



Submission to Productivity Commission

Access to Justice Arrangements

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Table of Contents

Summary.....	1
1. Section One - CLCs in Western Australia	2
1.1 Profile of community legal centres	2
1.2 Integrated service delivery.....	3
1.3 Accreditation.....	4
1.4 Working with LACs to reduce duplication	4
1.5 CLCs and civil law	5
1.6 Eligibility for CLC services.....	5
1.7 Reviewing CLCs services against legal need	9
1.8 Distribution of CLCs.....	12
2 Section Two: Responses to draft recommendations and information requests	16
2.1 Single point of contact	16
2.2 Legal health checks and effective referrals.....	19
2.3 Paralegals	23
2.4 Costs.....	25
2.5 Eligibility	25
2.6 Funding arrangements	28
2.7 Volunteers and pro bono	32
2.8 Data systems	34
3 References	37

Summary

The Community Legal Centres Association of WA (CLCAWA) is the peak organisation representing 28 community legal centres (CLCs) and Family Violence Prevention Legal Service (FVPLSs) operating in Western Australia. This submission has been prepared by CLCAWA on behalf of its members to the Productivity Commission's draft report *Access to Justice Arrangements*, released in April 2014. CLCAWA welcomes the opportunity to respond to the Commission's draft report.

Section One of this submission provides background information about the role and profile of community legal centres in Western Australia, with particular attention to the distribution of CLCs in Western Australia and eligibility criteria. Section One also clarifies the way in which CLC service delivery has been informed by a number of high level reviews that have included demographic and legal needs analysis, so as to ensure that CLCs remain focused on responding to those with highest needs.

Section Two of this submission responds to specific draft recommendations and information requests made in the Commission's draft report.

The CLCAWA strongly supports a legal assistance sector that is accessible and fairly resourced to respond to legal needs where there is market failure in relation to commercial legal services (e.g. consumer who cannot afford market fees, lack of private lawyers in remote areas, lack of lawyers wishing to practice in certain areas of law, matter does not require a lawyer etc.).

CLCAWA supports a legal assistance system that is made of complementary but distinctive providers, such as the current arrangement with CLCs, Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal Services (ATSILs) and Family Violence Prevention Legal Service (FVPLSs). Multiple providers allow for different approaches in meeting legal need and targeting specific groups or issues. Whilst synergy, coordination and collaboration between different providers is essential, the goal must not be blanket uniformity, or else the result will be decreased flexibility and reduced access to justice.

The same principle of complementary difference within a common and coordinated framework is supported within CLCs. A critical success driver in the CLC service model is the connection that centres have to their local communities and their ability to understand and flexibly respond to changing needs and circumstances. Diversity in this context is a strength and asset, not a liability. This is not to say that there are not opportunities that can and must be gained in greater collaboration, streamlined data collection, improved economies of scale and higher levels of integration.

Finally, CLCAWA agrees with the Commission that civil law matters are of critical importance in people's lives and require increased attention.

1. Section One - CLCs in Western Australia

1.1 Profile of community legal centres

Community Legal Centres (CLCs) are community based and controlled organisations providing free or low-cost services to their communities. There are currently 25 community based, community managed CLCs throughout metropolitan, regional and remote Western Australia and three FVPLSs that are members of the CLCAWA.

In 2012/13, WA CLCs assisted 26,942 clients, 18,044 of which were new clients.

CLCs target their services for people who are ineligible for legal aid and unable to afford the services of a private lawyer. Some CLCs provide general community legal services for people living in a geographic area, either in the metropolitan area or in regional and remote areas. Other CLCs provide specialist services for certain clients or in a certain interest area (e.g. mental health, tenancy, women, young people, refugees, employment and consumer issues). Some 'generalist' CLCs also provide some specialist services.

CLC services include information and advice; casework and minor assistance; representation and advocacy; community legal education; policy and law reform. Each CLC may offer difference services, depending on the needs of the community.

The *WA CLC Profile 2007*, conducted for the CLCAWA, found that of 23 responding CLCs:

- 100% provided legal advice and undertake community legal education
- 96% undertook legal casework
- 83% provided some level of telephone advice services
- 74% participated in policy and law reform
- 70% provided some form of legal representation
- 70% provided some form of public interest advocacy
- 22% offered alternative dispute resolution services.

By providing a range of direct services (information, casework, advocacy, representation and mediation) and preventative initiatives (education, policy and law reform), CLCs occupy a key role in the delivery of legal assistance services to disadvantaged groups, with a special focus on:

- early intervention
- dispute prevention
- dispute resolution
- assisting people to represent themselves
- public interest advocacy
- community building.

1.2 Integrated service delivery

Whilst working closely with LACs, CLCs provide a different model of service delivery, with a focus on strong community connection and responsive service delivery that can holistically address complex needs. In addition to legal services, CLCs offer a suite of services such as financial counselling, mediation, welfare rights advocacy, tenancy support and disability advocacy. Community legal education and community partnerships help build resilience in local communities, prevent legal issues arising and ensure early intervention.

As noted in the *WA Joint CLC Review* (2003, p.15):

Diversity in service delivery is a key feature of community legal centres in Western Australia and arises from a focus on local conditions and the context of legal need. Such diversity demonstrates itself as a strength of CLCs – enabling responses that are appropriate to local needs, demographics and conditions.

The value of the integrated service delivery model offered by CLCs is similar to the 'new wave of justice' articulated in the LAW Survey (Coumarelos et al. 2012:207)

A new wave of justice reform has emerged recently in the UK with the objective of achieving a more integrated approach to justice. This latest wave of reform includes introducing a large system of CLACs and CLANs to deliver coordinated legal and non-legal services (Buck et al. 2010a, 2010b; Fox et al. 2010). The policy impetus for this reform came from CSJS findings indicating that existing legal services were too fragmented to deal effectively with the clusters of legal problems that are commonly experienced by many people, especially socially excluded groups. These clusters of legal problems were shown to impact dramatically on a range of life circumstances, indicating the need for a coordinated response from legal and broader human services.

The LAW Survey suggest that a more holistic approach to justice is required that includes all of the following strategies:

- legal information and education
- self-help strategies
- accessible legal services
- non-legal advisers as gateways to legal services
- integrated legal services
- integrated response to legal and non-legal needs
- tailoring of services for specific problems
- tailoring of services for specific demographic groups.

It is from such a model of integrated, holistic service delivery that CLCs operate.

1.3 Accreditation

The National CLC Accreditation Scheme has been developed to provide an industry based certification process that supports good practice in the delivery of community legal services. Full members of CLCAWA must comply with the NACLAC Accreditation Criteria. The NACLAC Accreditation Criteria and the evidence requirements for certification incorporate the current Community Legal Services Program Service Standards and the requirements of the NACLAC Risk Management Guide.

1.4 Working with LACs to reduce duplication

Page 616 of the Commission's draft report states 'To get more out of the legal assistance dollar, duplication needs to be reduced — the CLCs, ATSILS and FVPLS should leverage more off the LACs in the area of information and resources and only add original information in specialised areas where material is not available'.

This is something that WA CLCs and Legal Aid WA (LAWA) work closely on. One example is a partnership agreement that allows CLCs to log into a LAWA portal that contains information sheets for clients and legal essential sheets for lawyers. This way, CLCs can utilise resources developed by LAWA and not 'reinvent the wheel'. In turn it has focused the resources created by CLCs on matters that are not covered by LAWA. CLCs have

produced a *Mediation Booklet* and a *Parenting Plan and Consent Order Booklet* - both areas that are not covered by LAWA resources.

Another example is CLC access to LAWA's 'train and track' system, an online resource that allows for the recording of CPD points and access to online training modules on a fee basis.

1.5 CLCs and civil law

CLCs in WA are one effective mechanism for responding to civil law legal need. A summary of CLC service data for 2011 to 2012 (from all funding sources, not just the Community Legal Services Program) shows that civil law matters accounted for 60% of all information services, 63% of all advice services and 64% of all cases opened (Kalico Consulting 2013). Of these matters, tenancy and credit/debt were the most frequent sub-matters. Family law matters accounted for an additional 37% of all information services, 30% of all advice services and 27% of all cases opened over the same period.

1.6 Eligibility for CLC services

Community legal centres were historically established to provide services to people who do not qualify for legal aid but who could not afford a private lawyer. However, due to funding pressures and increased demand, CLCs, like LACs, have increasingly needed to restrict their service delivery. These restrictions can take the form of narrower eligibility criteria, more focused areas of legal matters that can be dealt with, and/or reduced levels of assistance with eligible matters.

As identified in the Commission's draft report, CLCs determine their own eligibility. However, in a Western Australian context it is not true that 'not all target disadvantaged Australians' (draft report p.33).

Disadvantage is a complex experience and does not rest upon income alone, it often requires considered assessment of the client and his/her circumstances. In understanding disadvantage, it is also important to understand vulnerability. As articulated by Consumer Affairs Victoria (2004:3), disadvantage is largely associated with persistent circumstances, whilst vulnerability is a measure of risk as a result of interaction between someone and their circumstances:

Consumer vulnerability is exposure to the risk of detriment in consumption due to the interaction of market, product and supply characteristics and personal attributes and circumstances. The main cause of vulnerability is this interaction resulting in inadequate information, poor access to information and/or

ineffective use of information by a consumer or in the deterrence of complaint or the pursuit of redress by a consumer.....A vulnerable consumer is a person who is capable of readily or quickly suffering detriment in the process of consumption.

Consumer disadvantage is a persisting susceptibility to detriment in consumption. A disadvantaged consumer is a person in persistent circumstances and/or with ongoing attributes, which adversely affect consumption thereby causing a continuing susceptibility to detriment in consumption. As a result, a disadvantaged consumer repeatedly suffers consumer detriments or, alternatively expressed, generally obtains below-average satisfaction from consumption.

An example of this can be seen in the area of elder abuse, which is a sub-program offered by one of the metropolitan CLCs. An older person may not appear disadvantaged when a narrow means test is applied, but they may be highly vulnerable (Case Study #1).

Case Study #1

The client (85 year old) had jointly appointed her two daughters as her enduring attorneys.

After having suffered a serious fall, the client was hospitalised and at a family meeting with the medical staff her attorneys were advised to seek residential placement for their mother. While in transitional care the client's attorneys sold her house and disposed of the contents. They also took control of her banking and financial affairs. They refused to take any direction from their mother.

The client instructed the CLC to revoke the Enduring Power of Attorney and investigate the transactions undertaken by her attorneys on her behalf. Investigations revealed that her attorneys had indeed acted outside the client's instructions but had not done so with malicious intent. After discussing this matter with the client, she came to the view that she wanted to retain her daughters in the position of enduring attorneys.

Letters were sent to the attorneys illustrating their breach of obligations under the Guardianship and Administration Act and requesting that they explain all financial transactions undertaken by them. To facilitate the required disclosure to the client, the attorneys were invited to participate in a formal family mediation conference, where lawyers were not permitted. The invitation was declined so, the CLC focused on achieving the client's instructions while ensuring that the relationship with her daughters improved.

The client's attorneys produced all documents that were requested. Moreover, they returned to the client her bank books, bank cards and cheque book, and re-directed the mail to her residential care facility. They also arranged to deliver some of her precious things and personal papers, which had been taken from the house. Although the attorneys remained financially liable to the client for the value of all unrecovered goods, she waived their liability.

The client was not only empowered with control over her finances but also regained her sense of dignity at being able to determine her own affairs within a relationship of growing trust.

An understanding of both disadvantage and vulnerability is reflected in the eligibility criteria and assessment processes used by WA CLCs. Many CLCs have multi-layered eligibility criteria. For example, initial advice and information may be offered to a wider group of clients, but ongoing assistance is based upon holistic assessment and restricted to the most disadvantaged. In developing eligibility criteria, all Western Australian CLCs look at a range of disadvantage and vulnerability indicators including:

- income
- capacity of the client to self advocate
- severity of the legal issue and likely impact if no legal assistance is provided
- circumstances of the client e.g. language barriers, age, disability etc.
- alternative options available.

Although CLCs set the specific details of their eligibility criteria, this does not happen in an unregulated framework. Funding service agreements within specific programs define the parameters of eligibility. For example, the CCLSP guidelines (s6.6) detail the factors that a service provider must consider in deciding eligibility:

- extent to which the person is facing some form of social or systemic barrier to accessing legal services
- extent to which the person meets any eligibility criteria set by the service provider
- vulnerability of the person should no assistance or no further assistance be provided
- potential for reaching a resolution at the earliest opportunity which achieves a just and satisfactory outcome for the client
- extent to which the service required by the person falls within the particular scope of services provided by the organisation
- extent to which the matter is in the public interest
- availability of more appropriate assistance through other service providers
- potential of the service provider to assist the person to achieve a desired outcome, and
- impact the provision of services to a particular person will have on the ability of the service provider to assist other clients and potential clients.

Another example of the importance of assessing context and not just matter type in determining eligibility is provided in Case Study #2.

Case Study #2

Alice is a 40 year old woman. She has three children to her ex-partner, all aged under 11 years. The parties separated last year but remain living under the same roof. The relationship has been characterised by violence and financial coercion.

The parties had no assets of significance when they commenced their relationship. The assets they have now were obtained during their relationship. The husband is currently working in mining earning an income of around \$140,000 pa. The wife pursued part time work after the birth of the first and second child but by agreement with her husband ceased work after the birth of the third child in order to care for the children and maintain the home. The husband has at all times controlled the family finances. Properties, loans and cars were all obtained in his name. The current asset pool available for division includes the marital home (approximately \$100,000 in equity) and the husband's superannuation of approximately \$170,000.

Up until 6 months prior to separation, the husband transferred around \$1,000 per month to the wife for her to use for household expenses. When the parties relationship began to deteriorate, he reduced the monthly payment then stopped paying it altogether. At separation the husband told the wife to "get out of his house" and that she was "entitled to nothing". After a period of living in her car, the husband allowed the wife to return to the marital home and to sleep in the lounge room. They remain living under the same roof with the husband regularly threatening to kick the wife out of "his house".

The wife receives the family tax benefit and parenting pension payments. This income is not sufficient to meet her basic living expenses or expenses for the children. She is not able to afford rental accommodation. Without financial support from her husband, her options are to either remain in the marital home or move in to refuge accommodation.

The wife has to ask her husband for money to meet expenses, for example petrol to take the children to school and basic groceries. The husband regularly refuses. If the husband agrees to give the wife money for her expenses he gives her no more than the minimum she requires and demands she provide him with a receipt for purchases. These interactions occur in front of the children.

The wife has a clear case for spousal maintenance and generous division of property in her favour. Legal Aid provides no funding for legal representation on property and maintenance applications. The community legal sector similarly is not resourced to provide legal representation in relation to property and maintenance applications.

A specialist CLC has provided Alice with advice as to her entitlements and is offering limited ongoing support in trying to negotiate final settlement of maintenance and property matters.

Whilst eligibility assessment allows CLCs to look at a range of disadvantage and vulnerability factors, on the whole, CLCs still really only service people on very low incomes - over 80% of the people helped by community legal centres receive under \$26,000 a year in income (Community Law Australia 2012: 6). In 2012, the state minimum wage was approximately \$32,700 per annum.

1.7 Reviewing CLCs services against legal need

The draft Commission's report suggests that the placement and nature of CLC services has been largely historical and without ongoing review or assessment against changing legal need:

No systemic efforts have been made to take account of the legal need or the cost of service provision in determining the placement of CLCs or in allocating funding across centres. (draft report, p.32)

This is not the case in Western Australia. In the past ten years, there have been two major reviews of CLCs in Western Australia that have provided an agreed framework for the funding, planning and coordination of CLC services in Western Australia, as well as influencing the establishment of collaborative partnerships with other legal assistance providers.

The first study was a joint Commonwealth/State review of CLCs in 2003 that looked at the distribution of CLC services, accessibility, eligibility, management, funding and unmet legal need. Methodology in the review included demographic and socio-economic indicator analysis, surveys, workshops, visits and public submissions.

The major findings of the 2003 Joint Review of Community Legal Centres were:

1. Community legal centres (CLCs) enhance citizenship, make a positive contribution to the community and should be actively supported by all levels of government.
2. The diverse nature of CLCs, the specialist and generalist services they provide and their community involvement, ensures relevant and appropriate services that are responsive to client needs.
3. Existing CLCs are appropriately located and the services they are able to provide with existing resources are aligned with need.
4. Key gaps in coverage exist in four regional areas (Gascoyne, Peel, Wheatbelt and West Kimberley) and three 'geographical corridors' of the outer metropolitan area (north, north east and south east).

In addition to locational priorities, the review identified the following client priority target groups: Aboriginal people, culturally and linguistically diverse people, mental health consumers and young people.

Priority service areas were identified as alternative dispute resolution, domestic violence, family law, representation in general and welfare rights.

The 2003 review was instrumental in planning CLC services at both a state and local level and allocating new resources. Key outcomes of the review included the establishment of a state CLC funding program in 2004/05 and a WA Community Legal Centre Stakeholder Consultative Committee in 2006, with the terms of reference to provide policy development input on:

- ways to facilitate coordination and collaboration throughout the CLC sector; and
- addressing unmet legal needs.

In 2009, the Stakeholder Consultative Committee undertook a further review of WA CLCs and produced a report updating the findings of the 2003 Joint Review. The Committee was made up of representatives from CLCs, Legal Aid, Law Society WA, WA Department of Attorney General and the Commonwealth Attorney General's Department. Objectives of the 2009 review were to:

- provide an update of the key findings and recommendations arising from the WA 2003 Joint Review of Community Legal Centres
- provide an outline of new and emerging legal needs since the 2003 Joint Review
- look at priority areas in the current sustainability of community legal services
- provide a brief outline of current WA demographics as they relate to the update review.

Methodology in the 2009 review included demographic and socio-economic indicator analysis, a service sustainability study, a legal needs survey and program data analysis.

A key finding of the 2009 review was that:

Centres are well distributed in WA with an even split between generalist, specialist and regional centres. There is no duplication in terms of the geographical location of centres in WA. A number of centres offer outreach services to extend their level coverage and address areas of high demand. The ability of CLCs to flexibly respond to changing legal needs is a key part of the place they play in access to justice strategies. Community legal centres work co-operatively with other service providers such as Legal Aid, the Aboriginal Legal Service and Indigenous Family Violence Prevention Legal Services to provide legal assistance to disadvantaged clients in a targeted, efficient and cost effective manner. (Kalico Consulting 2009: p.ii)

The 2009 review identified areas of significant locational, client and service delivery need, showing where there had been a shift in legal need priority. Since 2003 new priority areas included care and protection; employment law; consumer law and debt;

and housing and tenancy. People with complex problems and/or multiple dimensions of disadvantage emerged as a key priority group, as did women, homeless people, older people, and people living in regional, rural or remote areas.

As with the 2003 review, the 2009 findings have informed resourcing, planning and policy decision making at both a program wide and CLC level.

National legal needs and strategic planning project

In 2010, the National Association of Community Legal Centres engaged Judith Stubbs and Associates (JSA) to provide an evidence-based understanding of the distribution of legal need across Australia and for each state and territory in the context of disadvantage. The research applied a model first developed in the Legal Needs and Strategic Planning Project, developed for Community Legal Centres NSW by JSA in 2009.

The methodology used by JSA identified key demographic indicators of legal need and disadvantage, drawn from Australian and international research. From the research JSA (2012) found that the key socio-demographic indicators of reporting any legal problem/event were:

- Lone parent (extremely high incidence of single and multiple legal problems).
- Co-habiting with children (extremely high incidence of single and multiple legal problems).
- Disability (more likely than persons without a disability to report a legal event).
- Crime victim (very high incidence of single and multiple legal problems).
- On benefits (very high incidence of single and multiple legal problems).
- Private sector rent, housing type (flat) and public sector rent (very high incidence of single and multiple legal problems).

Other socio-demographic indicators of reporting any legal problem/event were:

- Age (young and middle age persons are far more likely to report a legal event than persons aged 65 years or more).
- Income (high income earners have a high incidence of single problems but not multiple legal problems; people on lower incomes are less likely to report a legal event).

The CLCAWA considers it significant that the JSA findings are consistent with those found by the Law and Justice Foundation of New South Wales - namely that indicators of disadvantage correlate to higher levels of legal need.

Using identified socio-demographic indicators, JSA developed a model adapted from Pleasance et al (2006, as cited by JSA 2012) that combines and appropriately weights the indicators of legal need and other indicators to determine a probability and overall number of adults in an area likely to experience a legal problem in a three-year period. Using 2006 Census of Population and Housing and Centrelink data, as well as ABS 2010 geographic apportionment data, JSA applied the model for each LGA in Australia.

The model provides for a Probability of Legal Need (proportion of adults in an area likely to experience legal need) and a Calculated Legal Need (numbers of adults in an area likely to experience legal need). Some local government areas (LGAs) will have a high probability (concentration) of legal need but an overall small population, whilst other LGAs will have a high calculated need (actual number of people) but a lower overall concentration in relation to the area's population as a whole. Both indicators are based on the likelihood of experiencing a legal problem of any type in a three-year period. Probability and calculated need was then linked with SEIFA (Index of Relative Socio-Economic Disadvantage) to maintain a focus of overall disadvantage.

JSA applied the model to the 139 LGAs in Western Australia and the model has been increasingly used by individual CLCs in strategic planning to assess and determine services that they provide, priority areas and most disadvantaged client groups. The JSA model was also used by the CLCAWA to help understand unmet legal need in a feasibility study of pro bono models for Western Australia, conducted in 2013 (Kalico Consulting, 2013).

1.8 Distribution of CLCs

The CLCAWA supports the Commission's view that legal assistance services should be located in areas of high need. The Commission's draft report suggests that whilst LACs are informed by evidence of legal need, the placement of CLCs is largely based on history and the initiative of their local communities. The draft report uses SEIFA deciles to suggest that CLCs may be incorrectly placed where there is not evidence of sufficient greatest need (draft report p.634).

Whilst strong local support has been a feature of the placement of CLCs, it is incorrect to suggest that an overview of statewide legal need has not been a consideration in the planning of legal services. As discussed previously in the 2003 and 2009 reviews of CLCs in Western Australia, an evidence informed understanding of legal need has been a strong driver in the funding, planning and location of CLCs in Western Australia for over the last decade at least.

Figure 1 outlines the location of CLCAWA members outside the Perth metropolitan area, showing a spread across major regional centres. Many of the regional CLCs (Kimberley

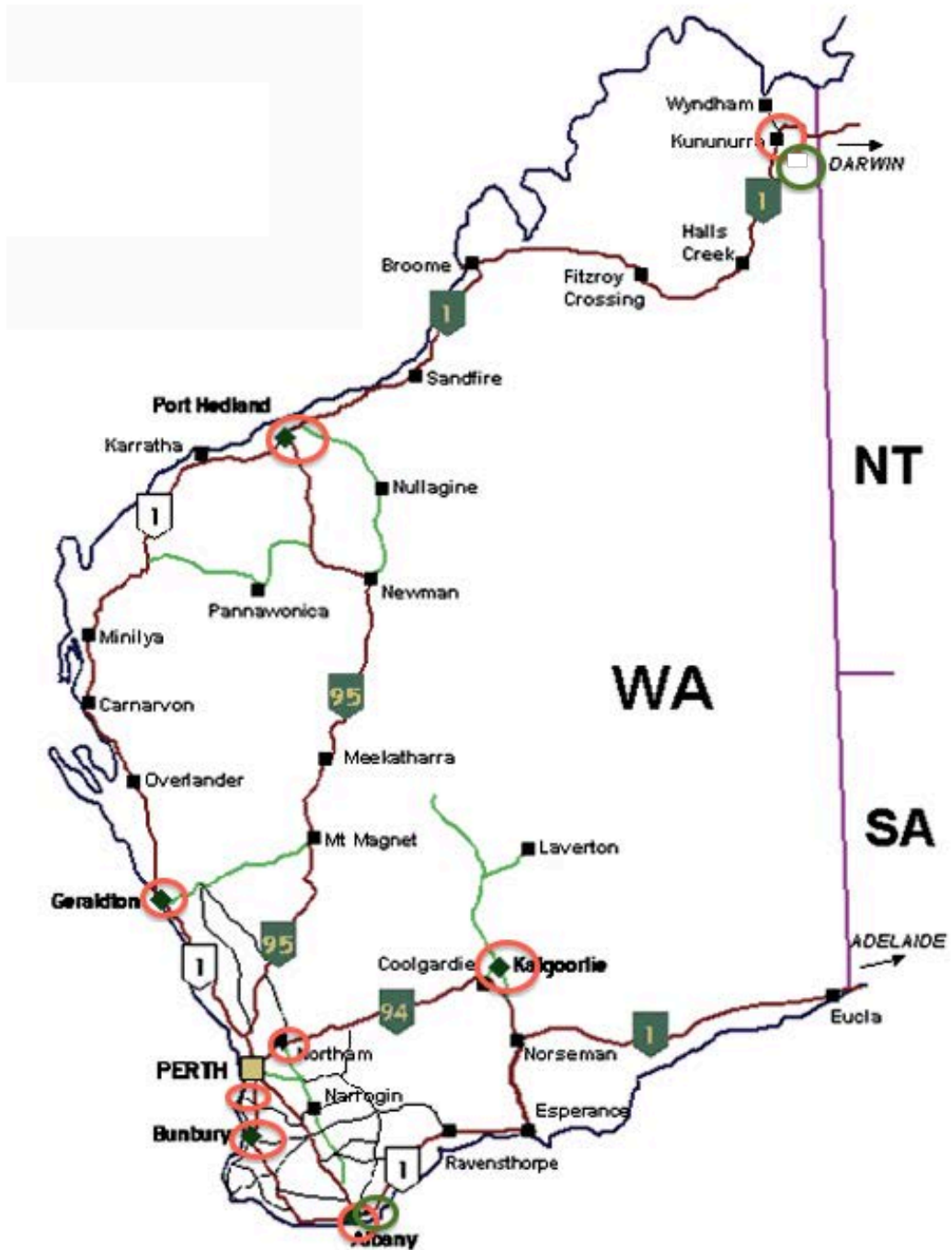
CLS, Albany CLC and Goldfields CLC) and outer metro CLCs (Northern Suburbs CLC and SCALES) were funded following the 1995 Commonwealth Justice Statement and were specifically supported in Western Australia as a strategy to increase access to justice across a state that covers one-third of Australia.

Within the Perth metropolitan, the distribution of generalist CLCAWA members shows placement within disadvantaged geographical areas and an even distribution (Figure 2). There are only seven generalist CLCs in Perth, with three of these having a specialist program that has either a statewide or non-metro coverage area. CLCs have responded proactively to locational needs by providing outreach services (often without additional funding) to outer corridors in the north, east and south.

The concentration of services within the inner city (see black box in Figure 2) indicate eleven specialist services with a statewide focus and the headquarters of one generalist service that has satellite offices across the state (Citizens Advice Bureau). The positioning of specialist services in the inner city area maximises access for clients and allows for greater pro bono partnerships with centrally located law firms. Specialist services are currently working on a co-locational hub project to further the benefits of centralisation, increased efficiencies and reduced costs.

In summary, of the 28 members of the CLCWA, 36% are placed within regional centres (two are regional and remote FVPLSs), 36% are specialists servicing the state, 11% are Perth based centres that have sub-programs that service areas outside the metropolitan region, 14% are Perth based centres and one has non-metro offices staffed by volunteers. Clearly, WA CLCs are not metro-centric in their distribution.

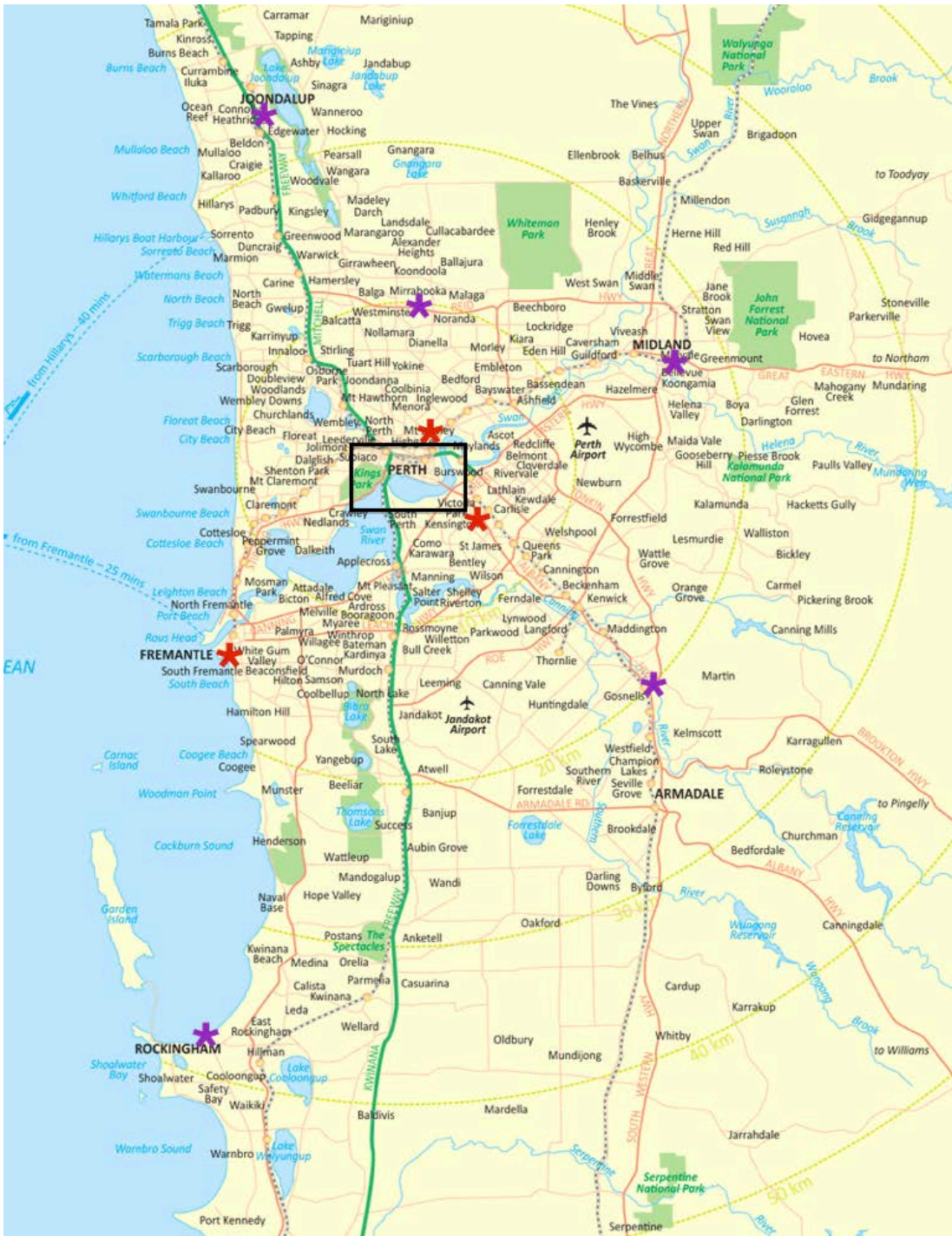
Figure 1: Regional CLCAWA Members



Green circles are RRR FVPLSs.

Red circles are generalist CLCs.

Figure 2: Metropolitan based CLCAWA members



- * Metro only CLCs. Joondalup and Mirrabooka are two locations for the one CLC.
- * Metro CLCs with non-metro service program/s.
- Location of specialist services plus headquarters of one generalist CLC with statewide offices.

2 Section Two: Responses to draft recommendations and information requests

2.1 *Single point of contact*

Draft recommendation 5.1

All states and territories should rationalise existing services to establish a widely recognised single contact point for legal assistance and referral. The service should be responsible for providing telephone and web based legal information, and should have the capacity to provide basic advice for more straightforward matters and to refer clients to other appropriate legal services. The LawAccess model in NSW provides a working template.

Single entry point information and referral services should be funded by state and territory governments in partnership with the Commonwealth. The legal professions in each state and territory should also contribute to the development of these services. Efforts should be made to reduce costs by encouraging greater co operation between jurisdictions.

CLCAWA supports initiatives that attempt to simplify and increase legal assistance access and referral points for people. However the Association cautions against initiatives that over simplify legal assessment processes. Telephone and web-based services can complement but should not replace locally based points of contacts and the resources for centralised contact points should not come from the existing, already stretched legal assistance pool.

The LAW Survey (Coumarelos et al. 2012) showed what CLCs are already well aware of, namely that legal problems tend to be inter-related and co-occur. This can be because one legal problem can lead to another (e.g. divorce can lead to debt issues) or some people are vulnerable to experiencing multiple legal problems (e.g. people on low incomes are more likely to experience housing problems and government benefit disputes). The experience of multiple legal problems is common. In the LAW Survey, 23% of Western Australia respondents experienced three or more legal problems within the 12 month reference period (22% nationally) and 9% of respondents accounted for 63% of the legal problems reported (65% nationally).

Much of the time, people are not aware that they have a problem of a legal nature, as demonstrated in Case Study #3. Case Study #3 also demonstrates the difficulties in fully assessing legal needs over the telephone, without a face-to-face meeting. Whilst some areas of law, such as traffic and some tenancy issues, can be dealt with on the telephone, it is not possible to assess complex matters through this method and it is often not possible to do more than give general information without sighting the relevant documentation pertaining to a matter.

Case Study #3

A young person presented at a regional CLC seeking assistance with a family law matter. He had already sought assistance from the Legal Aid advice line and had been referred to the CLC. At the time of intake he explained that he was concerned about his ability to access his young children after separation. The young person booked in for an appointment.

During the appointment it became clear that the young person was experiencing an intersection of issues that would require assistance. Since separation, a restraining order had been taken out which prevented him from accessing personal documents. He had been unable to provide Centrelink with any documentation to support a claim for benefits and had been homeless without any financial support. During this time he had also committed a traffic offence and was planning to appear in court, on a serious charge, unrepresented.

What became evident during the initial advice session was that the young person was primarily focused on his family law matter, as maintaining a relationship with his children was a pressing issue. The issues regarding his state of homelessness, financial vulnerability and potential incarceration were not raised by himself as matters of urgency and he was largely unaware of the potential ramifications of leaving these matters unaddressed.

The CLC offered the young person urgent follow up appointments with both the Solicitor and the Tenancy Advocate regarding the criminal matter and homelessness issue.

This case study illustrates the point that access to telephone and internet information based legal advice assumes that clients are able to sufficiently identify, prioritise and communicate their legal issues in a particular way so that their issues are effectively picked up upon and dealt with appropriately. Our many years of working with vulnerable and disadvantaged clients suggest that many clients struggle with this and as a result, their legal problems can escalate.

Telephone or web-based services can over simplify the assessment process or rely too heavily on client identification of the key issues. This can result in incorrect referrals or too many referrals to a multiple of agencies - a more integrated assessment and placement model would be a better first response. On the surface, telephone and web-based services can appear to be a simple solution, and indeed may suit people whose matters are clear cut and easily identifiable, but they can actually create delays and wasted resources where the client is vulnerable and/or the matter complex.

Telephone services have an important place in access to justice but cannot replace localised entry points. Many clients of CLCs do not have reliable access to telecommunications because of the cost of mobile phones (many clients are often on pre-paid mobile schemes which means they can have credit on one day but none the next) and very few CLC clients can afford the cost of telephone services that result in lengthy delays or long calls. A number of CLCs use methods such as calling back vulnerable clients who are on pre-paid mobiles so as to increase accessibility.

Many current telephone services do not cover the full cost of the telephone call (even free call 1800 numbers are not free from mobiles). The LAW Survey (Coumarelos et al.

2012) found that in Western Australia at least, difficulty getting through on the telephone was the most prevalent barrier to accessing legal, dispute/complaint-handling or government advisers, noted by one in five respondents. Cost was the most common barrier when the main adviser was a lawyer.

Telephone based services are great for some people but not everyone. Telephone services require a certain level of social confidence and verbal competency. It is difficult to develop rapport over the telephone and our experience is that often the most vulnerable clients will choose not to seek assistance rather than deal with telephone services. Many CLC clients access centres because they have a local, physical presence that is known to the community. The first point of contact is often by way of 'drop-in', or outreach services and is an essential access strategy for disadvantaged clients including many Aboriginal people, homeless people and people from culturally and linguistically diverse backgrounds.

Web-based services also have great potential and are increasingly being used by CLCs to provide information. However, like telephone services it can be easy to overestimate their utility. Household access to the internet is correlated with income. In 2012–13, 98% of households with household income of \$120,000 or more had internet access, compared to 57% of households with household income of less than \$40,000 (ABS 2014). Given that over 80% of the people helped by community legal centres received under \$26,000 a year in 2012 (Community Law Australia 2012), the ABS data suggests that a significant proportion of legal assistance clients cannot be assumed to have internet access. Compounding this issue is that many clients on low incomes purchase pre paid broadband schemes that often run out. Like mobile phones, internet access can be irregular.

A further consideration is privacy and confidentiality of information. Some CLC clients are homeless or in shared accommodation. They might have access to a phone or a computer in a public library or resource centre, but they have no private space where they can be assured that the privacy and confidentiality of their legal information would be protected. It should also be noted that telephone and internet information and advice lines can sometimes be risky for clients experiencing domestic violence, because potentially their partners can trace their activity.

WA CLCs effectively use technology to improve the relevance and quality of information resources in order to assist clients to help themselves. Examples include online resources, information videos, facts sheets and information kits. By enabling capable clients to get the most out of the information resources, CLCs free up time and capacity to better advise more vulnerable clients who still need one-on-one legal assistance and advice.

There are a number of models whereby telephone and web-based services complement rather than replace local face-to-face services. On such model, the WA Tenancy Network, is outlined in Case Study #4.

Case Study #4

The WA Tenancy Network delivers the Tenancy Advice and Education Program (TAEP) in Western Australia. The Network is founded on a model of co-operation, whereby tenancy advice and education is provided at a local level through local service units (LSUs) and a central resource unit (CRU) provides specialist expertise, advice, education and policy co-ordination functions. The CRU offers statewide telephone and web-based services. Tenants can access the TAEP either through the centralised or localised contact points. In addition to individual assistance, LSUs provide local community education as a means of increasing reach and many offer outreach services.

By locating tenant advocates in local, multi-service agencies (largely in CLCs), consumers are provided with access to integrated services that can address a range of needs that directly or indirectly impact on their tenancy. For example, local service units often provide complimentary services such as financial counselling, domestic violence support, general legal assistance and housing support.

No wrong door approach

Rather than support a model of single access points ('one door'), the best practice literature in relation to complex social problems and high need clients is actually one of a 'no wrong door' approach. Under the 'no wrong door' approach, service providers work towards greater integration in the entry assessment process so as to minimise the need for clients to re-tell their story and maximise the chances that the first point of contact will result in proactive alignment with a range of wrap around services to respond to complex needs.

The 'no wrong door' concept is premised on the principle that in a well integrated and partnered model, every door in a service system should be the right door. This is the model that we should be striving for and is built upon client friendly points of contact, comprehensive assessment and well developed localised partnerships that offer holistic, wrap around service responses. It is a model that lies at the heart of the CLC approach and is reflected in the strong relationships that CLCs have with local service providers across legal, crisis, housing and mental health sectors.

2.2 Legal health checks and effective referrals

Information request 5.1

The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependent on income support.

Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks. What role should non legal agencies that have regular contact with disadvantaged clients play? Do these organisations need to be funded separately to undertake legal health checks?

Information request 5.2

Information is sought on the costs and benefits of adopting the legal problem identification training module (being developed by the Commonwealth Attorney General's Department and Department of Human Services) more widely among non legal workers who provide services to disadvantaged groups.

Feedback is also sought on which agencies' staff should receive this training and whether funding should be provided to cover training costs.

Information request 5.3

The Commission seeks feedback on how best to facilitate effective referrals for legal assistance between organisations responsible for human service delivery, and, where appropriate, greater information sharing across departments and agencies.

The CLCAWA wishes to make the following points about legal health checks and the facilitation of effective referrals:

1. CLCs in Western Australia are already working in partnership with referring agencies to facilitate the early identification of legal need. Examples include work with crisis accommodation services, financial counselling services and youth services.
2. Relationship building, local partnerships, community legal education and a community development approach are critical elements in enhancing effective referrals to legal assistance agencies. Whilst centralised systems and tools can assist referrals, the heart of effective referral lies in well maintained localised relationships and processes that can respond flexibly to the local context. Understanding the importance of a community development approach to accessing legal assistance is foundational in the community legal centre model of service. Case Studies #5, #6 and #7 provide examples of the myriad of partnerships that CLCs are involved in as a means of facilitating effective referrals and engaging in preventative and early intervention initiatives.
3. Other strategies used by CLCs to facilitate effective referrals include co-location of CLCs in multi-agency community hubs; participation in cross sector networks and collaborations; and locating outreach services in community settings.
4. Legal health checks can be useful in two forms - one as a tool for lawyers and non-lawyers *within* legal assistance settings to assess and plan legal need; and secondly as a tool for generic agencies (e.g. homelessness services) to help identify if a

referral into a legal assistance agency is required. Where legal health checks are used, the tool must be developed with legal assistance agencies. It is not appropriate for non-legal agencies to develop their own legal health check tools.

5. All staff using legal health checks (both legal and non-legal) must be trained and monitored in understanding the background, context and use of any checklist or survey. It is our position that such training should be undertaken by legal assistance agency peaks, such as CLCAWA, in collaboration with its membership.
6. By increasing the level of early identification of legal need, demand for legal assistance will also increase. It is unadvisable to set up systems that increase referral into legal assistance systems without additional means to respond to such referrals.

Case Study #5

Northern Suburbs Community Legal Centre (NSCLC) works within a range of partnerships.

- *AnglicareWA - Family Relationship Centre Joondalup.*

NSCLC entered into a partnership with AnglicareWA to tender successfully for the Joondalup Family Relationship Centre (FRC). The partnership benefits both parties and clients, with a lawyer advising clients at the FRC and also providing advice to family consultants employed by the FRC.

- *Edith Cowan University - Joondalup Community Legal Centre*

NSCLC and Edith Cowan University (ECU) are partners in the Joondalup Community Legal Centre (an office of NSCLC). The centre is located on the University's campus at Joondalup. As part of the partnership the University provides the accommodation, furniture and utility overheads. An integral part of the partnership between the Centre and ECU's School of Law and Justice is the law student workplace practicum. Studied as an elective unit, students undertake a workplace practicum at the Centre, learning first hand many of the skills necessary for the responsible and successful practice of the law. This long-term collaboration enhances professional practice, community capacity building and significantly contributes to building a reputation for academic outreach with high community impact.

- *MercyCare - Rental Ready Program*

NSCLC and MercyCare are partners in the *Rental Ready Program*. In partnership with MercyCare, NSCLC delivers the legal education component of a four day program as part of the Settlement Grants Program to newly arrived migrants and humanitarian entrants.

- *Legal Aid WA - Human Rights are Aussie Rules Program*

Legal Aid WA and NSCLC are partners in the *Human Rights are Aussie Rules* program, a school based human rights education program for primary children aged 10-12. The program is based at the Mirrabooka office of NSCLC.

- *Advocare Inc – Older People's Rights Service*

The Older People's Rights Service is a legal and social work advocacy service managed by the NSCLC in partnership with Advocare Inc. The metropolitan wide service is located in the NSCLC offices in Mirrabooka with an outreach office in Belmont at the Advocare offices.

- *Informal Partnerships*

Partnerships in the development and delivery of education resources, including videos and manuals on family law, criminal law, driving and traffic and family violence.

- Central Institute of Technology, Perth Campus & Polytechnic West, Belmont Campus
- Cyril Jackson Senior Campus – Intensive English Program
- West Metropolitan Crime Prevention Office, Western Australia Police
- Centacare Inc
- Edmund Rice Centre
- The Law Society, Francis Burt Law Education Program
- PVS Workfind
- Save the Children
- City of Stirling
- Metropolitan Migrant Resource Centre
- Department of Child Protection
- ISHAR Multicultural Women's Services

Case Study # 6

Partnership examples undertaken by the Women's Law Centre of WA (WLC)

- Formal partnership with Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council for Domestic Violence to provide legal services in the NPY Lands in the Simpson Desert since 2009.
- Formal partnership with Relationships Australia WA to run the legal components Djinda Services (Perth Aboriginal Family Violence Prevention Legal Services) since 1/7/13.
- Formal partnership with Family Relationships Centre, Perth office.
- WLC hosts:
 - CLC's Family Relationships Centre coordinator position.
 - WLC hosts DV Legal Workers Network coordinator position.
 - WLC hosts Women's Legal Services Australia law reform coordinator since 1/11/13.
- WLC has representative on:
 - Family Pathways Network of WA since 2012
 - National Association of CLC Executive Committee as the WA State representative since 2013
 - CLC Association of WA Executive since 2011
 - (2 Ordinary members) Women's Legal Services of Australia Executive Committee since 2008
- WLC works in partnership with the Family Inclusion Network of WA to deliver CLE
- WLC actively participates in the Family Court Chief Judges Children Issues Committee
- WLC maintains strong working relationships with:
 - Legal Aid WA
 - Law Society of WA
 - Ruah Women's Support Service
 - Ngala Parenting Support Service
 - Women's Health and Family Services
 - Women's Council for Domestic and Family Violence Services
 - Pat Giles Centre
 - Anglicare WA
- WLC has a number of private solicitors who provide support to our centre to run the Evening Legal Clinic.
- WLC receives pro bono support in partnership with a number of private law firms including Allens, Clayton Utz, King & Wood Mallesons, Herbert Smith Freehills.

Djinda Services works in partnership: -

- Moorditj Yarning (Relationships Australia)
- Sexual Assault Resource Centre
- Langford Aboriginal Association
- At Work Services, Midland

The WLC prison outreach program works closely with:

- Other legal services such as legal aid, CLCs, private practitioners and FVPLS
- Non-legal government and non-government agencies inside and outside the prison
 - Ngala Parenting Advice and Support Service
 - Uniting Care West Accommodation and Support Service
 - Outcare
 - Ruah Women's Support Service
 - Office of the inspector of Custodial Services
 - Department of Child Protection and Family Support
 - Drug and alcohol services
 - Disability Services Commission
 - Women's Health and Family Services

Case Study # 7

The FRC/CLC partnership is an arrangement that is based on two models of cooperative practice already in existence in community legal centres in Western Australia, namely the Tenancy Network model and the Domestic Violence Legal Workers Network.

The former is a hub and spoke model developed in partnership with government in Western Australia, the tenancy network has at its hub a Resource Centre with Local Service Units located throughout Western Australia. The role of the Resource Unit is to provide education and support to Local Service Units including facilitating regular meetings and advising government whilst the roles of the Local Service Units is to provide direct services to tenants. This model has been described by government as an exemplary model of cooperative practice.

The Domestic Violence Legal Workers Network also features cooperative practice with a Coordinator based at Women's Law Centre and a number of direct service legal units in community legal centres. The network meets regularly, provides advice and representation, professional development training, education and facilitates submissions to government.

The FRC/CLC partnership is a similar model instigated by CLC's to work in partnership with Family Relationship Centres. There are 12 community legal centres and 7 Family Relationship Centres in the partnership. Lawyers from community legal centres provide advice to FRC clients when required and advice and education to FRC workers.

In the spirit of cooperative practice there are four community legal centres working together on a roster basis with the Family Relationship Centre located in central Perth. The catchment area for the Family Relationship Centre takes in the catchment areas of the four CLCs.

2.3 Paralegals

Information request 7.5

In what areas of law could non lawyers with specific training, or 'limited licences' be used to best effect? What role could paralegals play in delivering unbundled services? What would be the impacts (both costs and benefits) of non lawyers with specific training, or 'limited licences', providing services in areas such as family law, consumer credit issues, and employment law? Is there anything unique to Australia that would preclude the adoption of innovations that are occurring in similar areas of law overseas? If so, how could those barriers be overcome?

CLCAWA supports measures that enhance the ability of non-lawyers with specific training and oversight to provide services as part of the legal assistance landscape. However, this must occur within a properly established and supervised legal practice. Within CLCs, this is already occurring. A 2007 survey of CLCs in Western Australia (Kadmos 2008) found a strong multidisciplinary approach to legal assistance - within the profile of legal staff, paralegals, advocates and caseworkers, 37% of FTE positions were that of lawyers, 19% were financial counsellors, 13% were tenancy advocates, 12% were

paralegals, and the remainder included a range of positions such as welfare rights advocates, mediators, migrant agents, disability advocates and caseworkers. In addition to positions employed to directly work with clients, 4% of FTEs were dedicated to community legal education.

The benefit of using a range of staff, including paralegals and other non-lawyers, in a legal assistance setting is immense and goes beyond any cost saving objectives. Attracting and training paralegals can increase a CLC's links to its local community and improve access and referrals. This has been found to be the case where CLCs have employed Aboriginal people, people from CaLD backgrounds and youth workers.

The 2007 survey found that the most critical barriers to attracting and retaining staff (both legal and non-legal) were an inability to offer competitive salaries, the high cost of training and difficulties in attracting staff to regional areas (linked with high housing costs in the WA context).

In addition to general barriers, CLCAWA notes that specific barriers can exist in what restricted practitioners can undertake and the extent to which people can be represented by non-lawyers in court cases.

There is currently no universally recognised and accredited training course for paralegals. Quality training, coaching and supervision are essential to better utilising the potential and value of non-lawyers. Case Study #8 provides an example of how one CLC has achieved excellence in training non-legal staff.

Case Study # 8

A regional CLC provides legal assistance to people in the Mid-West and Gascoyne regions. The CLC has developed a unique training culture based on a coaching and mentoring approach. Partnering with Central West TAFE, paralegal trainees are able to link their onsite work with accreditation and supervision of quality standards for nationally recognised qualifications.

The CLC also undertakes a program in which it partners with certain Aboriginal community members who volunteer to provide services in their remote communities. The Centre offers Certificate III Business (Legal Studies) training to those volunteers who in turn are able to use those skills and training to benefit community members, whilst also securing a qualification.

The CLCs innovation and commitment to training has been acknowledged as a winner of Australian Training Awards 2005 (Prime Minister's Small Business of the Year Award) and WA Training Excellence Award 2005 (Australian Institute of Management Small Business of the Year).

2.4 Costs

Draft Recommendation 13.4

Parties represented on a pro bono basis should be entitled to seek an award for costs, subject to the costs rules of the relevant court. The amount to be recovered should be a fixed amount set out in court scales.

The CLCAWA support the recovery of costs where parties are represented by community legal centres as well as on a pro bono basis. Cost should not be fixed in accordance to court scales, but rather allow for cost agreements to be utilised.

2.5 Eligibility

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.

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.

The CLCAWA supports eligibility criteria that are transparent and equitable. As detailed in Section One, Western Australian CLCs are already engaged in establishing eligibility criteria that assesses disadvantage and vulnerability within circumstances of the applicant and context of the legal problem. WA CLCs currently only service disadvantaged or vulnerable clients.

The CLCAWA would welcome any opportunity to further collaborate in defining priority and developing assessment frameworks. The following points are made in relation to eligibility:

1. CLCs, as represented through their peak associations, should be an active member in the development of any eligibility framework and assessment tool/s.

2. Whilst there should be synergy between the eligibility criteria used between the four types of legal assistance programs, this does not mean that they should be identical. Eligibility needs to take into account the specific functions and roles of each legal assistance program and how they complement each other and work together.
3. It is important that eligibility criteria and assessment processes do not become so rigid or bureaucratically driven that they fail to understand the lived experience of the client or result in unintended consequences or unrealistic expectations. For example, there is a danger that questions that are too invasive without clear purpose may result in vulnerable applicants choosing not to seek assistance in the first place. We know from the LAW Survey (Coumarelos et al. 2012) that respondents in Western Australia sought legal advice in only 12% of all legal problems (16% nationally). It is important that preliminary eligibility is flexible enough for an applicant to engage, be willing to tell their story, and allow for a more comprehensive assessment of need and merit.
4. A principle in working towards more standardised criteria and tools should be to reduced 'red tape' rather than increase it. Emphasising uniformity over contextualisation should be avoided. It is widely recognised that best practice involves an assessment of the interplay between indicators of disadvantage and vulnerability, rather than a 'tick box' approach.
5. Any measure of disadvantaged must be developed in collaboration with CLCs, be able to take into account a range of indicators, the circumstances of the client, the context of the matter, and not inadvertently result in indirect discrimination. A fundamental principle is that assessment criteria and processes must not result in the further marginalisation of already disadvantaged clients.
6. A key strength of CLCs has been their ability to quickly respond to new or emerging legal need. In connecting to local communities and being able to flexibly respond, CLCs have often been effective in identifying new trends or needs before they have become major problems or nationally identified priorities. This has often led to early interventions in collaboration with other stakeholders (e.g. LACs, consumer protection agencies, the police) that can decrease the need for escalated responses. It is essential that eligibility and assessment frameworks do not become so rigid that this strength in the legal assistance system is lost. See Case Study #9 for an example of early identification and response.

Case Study #9

A metropolitan generalist centre established a community education program (CEP) in 2009 and has since escalated implementation and further refined services to the community and relative stakeholders. The CEP services have focused on emerging trends identified through both advice and casework services and in consultation with the community including ethnic leaders, WA Police Community Policing Unit, local community based organisations and government departments.

The focus is on the specialised delivery of legal education workshops targeting at-risk segments of the community; namely CaLD groups (including newly arrived migrants and humanitarian visa holders) and other non-English speaking communities. The local area is recognised as the most ethnically diverse suburb in Australia with significant segments of the local population from Africa, Middle East and Asia. A feature of these groups are that many of them have spent significant parts of their lives in refugee camps and have had little if any formal education.

Accordingly, it is these groups that the CLC has targeted and the primary recipient stakeholders or partners of CEP services have been TAFE's that deliver the Australian government's Adult Migrant Education Program (AMEP) and other settlement grant agencies such as Edmund Rice Centre and Mercycare (whose clients are specifically CaLD migrants and humanitarian visa holders). Many of the NGOs are contracted through the Department of Immigration and Citizenship.

In consultation with the community, the CLC identified key areas for preventative legal education. These areas/topics are *Finance and Consumer Issues, Family Relationships and the Law, Residential Tenancy Issues and Driving in WA: Getting a Licence and other Common Driving Issues*.

The educational workshops are tailored for non-English speakers and involve role play and interactive techniques. The response has been positive with settlement grant agencies requesting services and a number of partnerships being developed to deliver education to the communities including a partnership with MercyCare to deliver a four day Rental Ready Program to emerging communities.

Whilst entry to publically funded services must be governed by clear eligibility criteria, it is important to remember that the critical issue is in the demand supply ratio, without increased funding for services, eligibility reforms will have limited impact on addressing access to justice.

The fundamental issue is that the vast majority of Australians cannot afford private legal services but only those on the lowest of incomes can access legal assistance - leaving most Australians with few choices in addressing legal need. In the 2012 *ACOSS Australian Community Sector Survey*, 73% of community legal services reported an inability to meet demand, 82% said that in order to meet demand, services were more tightly restricted and 69% said that wait times had increased. The turn-away rate nationally for legal services in 2010-2011 was 14%, the highest of the five service groups profiled in the survey (ACOSS 2012). Across all community sector services surveyed, 36% of agencies named legal services as a current priority unmet need for clients, the second highest area of unmet need after housing.

Similar results to the ACOSS survey were found by Pricewaterhouse Cooper-CSI Community Index survey results (PricewaterhouseCoopers and the Centre for Social Impact, 2013). Of the 10 not-for-profit industry groups surveyed, Law and Advocacy had the highest demand score in any industry, with around 64% of agencies reporting 'very high' levels of demand, and the second lowest funding score.

2.6 Funding arrangements

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.

The CLCAWA supports a funding model that is equitable, transparent, accountable and needs based.

The Association does not agree with the Commission's premise that CLSP funding does not link with needs, is not responsive to demographic changes and does not incorporate evidence-based considerations. See Section One for information about the 2003 and 2009 review of Western Australian CLCs and how these reviews have informed resource allocation, planning, policy making and collaboration.

The following points are made in relation to CLSP funding and procurement options:

1. A critical success of the CLSP program in Western Australia has been the collaborative nature of decisionmaking, priority setting and policy development. As outlined in Section One, CLC program development has arisen out of collaborative arrangements such as the WA Community Legal Centre Stakeholder Consultative Committee and WA Jurisdictional Forum. Procurement processes should ensure that the outcome facilitates rather than hinders collaboration.
2. Procurement processes for legal assistance must be mindful of the nature and potential of conflicts of interest. The CLCAWA does not support any scenario that effectively creates a conflict of interest between LACs as the program administrator and also potential bidder. Conflicts of interests can also exist within agencies bidding for CLC services. For example, CLCs are often required to assist clients with matters where a community service provider is the other party e.g. landlord or discrimination in service provision. CLCs have consciously planned and grown sub-program service delivery to minimise such potential conflicts. CLC services should never be located in an agency where conflicts of interest can arise, e.g. an agency that seeks to provide tenancy advocacy whilst also being a community housing provider.
3. Diversity in legal assistance services aids the management of conflict of interest issues. For example, a CLC that is providing assistance to one party in a civil action can refer the other party to another CLC (assuming both parties meet eligibility). Similar arrangements are be made between CLCs and LACs, ATSILSs and FVPLSs.
4. It is important to recognise that the relationships that CLCs have with their local communities is a strength that cannot be underestimated or easily replicated. Local relationships are instrumental in increasing access, building early intervention initiatives, providing linked up service delivery and attracting pro bono support. Social capital is an often uncoded asset that CLCs bring to the legal assistance sector.
5. CLCs recognise that economies of scale are important in maximising efficiencies and have worked towards this in a manner that has rested upon collaboration rather than competition. We believe that collaboration is a more effective mechanism for maximising efficiency. Examples of initiatives include: the current specialist CLC co-location project; the national PI insurance scheme that has significantly reduced costs; reciprocal training and mentoring opportunities; shared research; and mutual policy sharing.
6. Procurement must incorporate the true costs of service delivery, especially in relation to rural, regional and remote areas. Regional centres often experience higher operational costs associated with travel, salaries, infrastructure, housing and

maintenance. By way of example, the Western Australian Council of Social Service (2010) estimates the cost of regional loading to be 150% in Broome and Roebourne, 125% in Kalgoorlie and 115% in Albany. Similar pressures exist for specialist services attempting to service the state.

7. The proper funding of outreach services is a critical access to justice issue in a state the size of Western Australia. For example, the LAW Survey (Coumarelos et al. 2012) found that one in seven Western Australian respondents living in remote or regional areas travelled more than 80 kilometres to consult their main adviser.
8. One way in which CLCs in Western Australia are increasingly addressing economies of scale, as well as enhancing integrated service delivery, is to diversify their funding base by attracting funding for complementary services, such as financial counselling, disability advocacy and homelessness support. Case Study #10 provides an example of this. The not-for-profit, non-government structure of CLCs provides an ability to attract some forms of funding that are not available to government or for profit agencies.
9. Funding arrangements for CLCs must acknowledge the efficiency and cost benefits that are provided through peak associations at a state and national level. Peaks such as CLCAWA and NACLCL provide a critical role in building capacity, coordinating policy development and reducing overall costs through the centralisation of certain functions, such as the National PI Insurance scheme and input into public enquiries and government consultation processes.
10. Systemic advocacy is a significant access to justice strategy that must be acknowledged in the funding of legal assistance agencies. A central component of the CLC service delivery model has been participation in policy and law reform development as a means of addressing some of the systemic issues that can impact on legal need. For example, CLCs participate in a wide range of government initiated enquiries and consultation processes, such as the Commission's inquiry into Access to Justice Arrangements. Systemic advocacy can also be an effective and cost efficient way to respond to high prevalence, low impact legal issues, such as consumer problems. The LAW Survey shows consumer problems to be the most prevalent legal problem group in Western Australia (and nationally), but also the most likely to be handled without advice (Coumarelos et al. 2012). Addressing consumer problems through collaborative law reform is much more cost effective than trying to provide direct services to a large number of people affected by consumer problems.

Case Study # 10

A CLC in regional WA has 25 programs operating that include four legal services and quasi-legal services such as financial counselling, tenant advocacy, Indigenous tenant advocacy and individual disability advocacy services. The Centre also offers support programs such as emergency relief, financial literacy, prisoner and ex-prisoner support programs, homelessness programmes, private tenancy support. Many projects have been successful in attracting private sponsorship, such as the Aboriginal Wills project that has been funded by the Clayton Utz Foundation over a two-year period.

In essence the CLC is able to provide a range of wrap around support programs for clients with multiple issues as a one-stop shop. It means that clients do not have to be referred to other agencies and importantly clients are not re-traumatised by having to repeat their stories to a number of different agencies that may otherwise be needed to deal with the underlying and multiple issues that clients may have.

Diversification has had organisational sustainability benefits as well as client benefits. With diversification, administrative and corporate costs can be spread across programs, resulting in an overall saving.

The Western Australian Government has introduced a new framework for procurement that emphasises a genuine partnership between government and the not-for-profit sector in the contracting of sustainable community services. It is one that is founded upon collaboration and negotiation, rather than restrictive 'one size fits all' approaches. It also emphasises that good procurement should be based upon the true and full costing of services, clear community outcomes and the encouragement of innovation, flexibility and partnerships. The key objectives of the *Delivering Community Services in Partnership Policy* are outlined below as an example of the sorts of elements that could inform any procurement framework:

- promoting flexibility, innovation and community responsiveness in the funding or contracting of services by Public Authorities, to better meet community needs;
- encouraging a more productive working relationship between Public Authorities and the not-for-profit community sector based on trust, collaboration, accountability and effective and sustainable service delivery;
- clarifying when services are to be put out to open tender and when a more targeted non-market based approach is more appropriate;
- reducing “red tape”, complexities and inconsistencies, and standardising terminology to clarify the dialogue between the parties; and
- requiring that Public Authorities remain aware of Government’s core desire to contract with the not-for-profit community sector in a manner that supports

sustainable service delivery and recognises the importance of ongoing organisational viability.

The *Delivering Community Services in Partnership Policy* recognises that, whilst open tender is one procurement option, it cannot be assumed that it is automatically the best option and, indeed, can have unintended, negative consequences. The decision of which procurement method to choose from a range of options (open tender, preferred provider, direct negotiation etc.) is based upon clear criteria and undertaken after a process of consultation, research and testing of a market.

One consequence of open market tenders can be a reduction in financial support from other sources. For example, in Western Australia, Lotterywest is a significant supporter of community services. However, so as not to distort the market or unfairly benefit different suppliers in an open market, Lotterywest will limit the funding options they provide to services that are subject to open tender.

The CLCAWA strongly recommends that any changes to the procurement of CLC services by the Australian Government is based upon agreed principles and a detailed review of the pros and cons of a range of options. At this stage it is not appropriate to assume that open tender is the best option without further, considered examination.

2.7 Volunteers and pro bono

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?

A feature of CLCs is their ability to attract volunteers to assist in the delivery of services. A survey conducted for CLCAWA of Western Australian CLCs in 2007 (Kadmos 2008) found that:

- 65% of the responding centres had volunteers, with just under a third having 20 or more volunteers.
- The duration of service for volunteers was largely under two years, with 20% having been with their centre for less than one year and 44% for one to two years.

- Students were the most common category of volunteers utilised by centres, with 44% of CLCs saying that they usually have students on placement at some time during the year. This was followed by administrative volunteers and lawyers.

Whilst volunteers add value to CLC service delivery, volunteer programs also require resources, such as coordination, training, supervision, reimbursement of expenses and, in some cases, registration fees.

In the 2007 survey, the amount of hours spent per week by CLCs on coordinating volunteers ranged from 0 to 15, with an average of 4.6 hours per week. The amount of time spent on supervision and mentoring ranged from 0 to 30, with an average of 6.2 hours per week. One CLC in 2007 employed a volunteer coordinator at 20 hours per week.

The 2007 survey asked CLCs to assess the extent to which a range of issues affected their ability to recruit and retrain volunteers. The most important issue to affect recruitment and retention was a lack of office space and equipment (56% of centres said that it was a very important issue 22% said that this was an important issue). The next most important issue was lack of time, with 40% rating the issue as very important and 33% rating the issue as important. The number of responding CLCs who thought that finding people with suitable qualifications was an important or very important issue was 61%. The ability to offer training was an important or very important issue for 53% of respondents and the ability to reimburse expenses was an important or very important issue for 47% of respondents.

Volunteering is only one way in which CLCs access pro bono assistance. According to a National Association of Community Legal Centres survey looking at pro bono partnerships between law firms and CLCs (NACLC 2012:1), of 106 CLC respondents to the survey:

- 82.6% benefitted from lawyers providing direct services to clients.
- 69.8% had experience of lawyers providing advice to the centre.
- 54.7% had specialist lawyers advising CLC lawyers on matters.
- 26.7% received pro bono assistance from firms in producing publications including design and printing.
- 18.6% received assistance in venue and catering for CLC events.
- 16.3% received pro bono assistance for CLC administration support.
- 12.8% received pro bono assistance in fundraising.

A feasibility study of pro bono models for Western Australia commissioned by CLCAWA in 2013 found that it was good relationships that were the foundation to partnerships between CLCs and law firms offering pro bono services. See Case Studies #11 and #12 for examples of these partnerships.

Case Study #11

Case for Refugees is a community legal centre that provides legal services to refugees, humanitarian visa holders and people from CaLD backgrounds living in Western Australia. Following the High Court decision in M13, there was a significant spike in demand for legal assistance seeking judicial review of MRT administrative decisions.

Case for Refugees decided to act as a clearinghouse to assess the merits of applications for pro bono assistance. Their experience identified a range of challenges that had a significant impact on the organisation's ability to galvanize a pro bono strategy that integrated the resources of law firms to act as instructing solicitors for barristers who were willing and able to take on matters. These challenges included the amount of time and resources that it took to develop and maintain pro bono relationships and the internal processes of some law firms that meant it took a long time for decisions to be made.

Case Study #12

A specialist CLC located in Perth relies heavily on the generous contribution of in-house volunteers and pro bono support to operate. Volunteers are invaluable in service provision, in particular by:

- providing the evening legal service;
- developing and expanding community legal education (CLE) resources;
- delivering CLE;
- researching case law developments;
- compiling procedural files and briefs;
- assisting pro bono solicitors in the provision of advice;
- conducting client appointments (in the case of volunteer solicitors);
- governing the organisation on the Board of Management; and
- supporting ELC staff in relation to administrative tasks.

In the last 6 month period, 1 July 2013 to 31 December 2013, the CLC attracted 1,510 hours from 35 volunteers and pro bono solicitors. This equated to \$425,462 worth of volunteer and pro bono support, which is just over the Centre's currently funded operational budget.

2.8 Data systems

Draft recommendation 24.1

All governments should work together and with the legal services sector as a whole to develop and implement reforms to collect and report data (the detail of which is outlined in this report).

To maximise the usefulness of legal services data sets, reform in the collection and reporting of data should be implemented through:

- **adopting common definitions, measures and collection protocols**
- **linking databases and investing in the identification of new data sets**
- **developing, where practicable, outcomes based data standards as a better measure of service effectiveness.**
- **Research findings on the legal services sector, including evaluations undertaken by government departments, should be made public and released in a timely manner.**

Information request 24.1

The Commission seeks feedback on where a data clearinghouse for data on legal services should be located. Such a clearinghouse needs to be able to coordinate data collection from multiple civil justice stakeholders and disseminate the information in a timely fashion. It should also have some expertise in linking, using and presenting data, especially administrative data. Ideally, the clearinghouse should also have experience in liaising with legal service providers and different levels of government, have an understanding of the operation of the civil justice system and understand the principles behind benchmarking.

Draft recommendation 24.2

As part of draft recommendation 24.1, existing data systems should be overhauled so that providers can track outcomes for intensive users of legal assistance services over time.

Draft recommendation 24.3

The Commission recommends that the LAW Survey, or a survey of similar scope and detail, be undertaken on a regular basis at least every 5 years. The results of, and underlying data from such surveys should be made publicly available.

CLCAWA supports reform to the collection and reporting of data that includes the elements detailed in draft recommendation 24.1. Community legal centres peak bodies should be included as an active participant in design and development of any new data system, including the adoption of common definitions, measures and collection protocols.

Key points that we wish to make in regard to data systems are:

1. All centrally collected data must be de-identified and not jeopardise confidentiality.
2. CLCs are funded from multiple sources. Data collection systems need to include collaboration across major funders (state and national), so as to align reporting and allow for one, integrated data collection system, not a range of systems that end up costing time and money. What is and is not collected and counted in any national system must be transparent and acknowledged in any related data analysis.

3. CLCs must be able to easily access their own aggregated data in a secure but timely manner. For the purposes of policy development, planning and evaluation, peak CLC associations must also have easy access to state and regional level aggregated data that allows for pre-defined and customised reports. Whilst respecting the need for strong access protocols, the ability to request and receive reports must not be so cumbersome or lengthy so as to effectively render the process unworkable.
4. Reforms to data collection should also give attention to ways in which the de-identified data sets themselves can be potentially shared for research purposes, and not just the reported data findings. This assists with future projects that wish to engage in the secondary analysis of data. For example, a range of ABS studies provide data cubes as well as final reports. The Australian Government's service data.gov.au is one example of how public data sets are provided for access and reuse.
5. The recording of outcomes is welcomed. However CLCAWA recognises that the identification and collection of real outcomes is complex and over simplification can lead to distortion. The measurement of outcomes must include qualitative as well as quantitative methods; process outcomes; and recognition that good outcome measurement systems require rigorous planning and testing. All members of the legal assistance system must be involved in the design and implementation of outcome measurement initiatives.
6. CLCAWA supports integration and streamlining of data collection across jurisdictions, so as to provide a comprehensive picture. This requires reform and standardisation at a state as well as national level. For example, obtaining court outcomes across jurisdictions is currently not possible and meta data from many state court proceedings is unavailable (e.g. number and outcomes of eviction proceedings undertaken in any given period, number and outcomes of self-representation).
7. CLCAWA acknowledges the value of studies such as the LAW Survey and agrees with the Commission that such studies should be ongoing.

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