

---

# **NORTHERN COMMUNITY LEGAL SERVICE INC.**

ABN: 17 203 143 630

26 John Street  
Salisbury, SA 5108

## **Productivity Commission Inquiry into Access to (Civil) Justice Arrangements**

We thank you for the opportunity to comment on the Productivity Commission's draft report on its inquiry into Australia's system of civil dispute resolution, with a focus on constraining costs and promoting access to justice and equality before the law.

Access to Justice is the *raison d'etre* of Community Legal Centres. Community legal centres (CLCs) are independent, community organisations that provide free legal services to the public.

The most relevant findings, recommendations and requests for information from a CLC perspective relate to Chapter 21 of the draft report and we have couched our comment accordingly. We have also had the opportunity of reading the submission of the Adelaide University Legal Clinic and endorse the recommendations contained therein.

### **Background**

Northern Community Legal Service is actively involved in the CLC sector, a member of the South Australian Council of Community Legal Services (SACCLS) and having been State representative on the National Association of Community Legal Centres (NACLC) for a number of years and is currently on the Board of the South Australian Council of Social Services (SACOSS). Northern was also the first CLC to enter into a joint project with Family Relationship Centres to promote mediation for people experiencing family breakdown and assisting them in reaching a fair and reasonable position for children and property.

The Northern Community Legal Service is located in one of the most disadvantaged areas in Australia. Prospects for the future of residents in our catchment area are uncertain given the closure of General Motors Holden and consequential impact on other component suppliers. Significant urban development in the northern suburbs is likely to place further demands on our services. The greatest influx of immigrants in this year will be to the northern suburbs where we will be welcoming 45% of the anticipated immigrants for South Australia.

**Northern Community Legal Centre's location and service delivery matrix means that it is ideally placed to meet legal need.** There is a complex relationship between a person's socio-economic position and the levels of reporting of legal issues. The data from the Law and Justice Foundation report shows that the likelihood of reporting legal events tended to increase with income and education level. However, there is general evidence that socially excluded or disadvantaged groups are more vulnerable to legal issues than others.

Previous studies have shown that unemployed people and homeless people appear to have a higher incidence of legal events. The Law Survey findings in relation to a group known to be disadvantaged—defined as people living in temporary accommodation—found 'a much higher incidence [of legal events] than the general population' survey (84 per cent versus 36 per cent), supporting the argument that disadvantaged groups are particularly vulnerable to experiencing legal events.

In view of the complexity and correlation of problems experienced by most people we suggest that Northern's model of assisting the client rather than the individual problem is far more cost effective.

There is a growing body of research about legal need and disadvantage, the confluence of legal and other social problems, how people most in need of legal help might best access that assistance and what might constitute effective legal service delivery. The LAW Survey findings carried a number of significant implications for the provision of effective legal assistance services including:

- Services should be 'multifaceted' and 'must integrate a raft of strategies';
- There is a need for accessible legal services;
- Service delivery models should recognise non-legal advisers as gateways to legal services;
- Integrated responses to legal and non-legal needs are critical; and
- The importance of tailoring services for specific problems and particular demographic groups.

This significant research affirmed approaches that were developed and have been utilised by Northern and other community legal centres in Australia over the past forty years. Community legal centres continue to be at the forefront of developing effective models of service delivery to improve access to justice for people with complex legal and related needs.

**Example** the Northern Community Legal has a financial counselling program within its legal service. In conjunction with the University of South Australia and the Elizabeth Magistrates Court law students and financial counsellors will provide assistance to those people appearing in the Court on Investigation Summons. This is a new innovation on other Court Legal Clinics utilising Financial Counsellors who work in conjunction with Students to achieve a realistic financial outcome for clients. This project has been developed with and has the unqualified support of Magistrate Little and the Registrar of the Court. The project has been funded in

part by a grant from the Law Foundation of South Australia in relation to the legal advice provided by the students.

### **Productivity Commission Overview**

The Northern Community Legal Service agrees with the following comments contained in the Overview.

- Self-Represented litigants in Higher Courts need more direct and personalised forms of assistance. Equipping judges and court staff through training and clear rules and guidance is essential to give them the confidence to assist self-represented litigants while meeting their obligations of impartiality. Duty lawyer schemes can help, but legal assistance with basic, discrete tasks that could be offered to self-represented litigants before their matter reaches court (or used to divert them away from the court system) also hold promise. Self-represented litigants should also be able to rely on assistance from non-lawyers, with appropriate protections in place. Northern Community Legal Service has had a number of successful outcomes for clients who are in the repossessions list in the Supreme Court of South Australia principally through negotiation and assistance from both lawyers and financial counsellors located in the service.
- We agree that unbundling legal services could help where the client can perform tasks on their own. In fact community legal centres have adopted this method of service delivery for some time; it is our belief that empowering the client to deal with their matters empowers the community as a whole.
- We agree that the financial eligibility criteria for individual services provided by Legal Aid Commissions and Community Legal Centres should be consistent and linked to establish a measure of disadvantage recognising however the differentiation between the services offered by LACs and CLCs in the matters they address. CLCs do not assist clients who are eligible for a grant of legal aid nor those who are able to afford private representation.

### **Service Delivery**

## DRAFT RECOMMENDATION 21.1

***Commonwealth and state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.***

*Legal Assistance Services – There is scope to improve how governments intervene*

- **Governments should ‘ earmark’ a specific amount of legal assistance funding for civil matters.**

Northern Community Legal Service often sees clients to advise them at a point of crisis, and many of their legal matters could be avoided if they had the knowledge of their rights or responsibilities. It is critical that we address these underlying causes and stem the difficulties and legal problems that arise for CALD communities. If systemic issues are not addressed, we will continue to see newly arrived communities experience easily avoidable legal problems. Footscray Community Legal Centre reported on common legal problems experienced by Burmese and African communities experienced once settled in Australia, which included:

- Problems with door-to-door salespeople and signing contracts
- Driving offences, including driving without a license
- Debt incurred from a motor vehicle accident when driving uninsured
- Large debts incurred from utility bills due to not understanding accounts and contracts
- Tenancy problems

Northern has similar experiences with CALD communities that seek legal advice from the service. Settlement of new arrivals for 2013-2014 in South Australia will see 6,100 of a total 13,631(45%) settled in Northern Adelaide.

*Unbundling legal services would help*

- **Governments in collaboration with legal service providers, should develop a single set of rules to offer consumers the option of purchasing unbundled assistance.**

Consistent with international studies, which have variously identified groupings of legal issues, a UK study in 2004 identified four main clusters of events: a family cluster (comprising domestic violence, divorce, relationship breakdown, children problems); a homelessness cluster (comprising rented housing, homelessness, unfair treatment by police, formal action against the respondent); a health and welfare cluster (comprising clinical negligence, mental health, immigration, welfare benefits); and an economic cluster (comprising consumer problems, money/debt, neighbours and employment problems). An earlier study in 1999 reported

correlations between the different pairs of economic problems: money and employment, money and rented accommodation, consumer and owning property, and employment and owning property.<sup>37</sup>

Similarly, some types of issues may be more likely to occur with other legal issues. For example, the Law and Justice Foundation found that 34 per cent of people who reported an employment related legal issue also reported other legal issues. Similarly, 27.7 per cent of people who reported a human rights issue, and 23–24 per cent of people who reported a consumer, credit/debt or government related legal issue also reported another legal issue. In fact, the Foundation notes that a minority of participants accounts for a disproportionate number of the legal events reported:

...the third of participants who reported three or more legal events accounted for more than

three-quarters (79.0 per cent) of the 5776 legal events reported. Less than one-quarter of the sample (23.9 per cent) accounted for two-thirds of the events (67.5 per cent) and about one-sixth of the sample (16.4 per cent) accounted for over half the events (54.9 per cent).<sup>38</sup>

This pattern is consistent with international research. For example, of the 37 per cent of respondents to one UK survey who reported one or more justiciable problem, 46 per cent reported two or more, and of those 47 per cent reported three or more. This pattern continued as the number of problems increased, culminating in 88 per cent of respondents who reported eight or more problems reporting nine or more.<sup>39</sup>

37 P Pleasence, A Buck, N Balmer, A O'Grady, H Genn & M Smith, *Causes of Action: Civil Law and Social Justice – the final report of the first LSRC survey of justiciable problems*, 2004 and Genn (1999) in Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, 2006, p 25.

38 Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, 2006, p 72.

39 P Pleasence, A Buck, N Balmer, A O'Grady, H Genn & M Smith, *Causes of Action: Civil Law and Social Justice – the final report of the first LSRC survey of justiciable problems*, 2004, p 31.

In view of the complexity and correlation of problems experienced by most people we suggest that the CLC model of assisting the client rather than the individual problem is far more cost effective.

There is a growing body of research about legal need and disadvantage, the confluence of legal and other social problems, how people most in need of legal help might best access that assistance and what might constitute effective legal service delivery. The LAW Survey findings carried a number of significant implications for the provision of effective legal assistance services including:

- Services should be 'multifaceted' and 'must integrate a raft of strategies';
- There is a need for accessible legal services;
- Service delivery models should recognise non-legal advisers as gateways to legal services;
- Integrated responses to legal and non-legal needs are critical; and
- The importance of tailoring services for specific problems and particular demographic groups.

This significant research affirmed approaches that were developed and have been utilised by community legal centres in Australia over the past forty years. Community legal centres continue to be at the forefront of developing effective models of service delivery to improve access to justice for people with complex legal and related needs.

#### INFORMATION REQUEST 21.1

*The Commission seeks views on whether the above demarcation of funds would be sufficient to ensure that appropriate resources are directed towards non-criminal, non-family law matters.*

We would suggest that the majority of criminal matters for the disadvantaged are handled by the Legal Services Commission either in house or through a grant of legal aid. The LSC has a telephone advice line and limited assistance through their Access Service Department for Civil matters. The Commission refers to Community Legal Centres for ongoing assistance. This is a partnership which has worked well in the legal assistance arena in South Australia.

In Family Law, matters of child protection and such serious matters concerning child abduction and relocation are in the bailiwick of the LSC. Assistance with divorce, separation and property settlements, usually a distribution of debt, are handled through the CLC flowing from its partnership with Family Relationship Centres. Northern Community Legal Service was one of the first partnerships with a FRC enabling a seamless flow from first contact at either the CLC or FRC through informed mediation to a Parenting Plan or Consent Minutes prepared by the CLC if they are required.

Northern has a Financial Counselling Programme to assist in dealing with the debts of a relationship and a Child Support Programme to assist in resolving any Child Support issues.

Northern Community Legal Service is pleased to be able to offer this holistic service to its clients and prides itself on its efficiency both financial and emotional for the client and cost savings for the Court.

## DRAFT RECOMMENDATION 21.2

***The Commonwealth and state and territory governments should ensure that the eligibility test for legal assistance services reflect priority groups as set out in the National Partnership Agreement on Legal Assistance Services and take into account: the circumstances of the applicant; the impact of the legal problem on the applicants life (including their liberty, personal safety, health and ability to meet the basic needs of life); the prospect of success and the appropriateness of spending limited public legal aid funds.***

Legal Service Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services operate quite distinct services and are not in competition with one another at the present time.

The CLSP Review recognised many positive aspects of CLCs, including: their expertise in areas of law that other providers are not able or not willing to cover; their multi-dimensional approach to service delivery, facilitating assistance to people with complex needs and multiple disadvantaged; and a client base marked by low income, marginalisation, disadvantage and a lack of social inclusion.

Submissions to this inquiry endorsed these positive comments. For example, the Family Court of Australia (FCA) and the Federal Magistrates Court (FMC), with whom the department agreed, submitted:

The national network of community legal centres is a vital adjunct to the services provided by legal aid commissions and private legal practitioners. They are a critical source of professional and impartial legal information and advice, particularly for people who are not eligible for legal aid.

The Legal Australia Wide Survey: South Australia, p.76 Report observes that people living in remote areas had low prevalence of legal problems overall and problems from one problem group, when compared to those living in major city areas. In addition, compared to people living in major city areas, those living in regional areas had low prevalence of problems from two problem groups. Unlike some other Legal Aid Commissions the Legal Service Commission in South Australia does not provide grants of aid in Consumer/Civil matters.

Community legal centres are able to offer effective and creative solutions to legal problems based on their experience within their community. It is the community relationship that makes community legal centres vital organisations able to respond to the needs of their community as these needs arise and change. It is the relationship with their community that distinguishes CLCs from other legal services.

While providing legal services to individuals, CLCs also work beyond the individual. Community legal centres undertake community development, community legal education and law reform projects that are based on client need, that are preventative in outcome and that strengthen the community they serve.

The clients of community legal centres are those who face economic, social or cultural disadvantage and whose life circumstances are often affected entirely by their legal problem.

Community legal centres harness the energy and expertise of thousands of volunteers across the country. Centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for their clients and the system of justice in Australia.

Community legal centres are about Justice and not simply the Law.

#### DRAFT RECOMMENDATION 21.3

***The Commonwealth and state and territory governments should use the National Partnership Agreement on Legal Assistance Services to align eligibility criteria for civil law cases for legal aid commissions and community legal centres. The financial eligibility test for grants of legal aid should be linked to some established measure of disadvantage.***

Northern Community Legal Service following the review of CLCs in South Australia adopted the following eligibility criteria:

### **1. CLIENT ELIGIBILITY CRITERIA**

#### **Introduction**

These guidelines have been revised in response to the contents of the Community Legal Centres Implementation Advisory Group document entitled "A Fabric for the Future". We further gratefully acknowledge the information made available by other members of SACCLS subsequent to that document and to the Justice Strategy Unit.

#### **1.1 Explanation of terms**

**REPRESENTATION** For this group of clients the Service is retained by the client to act on his or her behalf. Proceedings, the writing of letters and negotiations are all done on this basis. Court records will reflect that the Service is acting on behalf of the client.

**SIDELINES ASSISTANCE** This term includes the drafting of letters and documents and assistance with negotiations. Its essence is that the service and its solicitors are not acting for the client, but are assisting the client with their matter. It would include ongoing advice and might, if the circumstances warrant, be upgraded to representation.

#### **1.2 Client Services – General**

Any member of the community is entitled to receive one free consultation from NCLS, unless there is a conflict of interest. This consultation, which is



not subject to an income or asset test, may be face-to-face, by telephone or by other electronic means as technology allows and can include provision of legal information regarding a problem, legal advice and referral. The initial consultation will be conducted by a qualified lawyer admitted to practice in the Supreme Court of South Australia, or an experienced para-legal supervised by such a lawyer. Such a consultation would provide general information about the law, advice pertaining to the legal obligations, rights and remedies of the client together with practical advice about the available choices.

We, on the basis of our extensive experience with the clientele in the northern suburbs, a high incidence of low literacy levels, mental illness etc. allow up to 60 minutes for such a consultation. Obviously, some consultations are shorter and some longer. Where, due to subsequent appointments the initial consultation has to be curtailed then another appointment will be made with the client as soon as practicable.

NCLS provides an initial free consultation, but not ongoing assistance to persons eligible to receive assistance from the Legal Services Commission of South Australia. Where legal aid has already been provided to a person and the funding cap for legal aid has been reached a resolution of the Management Committee of NCLS is required to entitle that person to our assistance. Where legal assistance for a particular matter is provided elsewhere the client should be referred to the appropriate agency.

We do not provide advice to established-for-profit organizations. Non-profit, community based Non-Government Organisations are entitled to receive advice and ongoing assistance where the organization is assessed as not having the capacity to pay for private legal advice.

Available resources influence the decision making process in regard to the extent of service offered to a client. While a person may otherwise be eligible for ongoing assistance from NCLS our capacity to provide the extent of service required may not exist. In the event of a person being denied a service due to a lack of resources the matter is brought to the attention of the Management Committee who will formally notify the Manager of the funding program on an annual basis.

The principle that in supplying a legal service to a person it will be provided until a logical legal conclusion is reached is acknowledged and accepted as a matter of course. The basis upon which such service is supplied and what it includes is outlined in the initial letter of engagement. As a matter develops, the terms may be revised in accordance with those developments. If the client is dissatisfied with initial offer or a subsequent change, then they have a right of review to the Management Committee of NCLS. The circumstances behind any such decision then form the basis of a report which is forwarded on an annual basis to the Program Manager.

### 1.3 Summary of Client and Matter Selection Considerations

When assessing the *eligibility of any person* for ongoing assistance the Service considers the interplay between:

- Income/assets;
- Nature of the matter;
- Impact on the client; and
- Extent of service the CLC can realistically provide.

The *extent of service* is linked to individual circumstances such as:

- Literacy level;
- Language difficulties;
- Threat or fear of violence from one of the parties;
- Recent migration and hence unfamiliarity with the legal and other systems; and
- Mental illness, etc.

When assessing whether or not to deal with *a particular matter* we also consider:

- The power imbalance of the parties in dispute;
- The degree of vulnerability or risk to the client if no intervention or assistance is provided; and
- The legal merit of the matter.

#### **The criteria for offers of ongoing representation:**

- a. That no grant of legal aid is available; and
- b. That the client is unable to afford private legal representation; and
- c. That the dispute contains some element of social injustice, ie., that the parties in dispute are in a position of relative inequality to each other; and
- d. That the likely disadvantage to the client if assistance is not provided warrants such assistance; and
- e. That the matter has legal merit; and
- f. That NCLS has the ability to offer a competent service to the particular client and the resource capacity to meet the demand at the time.

#### **Applying the criteria:**

1. The criteria are applied by the interviewing staff member in the first instance. If the staff member is of the opinion that the matter satisfies the guidelines the matter is presented to the Case Conferencing meeting. That meeting reaches its decision by consensus, or in the absence of consensus, the senior solicitor has the casting vote. The decision, and the reasons for it are recorded and attached to either the file or the interview sheet.

2. If the matter qualifies for ongoing assistance a letter of engagement is forwarded outlining the level of assistance to be given.
3. When the interviewing staff member makes an assessment at the initial interview that the client does not qualify for any ongoing assistance and/or representation by NCLS, and the client requests that the matter be presented to the Case Conferencing, then the matter is so presented for a decision.
4. If the Case Conferencing meeting decides that a matter does not qualify for ongoing assistance or representation then the client is notified in writing of that decision and brief reasons are given.

### **Appealing rejection of an application for assistance**

1. All letters of rejection include advice that the client can appeal the decision by writing to the Chairperson of the Management Committee of NCLS and that their matter will be considered at the next Management Committee meeting.
2. At the next Management Committee meeting the client's matter and all available information is presented for the Management Committee to make a decision. It is to be noted that information identifying the client is removed from the information presented to the Management Committee.
3. The client is notified in writing of the Management Committee's decision.

Determining who is unable to afford private legal representation – Income and Assets

*Income Test* The ability of a person to pay legal expenses is relative to the extent and the associated cost of the legal service required. For this reason the income of clients is tested on different levels.

For 'minor' assistance (defined as up to eight hours work) the income test is set at a relatively low rate on the basis that legal assistance for matters of this type can also be bought from a private practitioner for an amount affordable by the client.

For 'major' matters of a potentially lengthy nature (more than eight hours work) the test is set at a higher scale on the basis that people who would not normally be regarded as having a 'low-income' would be increasingly unable to afford private legal services the longer the matter took to resolve.

Any person who presents a current *Health Care Card* or current *Pension Card* will automatically satisfy the Income Test. People not able to present such evidence may be required to provide evidence of their income.

*Asset Test* To ensure some parity between clients with various spending/saving habits, an Asset Test is applied for major matters. This test is a cut-off test and any person with *assets that will realise \$4,000 more than the estimated cost of the service* will be refused ongoing assistance or representation on the grounds that the proceeds from such assets could be used for private legal representation. When estimating the cost of legal services the current Supreme Court Hourly Rate is used in the absence of a more appropriate scale of fees.

When applying the Asset Test the following *assets should be considered* :

- Equity in the principal place of residence;
- Reasonably necessary household furniture and effects;
- Clothing;
- Tools of Trade;
- Equity in a farm or business which provides the client's main source of income;
- Equity in motor vehicles;
- Essential effects, eg medical equipment;
- Lump sum compensation or other payments in hand;
- Lump sum child or spouse maintenance in hand where the client is receiving a pension or benefit at a reduced rate under the maintenance income test;
- Any other assets or resources in which the client has an interest.

Income and Asset Tests should be applied on the joint income of *financially associated persons*.

Clients may be required to complete a Statutory Declaration in respect of their income and/or assets.

The Management Committee may vary the Income and Assets Tests in relation to public interest cases, test cases and class actions.

As a discretionary rule, if there is more than \$20,000 equity in the family home in a family or defacto law property settlement matter then the client should be referred to a private practitioner.

Types of Legal Matters

That the dispute contains some element of social injustice, ie., that the parties in dispute are in a position of relative inequality to each other, is satisfied when the client is in dispute with a corporate body or government agency. This is not a rule merely a principle. This principle encourages the selection of clients who could be described as disadvantaged by way of economic position, disability, race or gender and includes but is not confined to the following instance:

- Employees in dispute with their employer;
- Tenants in dispute with their landlords;
- Credit consumers in dispute with finance providers;
- Victims of domestic violence;
- Uninsured motorists in dispute with insurance companies;
- Impoverished family or defacto law property settlements,
- Family Law matters,
- Child Support.

NCLS does not generally provide ongoing assistance in the following instances but may do so in special circumstances:

- *Wills and Powers of Attorney;*
- *Taxation and Company Law;*
- *Personal Injury, Workcover, Medical Negligence;*
- *Complaints against Legal Practitioners;*
- *Major indictable matters;*
- *Traffic matters;*
- *Superannuation;*
- *Guilty Pleas;*
- *Transfers of Real Property;*
- *Neighbourhood Disputes;*
- *Certification of Guarantees;*
- *Restraining Orders;*
- *Preuptial or Certified Cohabitation Agreements;*
- *Certification of Guarantees.*

### Legal Merit

The legal merit of the matter includes that the case must have reasonable prospects of success. On some occasions this cannot be properly determined at the outset and any doubt should be resolved in favour of entitlement to assistance until the unmeritorious nature of the assistance is certain. Legal merit also requires that the matter must be one in which the ordinarily prudent self funded litigant would risk his or her own funds and the likely benefit to the client must justify the spending of limited legal funds.

## Civil Litigation

In matters where legal costs are recoverable it is required that two appropriate approaches be made to private practitioners to see if they will conduct the case. This requirement may be satisfied in a number of ways, eg.:

- If the client has instructed they have approached the private sector and the staff member is satisfied that the approach has taken place and was appropriate;
- If the staff member confirms the approach(es) to the private sector have been made by the client;
- If the staff member contacts the private sector on behalf of the client to see if the private sector will take on the case.

If, after the two approaches have been made, the staff member is satisfied that the private sector will not take the client, the file is then taken to the next Case Conferencing meeting where a decision will be made.

## Disbursements and Donations

Clients are required to meet their own disbursements.

There is no charge for the service provided by NCLS. Clients are free to make a donation (tax deductible if over \$2) if they wish. This is in accordance with a Community Legal Centres' charitable body status, *Public Benevolent Institution*, as ruled by the ATO.

## INFORMATION REQUEST 21.2

*The Commission seeks views on the appropriate relationships between legal aid rates and market rates for the provision of legal services. What might be the cost of altering the relationship between the two rates?*

NCLS provides free services for clients who have no other recourse, those who are eligible for a grant of legal aid or who are able to afford private practice are so referred.

Accordingly NCLS is not in a position to comment.

## Funding

### DRAFT RECOMMENDATION 21.4

#### ***The Commonwealth Government should:***

***discontinue the current historically-based Community Legal Services Program (CLSP) funding model***

***employ the same model used to allocate legal aid commissions funds to allocate funding for the CLSP to state and territory jurisdictions***

***divert the Commonwealth's CLSP funding contribution into the National Partnership Agreement on Legal Assistance Services and require state and territory governments to transparently allocate CLSP funds to identified areas of 'highest need' within their jurisdictions. Measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level.***

*Legal Assistance Services The distribution of funds could be better matched to need*

As community-based organisations committed to a community engagement approach to service planning and delivery, the work of a community legal centre is informed by the local community it serves or the client group/s it strives to assist. Community legal centres consult and involve their communities in operations and management. This connection to community enables community legal centres to be responsive and sensitive to the needs of their client groups and to respond flexibly to changes in these needs. Because community legal centres focus on providing services to those most in need of assistance, most clients of community legal centre experience significant economic, social or cultural disadvantage, which can often be intergenerational.

Many community legal centre clients have a range of complex needs, commonly including special needs arising from mental illness, cognitive impairment, trauma, limited literacy or limited understanding of English. Other needs arise from a person's circumstances, for example because they are experiencing family breakdown, violence or homelessness and often a number of these factors are affecting the person at the same time.

Community legal centres have a longstanding commitment to providing legal and related assistance to address the individual client's inter-related problems. They recognise that an individual's legal rights and well-being are usually affected by far more than the facts of their legal case. The community legal centre model of service is to provide, wherever possible, an holistic response. Community legal centres' philosophy and practice means providers take the time and care, and develop the knowledge required, to provide access to justice for clients with more complex and time consuming needs. The result is

that community legal centres have developed expertise in working with clients experiencing a range of complex and inter-connected problems, whether they work in generalist or specialist situations or in targeted programs within community legal centres.

A consequence of this commitment and expertise is that community legal centres may take much longer to help a client than, say, a private lawyer would. This is partly because they do not look to advise in relation only to one obvious legal problem, but rather to understand and address the causes of that problem and also the problems, legal and practical, that may have occurred as a consequence. It is also because it necessarily takes more time to understand and communicate effectively with a person with, for example, a mental illness or a cognitive impairment, or who needs a translator. Private lawyers, who still generally charge on a time basis, generally have less capacity to work with clients who have little or no money, and who take much more time

- **The Commonwealth Government should reform the Community Legal Services Program funding to be more responsive to legal need and resources should be reallocated accordingly.**

It would be the contention of CLC's, in particular Northern CLC as one of the most disadvantaged areas in the country, that they are ideally situated in areas of need and have been utilising a sophisticated, evidence based approach to inform their approach to service delivery, blending local or in depth knowledge of a target community with analysis of available quantitative data. The National Association of Community Legal Centres has supported this work through the development of the Legal Needs Assessment Framework and Toolkits for CLCs.

#### *Legal Assistance Services – There is scope for better targeting of services*

- **Eligibility for grants of legal aid should take into account the client's circumstances and the impact of the legal problem on the client and the community more broadly**

As noted in the Strategic Framework for Access to Justice in the Federal Civil Justice System. 2009, the direct legal assistance sector—a key aspect of the Australian justice system, and a significant investment at \$283m in 2008–09—is operating in an environment of rising demand and increases in the cost of service provision.

Viewing access to justice solely as a legal assistance issue is incomplete because it is only part of the solution. Even massive increases in legal aid budgets will not provide any assistance to the vast majority of people who experience legal issues in their day to day lives. Statistics provided by LACs indicate that in 2008, 98 per cent of legal aid recipients were receiving an income that could be considered below the poverty line. This leaves much of Australia unable to afford legal representation but nevertheless ineligible for legal aid.



A system-wide approach can identify options for governments as to how resources might be allocated. A strategic framework should enable identified demand issues to be better addressed by available supply, and identify opportunities to modify demand for different services—for example more information and advice could reduce demand for legal aid representation.

The ‘Public Debt Private Good’ report (Were, 2010) showed that low income debtors are confused and frightened by the debt recovery process, and often agree to terms they cannot afford. In domestic mortgage possession proceedings, borrowers are often unrepresented and may be unaware of their options in relation to seeking hardship variations or preserving any equity left in their property. Good advice and effective representation is vital, particularly where consumers are disadvantaged or marginalised.

The Legal and Constitutional Affairs References Committee Access to Justice December 2009 pp115 recognised:

*The CLSP Review recognised many positive aspects of CLCs, including: their expertise in areas of law that other providers are not able or not willing to cover; their multi-dimensional approach to service delivery, facilitating assistance to people with complex needs and multiple disadvantaged; and a client base marked by low income, marginalisation, disadvantage and a lack of social inclusion.*

Submissions to this inquiry endorsed these positive comments. For example, the Family Court of Australia (FCA) and the Federal Magistrates Court (FMC), with whom the department agreed, submitted:

*The national network of community legal centres is a vital adjunct to the services provided by legal aid commissions and private legal practitioners. They are a critical source of professional and impartial legal information and advice, particularly for people who are not eligible for legal aid.*

### INFORMATION REQUEST 21.3

*The Commission seeks feedback on how Community Legal Centre (CLC) funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of CLCs are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating CLC funding.*

CLC’s have been utilising a sophisticated, evidence based approach to inform their approach to service delivery, blending local or in depth knowledge of a target community with analysis of available quantitative data. The National Association

of Community Legal Centres has supported this work through the development of the Legal Needs Assessment Framework and Toolkits for CLCs.

The proposal that Community Legal Service funding should be reviewed and resources reallocated is of considerable concern particularly the proposal that all legal assistance funding should be consolidated and offered by tender.

South Australian CLCs were subject to a rigorous review which commenced in 1998 to reassess the location of CLCs in the metropolitan area, requiring the then seven CLCs to tender for service provision in four metropolitan locations. No cost saving was achieved from the process and the co-operative service delivery from CLCs and their ability to work harmoniously together was destroyed in the competitive tender process. It has taken many years for a degree of collegiate support to be re-engendered.

We note that the Productivity Commission recommended that CLSP funding be included in the NPA and that the eligibility guidelines for Legal Services Commissions and Community Legal Services be the same. CLCs provide Legal assistance services to clients who are ineligible for legal aid and cannot afford a private practitioner. The services offered by LACs and CLCs are quite discrete and complement one another rather than competing.

Including CLSP funding in the NPA and uniform eligibility guidelines for Legal Services Commissions and Community Legal Services will likely destroy the historic community support of CLCs. A CLC is not a miniature Legal Services Commission. The LSC is a statutory body whose powers are governed by legislation. Conversely, a CLC is an independent not-for-profit community organisation. A CLC is typically managed by members of its community. This organisational form provides a tremendous synergy which enables a CLC to quickly target and meet legal need within its community. It also means that there is a legal service which is run for and by its community. A community that is empowered is one that can avoid exclusion and can readily participate in wider society.

An independent economic cost-benefit analysis of community legal centres found that, on average, community legal centres (CLCs) have a cost benefit ratio of 1:18; that is, for every dollar spent by government on funding CLCs, these services return a benefit to society that is 18 times that cost. To express this in dollar terms, if the average held constant for CLCs across Australia, the \$47.0 million spent on the program nationally in 2009/10 would yield around \$846.0 million of benefit to Australia. *Executive Summary of the Economic Cost Benefit Analysis of Community Legal Centres June 2012 Judith Stubbs & Associates*

[http://www.naclc.org.au/cb\\_pages/submissions.php](http://www.naclc.org.au/cb_pages/submissions.php)

Northern Community Legal Services operates in South Australia in one of the most disadvantaged regions of the country.

| LGA_CODE<br>10 | State | LGA_NAME<br>2010              | SEIFA<br>Disadvantage | SEIFA<br>AUS<br>Decile | SEIFA<br>STE<br>Decile | Calculated<br>Legal<br>Need (#<br>Adults) | Probability of Legal<br>Need | Adult<br>Pop<br>(16+) | CLC<br>Matters<br>08_10 | National<br>CLC<br>Need<br>Ratio |
|----------------|-------|-------------------------------|-----------------------|------------------------|------------------------|---|------------------------------|-----------------------|-------------------------|----------------------------------|
| 40310          | SA    | Barossa (DC)                  | 1018.58               | 8                      | 8                      | 6,021                                     | 37.3%                        | 16,152                | 288                     | 0.3702<br>61764                  |
| 42030          | SA    | Gawler (T)                    | 968.94                | 5                      | 5                      | 6,025                                     | 40.3%                        | 14,960                | 556                     | 0.7152<br>02543                  |
| 42110          | SA    | Goyder (DC)                   | 959.59                | 4                      | 4                      | 1,281                                     | 38.6%                        | 3,321                 | 99                      | 0.5979<br>54094                  |
| 43650          | SA    | Light (RegC)<br>Murray Bridge | 1022.72               | 9                      | 9                      | 3,532                                     | 38.2%                        | 9,253                 | 265                     | 0.5821<br>09635                  |
| 45040          | SA    | (RC)                          | 906.81                | 2                      | 2                      | 5,615                                     | 40.6%                        | 13,846                | 295                     | 0.4064<br>70965                  |
| 45680          | SA    | Playford (C)                  | 885.58                | 1                      | 1                      | 22,883                                    | 43.6%                        | 52,496                | 3416                    | 1.1568<br>30143                  |
| 47140          | SA    | Salisbury (C)<br>Wakefield    | 943.69                | 3                      | 3                      | 38,224                                    | 41.4%                        | 92,227                | 5780                    | 1.1718<br>32502                  |
| 48130          | SA    | (DC)<br>Yorke<br>Peninsula    | 962.49                | 4                      | 4                      | 1,941                                     | 39.3%                        | 4,937                 | 207                     | 0.8251<br>20885                  |
| 48830          | SA    | (DC)                          | 944.07                | 3                      | 3                      | 3,386                                     | 37.0%                        | 9,141                 | 159                     | 0.3630<br>43775                  |
|                |       |                               |                       |                        |                        |   |                              |                       | 11,064                  |                                  |

Northern CLC has as its primary responsibility the LGAs of Salisbury, Playford and Gawler with outreach responsibilities for the Yorke Peninsula, including Holdfast Bay and Murray Bridge. Gawler attracts clients from the Barossa, Goyder, Light and Wakefield as a regional hub.

#### Australian Bureau of Statistics – National Regional Profile

\*The average index value for SLAs across Australia is 994. Hence an index value exceeding 994 indicates that an SLA is more advantaged than the Australian average, while a value of less than 994 indicates that an SLA is more disadvantaged than the Australian average.

We contend therefore that northern Community Legal Service is well placed to reach its client base which represents some of the most disadvantaged in South Australia.

## INFORMATION REQUEST 21.4

*The Commission seeks feedback on the extent of, and the costs associated with, meeting the civil legal needs of disadvantaged Australians, and the benefits that would result.*

### **Consumers lack knowledge about whether and what action to take?**

*“There is a complex relationship between a person’s socio-economic position and the levels of reporting of legal issues.”*

*A Strategic Framework for Access to Justice in the Federal Civil Justice System, September 2009 Report by the Access to Justice Taskforce Attorney General’s Department*

There is a complex relationship between a person’s socio-economic position and the levels of reporting of legal issues. The data from the Law and Justice Foundation report shows that the likelihood of reporting legal events tended to increase with income and education level.<sup>32</sup> However, there is general evidence that socially excluded or disadvantaged groups are more vulnerable to legal issues than others.<sup>33</sup> Previous studies have shown that unemployed people and homeless people appear to have a higher incidence of legal events. A study done in relation to a group known to be disadvantaged—defined as people living in temporary accommodation—found ‘a much higher incidence [of legal events] than the general population’ survey (84 per cent versus 36 per cent), supporting the argument that disadvantaged groups are particularly vulnerable to experiencing legal events.<sup>34</sup>

### **Impact of particular legal events on the incidence of future events**

Legal issues do not arise in isolation. Nor are they experienced randomly or equally across society. Experiencing one legal issue may increase the likelihood of experiencing further issues because one triggers another, both arise out of the same circumstances or some individuals are vulnerable to experiencing more than one type of legal issue.<sup>35</sup> Each time a person experiences a problem they become increasingly likely to experience additional problems. Many legal issues co-occur, arising in clusters.

Studies have identified different clusters or co-occurrences of types of legal events. The Law and Justice Foundation identified a number of clusters (and sub-clusters), including for example a cluster comprising family, domestic violence, human rights and education events tending to co-occur, with family and domestic violence events forming one sub-cluster, and human rights and education events forming a second sub-cluster.<sup>36</sup>

<sup>32</sup> Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, 2006, p 82.

<sup>33</sup> P Pleasence, A Buck, N Balmer, A O’Grady, H Genn & M Smith, *Causes of Action: Civil Law and Social Justice – the final report of the first LSRC survey of justiciable problems*, 2004, p 11. The report showed that 66 per cent of lone parents reported problems, while just 33 per cent of married or co-habiting respondents without children did so.

<sup>34</sup> Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, 2006, pp 27–29.

<sup>35</sup> *Ibid* p 25.

<sup>36</sup> *Ibid* p 77. Depending on the type of analysis undertaken the groupings included a broad range of legal event groups, comprising general crime, consumer, government, housing,

accident/injury, employment and wills/estates events. A second grouping comprises family, domestic violence, human rights and education events, with family and domestic violence events forming one sub-cluster, and human rights and education event forming a second sub-cluster, and a third economic cluster comprising business, credit/debt and consumer events.

Legal Australia-Wide Survey: Legal need in South Australia conducted by the Law Foundation of NSW found:

The survey results confirmed that people who seek advice for their legal problems by no means limit themselves to lawyers or traditional legal services. A wide variety of non-legal workers are routinely the only points of contact with a professional for many people with legal problems.

Across jurisdictions, a legal adviser was consulted for no more than one-third (23–33%) of the cases where respondents sought advice from a professional. There were significant, but modest, differences between states/territories in the use of legal advisers. In South Australia, legal advisers were consulted for 29 per cent of the legal problems for which respondents sought advice. This percentage was not significantly different from average. Given that respondents did not seek advice in approximately half of all cases, this percentage translates to respondents seeking advice for only 16 per cent of all legal problems.

Summary: South Australian findings in context

The LAW Survey results for South Australia are largely consistent with those in other jurisdictions and with the international findings. Legal problems are widespread, with some people experiencing multiple, severe problems with substantial impacts on many life circumstances. Disadvantaged groups are particularly vulnerable to legal problems. A substantial proportion of people take no action to resolve their legal problems and consequently achieve poor outcomes. Most people who seek advice do not consult legal advisers and resolve their legal problems outside the formal justice system.

- **Each jurisdiction should have a centralised source of legal information, advice and referrals. The sponsoring organisation needs to be highly visible and be responsible for providing services across a range of telephone, online and print media.**

Northern Community Legal Service agrees with a statewide telephone referral service similar to the Legal Service Commission (SA) information line. However in relation to the provision of legal advice, we are strongly of the opinion that disadvantaged clients in South Australia need to receive legal advice on a face to face basis in their community not a centralised location. Many clients of a CLC will not have access to a landline or the internet and will have difficulty processing the information provided. See also below.

*Consumers find it hard to shop around for legal services*

The Law and Justice Foundation of NSW found that 67.2 per cent of people faced with a legal issue took some action to resolve it, either seeking some assistance

(51.2 per cent) or handling the legal issue on their own (16 per cent). Just under a third of people took no action (32.8 per cent).<sup>40</sup>

In the *Dispute Resolution in Victoria : Community Survey 2007*, 65 per cent of disputes were resolved without the assistance of a third party legal or non-legal service provider, while 15 per cent involved a third party and 25 per cent were not resolved.<sup>41</sup>

In the specific area of credit/debt and other financial issues, the 2009 Wesley Report indicated that only about one in four respondents (26 per cent) to the Wesley Mission Survey sought help after experiencing financial concerns, while 47 per cent sought no help at all.<sup>43</sup> Of the 26 per cent who did seek help, the majority turned to a family member (47 per cent) or spouse/partner (29 per cent) for guidance, and only 3 per cent of respondents turned to a professional financial counsellor for assistance.<sup>44</sup> Differences between those that sought financial advice and those that did not was most evident in the single-parent households surveyed, who were 30 per cent more likely to avoid a counsellor in times of financial worry.<sup>45</sup>

### People who took no action

A significant proportion (32.8 per cent) of people surveyed by the Law and Justice Foundation took no action when faced with a legal event.

#### *Reasons for inaction*

People cited a range of reasons for doing nothing in response to a legal issue—the most common reasons relate to lack of knowledge, lack of capacity, disempowerment or exclusion.<sup>46</sup> For example, 26 per cent of people thought action would make no difference or *make things worse*.

**Table 2.1: Individuals' reason for doing nothing in response to legal events**

| Reason  | %          |
|---|------------|
| Problem not serious enough/did not realise how serious it was | 28.7       |
| Thought it would make no difference/make things worse         | 26.1       |
| Had bigger problems/too busy/thought it would take too long   | 11.1       |
| Did not know how to get help/could not get there              | 9.5        |
| Waiting it out/hoping it would resolve itself                 | 7.6        |
| Problem resolved before I got around to seeking help          | 6.7        |
| Could not afford it   | 3.9        |
| Thought it was my fault                                       | 3.7        |
| No internet access  | 1.5        |
| Did not trust anyone/embarrassed                              | 1.2        |
| <b>Total</b>  | <b>100</b> |

<sup>40</sup> Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, 2006, p 93.

<sup>41</sup> Ipsos Australia (prepared for the Victorian Department of Justice), *Dispute Resolution in Victoria: Community Survey 2007 Report*, 2007. NB: 'assistance' was characterised as assistance from a third party legal or non-legal service provider (and therefore did not encompass assistance from people such as family and friends).

<sup>42</sup> Based on data from the Law and Justice Foundation of NSW, 2006.

<sup>43</sup> The Wesley Mission, *Financial Hardship, the Hidden Human Cost*, The Wesley Report, 2009, p 26.

<sup>44</sup> Ibid.

45 Ibid p 44.

46 Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, 2006, p 94.

### **The cost to the individual of accessing the justice system**

The cost to the individual of accessing services varies depending on the service in question, and in particular whether legal representation is required.

Services provided by CLCs and ATSILSs are provided free of charge. FRCs and legal aid also provide some services free of charge, but may require a contribution from individuals for other services, normally depending on the individual's capacity to pay. EDR schemes are usually provided free of charge to consumers but a cost to business. The Department of Immigration and Citizenship (DIAC) funds legal assistance programs for certain classes of visa applications; the Legal Advice Scheme (LAS), Immigration Advice and Application Assistance Scheme (IAAAS) and Community Assistance Support (CAS) program provide assistance at various stages of the application, decision and appeals processes. Many, but not all, free services are subject to a means test.

### DRAFT RECOMMENDATION 21.5

***The Commonwealth and the state and territory governments should renegotiate the National Partnership Agreement on Legal Assistance Services (following the current one expiring) and seek agreement on national core priorities, priority clients, and aligned eligibility tests across legal assistance providers.***

*Steps to understand how the system is functioning*

- **All governments should work together and with the legal service services sector as a whole to develop and implement reforms to collect and report data that can be used for policy evaluation and research purposes.**

Northern agrees with paragraph 578 of the Law Council submission:

If Australian citizens are to enjoy anything even approximating access to justice, all Australian governments must revisit the objectives and funding models for the justice system, starting with the courts and legal assistance services. There is a need for an inter-governmental commitment to nationally agreed objectives for the delivery of legal assistance services for those who cannot afford a private lawyer; and to achieving fair and equitable access to the justice system for all Australians, regardless of where they live, what they earn or who they are.

Northern Community Legal Service would be delighted to be an active participant in this process.

*Not all parties are on an equal footing*

- **Governments and their agencies should be subject to model litigant guidelines. More effort is needed to ensure that model litigant guidelines are adhered to**
- **Courts and tribunals should further develop plain language forms and guides, and should assist self represented parties to understand time-critical events.**
- **Self represented litigants should be better assisted by judges and court staff; consistent rules and guidelines are needed to give them the confidence to assist, while remaining impartial. Lawyers who deal with self represented litigants also require clearer guidelines on how to simultaneously meet their duties to their client and to the court. Clearer rules on when assistance can be sought from non-lawyers are also required.**

Dr Andrew Cannon, South Australia's Deputy Chief Magistrate, has said:

"The essential protection of the adversary system is that the parties define the boundaries of the dispute, that all stages of the process occur in the presence of the parties and that the parties each have a reasonable opportunity to contribute to and test all matters upon which the decision will be based."

Similarly, the Australian Law Reform Commission ('ALRC') has previously stated that the adversarial system is different to the inquisitorial system:

"An adversarial system refers to the common law system of conducting proceedings in which the parties, and not the Judge, have the primary responsibility for defining the issues in dispute and for investigating and advancing the case."

Northern Community Legal Services would agree with paragraph 223 of the Law Council Submission to the Issues Paper which states

There has been a national tendency to increase the jurisdiction of courts dealing with "small claims", intending to facilitate a quicker and cheaper method of resolving civil monetary disputes. These initiatives often, or usually, involve excluding legal practitioners. Whilst the idea of facilitating speed and inexpensiveness is appealing, in practice these initiatives carry risks and costs. They can, or do:

- (a) give a disproportionate advantage to professional litigants such as government, insurance companies, finance companies, debt collection agencies and the like, who understand the processes and who can utilise "lay" representatives, who have a significant advantage over ordinary litigants; and
- (b) place a substantial burden on the presiding magistrate, who is obliged to compensate for the lack of skill and understanding of the unrepresented.



NCLS agrees with the submission of Adelaide University Legal Clinic (submission 16) that;

Legal literacy falls far behind medical and educational literacy in Australia. Very few people comprehend legal concepts beyond the obvious propositions of tortious or contractual liability. Very few litigants understand that they must prove allegations by calling evidence of fact. Most litigants believe their narrative will suffice.

This means that litigants may be capable of completing the 'forms' a jurisdiction may require to be filed, but are not capable of framing their case in relevant legal terms. In a case involving a verbal contract entered into between friends for a commercial enterprise that subsequently goes sour after complicated payment arrangements, it is unlikely that personal narrative without documentary support will be sufficient. However, without legal knowledge and/or advice it is overwhelmingly likely that the parties will not know to bring with them ordered documents that disclose the terms of agreement and financial dealings over the years.

Data can be obtained from community legal services regarding their client demographic; the volume of those particular individuals that access the service for specific disputes, and what level of assistance is provided to the client. This coupled with statistical data retained by courts, tribunals and other dispute resolution services would inform analysis.

Increased SRLs are a representative of a growing numbers of disputes, limited resources and the encouragement to less adversarial forms of dispute resolution.

As many of Northern's clients experience family violence, having SRLs manage this type of trial and cross examine each other is an inappropriate scenario for self-representation.

There are many examples now of alternative dispute resolution processes. For example, pre-action mediation in the family law jurisdiction and pre-hearing conferences in the civil jurisdiction.

Community legal services provide an integral step by informing litigants of their rights, responsibilities and managing their expectations. Community legal services can provide initial assistance in trying to negotiate resolutions that avoid the emotional and financial cost of litigation together with risks in adverse outcomes for our clients. Potential litigants need to have access to legal advice in order to assess merit, risks, be informed about process and possibly supported with challenges such as preparation of court documentation. This advice needs to be obtained from appropriately trained legal practitioners, which means attracting and retaining practitioners in community based services. Duty lawyer systems need to be adequate and not limited to criminal and family law, particularly where the other party is represented.