

Civil justice action plan

Improving access to justice for everyday problems



NSW Department of Justice | December 2018

Department of Justice

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01

The civil justice system

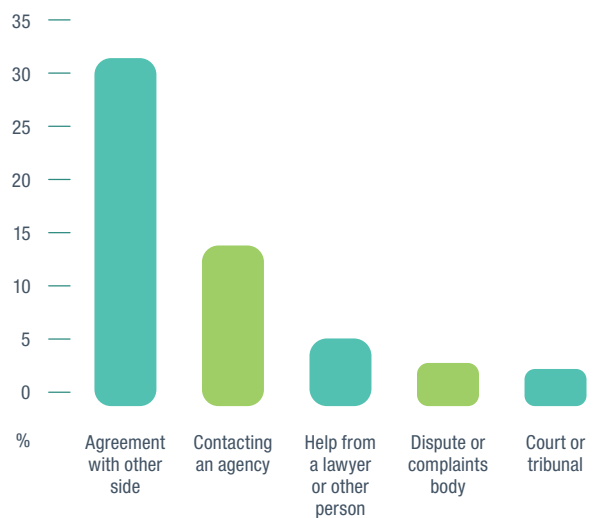
The civil law is relevant to almost every aspect of modern life. Every time you buy something, take out a lease, sign a contract, or deal with a government agency, you are making a civil transaction. Millions of these interactions take place every day, so it is not surprising that sometimes problems occur.

The civil justice system provides a legal framework to help people and businesses solve these problems and disputes. Many of these are 'everyday' issues that we face in our daily lives. Research conducted by the Law and Justice Foundation of NSW indicates that around 2.8 million people in NSW experience a legal problem every year. Around 85 per cent of all legal problems are civil.

Not all legal problems need to be resolved through formal court and tribunal processes. Research shows that just over 30 per cent of legal problems are resolved through discussions with the other side, and only around 3 per cent of legal problems ever reach a court or tribunal.

Improving access to justice is therefore not just about making our courts and tribunals more accessible. It is also about making it easier for people to resolve disputes as early as possible, and in a manner that suits them.

How legal problems are resolved



Source: Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney, p.140.

The benefits of a well-functioning civil justice system

A well-functioning and efficient civil justice system is important for individual wellbeing, community wellbeing and business relationships.

The civil justice system is particularly important for small businesses. NSW is home to over 680,000 small businesses, which employ over 1.5 million people, contribute over \$269 billion in annual sales and service income, and \$41.6 billion in annual wages and salaries.

Research conducted by the Law and Justice Foundation of NSW found that 60 per cent of business-related legal problems cause financial strain or loss of income, and nearly a quarter lead to stress-related illness.

Business relationships rarely survive a dispute that leads to litigation, or indeed a court battle. Resolving disputes quickly through early intervention is a key strategy to saving on legal costs and avoiding stressful legal proceedings for small businesses in NSW.

– NSW Small Business Commissioner

Civil justice problems, especially minor problems, should be resolved as quickly, efficiently and fairly as possible.

The NSW civil justice system is built on strong foundations. However, this does not mean that it cannot be enhanced. There are opportunities to make the system more accessible and user-friendly, especially for small business owners and people who live in regional, rural and remote areas.



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Our consultation process

The actions outlined in this plan are the result of a thorough public and community based consultation process.

The Department of Justice held a number of one-on-one meetings, roundtable discussions, public events and community legal forums to identify opportunities and actions. We also formed a Collaboration Group consisting of experts from the community and legal sectors to gather and test ideas. We spoke to:

- > small business advocates
- > financial counsellors
- > neighbourhood groups
- > welfare agencies
- > community lawyers
- > members of the public
- > judges and magistrates
- > court and tribunal staff
- > private law firms
- > government agencies.

We also released a formal consultation paper, together with an online survey.

We commissioned in depth research from the Law and Justice Foundation of NSW to explore the types of civil claims filed in NSW courts and tribunals and ensure that actions were relevant and targeted. The research is available on the Law and Justice Foundation's website at www.lawfoundation.net.au.

The remainder of this document converts the issues we uncovered during our consultation process into concrete actions to improve the civil justice system. These actions aim to:

- > provide people with the help and support they need to prevent and resolve disputes fairly, quickly and simply
- > trial new technologies to improve access to information and dispute resolution pathways
- > enhance support for people who need face to face assistance
- > improve the way that small debts are resolved.

Our actions

1. Improve access to self-help information via LawAccess NSW

Context

The LawAccess NSW website (www.lawaccess.nsw.gov.au) provides a free and comprehensive database of legal information to the public.

LawAccess NSW is a valuable resource for both individuals and community workers. However, there is an opportunity to make its content more intuitive and tailored, in order to help people understand the information and work out how to apply it to their particular circumstances.

Action

The LawAccess NSW website will include intuitive, guided pathways on common issues and requests. The guided pathways will match people with information that is directly relevant to their needs through a series of easy to understand questions, and provide referrals to other support services.

This will provide more people with the tools they need to resolve common legal problems themselves. Where people need an extra level of professional support, they will have a clearer understanding of the issues that still need to be discussed with a lawyer. This will build on the reputation of LawAccess NSW as a leading provider of free, accurate and trustworthy legal information.

Implementation

We will release two guided pathways in January 2019, focusing on unpaid council rates and mortgage stress. These initial two pathways have been selected due to high demand for information and guidance on these topics. We will add another two pathways by 30 June 2019, followed by another two pathways by 31 December 2019.

The additional pathways will also focus on high volume legal topics to maximise the number of people that can benefit. We will work collaboratively with the community legal sector and other experts to ensure that people are given the information and referrals that meet their particular needs. We will also make sure that content is updated regularly to reflect feedback from users and changes to the law or service provider landscape.

Over time, we will continue to expand the number of guided pathways on the LawAccess NSW website, and improve the functionality of those pathways.

2. Pilot innovative online court technology

Context

Individuals and small business owners can find court and tribunal processes complicated, expensive and time-consuming, even when a dispute is straightforward and low value. Public surveys indicate that people want more opportunities to interact with courts and tribunals online so that they can get on with everyday life instead of spending hours off work to deal with their issues.

We have been working to bring digital and online processes into our courts and tribunals. Online court filing is now available for most matters. While technology is increasingly making courts and tribunals more accessible and efficient, there are more opportunities to enhance online services, especially for self-represented litigants.

Action

We will trial innovative new technology to make the court and tribunal system easier for people and small businesses to use.

This will enable cases in selected court lists to be finalised online, particularly where a hearing is not required. When matters do require court time, there will be less need for parties to come to court multiple times, especially for procedural decisions.

These improvements will save time and money for both individuals and small businesses. This will be particularly valuable for people who are self-employed or run a small business, as it will help them to resolve disputes more quickly, cheaply and efficiently.

Implementation

In February 2019, we will release new online services for parties involved in matters in the Local Court Small Claims Division and the Supreme Court Possession List. After the new online services are launched, we will assess them to determine whether there is potential to expand the services to other court lists.

These services will allow parties to complete the most common steps in the court process online and, if appropriate, without legal representation. This will include the ability to lodge claims and to request and respond to default judgments and enforcement orders.

By 30 June 2019, we will release a new Supreme Court website that will enable executors to apply for Probate quickly and simply. The current process for probate is complex and relies heavily on paper forms. This new process will create an easy to use interface that will provide the court with all of the information needed to make decisions on the most common applications for probate.

We will also work to refresh the Online Registry to make it easier to use for self-represented litigants. The refreshed website will provide clear information on what is required from litigants, explain key legal terms, and make it easier to fill in common court forms. This work will be completed by 30 June 2020.



3. Establish an Access to Justice Innovation Fund

Context

Technology and innovation have an important role to play in supporting and enhancing access to justice. Legal professionals, designers, coders and social entrepreneurs often have new and inventive ideas to reduce barriers to justice and help people better navigate the legal system. These kinds of projects should be supported in order to encourage experimentation and user-focused solutions.

Action

The NSW Government will launch an Access to Justice Innovation Fund to provide grants for projects that reduce barriers or make improvements to the justice system.

The Fund will particularly focus on projects that show how technology or new methods of service delivery can support people who are experiencing social and economic disadvantage to resolve legal problems.

Applications will be open to any organisation with an innovative idea to improve access to justice. Up to \$250,000 in grants will be available each year.

Implementation

The Access to Justice Innovation Fund will begin accepting applications in January 2019. More information about the Fund is available at www.justice.nsw.gov.au.

4. Provide additional support to community legal centres

Context

Community Legal Centres (CLCs) play a critical role in helping people to resolve everyday disputes as early as possible and avoid the financial and emotional impacts associated with unresolved legal disputes. In NSW alone, more than 50,000 people seek assistance from CLCs each year in relation to a wide range of legal issues, including domestic violence, debt, care and protection of children, and tenancy.

CLCs receive funding from a range of sources, including the NSW Government, the Australian Government and the Public Purpose Fund. CLCs have historically received this funding on an annual basis. This can create an uncertain funding environment, affecting the ability of CLCs to plan services, efficiently spend funds and effectively engage with the communities they serve.

A number of independent reviews conducted in recent years, including the Productivity Commission's Inquiry into Access to Justice Arrangements and the Cameron Review of Community Legal Centre Services, have recommended that CLCs receive increased funding in order to address unmet legal need.

Action

The NSW Government has committed to establishing a \$44 million 'future fund' for CLCs. This 'future fund' will be quarantined within the Public Purpose Fund and the interest earned will be used to support CLCs in future years, providing CLCs with more funding certainty.

The NSW Government has announced record state funding of \$45 million to CLCs over the next four years, including almost \$20 million in new funds (inclusive of earnings from that new 'future fund').

From 2019–20, CLCs will receive almost \$12 million per annum in state funding. This represents an increase in NSW Government funding for CLCs of more than 85 per cent against 2015–16 funding levels.

A new application-based model for both NSW Government and Public Purpose Fund funding to CLCs will also be implemented from 2019–20.

Under the new funding model, CLCs will receive three-year funding contracts for both NSW Government and Public Purpose Fund funding amounts. Delivering funding in three-year cycles instead of yearly will provide CLCs with more funding stability so they can plan for the future.

CLCs have also been asked to submit applications for funding, which will require them to demonstrate how they will deliver legal services in the communities they serve. This will also help to ensure that legal assistance services are directed to where they are most needed in NSW.

Implementation

Legislation was introduced into the NSW Parliament on 24 October 2018 to close a statutory insurance fund that is no longer required, and transfer half of its funds to the Public Purpose Fund. These amendments commenced on 7 December 2018.

The new funding amounts will be allocated to CLCs from 1 July 2019, following the conclusion of the application process.

5. NSW Fair Trading to pilot a small consumer claims directions power

Context

According to the Law and Justice Foundation of NSW, consumer disputes account for 21 per cent of legal problems experienced by NSW citizens. The 2016 Australian Consumer Survey found that 60 per cent of people have experienced at least one problem relating to the purchase of a product or service in the last two years, and 76 per cent of these problems were identified within six months of purchase.

The current process for obtaining an enforceable remedy in consumer disputes involves three separate steps and takes an average of 100 days. This can discourage people from attempting to resolve low-value consumer problems, and limits the ability of consumers and traders to achieve a quick and efficient outcome.

Action

The NSW Fair Trading Commissioner will be empowered to direct a business to repair, replace or refund a good if the sale price is \$25 or higher but not more than \$3,000 (exclusive of GST).

The new directions power will give both consumers and businesses access to a dispute resolution process that is free, fast and accessible. The option to obtain an enforceable remedy from NSW Fair Trading will make it easier for both consumers and traders to resolve disputes and reduce the number of matters that need to be filed in the NSW Civil and Administrative Tribunal (NCAT) and the Local Court.

It will not be mandatory for consumers to use the new directions power. If consumers would prefer that NCAT hear the dispute, they may still choose this. Both consumers and traders will also be entitled to commence proceedings in NCAT if they are not satisfied with NSW Fair Trading's direction.

Implementation

The amendments will commence by 1 January 2019.

6. Government agencies to take reasonable steps before pursuing small debts

Context

Most state and local government agencies are owed small debts such as unpaid council rates. In NSW, more than a third of all civil claims in the Local Court involve local councils pursuing unpaid council rates, and more than 80 per cent of these claims are worth \$2,000 or less. NSW government agencies also pursue small debt matters in court. Wherever possible, government agencies should resolve these issues early, including by negotiating time to pay arrangements.

Action

The NSW Government is moving towards a whole of government approach to debt recovery, whereby Revenue NSW is now authorised to recover debts owed to state and local government agencies.

To support these reforms, Revenue NSW has published Debt Recovery Guidelines to guide decision-making regarding the recovery of debts owed to government agencies by people who are vulnerable or experiencing hardship. This will provide a consistent and fair framework for the treatment of debtors where government agencies engage Revenue NSW to recover debts on their behalf.

The Office of Local Government has also issued Debt Management and Hardship Guidelines to local councils under section 23A of the *Local Government Act 1993* in order to promote early identification of whether a ratepayer is facing hardship. The Guidelines provide guidance to councils on how to review and update existing debt management policies and practices to collect rate, waste, water and sewerage charges, and align them to best practice across the sector.

Implementation

The Office of Local Government issued guidelines to the local government sector on 27 November 2018. The Guidelines are available on the Office of Local Government's website at www.olg.nsw.gov.au.

Revenue NSW's Debt Recovery Guidelines were published on 30 November 2018 and are available on Revenue NSW's website at www.revenue.nsw.gov.au.

7. Expand the Local Court Small Claims Division

Context

The Small Claims Division of the Local Court provides a quicker, cheaper and less formal process for resolving low value disputes compared with traditional court proceedings. Its practices and procedures are specifically designed to maximise efficiency while ensuring that proceedings remain procedurally fair. For example:

- > the court must use its best endeavours to bring the parties to an acceptable settlement
- > hearings are to be conducted with as little formality as possible, and
- > the rules of evidence do not apply.

The *Local Court Act 2007* currently provides that the Small Claims Division can hear civil claims with a monetary value of up to \$10,000.

Action

The jurisdictional limit of the Local Court Small Claims Division will increase from \$10,000 to \$20,000.

This will let more people access the Small Claims Division's simpler and faster procedures. The new jurisdictional limit is expected to allow an extra 6,500 cases to be resolved in the Small Claims Division, at lower cost to parties than the General Division. This will especially help small businesses pursuing unpaid invoices, helping them to avoid drawn-out legal battles and resume normal operations sooner.

Implementation

The NSW Parliament amended the *Local Court Act 2007* in November 2018 to increase the Small Claims Division jurisdictional limit, as part of the *Justice Legislation Amendment Act (No 3) 2018*. The new jurisdictional limit will commence on 2 March 2019.

Next steps

The initiatives in this Action Plan will help to strengthen the NSW civil justice system and deliver positive outcomes for individuals and small business owners.

Wherever possible, we will collect data along the way to ensure that the actions can be properly evaluated. Once the actions have been implemented, we will keep exploring options to improve online resources and empower individuals to resolve legal issues as early as possible.

