

# **Productivity Commission Inquiry: Access to Justice Arrangements**

***CLCNSW response to Draft Report***

**Community Legal Centres:  
Community, Compassion, Justice**

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## 1. Executive Summary

This submission has been prepared by Community Legal Centres NSW Incorporated (CLCNSW), the peak body for member Community Legal Centres (CLCs) in NSW, in response to the Productivity Commission's *Access to Justice Arrangements Draft Report* released on 8 April 2014.

The submission has three main sections.

The first section outlines the unique role and place of Community Legal Centres in the community. It demonstrates the characteristics that make them independent community organisations that provide free legal services focussing on the most disadvantaged members of the community. Community Legal Centres provide a safety net for those who have no other option for legal assistance. The early intervention legal work centres undertake reduce potential long-term costs to the community. CLCs work closely in partnership with other legal and non-legal organisations to ensure an effective referral pathway is in place for their communities.

The second section provides responses to draft recommendations in the Draft Report. In response to the draft recommendation on the demarcation of criminal and civil law funding, Community Legal Centres NSW posits that funding for civil law needs is critical if society is to avoid people becoming trapped in a cycle of poverty and disadvantage with criminal, housing, safety and welfare issues. With respect to eligibility tests, Community Legal Centres NSW agrees it is appropriate that the eligibility tests of different legal assistance services operate in accordance with a high level framework, noting that services must also retain flexibility to develop their own criteria responding to priority groups and legal issues in particular communities. We do not, however, support uniform eligibility criteria across CLCs and legal aid commissions. A uniform eligibility criteria approach would mean that the process for CLC service delivery becomes exclusionary, not inclusionary. In response to the draft recommendation on funding of CLCs, Community Legal Centres NSW agrees that resources should be targeted to meet highest need and that there are areas of significant unmet need and serious gaps

in service. Whilst we agree that there should be a transparent funding model, we note that, inter alia, to determine funding provided to CLCs based solely on legal need ignores the huge scope and benefit of work that CLCs do in community legal education and advocacy and law reform; legal need is an important factor in directing services to those most in need, however we posit that measuring outcomes of community education and law reform work is difficult. Enabling CLCs to be funded to engage in these activities, along with advice and casework, is fundamental to having a truly progressive legal system. We note that competitive tendering is proposed as a possible method for allocating funds. In our view, competitive tendering is not necessary and would negatively impact CLC sector productivity, capacity, performance, and therefore services to clients.

The third section addresses other comments and statements made in the Draft report. We are pleased to see the Commission's recognition of advocacy work, noting that it should be a core function of CLCs and Legal Aid Commissions. We ask the Commission to provide evidence for its comments around efficiencies of Community Legal Centres and Legal Aid Commissions, noting that both strive for efficiencies on scarce resources. We discuss the complex nature of CLC work, highlighting that a significant percentage of CLC clients present with multiple issues and characteristics, that require a holistic and time-intensive approach. Community Legal Centres NSW brings to the Commission's attention that there have been many reviews of the legal assistance sector over the past years, with few recommendations having been implemented arising from these reviews. We note our concerns to the suggestion of a Legal Expenses Contribution Scheme (LECS); we believe such a scheme would lead to low income Australians facing further financial disadvantage and pressure. In response to the Commission's comments on the benefits of alternative mechanisms to resolve disputes, we note that many CLC clients are vulnerable and present with complex needs that make their participation in such alternative mechanisms difficult. We support in principle a single referral point for legal information and advice, however we note the difficulties in referring a client from a generalist referral service to a specialist service, where the advice may be duplicated or contradicted. With respect to the draft recommendation on volunteers, we note that increasing volunteers is not a sustainable substitute for addressing increasing legal need. And, lastly, we call upon the NSW

Government to both increase its per capita spending for CLC programs and redress reduction in Public Purpose Fund funding through providing recurrent core funding to CLCs from NSW Treasury's consolidated revenue.

## **2. Introduction**

This submission has been prepared in response to the Productivity Commission's *Access to Justice Arrangements Draft Report* released on 8 April 2014.

The submission has been informed by a number of sources including: consultation with member Community Legal Centres in NSW; consultations with colleagues in other States and Territories; and data and case studies collected by Community Legal Centres NSW from sources such as its member CLCs, the Law and Justice Foundation of NSW and submissions made to previous inquiries.

Community Legal Centres NSW has chosen in this submission to respond to the main issues raised in Chapters 20 and 21 that impact on Community Legal Centres. We also address issues and comments made in other sections of the Draft Report that are relevant to Community Legal Centres.

## **3. About CLCNSW and Community Legal Centres**

Community Legal Centres NSW Incorporated (CLCNSW) is the peak representative body for 38 member Community Legal Centres (CLCs) throughout NSW, including generalist and specialist CLCs. CLCNSW also has associate members who support the aims and objectives of the organisation. It provides services to member CLCs in the areas of network support and development, communications and information, legal policy development and advocacy, and sector development. CLCNSW represents the interests of CLCs, co-ordinates strategic direction and development for the sector as a whole, and liaises and negotiates with government on relevant legal, equity, funding and program issues. CLCNSW is the NSW State member of the National Association of CLCs (NACLC).

Community Legal Centres provide a range of legal services including:

- Free, easily accessible advice, representation and casework
- Information and referrals
- Community education
- Systemic advocacy and law reform on behalf of disadvantaged groups
- Self-help resources
- Training of community workers
- Outreach services
- Community development

#### **4. The unique role and place of Community Legal Centres in the community**

Community Legal Centres are independent community organisations that provide free legal services focussing on the most disadvantaged members of the community. They focus on helping people who cannot afford a lawyer and cannot obtain Legal Aid either because of the Legal Aid means test or because Legal Aid does not assist with their type of legal problem. Community Legal Centres provide a safety net for those who have no other option for legal assistance.

The Attorney-General's Department noted in 2009:

“98 per cent of legal aid recipients [receive] an income that would be considered well below the poverty line. This leaves much of Australia unable to afford legal representation but nevertheless ineligible for legal aid”.<sup>1</sup>

Through their early intervention legal work, Community Legal Centres play a large role in reducing potential long-term costs to the community. This early intervention work aims to educate people about the law so they can avoid legal disputes altogether, or where people are already involved with the law, assist them to resolve disputes early without resorting to costly litigation.

Investing in CLCs means an investment in social justice, which ultimately leads to healthier, happier and stronger communities. Access to justice for all individuals is a

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<sup>1</sup> Attorney-General's Department, Strategic Framework for Access to Justice in the Federal Civil Justice

linchpin for a community that values and enforces fundamental human rights for all individuals.

Community Legal Centres do not just provide legal advice. Community Legal Centres also provide legal information, representation, community legal education and engage in law reform activities to promote systemic policy changes. Because Community Legal Centres are independent community organisations, Community Legal Centres are seen as a part of the local community and are able to reach out to people who would not access other forms of legal assistance. Community Legal Centres work in partnership with local community organisations and small specialist services such as migrant resource centres and local disability organisations. This can involve the co-location of services, offering outreach services based in local community organisations, or working on joint projects to meet the legal needs of local disadvantaged communities. Being a local community organisation working in partnership with other local community organisations and having greater flexibility and less bureaucracy than other legal service providers, means that Community Legal Centres are able to meet the legal needs of their local community in a way that is much more responsive and effective.

CLCs work closely with other service providers to ensure that clients who contact CLCs are referred to a more appropriate service, particularly if the client's issue is not a legal one. Many CLCs in NSW have, over the years of their operation, developed productive relationships with local service providers. These are not always documented formally in the sense that there may be, for example, a formal Memorandum of Understanding between the two organisations. Instead, they are demonstrated through effective referrals, regular liaisons with each other, and network meetings.

Examples of these arrangements are:

- The Cooperative Legal Services Delivery (CLSD) program, managed by Legal Aid NSW. CLSD facilitates forums in regional areas to enable local legal and non-legal service providers to get together to share information, create awareness of each other, and collaborate on projects that increase access to justice. Rural, regional and remote (RRR) CLCs play a leading role in CLSD forums.

- The interagency networks and forums on domestic violence, which bring together a range of services to meet the needs of a particular, very vulnerable, client group.
- Redfern Legal Centre has a number of initiatives to ensure it engages with its local community organisations, including its Helping the Helpers training program and a “Community Worker Alerts” email list, which provides tailored information on training offers and legal tidbits relevant to their work to community workers.
- The GP Toolkit created by Women’s Legal Services NSW to assist doctors in identifying and responding to women and children who have experienced or are experiencing family violence.
- Programs developed by CLCs and Migrant Resource Centres to meet the legal and other needs of particular migrant communities.

We understand that Section 5.1 of Draft Working Paper 2 from the National Partnerships Agreement (NPA) review makes the following observation:

*The views of police, courts and judiciary support a finding that legal assistance services are helping resolve issues earlier (see Box 5.3). Views of non-legal service providers concerning the impact of legal assistance services on earlier resolution of legal problems are mixed, showing the highest proportion of respondents that agree or strongly agree refer to services delivered by community legal centres, at around 70 per cent (of those providing a response). For ATSILS, FVPLS and legal aid commissions the corresponding proportions were all between 50 per cent and 60 per cent.*

This illustrates the way in which the relationships that Community Legal Centres have with the local community enables them to provide services that better meet the needs of that local community.

## **5. Responses to draft recommendations in Draft Report**

### **5.1 Funding for civil law**



***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.

***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.

Community Legal Centres have long recognised that civil law needs are critical and that civil law problems directly impact people's livelihood, housing, safety and welfare. We recognise that civil law funding has historically been inadequate and that a mechanism to ensure adequate allocation of funding for civil law matters is required. We do not support a reduction in funding for criminal matters to address the need for civil law funding. Proposed changes to the justice system should not result in a reduction of the quality nor the quantity of the current services provided to disadvantaged people.

We encourage the Productivity Commission to conduct or commission detailed analysis on the extent of resourcing required to reach a reasonable and necessary level of assistance for civil law matters as the Productivity Commission has done in a number of other inquiries. Community Legal Centres NSW endorses the suggestions made by the National Association of Community Legal Centres (NACLC) in their submission about what the Productivity Commission could do to quantify the level of funding required to adequately fund legal assistance services in Australia.

A NSW CLC noted that:

*We don't have a problem with this approach provided the amount of funding given to each area of law is independently assessed and calculated on the basis of need for that area. That is, the government doesn't decide there is \$X in total which is then split Y% for civil and Z% for crime. Such an approach would undoubtedly see the funding for civil matters being significantly insufficient.*

Another NSW CLC noted that:

*Civil law matters are important as they are ubiquitous and if left undealt with, can often escalate into criminal and/or family matters. CLCs deal with a lot of civil law and should continue to do so as "the fence on the top of the cliff". For example, a small civil fine that is not dealt with can escalate to an offence 'drive whilst unlicensed' (usually many times over) which is a criminal matter. Any early intervention in civil matters will save the funders more money in the long term.*

## **5.2 Eligibility tests**

***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.*

Community Legal Centres NSW agrees it is appropriate that the eligibility tests of different legal assistance services operate in accordance with a high level framework, noting that services must also retain flexibility to develop their own criteria responding to priority groups and legal issues in particular communities. We agree that CLCs and legal aid commissions should work together to ensure that services' eligibility criteria are complementary and operate together to provide maximum access to justice for the relevant community or client groups.

Noting that CLCs already target and prioritise their assistance to the most disadvantaged, in addition to the factors listed above, we suggest that eligibility tests for certain types of service should also reference whether the legal matter or case under consideration has potential to have an impact broader than on the individual parties. When deciding to take on casework, CLCs actively consider whether a matter has broader public interest elements, which will provide social justice for a larger group of people. CLCs also assess the socio-economic disadvantage experienced by the client, such as their Culturally and Linguistically Diverse (CALD) background, Aboriginality and

age. The following case study, supplied by Kingsford Legal Centre, demonstrates the need for consideration of public interest in taking on matters:

*Case study: Alice*

*Alice arrived in Australia from China in on an 'Other Family (Class BO) Carer (Subclass 116)' visa. This visa gives Alice permanent residency.*

*Alice was providing full-time care for her husband, who suffers from schizophrenia, until he started to become violent. As a result of this domestic violence, Alice had to move out of the home she was sharing with her husband and now lives in crisis accommodation for single women escaping domestic violence, which is provided by a charity organisation.*

*Her son currently lives overseas with family, who are no longer able to care for him due to illness. Alice's current housing provider does not provide accommodation for children, so she will not be able to continue to live in her current accommodation once her son arrives.*

*Alice applied for public housing but was rejected because Housing NSW policy states that people on carer's visas' are not eligible for public housing until they have lived in Australia for 10 years.*

*One of the reasons Kingsford Legal Centre (KLC) decided to assist Alice complain to Housing NSW was because KLC was hoping to convince Housing NSW to change this particular policy. KLC thought that changing this policy would benefit other newly arrived migrants experiencing domestic violence.*

We note that considering the prospect of success of a client's matter is a basic professional requirement for all legal practitioners. We further note that due to the significant diminishing of public legal aid funds, CLCs are often faced with situations where clients are regularly declined service based on lack of resources rather than the means and merits of the matter or prospect of success.

***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.*

Uniform eligibility criteria across CLCs and legal aid commissions are not supported. One of the greatest assets of CLCs in their current form is that they can respond quickly to the needs of disadvantaged people in their catchment area as assessed and determined by the centre in a flexible and equitable way. A uniform eligibility criteria approach would mean that the process for CLC service delivery becomes exclusionary, not inclusionary.

In brief, such an approach would remove CLCs' capacity to:

- Focus on community-specific needs or variations in the legal issues affecting a CLC's client group or community;
- Respond to emerging issues and needs within a CLC's client group or community;
- Assist people who do not meet the means test elements of legal aid eligibility criteria but who experience various forms of disadvantage and marginalisation and would face severe injustice if excluded from all legal service assistance.

A uniform formal eligibility criteria would introduce inefficiencies and unnecessary 'red tape' into CLC operations. The process of verifying eligibility would introduce a new level of cumbersome bureaucracy; most, if not all, CLCs would not have the administrative staff or infrastructure and funding to oversee, assess, collect monetary contributions or enforce formal eligibility criteria.

A number of CLCs pointed out that a strict eligibility test itself becomes a barrier to access to justice for many disadvantaged people. For example, a woman escaping domestic violence may not be able to produce evidence of her identity, bank account statements, or be able to articulate the merits of her case sufficiently to obtain a grant of legal aid without assistance. Further, a strict test might exclude clients with mental health issues who should be assisted. For example, a farmer in a remote area who owns a property that is worth a lot of money yet has no access to cash; the farmer may be experiencing feelings of suicide and depression arising from the inability to pay bills on time. Due to the flexibility of CLCs, they are able to provide services to these clients who may have been turned away from other legal services with strict eligibility criteria.

The lack of up-front eligibility testing by CLCs is a great contributor to both the accessibility of services and to the lower cost of service delivery. The NACLC National Accreditation Scheme requires all CLCs to maintain policies and procedures to assist in decision making when determining service delivery strategies to meet the needs of their local community as well as assisting individuals with their legal matter. Each CLC determines transparent policies and procedures to enable staff to design and deliver a flexible service delivery model which is responsive to the needs of local communities/region. Whilst these may vary from CLC to CLC they are all based on the National Accreditation Scheme requirements.

If Community Legal Centres use the same eligibility test as Legal Aid Commissions, the legal needs of the clients that CLCs currently target will be left unmet. In 2012-13, Community Legal Centres in Australia helped over 211,000 people with direct services (249,000 sessions of advice and 76,000 cases) in addition to providing 4,000 legal education sessions and responding to 171,000 requests for information from the public.

Community Legal Centres NSW endorses the comments made by the National Association of Community Legal Centres (NACLC) in their submission about the advantages of high-level eligibility principles, rather than common eligibility criteria for legal assistance services.

### **5.3 Re-distribution of CLC funds**

***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.*

**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.*

A redistribution of CLC funds, on its own, will not reduce the current unmet legal needs of disadvantaged Australians. Any changes to the legal assistance system should not lead to reduced access to disadvantaged people currently receiving assistance.

We understand that the NPA review found:

*There is no evidence to suggest that improvements in efficiency would lead to cost savings of sufficient magnitude to meet current shortfalls in demand for services for disadvantaged Australians.*

And:

*The Review found strong indications that current levels of service delivery were not sufficient to support the NPA outcomes and objectives. These service shortages have an impact on achievement of the NPA outcomes, including on early resolution of legal problems. Some service providers were constrained in meeting the needs of clients requiring more intensive assistance, in the form of ongoing task assistance and/or legal representation, or where a range of legal and related support services are appropriate.*

We encourage the Commission to conduct or commission detailed analysis on the extent of resourcing required to reach a reasonable and necessary level of assistance as the Commission has done in a number of other inquiries. Community Legal Centres NSW endorses the suggestions made by the National Association of Community Legal Centres (NACLC) in their submission about what the Productivity Commission could do to quantify the level of funding required to adequately fund legal assistance services in Australia.

Community Legal Centres NSW agrees that:

- Resources should be targeted to meet highest need;
- There are areas of significant unmet need and serious gaps in service;
- Some work is warranted to ensure CLC resources are being applied in a way consistent with changing legal need; and
- There is some potential for CLCs to work together to improve coordination of legal needs analysis, service planning and service delivery.

Whilst we agree that there should be a transparent funding model, we note that, *inter alia*, to determine funding provided to CLCs based solely on legal need ignores the huge scope and benefit of work that CLCs do in community legal education and advocacy and law reform; legal need is an important factor in directing services to those most in need, however we posit that measuring outcomes of community education and law reform work is difficult. Enabling CLCs to be funded to engage in these activities, along with advice and casework, is fundamental to having a truly progressive legal system.

We note with caution the reliance on statistics alone, such as SEIFA data, to identify areas of disadvantage when considering redistribution of funding for CLCs. For example, there are pockets of severe disadvantage in the suburb of Marrickville, such as South Marrickville and a large number of boarding houses. When examining SEIFA statistics, the granularity of the statistics is important. Analysis should not necessarily be done at the Local Government Area (LGA) or suburb level, but rather at the smaller Statistical Area Levels 1 or 2.

Taking Marrickville Legal Centre as an example of a centre based in one suburb, it has a large catchment with a population of over 1.4 million people in Sydney. While the Centre is located in Marrickville, its catchment includes suburbs like Bankstown, which the Commonwealth government identified as a priority area of disadvantage in its Building Better Communities program.

We also note that CLCs in rural, regional and remote areas may be servicing a small population base of disadvantaged people but over a large geographical area so

additional resources are required to provide an effective service. In addition, the complexity of legal needs within some disadvantaged communities as found by the recent Law & Justice Foundation of NSW's LAW Survey needs to be recognised as a factor in designing and delivering effective legal service delivery and funding required.

We note the Productivity Commission's comments on the historical nature of funding for CLCs and the placement of some centres. CLCs evolved from a concern that many in the community were missing out on legal services; inevitably, many of those in the community lived, and still do, in 'pockets' of disadvantage in suburbs, including inner city suburbs such as Redfern and Marrickville. CLCs are therefore located where there are significant populations of people experiencing socio-economic disadvantage.

There are a number of factors to consider in any analysis of legal need. A state-wide specialist CLC made the following observations when considering this:

- *Amongst those who are the most disadvantaged are people who are homeless or itinerant. These people do not have postcodes, but if they are counted in places where they are located at any one time, tend to be concentrated in city centres or near major railway interchanges, which for other reasons would appear to be 'affluent' postcodes.*
- *Postcodes refer to households and do not distinguish the relative access to finances of any individual member of a household. For example, women and children escaping domestic violence are just as vulnerable whether escaping a rich or poor abuser and just as likely to have limited or no access to the funds of the perpetrator. Live-in servants and trafficked persons can also be living in affluent areas without experiencing the affluence of their surrounds.*
- *Many CLCs occupy premises that have been donated or offered at subsidised rentals by local councils or other government agencies and tend to be premises available due to being unsuitable for their original intended use. Forcing CLCs to vacate such premises in circumstances where similar accommodation was not available in the poorer area would result in CLCs having to pay higher rent, with resulting reduction in funds available for service delivery while not receiving any benefit from the sale or re-use of the property vacated.*



- *CLCs are non-residential uses and cannot operate in areas zoned residential even where the postcodes so zoned are of greater disadvantage.*
- *It is not necessary to be located in a disadvantaged postcode to be a convenient source of assistance for residents of a disadvantaged postcode. Location in an area which is accessible to public transport, which is safe to travel in at night, and which is clustered with other services needed by disadvantaged people such as police, courthouses, medical services, schools etc. would be of greater benefit.*
- *CLCs rely on pro bono services to assist with the provision of legal advice. Solicitors who work in a CBD or urban centre and have little free time would have a disincentive to offer their support if compelled to travel a greater distance to a location less convenient to transport. For example, Women's Legal Services NSW discontinued an evening advice service provided by volunteers due to inaccessibility.*
- *The office locations of other legal assistance providers are also determined by reference to availability of other services as implied above; we posit this reasoning should apply to why CLCs are also located as they are.*
- *Specialist CLCs service an entire state or even the whole country. For such services a hub in a central location is a rational and convenient option. If compelled to relocate to a disadvantaged postcode, we query how that would be equitable for all the residents of every other disadvantaged postcode in the state.*
- *Specialist services offer advice by telephone, internet, outreach etc. so location of an office is not a relevant factor in considering their accessibility for disadvantaged people.*
- *For similar reasons, Centrelink, and other government, offices are also not located in the most disadvantaged postcodes.*

We note that competitive tendering is proposed as a possible method for allocating funds. In our view, competitive tendering is not necessary and would negatively impact CLC sector productivity, capacity, performance, and therefore services to clients.

CLCs operate on a model of collaboration and sharing of specialist skills and resources; supported by Community Legal Centres NSW, CLCs operate on a network model whereby different workers across CLCs may be working on law reform initiatives and

developing community education resources as well as informal mentoring of less experienced staff. This model of collaboration provides for economies of scale for information sharing. The draft report highlights the importance of community ties and this is a very important factor, which CLCs harness through their collaborative approach with each other.

A NSW CLC provided the following commentary on competitive tendering:

*The experience of competitive tenders for CLCs has been difficult. In some service areas it has led to CLCs accepting lower than sustainable resources to run a program (for example: in Family Relationship Centres partnerships). In other situations it has resulted in unnecessary damage to co-operative relationships, (such as in the expansion of women's domestic violence court advocacy schemes).*

*If competitive tendering is to be used for allocation of funding, the criteria in the tender need to include: the benefit of local experience and capacity to attract volunteer contributions.*

*A competitive tender that pitches CLCs against LACs would be inequitable as LACs have significant back office resources to commit to such a process which CLCs lack.*

*In general, competitive tendering undermines collaborative service delivery practices and in an environment of scarce resources we should encourage sharing rather than competing to get more impact from taxpayer investment.*

Putting the emphasis on competition rather than co-operation will also diminish the attractiveness to volunteers and to the communities that CLCs have been built to serve. The volunteer and pro bono resources that CLCs rely on to increase capacity to service clients are often connected to the location of the CLC (proximity to major commercial centres and universities) and cannot be replicated in other areas.

Further, pre-existing relationships between CLCs and local marginalised and disadvantaged communities should not be underestimated. Building trust and relationships with people and services in communities takes time and a lot of investment

and is key to providing accessible legal services to the most vulnerable people. The following case study, provided by Kingsford Legal Centre, demonstrates this:

*Case study: Kooloora Community Centre*

*Kooloora Community Centre is located in an area surrounded by housing public estates. The coordinator of the service has a great relationship with the local residents, many of whom are elderly and extremely disadvantaged. We invested a lot of time and energy building up a good relationship with the coordinator and local residents.*

*The coordinator now refers many community members to Kingsford Legal Centre (KLC) for legal advice and KLC also provides an outreach legal service at the centre on a fortnightly basis. The success of the outreach has meant that local tenants groups are now approaching for advice about how to run effective meetings.*

*This relationship has meant that KLC is able to provide accessible legal services and other empowering skills to a vulnerable group of people, many of whom would not have had the confidence to do so before.*

A collaborative model involving CLCs in the decision making process is a more appropriate and effective approach. There are already many examples of CLCs working either with other CLCs or with legal aid commissions and other CLCs to jointly map legal need, plan and coordinate services, and maximise efficiency and effectiveness. The following case study demonstrate the effective way CLCs, legal aid commissions and other legal service providers have collaborated on a systemic issue:

*Case study: Work and Development Orders*

*In 2006, the Public Interest Advocacy Centre (PIAC) prepared a report *Not Such a Fine Thing!*, which set out options for reforms of the management of fines matters in NSW. Subsequently PIAC worked cooperatively with other community organisations and with the Attorney Generals Department to reach a practical answer to address the unintended consequences of the Fines Act 1996.*

*In December 2008, the Act was amended to incorporate a pilot scheme for Work and Development Orders (WDOs). The pilot scheme provided guidelines for WDOs where a person has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship following issuing of a fine enforcement order. The WDO effectively allowed the person to work off their fine at an early stage, and the order could include unpaid work, training, counselling or drug and alcohol treatment.*

*The Illawarra Legal Centre (ILC) worked with community organisations and the State Debt Recovery Office (SDRO) to operationalise the mechanisms by which people would be able to undertake and register for WDOs. It also worked to promote use of WDOs and take up of the scheme by sponsors. As a result there was a significant uptake in the next year with 900 WDOs issued through ILC action alone.*

*There is likely to be a benefit to society through the cost savings. Currently, 16,000 WDOs have been approved, \$2.0 million worth of unpaid work has been carried out and \$18.0 million in outstanding debt has been cleared.*

*CLCs work with Legal Aid NSW, the Aboriginal Legal Services and other service providers in implementing the WDO system.<sup>2</sup>*

If a competitive tendering model for legal assistance services was to be developed, it would need to be administered by someone other than legal aid commissions to avoid an obvious conflict of interest.

Community Legal Centres NSW endorses the comments made by the National Association of Community Legal Centres (NACLC) in their submission about the advantages of collaborative rather than competitive tendering-based approaches to funding of legal assistance services.

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<sup>2</sup> Effectiveness of CLC law reform work report (forthcoming report from Consumer Credit Legal Centre NSW)

## 6. Responses to statements in the Draft Report

Community Legal Centres NSW has the following responses to a number of statements and comments from the Draft Report.

### 6.1 Advocacy work of Community Legal Centres

We note the Commission considers that “advocacy should be a core activity of LACs and CLCs (particularly peak bodies and the larger CLCs)”.<sup>3</sup> We are pleased to see this statement in support of the systemic advocacy work undertaken by public legal assistance providers.

CLCs have, since their inception in the 1970s, recognised that discriminatory laws and policies are often the cause, not a symptom, of disadvantage for many in the community. Information and advice to individual clients on their own will not ameliorate the causes of disadvantage. Hence a significant part of their work is to undertake systemic advocacy and law reform and policy work to raise awareness of, and challenge, unfair or unhelpful laws, policies and practices to effect positive change. CLCs are well known for their embedded work within their local communities. They are part of their communities and are therefore able to respond to issues which those communities raise and work with them to resolve issues. This often involves a combined community legal education and law reform approach.

CLCs have focussed on both representing the interests of their client groups and ensuring that people have a voice themselves within law reform processes; this work by CLCs ensures that changes in laws do not disproportionately impact on vulnerable groups who are often disenfranchised from such processes. The involvement of CLCs in law reform processes has been recognised as a valuable and indispensable part of the legal system. Research has demonstrated the integral role in law reform processes of community organisations such as CLCs in being important ‘linchpins’ between individuals and communities and government.<sup>4</sup>

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<sup>3</sup> Page 625, Draft Report, Productivity Commission inquiry into access to justice (April 2014)

<sup>4</sup> Nheu, N, & McDonald, H, 2010, *By the People, for the People? Community Participation in Law Reform*, Law and Justice Foundation of NSW, Sydney, page 265

CLC law reform and systemic advocacy activities encompass a broad range of activities, which include the following:

- Working in coalition with other CLCs, service providers, and the community to effect change.
- Planning and running specific law reform campaigns.
- Meeting with politicians and government.
- Participating in advisory councils and bodies or policy bodies.
- Providing advice to individuals and community groups undertaking their own law reform campaigns.
- Responding to government and other requests for submissions to inquiries.

As a result of these activities, CLCs have been successful in achieving changes to laws, policies and practices which are unfair or unnecessarily oppressive or burdensome. A recent example is as follows:

### ***Boarding houses reforms***

*Many CLCs, including the Tenants' Union of NSW, lobbied successive Governments for laws to provide basic safeguards and access to justice for residents of boarding houses. The campaign sought to legal protection via legislation for this socially and economically disadvantaged group of citizens, who are extremely vulnerable to homelessness. During this campaign, which spanned over a decade, CLCs were active participants in the Boarders and Lodgers Action Group (BLAG): a coalition of interested community workers, legal professionals and tenancy workers. As a result of this effective campaign, the current NSW Government enacted the Boarding Houses Act 2012. Prior to this legislation, legal advice and casework in relation to boarders was largely futile, as there simply were no effective legal protections.*

*This campaign for law reform was analysed in the Law and Justice Foundation report, *By the people, for the people? Community participation in law reform\**. The report stated:*

*“In the Boarders and Lodgers Case Study we found that it was the legal expertise of legal CSOs, coupled with their knowledge of the needs of disadvantaged communities and the impact of the law on these groups, which enabled them to demonstrate the practical consequences of lack of legislative protection for boarders and lodgers (legal CSO):*

*... the two [providing services and law reform work] go hand in hand. It's very hard to not get involved in law reform when you're*

*working as a tenant's advocate ... definitely the two go hand in hand ... When you're talking to clients and you're constantly saying to clients, 'Yes, I know that's crap but that's the way the legislation is ...' (Legal CSO)*

*The particular circumstances and living arrangements of boarders and lodgers also meant that, in practice, it would be very difficult for these individuals to be involved in law reform other than through the advocacy of CSOs, as they themselves are often marginalised and unwilling to rock the boat:*

*... the majority of our clients do have quite serious mental health issues. So they don't have the capacity a lot of the time to do their own lobbying or advocating, they're disenfranchised as it is for various reasons ... there's no legislation protecting you ... they'd ring us up for advice and we said, 'Do you want us to contact the landlord?' and they'd say, 'No. I don't want to do this bit. I don't want to rock the boat ... I can't afford to get kicked out. I've got nowhere to go.' (Legal CSO)*

*Information about some disadvantaged individuals or groups, and particularly those groups with complex needs, may be unknown to law-makers unless the CSOs that work with them and have knowledge about their issues are capable of participating in law reform."*

*\*Nheu, N & McDonald, H 2010, By the people, for the people? Community participation in law reform, Law and Justice Foundation of NSW, Sydney, pp 202-203.*

## **6.2 Efficiency of CLCs**

A number of CLCs in NSW have responded to the following comment in the Productivity Commission draft report: 'The LACs are also better able (than CLCs) to achieve economies of scale through high volume service delivery... Evidence presented to the Commission suggests that LACs are more efficient in terms of the number of cases held per civil law lawyers when compared with the CLCs.'<sup>5</sup>

The responses from CLCs have questioned what evidence was presented to the Commission in support of this statement and how efficiency is measured in these circumstances. We note that both CLCs and LACs strive to provide services in an

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<sup>5</sup> Page 633, Draft Report

efficient and cost-effective manner in an ever-diminishing funding environment. Having said that, we note the following:

- We understand that in NSW, Legal Aid civil law advice sessions are limited to 20 to 30 minutes. Legal Aid civil law solicitors rarely draft Statements of Claim. Instead, clients are regularly referred to their local Community Legal Centre to have the documents drafted.
- CLCs deal with the most disadvantaged clients who have complex needs that require a substantial amount of time to address. These include people with disabilities, people with mental illnesses, and working through interpreters for people who do not speak English.
- These CLC practices may not appear, prima facie, to be 'efficient' yet they facilitate access to justice.

CLCs have long recognised the need for efficiency on scarce resources and have implemented a wide range of initiatives that result in efficient use of resources for their clients. These initiatives are nonetheless difficult to measure due to the myriad of complexities around measuring such activities and the environment in which they operate. Such initiatives need to be considered in a broader spectrum of indicators and data.

In brief, CLCs in NSW:

- Collaborate with each other to:
  - Identify new opportunities that can be shared amongst more than one CLC;
  - and
  - Avoid duplication of services.
- Provide minor assistance to enable clients to do as much as they can in their own legal matter (self-representation).
- Mobilise pro bono support (such as volunteer solicitors and barristers) to leverage their resources to provide significantly more extensive and complex services.
- Engage in community legal education activities to educate the community about their legal rights and responsibilities. This can be an extremely efficient way of preventing legal problems from arising in the first place, or escalating into larger and more expensive problems.



- Engage in law reform to change law and policies that are unfair, or that are unintentionally or unnecessarily causing legal problems and obstacles for vulnerable members of the community.

These factors, along with others, result in communities that have increased access to justice. They are, however, difficult to measure due to the intangible nature of these activities. For example, a community member may be empowered by attending a community legal education session run by a CLC to resolve their problem (e.g. a wrongly imposed fine) without needing the assistance of a lawyer. The CLC is likely to be unaware that this person has done so – and thus such an activity is not included in the measurement of CLC effectiveness.

An example of where a Community Legal Centre has collaborated with a private law firm to address community legal needs is as follows:

***Case study: Redfern Legal Centre Unfair Dismissal Representation Scheme***

*The Redfern Legal Centre Unfair Dismissal Representation Scheme is run by RLC in partnership with Clayton Utz, an Australian law firm. The Scheme provides free advice and representation to low income employees in unfair dismissal conciliation conferences.*

*Clayton Utz solicitors, while working as secondees for RLC, assist clients with their cases. This includes representation at conciliation conferences and assistance with settlement agreements.*

### **6.3 Complexity of Community Legal Centre work**

We note the following statement in the Draft Report: “Another factor contributing to CLCs low case load is the scale of CLCs. The ‘lumpy’ nature of case work and CLC’s relatively small resource base means that they focus on relatively discrete provision of advice and planned information sessions.”<sup>6</sup>

A number of CLCs have queried the evidence for this proposition. In Community Legal Centres NSW’s experience, its member CLCs, both generalist and specialist CLCs, take

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<sup>6</sup> Page 619, Draft Report

on the most difficult, complex and time consuming matters. These clients present with a multitude of factors.

An example of a client with complex needs requiring extensive time and resources is a woman with an intellectual disability escaping domestic violence. She may be highly traumatised, worried about her children who are also at risk, unable to get bank and other financial papers, and needs many hours of contact to be able to complete a statement or give complete instructions. These factors are complicated by her intellectual disability. CLC staff are trained to provide holistic services to clients with complex needs, as well as acknowledge the time required for dealing with these needs, something that other legal services are unable to do. The majority of CLC clients present with multiple needs; these people are the most disadvantaged in having their legal needs met.<sup>7</sup>

We further note that many CLCs provide one-off advices in complex matters and frequently a client will see a CLC for a series of one-off advices in related matters during the course of an ongoing matter, such as a family dispute.

## 6.4 Reviews of CLCs

We note the following statement in the Draft Report: “No systematic efforts have been made to take account of legal need or the costs of service provision in determining the placement of CLCs or in allocating funding across centres.”<sup>8</sup>

A NSW Community Legal Centre has commented that:

*Community Legal Centres have been intensively and repetitively scrutinised and reviewed throughout the past decade. CLCs have made significant contributions towards the development of tools to analyse need, develop a strategic service delivery model, provide evidence of cost effectiveness and prove what resources would be required to pay comparable salaries to the staff of LACs. The main reason nothing has been done is that in all cases the results*

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<sup>7</sup> Page xv, Legal Australia-Wide Survey, Legal Need in NSW, Law & Justice Foundation of NSW (August 2012)

<sup>8</sup> Page 32, Draft Report: Overview

*of reviews have been recommendations for additional funding, which has never been forthcoming, so nothing is done to change the model.*

*The tendency to open new, underfunded CLCs instead of improving the capacity of existing CLCs is politically driven and has not lead to equitable outcomes. Additional resources are required to improve the reach of CLCs to regions of disadvantage.*

Community Legal Centres NSW submits that the number of reviews of legal services that have taken place over the years have been extensive, yet with very few real outcomes arising from recommendations from these reviews.

In 2004, the Commonwealth and NSW Attorneys General commissioned a review of the Commonwealth Legal Service Program (CLSP) in NSW, with the aim of it contributing to the development of strategies to consolidate and strengthen the program, and a more integrated framework for planning and delivering legal services to disadvantaged members of the NSW community. This review was completed in 2006 with the production of a 274-page report.

The 2006 review report outlined 62 recommendations for improving the delivery of CLC services in NSW. It is disappointing to note that 8 years later, with the exception of a few recommendations, the vast majority of recommendations have either been ignored or implemented in an ad hoc or uncoordinated manner. The review considered a vast amount of material, including 52 submissions, of which 37 were from CLCNSW and its member CLCs.

We urge the Commission to consider in full the reports and recommendations of past reviews, in particular the 2006 report.<sup>9</sup>

## **6.5 Legal Expenses Contribution Scheme**

Community Legal Centres NSW is concerned about the Productivity Commission's

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<sup>9</sup> The report can, for example, be found via the CLCNSW website at:  
[http://www.clcnsw.org.au/cb\\_pages/publications.php?category\\_id=1160](http://www.clcnsw.org.au/cb_pages/publications.php?category_id=1160)

proposal for a Legal Expenses Contribution Scheme (LECS).<sup>10</sup> We are concerned that such a scheme would lead to low income Australians facing further financial disadvantage and pressure. Unmanageable debt is common problem that Community Legal Centres assist low income Australians with. We see that low income Australian are not deterred from taking on further debts that they are not able to service. Thousands of low income Australians take out payday loans' with annualised interest rates of 400% or more.<sup>11</sup> We do not believe that LECS would be a disincentive for low income Australians to pursue unnecessary legal action.

## 6.6 Alternatives to traditional dispute settling mechanisms

We note the following mechanisms are suggested by the Commission as ways of reducing costs by reducing recourse to lawyers and traditional trial and hearing processes: ombudsmen<sup>12</sup>, alternative dispute resolution<sup>13</sup>, tribunals<sup>14</sup>, and self-representation.<sup>15</sup>

The following comment was provided by a NSW CLC in response to these suggestions:

*The protection of vulnerable and disadvantaged litigants from being bullied, re-victimised or bamboozled by the legal process will always require representation, even in relatively informal settings. Restrictions on access to representation (such as grants of legal aid not being available early in family or employment proceedings) will result in inequitable outcomes for the disadvantaged individuals involved. It will also lengthen the time taken within the tribunal for the matter to be resolved. A cost reduction in one area of the system (legal representation) will simply increase costs in another (the tribunal or other forum).*

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<sup>10</sup> Page 566, Draft Report

<sup>11</sup> Zac Gillam and the Consumer Action Law Centre, *Payday Loans: Helping hand or quicksand? An examination of high-cost short term lending in Australia, 2002-2010*, September 2010, Consumer Affairs Victoria, <http://www.consumer.vic.gov.au/library/publications/resources-and-education/research/payday-loans-helping-hand-or-quicksand-2002.pdf>

<sup>12</sup> Page 13, Draft Report: Overview

<sup>13</sup> Page 14, Draft Report: Overview

<sup>14</sup> Page 15, Draft Report: Overview

<sup>15</sup> Pages 19-20, Draft Report: Overview

We posit that whilst there are significant benefits in alternative mechanisms to resolve disputes, particularly those that are less formal than traditional dispute settling processes, many CLC clients are vulnerable and present with complex needs that make their participation in such mechanisms difficult. They will require the support and protection of a system that allows their voices to be heard; this may best be served by allowing them to be represented by a lawyer who is trained in supporting clients with complex needs. The power dynamics that exist in formal legal proceedings are not removed by alternative mechanisms to resolve disputes. For example, Aboriginal and Torres Strait Islander women still face the same disadvantages they experience in the community. An alternative mechanism does not remove this entrenched disadvantage that exists in our community and legal system.

## **6.7 A single referral point for legal information and advice**

We note the following statement: “Information about where to refer parties with legal problems needs to be simple and widely known. The Commission considers that each state and territory should have a single, widely recognised contact point for legal assistance and referral. Each service should be responsible for providing free telephone and web-based legal information within the jurisdiction, and should have the capacity to provide basic advice for more straightforward matters. They should also refer clients to other appropriate legal services where necessary such as local or specialist services. The LawAccess model in NSW provides a working template. These services should prove effective in assisting those people who have the ability to resolve their own legal problems if provided with appropriate information and given some direction. However, disadvantaged Australians are likely to require additional assistance.”<sup>16</sup>

In principle, we support the concept of a single referral point for people seeking information on legal issues. In NSW, we have seen the benefits of the LawAccess model and can see it working for other States and Territories. Arguably, the model could work better if it was run by the Commonwealth to overcome cross-jurisdictional issues or where an issue arises in a different State or Territory. We caution though that

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<sup>16</sup> Pages 10-11, Draft Report: Overview

for this model to work effectively, there needs to be much consultation with State and Territory legal assistance providers to ensure appropriate referrals.

We note the Commission's comment that 'disadvantaged Australians are likely to require additional assistance'. In our experience, referrals from LawAccess to CLCs can mean there is a duplication and possible contradiction of advice. This can occur when LawAccess provides general advice and then refers the caller to a specialist CLC where lawyers have more specialist casework experience than is found in LawAccess.

To avoid this problem, a better model for a referral service would be to keep the top level to referral only and leave the advice to lawyers who are experienced and can give comprehensive legal advice.

## **6.8 Volunteers**

**DRAFT RECOMMENDATION 23.1:** *Where they have not already, all jurisdictions should allow holders of all classes of practising certificate to work on a volunteer basis. Further, those jurisdictions that have not done so already should introduce free practising certificates for retired or career break lawyers limited to the provision of pro bono services either through a Community Legal Centre or a project approved by the National Pro Bono Resource Centre. This could be modelled on the approach currently used in Queensland.*

- *For those not providing court representation, persons eligible for admission as an Australian lawyer coupled with a practising certificate that has expired within the last three years (without any disciplinary conditions) should be sufficient to provide pro bono work, particularly if the service is supervised.*

**INFORMATION REQUEST 23.1:** *Would there be merit in exploring further options for expanding the volunteering pool for Community Legal Centres (CLCs)? For example, are there individuals with specialised knowledge that could provide advice in their past area of expertise such as retired public servants or retired migration agents, that CLCs could draw on in the relevant area? Are there currently any barriers to prevent this?*

Community Legal Centres rely significantly on volunteers to provide services. As we noted in the NACLCLC and State/Territory submission to the inquiry in November 2013:

*In June 2012, NACLCLC conducted a survey of community legal centres around Australia on the use of volunteers and pro bono services. Of the 106 community legal centres that responded, **95.2% utilised volunteers**, and in these centres alone, **3,637 volunteers contributed 8,369 hours of work per week.**<sup>17</sup>*

Ultimately, however, increased use of volunteers is not a sustainable way of dealing with increased legal need. Volunteers play a very valuable role, however we cannot base service delivery on particular volunteers with specific skills being available. The availability of volunteers fluctuates over time, and each volunteer has a different area of expertise, different skills, motivation and varying levels of commitment. They also require legal supervision, and often training in dealing with clients with complex needs, which takes highly skilled staff solicitors away from client contact and demands extra resources from the Community Legal Centre.

## **6.9 Funding for CLCs**

We note figure 20.13 in the Draft Report, which outlines real CLSP funding per person by state and territory, 1997-98 – 2012-13.<sup>18</sup> With the exception of the ACT, NSW appears to have the lowest per capita spending of all States and Territories. Whilst NSW's per capita spending hovers just above \$2.00 per person, others are around the \$3.00 mark.

We express our disappointment that the NSW Government continues to have a low per capita spending on Community Legal Centres. This disappointment is particularly compelling when the contribution made by the NSW Public Purpose Fund to CLC programs is considered in light of total NSW funding for CLCs.

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<sup>17</sup> Page 48, NACLCLC and others submission to Productivity Commission (November 2013)

<sup>18</sup> Page 606, Draft Report

For the 2013-14 financial year, CLCs in NSW have been provided with approximate funding as follows:

Commonwealth (CLSP):	\$9.5m
NSW Government (CLSP):	\$5.7m
<i>Sub-total:</i>	<i>\$15.2m</i>

NSW Public Purpose Fund:	\$4.7m
Total funding:	<b>\$19.9 million</b>

In December 2013, March and April 2014, we have been advised that cuts will be made to funding for 2014/15 and 2015/16 for both Commonwealth and PPF programs. These cuts will impact significantly on the ability of many CLCs to deliver services.

The NSW Public Purpose Fund Trustees have advised that the current model of discretionary payments is unsustainable in both the short and longer term as a result of a considerable increase in grants made over the last decade against a declining interest rate over the same period and reduced use of solicitors trust accounts. This has led to the current round of significant funding cuts. The Trustees made these cuts with the view to giving priority to those programs that provide legal representation for disadvantaged individuals. Further, the Public Purpose Fund Trustees have forewarned there may be further cuts in future years if there are no improvements in interest rates and the economy generally and a continuing decline in use of solicitors trust accounts.

Community Legal Centres NSW believes that the NSW Government must commit to not only increasing its per capita spending for CLC programs but also seek to redress reduction in Public Purpose Fund funding through providing recurrent core funding to CLCs from NSW Treasury's consolidated revenue.

## **7. Further information and contact**

We thank the Productivity Commission for the opportunity to participate in this inquiry and to provide a response to the Draft Report.



Detailed information referred to in this response, as well as any additional information or materials, can be obtained by contacting:

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27 May 2014