2018-19 law reform program could be instigated relatively quickly. Once established, DMIRS could then use the learning from this process to introduce a formal law reform program into the future.
- Provision of the funding by way of a grant in 2018-19 will enable the three providers to further build capacity in the area of law reform and further develop their level of expertise.
Future funding arrangements

Subject to the availability of recurrent funding in 2019-20 and beyond, it is recommended that a Law Reform Grants Program (Grants Program) is introduced from 2019-20.

Provision of funding by way of grants affords DMIRS more control to set law reform priorities that are consistent with its legislative agenda. As noted above, law reform initiatives, particularly those required for statutory reviews of legislation, can typically be completed within a 12 month period. As such, there may be no ongoing need for funding to the CLCs for law reform beyond this point.

With a Grants Program, Consumer Protection, in consultation with the community sector, could set an agenda for law reform work over the course of a financial year and call for submissions based on the agenda. For transparency, the Grants Program could be advertised on Tenders WA which would broaden the scope of organisations that may submit a proposal to undertake the required work. This approach would ensure that law reform activities are closely aligned to the government’s legislative agenda and the information provided is relevant and useful.

If Consumer Protection chose to run a Grants Program for a few years, and subsequently determined there was a body of work for the sector to undertake over a significant period of time, it could move to establishing a service agreement with the relevant organisation/s having learned lessons from the Grants Program. It is prudent to note that once a program of service delivery is established via a service agreement, it is hard to then withdraw from the provision of funding.