

Submission to Productivity Commission

# Access to Justice Arrangements

May 2014



**COMMUNITY**  
LEGAL CENTRES  
TASMANIA

Northern Territory  
Association of  
Community Legal  
Centres



ACT  
Association of  
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## Executive Summary

This submission has been prepared by the National Association of Community Legal Centres Inc (NACLCL),<sup>1</sup> the peak national body of Australia's community legal centres jointly with all state and territory community legal centre associations in response to the Productivity Commission's Draft Report, *Access to Justice Arrangements*, released in April 2014.<sup>2</sup>

Community legal centres (CLCs) are

community-based, independent not-for-profit organisations that provide a range of legal and related assistance services to people who are disadvantaged, those with special needs and/or those whose interests should be protected in the public interest. CLCs are a key component of Australia's legal aid system and provide a distinctive form of service that complements services provided by legal aid commissions (LACs), Indigenous legal assistance service providers and the private legal profession...<sup>3</sup>

NACLCL welcomes the opportunity to respond to the Draft Report. This submission is made in addition to three submissions and two memorandums in response to the Issues Paper.<sup>4</sup> The focus of this submission is on Chapters 20 and 21 of the Draft Report that deal with the legal assistance landscape and reforming legal assistance services. However, comment is also made on a number of specific issues in other chapters where they are relevant to the work of CLCs, including for example, in relation to understanding and measuring legal need, information provision and navigation of the system, and data and evaluation.<sup>5</sup>

NACLCL also welcomes the Productivity Commission's recognition of the important role and work done by legal assistance providers in Australia addressing and acknowledgement that 'legal assistance is an integral part of ensuring that the justice system is accessible to all'.<sup>6</sup>

At the outset however, NACLCL wishes to highlight what it sees as an important component of the Commission's role in this Inquiry. The Commission finds that 'more resources and more efficient and effective practices by legal assistance providers are required to better meet the legal needs of disadvantaged Australians'.<sup>7</sup> However, the Report focuses on possible improved efficiencies with respect to funding mechanisms and other arrangements for legal assistance services. The Report acknowledges the difficulty in quantifying the funding shortfall, but does not, despite its Terms of Reference, attempt to identify and quantify the level of funding required to fund legal assistance services in Australia to meet the legal needs of disadvantaged and vulnerable people in Australia. NACLCL encourages the Commission to undertake this task, emphasising that there is no evidence in the

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<sup>1</sup> NACLCL's members are the eight State and Territory Associations of Community Legal Centres.

<sup>2</sup> Subject to the qualifications noted on pages 34 and 35 of the submission with respect to the Federation of Victorian CLCs and

<sup>2</sup> Subject to the qualifications noted on pages 34 and 35 of the submission with respect to the Federation of Victorian CLCs and the Northern Territory Association of CLCs.

<sup>3</sup> Australian Government Attorney-General's Department, *Commonwealth Community Legal Services Program Guidelines*, cl 1.2.

<sup>4</sup> These include: a submission in response to the Issues Paper, *Access to Justice for 'Disadvantaged Parties'* (August 2013); a submission in response to the Issues Paper (November 2013); additional submission in response to the Issues Paper, *Increasing Access to Justice through Alternative Dispute Resolution* (November 2013); a memorandum on disadvantaged and marginalised peoples being turned away from CLCs because centres cannot provide the legal assistance the person needs, or cannot provide it in the timeframe needed (December 2013); and a memorandum on the contributions of volunteers and pro bono workers to CLCs (December 2013).

<sup>5</sup> See, eg, chapters 2, 5, 19 and 24.

<sup>6</sup> Productivity Commission, *Access to Justice Arrangements*, Draft Report (April 2014), 611.

<sup>7</sup> Productivity Commission, above n 5, 2.

Draft Report that the improved efficiencies discussed would be sufficient to meet unmet legal need or funding shortfalls.<sup>8</sup>

NACLC endorses a number of the overarching principles and aims that underpin the Commission's approach to reform of the legal assistance landscape. Consistent with these, NACLC emphasises the need for:

- a high level national framework, such as the NPA, which governs Commonwealth, state and territory legal assistance funding, that covers and is negotiated between all legal assistance providers, and identifies national priorities
- a strategic and coordinated approach to providing legal assistance services and referrals including collaborations between legal assistance and other relevant service providers
- increased awareness among the broader community of the role of legal assistance service providers
- decisions on legal assistance funding to be made by way of a transparent, consistent and evidence-based mechanism taking into account as evidence and analysis of (met and unmet) legal needs
- the desirability of, and need for, as far as is practicably possible, consistent and reliable data across the legal assistance services, and
- the need for funded regular legal needs research, and publicly available research.

This submission also clarifies and provides additional information about a number of Draft Recommendations or observations for the Commission's consideration, including in relation to:

- the distinct nature and role of CLCs and each of the other three publicly funded legal assistance providers
- the coordinated approach of legal assistance providers, limited duplication between services, and the complementary nature of their service delivery models
- concerns in relation to the Commission's characterisation of CLC funding mechanisms
- CLC use of evidence-based legal needs identification and assessment mechanisms in targeting service delivery
- the difficulties associated with imposing strict common eligibility criteria between CLCs and LACs, and
- the nature of, and difficulties associated with, developing a consistent data recording and collection framework across the legal assistance sector, including in measuring and comparing the services provided by different types of providers.

This submission contains a number of sections:

**Section 1** clarifies the specific role and work of community legal centres in the legal assistance landscape. This section outlines sector governance and accountability mechanisms and awareness of CLCs. It also briefly examines issues of relevance for particular client groups with demonstrated high levels of legal need, including Aboriginal and Torres Strait Islander peoples, women, and people in rural, regional and remote communities.

**Section 2** outlines NACLCs support for a transparent and publicly accountable funding model. It discusses the way in which CLCs identify and respond to legal needs at an individual service provider level, jointly with other legal assistance providers, and more broadly. It also highlights some of the difficulties associated with measuring efficiency and effectiveness and comparing legal assistance providers.

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<sup>8</sup> See, eg, The Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services*, Confidential Draft Report (July 2013); Law Council of Australia, *Submission 96 to Productivity Commission Access to Justice Arrangements Inquiry*, 120-121.

**Section 3** discusses a number of key elements NACLC suggests should form part of any new national framework, national funding model and National Partnership Agreement on Legal Assistance Services (NPA). These include: encompassing Commonwealth, state and territory Community Legal Services Program (CLSP) funding; coverage of all legal assistance providers; national principles and objectives; national priorities; national priority client groups; and eligibility principles.

**Section 4** focuses on civil law. It addresses Draft Recommendation 21.1 and Information Request 21.1 in relation to the separate determination and management of legal assistance funding for civil law matters, as distinct from funding for criminal law matters.

**Section 5** responds to Draft Recommendations 21.2 and 21.3 with respect to the targeting of legal assistance funding, specifically eligibility tests. It outlines existing eligibility tests; highlights a number of difficulties with aligning eligibility tests for CLCs and Legal Aid Commissions; and suggests that the development of high level principles to guide the development and application of eligibility tests, rather than imposition of a strict common test, is a more appropriate and effective approach.

**Section 6** discusses Draft Recommendation 21.4 and Information Request 21.3 with respect to appropriate mechanisms and models for legal assistance funding, in the context of the Commission's recommendation that the CLSP funding model be discontinued. First, the section examines current funding requirements, the quantum of funding for legal assistance services and relevant reviews and inquiries. Secondly, it outlines a potential model for funding allocation at a Commonwealth, state and territory level, including discussion of the Commission's suggestions with respect to potential state level responsibilities and methods for determining funding, including collaborative approaches and competitive tendering.

**Section 7** discusses a number of other relevant issues, including information provision and Draft Recommendation 5.1 with respect to a single contact point; data and Draft Recommendation 24.1; and the legal expenses contribution scheme referred to in Information Request 19.2.

NACLC welcomes the opportunity to engage with the Productivity Commission in the course of this Inquiry. NACLC is pleased to note that in addition to this submission, a number of State and Territory Community Legal Centre Associations as well as individual CLCs have made, or intend to make, submissions to this Inquiry.

# Section 1: Community Legal Centres: Role, Governance and Clients

## Summary

This section of the submission clarifies the specific role and work of CLCs within the legal assistance landscape. In particular, it outlines the role of CLCs, governance and accountability mechanisms; highlights the use by CLCs of a sophisticated evidence-based approach in determining legal need and in informing their approach to service delivery; and outlines a number of difficulties with measuring efficiency and effectiveness and in comparing legal assistance services.

## The role of community legal centres

Community Legal Centres are a vital part of the legal assistance sector. CLCs are independently operating community-based organisations that provide free and accessible legal and related services to disadvantaged members of the community, and to people with special needs or who are for other reasons vulnerable and at risk.

## Centre information

There are around 200 CLCs nationally, of which around 163 receive funding through the CLSP.<sup>9</sup> The CLC sector includes generalist CLCs that provide legal assistance in a wide range of 'community law' areas to people in their local community;<sup>10</sup> and specialist CLCs which provide services to a particular target group and/or in a particular specialist area of law. For example, there are specialist services for women, tenants, consumer and credit, welfare rights, immigration and refugee applications, seniors, children and youth, and people with disability, among others. Specialist CLCs are often state-wide services, although at least one is a national service and another state-wide service operates a national insurance telephone advice line in addition to its other services. Many generalist CLCs operate specialist programs, for example, financial counselling, a family violence counselling and support service, or an Aboriginal community liaison role.

CLCs vary greatly in terms of structure, resources, staffing profile, focus and mix of work, and location. Many are stand-alone organisations, but a number are auspiced by a larger community service, a few auspice other services; and some are co-located with other community services such as a health or neighbourhood centre.

The work of CLCs is done predominately by in-house lawyers. However, the extent of volunteer involvement that CLCs are able to garner sets them apart from all the other legal assistance providers and significantly increases their capacity and extends areas of expertise. In addition, CLCs are most effective at gaining significant pro bono contributions from private law firms, adding to both their service delivery capacity but also saving money in other areas of their operations, money that is put to legal service delivery.

In 2013, NACLC conducted a national, annual sector-wide survey of the CLC sector, the *NACLC Census*. CLCs were asked a number of questions about their use of volunteers and pro bono workers.<sup>11</sup> With the respect to volunteers, of the 149 CLCs who responded to a question about volunteers, 87.9% (131

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<sup>9</sup> Note however, not all receive Commonwealth CLSP funding. These figures are drawn from the Australian Government Attorney-General's Department, *2013-2014 CLSP Funding Spreadsheet*.

<sup>10</sup> Defined by a geographic catchment area, although often other eligibility criteria are also applied, especially for anything other than one-off minor assistance.

<sup>11</sup> These questions were a follow-up to the *Volunteer and Pro Bono Survey* that NACLC undertook in 2012. See: National Association of Community Legal Centres, *Working Collaboratively: Community Legal Centres and Volunteers* (2012); and National Association of Community Legal Centres, *Working Collaboratively: Community Legal Centres and Pro Bono Partnerships* (2012).



CLCs) indicated that volunteers were used.<sup>12</sup> Overall, 4,588 volunteers contributed 24,113 hours per week to increase the capacity of CLCs to provide equitable and accessible legal assistance.<sup>13</sup> With respect to pro bono partnerships, of the 148 CLCs that provided this information, 60.2% (92 CLCs) had a pro bono partnership with a business. CLCs estimated that these partnerships contributed 50,859 hours of assistance.<sup>14</sup>

## Role of CLCs

CLCs play a complementary but distinct role to other providers of legal assistance in Australia, playing a safety net or ‘gap filling’ role by assisting those clients who are unable to access legal aid or other legal assistance services, and who cannot afford private lawyers. The service delivery model of CLCs is a holistic one: they do not just employ lawyers and do not just provide narrow legal services; their work is both responsive, in providing legal services as needed, and proactive, in that they attempt wherever possible to assist people in resolving the causes of their legal problems.

Briefly, community legal centres:

- provide a mix of legal services to individuals, and blend individual assistance with community legal education, systemic advocacy and other early intervention and prevention approaches including participating in law and policy reform initiatives to improve the effectiveness and fairness of law and its operation
- provide a safety net, as much as is possible within limited resources, for those who cannot obtain legal help from any other legal service provider
- use connections with their communities to identify and address appropriately the most pressing legal needs in their target community
- are expert in working with people with complex needs, and have been early instigators of targeted strategies and multi-disciplinary or integrated service delivery, and
- are highly cost effective providers of legal assistance—for example, an independent economic cost-benefit analysis in 2012 found that on average, CLCs have a cost benefit ratio of 1:18; that is, for every dollar spent by government on funding CLCs, these services return a benefit to society that is 18 times that cost.<sup>15</sup>

As the Commission acknowledged, CLCs ‘adopt a holistic approach to service delivery’.<sup>16</sup> Indeed, CLCs have been at the forefront of developing both targeted and integrated models of service delivery.<sup>17</sup>

Community legal centres provide legal advice, legal information and referrals (including, often, warm referrals) and casework. They also play a key role by utilising a range of early intervention and preventative strategies such as community legal education and community development, individual skill building, systemic advocacy and law and policy reform activities. CLCs also undertake a number of broader roles relating to community engagement, developing and facilitating of partnerships between legal assistance providers and between legal and non-legal services, and developing and maintaining referral networks and protocols.

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<sup>12</sup> Reasons cited by CLCs for not having volunteers include a lack of time or resources to provide adequate supervision, and a lack of office space. For those CLCs that are able engage volunteers, these factors still limit the extent to which volunteers can be utilised. For some CLCs in RRR areas, volunteers are unavailable. See, eg, National Association of Community Legal Centres, *Working Collaboratively: Community Legal Centres and Volunteers* (2012).

<sup>13</sup> National Association of Community Legal Centres, *NALCL National Census of Community Legal Centres* (2013).

<sup>14</sup> National Association of Community Legal Centres, *NALCL National Census of Community Legal Centres* (2013).

<sup>15</sup> Judith Stubbs and Associates, *Economic Cost Benefit Analysis of Community Legal Centres* (2012), prepared for the National Association of Community Legal Centres. The report actually makes clear that this is a conservative ratio because in calculating the ratio, the consultants only looked at economic benefits arising from only some of the CLCs’ services, such as legal information, advices and cases, but counted in the total cost of the centre and its operations.

<sup>16</sup> Productivity Commission, above n 5, 591.

<sup>17</sup> National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry* (November 2013), 3.

As CLCs are connected to their communities through their organisational and service delivery model, they are in the best position to identify and respond flexibly to changes in their communities legal needs and to adjust methods of service delivery to access difficult to reach groups. It is important to understand that for CLCs, 'communities' in this context is not merely geographic. They may also include priority target groups and commonly include, for example, the many different culturally and linguistically diverse or other groups, such as young people in a particular area.

## Law reform, policy and advocacy

The Commission acknowledged that CLCs play a key role in law reform, policy and advocacy.<sup>18</sup> In particular, the Commission expressed the view that: 'advocacy can ... be an efficient way to use limited taxpayer dollars' and should be a 'core activity' of Legal Aid Commissions (LACs) and CLCs.<sup>19</sup> The Commission also stated that:

strategic advocacy can benefit those people affected by a particular systemic issue, but, by clarifying the law, it can also benefit the community more broadly and improve access to justice (known as positive spill-overs or externalities). Advocacy can also be an efficient use of limited resources. It can be an important part of a strategy for maximising the impact of LAC and CLC work.<sup>20</sup>

NACLC commends the Commission for recognising the value of CLCs and other legal assistance providers undertaking this strategic systemic work. Community legal centres are best placed to engage in systemic advocacy and law reform. This work is informed by CLC connections with community and ongoing work providing direct legal services to disadvantaged Australians. It includes working with clients, Government and other bodies to clarify or amend laws, policies and processes that operate unfairly or have a disparate adverse effect on the disadvantaged or vulnerable. It also includes providing evidence-based information to Government and law reform reviews and inquiries, as well as broader work including human rights education. Critically, this work benefits individual clients and their families, other members of the community and the legal system more broadly. It prevents the occurrence of similar legal issues in the future, helping to ensure that the law is current, fair and effective, and sets valuable precedents, all of which ultimately reduces demand for legal assistance services and encourages respect for the rule of law.

Unfortunately, in May 2014, the Australian Government Attorney-General's Department confirmed that the Commonwealth is 'working towards a one year extension of current CLSP service agreements' which will also serve to implement 'the Government's policy in relation to the use of Commonwealth legal assistance funding for front line service delivery' by varying the agreements to include clauses which will 'provide that, in relation to Commonwealth funding, the definition of core service activities is: information, advice, casework and community legal education activities'.<sup>21</sup> The change is intended to amend the definition of 'core legal services' to make clear that services funded by the Commonwealth will not, for the period of the extension of the Agreement, include law reform or policy advocacy. This would have a significant impact on the ability of CLCs to engage in these important activities.

While this is a policy decision of the Australian Government, NACLC urges the Commission to confirm in its Final Report, the importance and value, both in economic and social justice policy terms, of CLCs and other legal assistance providers undertaking law reform and policy advocacy.

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<sup>18</sup> Productivity Commission, above n 5, 623.

<sup>19</sup> Productivity Commission, above n 5, 609, 625.

<sup>20</sup> Productivity Commission, above n 5, 623.

<sup>21</sup> Email Correspondence from Director CLSP (Commonwealth AGD) to Executive Director (NACLC), *Extension of Tripartite Service Agreement*, 19 May 2014.

## The complementary but distinct roles of legal assistance providers

The nature, purpose, work and capacities of each of the types streams of legal assistance providers are complementary, but not interchangeable. Community legal centres play a distinct and separate role from LACs and the dedicated Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS). In particular, CLCs often play a safety net or ‘gap filling’ role, assisting those clients who are ineligible for legal aid and fall outside the client groups of the Aboriginal and Torres Strait Islander legal assistance services – or who perhaps cannot be assisted by those services because of a conflict of interest – and who cannot afford private lawyers. This role is particularly important in light of evidence that suggests a growing level of unmet legal need in Australia<sup>22</sup> and the strictness of legal aid eligibility tests.<sup>23</sup>

The Commission suggested in its Report that CLCs have a low case load, and stated that the ‘lumpy nature of case work and CLCs’ relatively small resource base means that they focus on relatively discrete provision of advice and planned information sessions’.<sup>24</sup>

NACLC submits that this statement indicates some misunderstanding. It is correct that CLCs generally have such limited resources that they have to, or choose to, restrict and prioritise the number of cases or ongoing casework matters that they conduct at any one time (or at all). It is also the case however that CLCs focus on assisting people with their legal problems as early as possible. As a service delivery strategy, CLCs make every effort to provide information, referral and advice early to prevent problems escalating. This is an effective and efficient strategy for assisting a large number of clients, often with multiple and entwined legal and related problems. It also complements the services other legal assistance providers such as LACs and the ATSILS which are understandably more directed towards representation and cases—predominately in criminal matters—than CLCs.

The very high proportion of information services, referrals and advices that CLCs provide as a proportion of their overall service delivery serves as a critical safety net for people who cannot gain assistance elsewhere and also as a highly useful triage service. It is also very important to note that the definitions of services and matter types is different across the legal assistance services and for this reason alone comparisons cannot be validly made.

Further, the Commonwealth’s CLSIS database records only those services provided with CLSP funding. As a result, it does not provide an entire picture of CLC services. There are also a number of counting peculiarities in CLSIS. For example, one can count cases that have been opened or closed in a particular year. However, it is harder to calculate the number of active cases open in one given year, as some matters can span several years and may—for external reasons eg waiting for a hearing date or a decision—have no activity for a year, but be an active case. In addition, CLSIS records law reform work when the file is closed. As a result, while law reform work may span a long period and involve many submissions, letter or other actions and extensive work, it may only count as ‘one’ when the file is closed. Similarly, a community legal education project on CLSIS is counted as one, but may in fact comprise several different seminars in a series. These ‘counting’ features must be taken into account when considering CLC service data.

We note that in 2012-13, CLCs funded under the CLSP:

- worked on a total of 240,506 matters (or 300, 241 matters if considering those which fall within LAC definitions of ‘matter’)
- assisted a total of 202, 703 clients

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<sup>22</sup> National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry* (November 2013), 9.

<sup>23</sup> The Commission states that it ‘considers that the LACs financial eligibility test is probably too tight’: Productivity Commission, above n 5, 647.

<sup>24</sup>Productivity Commission, above n 5, 619.

- provided a total of 249,318 advices
- worked on a total of 76,336 active cases
- opened 51,959 cases, and
- finalised and closed 51,344 cases.<sup>25</sup>

CLCs also made 118,218 referrals, completed 3,955 community legal education projects, and completed 958 law reform and legal policy projects.<sup>26</sup> With respect to clients with particular vulnerability or legal need, over this period, domestic violence was a factor in at least 31,861 matters and risk of homelessness was identified in 15,715 matters. CLCs also assisted over 11,500 Aboriginal and Torres Strait Islander clients.

The difficulties associated with measuring the efficiency and effectiveness of the different legal assistance service provider, especially by comparison is discussed in more detail, later in this submission.

## Governance arrangements

As noted by the Commission, governance arrangements for CLCs are ‘varied and complex’.<sup>27</sup> The Commission outlines governance arrangements arising as a result of funding arrangements, as well as making brief reference to the NALC National Accreditation Scheme for CLCs and management committee structures. However, CLCs are subject to a number of governance arrangements and accountability requirements, including:

- obligations arising from CLCs’ status as companies and associated incorporations, and in many cases as charities and not-for-profit organisations (eg DGR and PBI), or the legal obligations for fundraising
- requirements arising under Commonwealth, state and territory government funding agreements (for example, the CLSP Service Standards and specified financial reporting and accounting standards obligations) and the terms of funding arrangements with other bodies such as philanthropic organisations
- memoranda of understanding and agreements made in relation to formal partnerships and collaborations
- legal profession regulation and ethical obligations contained in legislation, Solicitors Conduct Rules (or equivalent) and case law
- professional regulation requirements of other professionals who work with or within CLCs, such as social workers and counsellors, youth workers, and accountants, and
- the NALC National Accreditation Scheme’s continuous assessment of CLCs against the Scheme’s Accreditation Criteria and Standards.

The National Accreditation Scheme (NAS) has been developed to provide an industry based certification process for CLCs that supports organisational development and gives recognition to good practice in the delivery of community legal services. Full members of State and Territory Associations of CLCS must comply with the NALC Accreditation Criteria. The NALC Accreditation Criteria and the evidence requirements by which CLCs are assessed for certification incorporate, but go beyond, the current CLSP Service Standards and the Mandatory Standards of NALC’s *Risk Management and CLC Practice Guide* (RMG).

The accreditation assessment is a detailed process. It involves online self-assessment, external assessment of the resulting reports, and site visits to test implementation and practices ‘on the ground’

<sup>25</sup> Community Legal Service Information System, accessed 27 May 2014. Note, these figures refer to CLCs funded under the CLSP however not all CLCs are funded under the CLSP.

<sup>26</sup> National Association of Community Legal Centres, *The Work and Clients of CLSP CLCs in Numbers* (February 2014).

<sup>27</sup> Productivity Commission, above n 5, 592.

by a trained external accreditation reviewer. In addition, CLCs are required to develop an agreed improvement work plan that is reviewed at least every six months. The process occurs in a continuous improvement framework that requires ongoing monitoring and reporting, as well as improvement actions from all centres.

The NACLC Risk Management Scheme supports NACLC's Professional Indemnity Insurance (PPI) Scheme and is very effective in requiring and encouraging high quality legal practice management processes. The PPI Scheme is recognised by state and territory law societies, which allow CLC lawyers to be part of this PII policy rather than jurisdiction-specific schemes, and exempt CLC lawyers from payment of fidelity fees.

Another feature of the NAS is the availability, free to all CLCs, of the suite of Management Support Online (MSO) services and resources that focus on governance, management, operations and administration, tailored to CLCs. The MSO provides detailed and practical resources on all aspects of running a CLC, including an extensive collection of pro forma policies and procedures, templates, and information sheets – all of which are regularly updated to take into account changes in the law or other relevant regulatory developments. As NACLC hosts its own CLC-tailored MSO portal, it is able to add best practice examples from CLCs themselves to share with others in the sector. The MSO is designed to meet the different needs of boards and management committee members, managers, staff teams and volunteers, and also provides training modules and quizzes for individuals and organisations.<sup>28</sup>

CLCs regularly make use of these resources to help them meet the requirements of the Accreditation Scheme and, increasingly to support them in their daily work and reporting to government and other funders.

There are also a number of state and territory initiatives designed to improve and consolidate best practice governance practices. For example the Governance and Management Project (GAMP) in Western Australia incorporated a number of components including an induction kit for prospective CLC Management Committee/Board members, a risk management education program, as well as a mentoring program and orientation kit for new CLC Managers.

There are numerous examples of the CLC sector sharing best practice processes and practice. These include the NAS, NACLC's Community Legal Education & Law Reform (CLEAR) database (a database of good practice examples of law reform and CLE work and resources developed by CLC and other legal assistance providers), the NACLC supported National Networks of CLCs working on specialist areas, and the annual National CLCs Conference. There are also a range of state and territory initiatives and events that contribute to this sharing of best practice.

As discussed later in this submission, collaborative mechanisms in relation to funding are likely to provide an additional forum within which to share best practice more broadly across legal assistance providers.

## Awareness of CLCs

The Commission highlighted that according to the LAW Survey, 'of all the legal assistance services, the Australian public are most aware of the LACs ... Community awareness about CLCs and LawAccess was found to be considerably lower'.<sup>29</sup> While NACLC recognises the importance of increasing awareness among the broader community of the role of CLCs, we note that there may be a number of additional explanations for the findings.

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<sup>28</sup> NGO Service Online, *Management Support Online*, accessed at [www.ngoservicesonline.com.au/subscribe-mso](http://www.ngoservicesonline.com.au/subscribe-mso) on 27 May 2014.

<sup>29</sup> Productivity Commission, above n 5, 516.

CLCs use a variety of different names (for example, 'Jobwatch' or 'The Accommodation Rights Service'), not all of which use 'community legal centre'. This may make it less likely for members of the general public to identify these services as 'community legal centres' that they know. Secondly, there are areas where there is no CLC operating (other than, perhaps, a specialist state-wide service). Further, the sector knows from experience that the term 'legal aid' is sometimes used, consciously or not, by members of the public as a generic term because the person does not understand or distinguish who is the provider of legal assistance, or it is used as shorthand to refer to legal assistance services broadly, rather than necessarily specifically referring to a LAC.

That said, in recognition of the need to increase awareness of CLCs among the community more broadly, NACLC and the Federation of CLCs (Victoria), with the other state and territory associations established and now lead a campaign called Community Law Australia. The aim of the campaign is to raise awareness about the extent of unmet legal need in Australia, the need for increased funding for legal assistance, and of CLCs and their work.<sup>30</sup>

Finally, as CLCs focus on their communities – whether geographic or target groups – a more relevant question is how well is each centre and its services are 'known' to its particular community or communities. Awareness among the general public is not necessarily the same as awareness among disadvantaged groups.

### Particular client groups with demonstrated legal need

As outlined in NACLC's November 2013 submission, there are a number of disadvantaged groups that should be specifically considered by the Commission in the course of this Inquiry. Without limiting these groups we suggested that the following groups have high vulnerability to legal problems and face particular challenges in accessing legal assistance services, and some may need specialist services:

- Aboriginal and Torres Strait Islander peoples, and that in some areas of legal need, these services need to be different for men and women
- people with disability<sup>31</sup>
- people from culturally and linguistically diverse communities
- older Australians
- women; and
- people living in rural, regional and remote (RRR) areas.<sup>32</sup>

NACLC confines its comments below to Aboriginal and Torres Strait Islander peoples, women and those living in RRR areas and the chapters which are the focus of this submission. However, we draw the Commission's attention to the previous submissions made by NACLC to this Inquiry as well as the submissions of ATSILS, FVPLS, Women's Legal Services Australia, with respect to improving access to justice and to legal assistance services for these people.

### Aboriginal and Torres Strait Islander Peoples

It is NACLC policy and firm belief that the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the specifically dedicated ATSILS and FVPLS staffed and managed, as far as is possible, by Aboriginal and Torres Strait Islander people.

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<sup>30</sup> Community Law Australia, accessed at [www.communitylawaustralia.org.au](http://www.communitylawaustralia.org.au) on 26 May 2014.

<sup>31</sup> See, eg, Australian Human Rights Commission, *'Equal Before the Law: Towards Disability Justice Strategies'* (2014).

<sup>32</sup> See, eg, C Coumarelos et al, *'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia'*, Law and Justice Foundation NSW (2012); R Iriana, P Pleasence and C Coumarelos, *Awareness of Legal Services and Responses to Legal Problems in Remote Australia*, Working Paper (2013), Law and Justice Foundation NSW; Z Wei and HM McDonald, *Concentrating Disadvantage: A Working Paper on Heightened Vulnerability to Multiple Legal Problems* (2013), Law and Justice Foundation NSW.

Aboriginal and Torres Strait Islander peoples have experienced, and continue, to experience, historical marginalisation from mainstream services, and generally prefer to and feel culturally secure in attending Aboriginal and Torres Strait Islander specific services.

It remains the case however, that there will be occasions when these providers are unable to assist a client because of real or perceived conflict, lack of resources, or because it is a specialist area of law that is outside their practice expertise. It may also be the case that in some matters, particularly in smaller communities, a person may not wish to consult, or be seen to consult a particular legal service where other members of family or community attend or work. It is therefore important that Aboriginal and Torres Strait Islander people have the choice to access other, culturally safe legal assistance providers if they so wish.

NACLC and CLCs across Australia are committed to ensuring that CLCs provide a culturally safe and appropriate service. In addition to employing Aboriginal and Torres Strait Islander staff in CLCs, including in some CLCs a dedicated Aboriginal liaison officer, NACLC recommends the inclusion of cultural safety indicators as good practice in the National Accreditation Standards and intends to make these mandatory in the next cycle. In addition, many individual CLCs run a range of programs and projects which ensure CLCs connect with their local Aboriginal and Torres Strait Islander communities, build relationships or trust, and offer services in a culturally appropriate ways.

NACLC submits that any new framework or agreement for legal assistance services recognise and support these important considerations. It is also important that any eligibility criteria introduced do not work against these key principles.

## Women

NACLC draws attention to a point made by Women's Legal Services Australia (WLSA) in its submission to the Commission that demonstrates the critically important example of the safety net function performed by CLCs.<sup>33</sup> The necessary priority of government LACs in terms of allocating their own limited funds, is on providing legal representation before the courts, and particularly for defendants in serious criminal matters.<sup>34</sup>

This inevitably causes limited legal aid resources to be directed far more towards men as perpetrators of serious crime. For example, National Legal Aid's national statistics indicate that only 33.26% of approved legal aid grants in 2013-2014 across Australia were for women.<sup>35</sup> The resulting gender bias in determinations about, and grants of, legal aid is highlighted in the WLSA submission to the Commission:

Gender bias in legal aid relates to the historic redistribution of public funding away from legal issues of most concern to women and the current decision-making practices within Legal Aid Commissions that discriminate against the issues of concern to women (especially those who seek aid for family law matters and who have experienced violence).<sup>36</sup>

This gendered impact is also relevant to ATSILS, particularly where this weighting towards criminal law matters results in conflicts of interest and may prevent women from accessing ATSIL services. This is not to say that LACS and the ATSILS do not provide family and civil law services, or that they do not have female clients: they do. However, their required focus on representation in criminal law cases

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<sup>33</sup> Women's Legal Service Australia, *Submission 29 to Productivity Commission Access to Justice Arrangements Inquiry*, (November 2013).

<sup>34</sup> As confirmed by the decision in *Dietrich v R* (1992) 177 CLR 292.

<sup>35</sup> National Legal Aid Statistics Report, accessed at <http://lacextra.legalaid.nsw.gov.au/NLAREports/reportviewer.aspx?reportname=Gender> 28 May 2014.

<sup>36</sup> Women's Legal Service Australia, *Submission 29 to Productivity Commission Access to Justice Arrangements Inquiry*, (November 2013).

strongly works against funding being used for family and civil law problems, and against gender equity in the allocation of legal assistance funding.

It is therefore critically important that significant funding is specifically earmarked for family and other civil law matters, and to address the legal needs of women and children. Importantly, with more funding dedicated to family and civil law, more unmet legal need of this type can be assessed and addressed and the services and government may be better able to determine its extent and the funding required.

### **People in rural, regional and remote areas**

The Access to Justice Taskforce noted in 2009 that ‘accessing legal services of any kind (public-funded or otherwise) is becoming increasingly difficult in regional, rural and remote Australia’.<sup>37</sup> NACLC briefly notes that there are additional difficulties for people in RRR areas in accessing legal assistance. Aside from general barriers such as lack of services and physical and transport-related barriers, these include: shortage and significant turnover of legal assistance staff in RRR areas; the ageing and decline in numbers of private lawyer in RRR areas;<sup>38</sup> and other accessibility issues including communications and cost. In considering any funding model it is important to recognise any additional needs or costs associated with service delivery in RRR areas.

NACLC notes that it has two programs in particular designed to address difficulties faced in recruiting and retaining legal assistance staff in RRR areas. The RRR Practical Legal Training Project, funded by the Commonwealth Attorney-General’s Department, has been developed to support and facilitate graduate lawyers in securing their Practical Legal Training placements at legal assistance services in RRR areas. The RRR Law project involved four regional coordinators being employed to work with legal assistance services in North West Queensland, the Northern Territory, South Australia and Western New South Wales, focusing on recruitment and retention strategies for legal assistance staff.

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<sup>37</sup> Commonwealth Attorney-General’s Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009), 146.

<sup>38</sup> Law Council of Australia and Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey* (July 2009).



## Section 2: Identifying and Responding to Legal Need

As outlined in NACLC's November 2013 submission, 'legal need' is defined as legal issues that individuals have not been able to resolve effectively by their own means.<sup>39</sup> The distinction between 'met' and 'unmet' legal needs is an important one.

The most recent work done in terms of measuring legal need in Australia is the report published by the Law and Justice Foundation of NSW (LJF) and supported by National Legal Aid (NLA), the Legal Australia-Wide Survey (the LAW Survey).<sup>40</sup> However, NACLC reiterates our concerns that the methodology of the survey may have resulted in some common users of CLCs not being surveyed, for example people without landline telephones.<sup>41</sup> In addition to the LAW Survey, other recent important developments relating to legal need in Australia include: the NACLC Legal Needs Strategic Planning Toolkit; the Indigenous Legal Needs Project; and the Australian Council of Social Services (ACOSS) Community Services survey.<sup>42</sup>

The Commission states that 'there appear to be no metrics for allocating Commonwealth funding to CLCs'.<sup>43</sup> It suggests that the CLSP funding model does not link needs with services, is not responsive to demographic changes or changes to need, and that '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'. It concludes that placement of CLCs (and by extension their approach to service delivery) is historically based.<sup>44</sup>

NACLC has a number of concerns with these conclusions.

### Transparent and publicly accountable funding model

NACLC has made submissions to Government and has been advocating the importance and appropriateness of there being a transparent and publicly accountable funding model for CCLSP funding for some years. A copy of NACLC's current articulation, *Principles for CCLSP Funding 2013-2016* (7 November 2013), is included at Appendix A.

NACLC continues to support the need for a transparent process, and agrees that it should take into account evidence-based research on legal needs, met and unmet, when making funding decisions. NACLC also accepts that as the Government makes decisions about allocating limited public funds, it is appropriate for it to determine in advance social justice policy that identifies priority areas for allocating funding.<sup>45</sup>

Having said that, assessment of disadvantage and legal need—which are different but overlap—are complex matters. NACLC submits that consultation with existing legal service providers, or peak bodies, is important to ensure that other relevant considerations are taken into account. Such considerations include: existence, accessibility and appropriateness of other service providers in the area/s for the particular type of legal needs; local demographic considerations such as pockets of disadvantage in affluent local government areas (LGAs); or types of legal needs that render otherwise well-resourced

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<sup>39</sup> JT Johnsen, 'Legal Needs in a Market Context' in F Regan, P Paterson, T Goriely and D Fleming (eds) *The Transformation of Legal Aid* (2009), 205-232.

<sup>40</sup> C Coumarelos et al above n 21.

<sup>41</sup> National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry* (November 2013), 11.

<sup>42</sup> National Association of Community Legal Centres, *Legal Needs Strategic Planning Toolkit* (2012); Indigenous Legal Needs Project, accessed at [www.jcu.edu.au/ilnp](http://www.jcu.edu.au/ilnp) at 26 May 2014; ACOSS, *Australian Community Sector Survey 2013: National Report*, ACOSS Paper 202 (2013).

<sup>43</sup> Productivity Commission, above n 5, 598.

<sup>44</sup> Productivity Commission, above n 5, 609.

<sup>45</sup> Judith Stubbs and Associates, above n 14.

people vulnerable and disadvantaged – family violence and related dispossession occurs in all areas and demographics.

## Identifying and responding to legal needs

Increasingly, CLCs are using a sophisticated, evidence-based approach to inform their approach to service delivery and identify and respond to legal need in a number of key respects. Academics such as Dr Liz Curran have highlighted this trend towards a ‘more targeted approach to service delivery’ which has evolved to

better meet the needs and circumstances of those who need help the most who are often vulnerable and disadvantaged and to garner the small resources available to community legal centres to have an impact. Accordingly, it focuses on targeting specific disadvantaged communities and targeting specific legal problems identified by those communities.<sup>46</sup>

Accordingly, we are concerned that the Commission appears to consider that needs-based assessment has not been occurring. This assessment has been, and continues to be, undertaken by individual CLCs themselves, sometimes in consultation and collaboration with their state funding bodies. It has also been occurring as a result of state and territory reviews as well as national approaches, including being guided by the NALC Legal Needs Assessment Toolkit.

CLCs focus on the most disadvantaged and vulnerable members of the community, as well as those unable to access other legal assistance services. CLCs focus on priority areas of legal need, and subject to resources, offer a mix of services most likely to meet that need. CLCs collect and retain locally far more demographic data than appears in the CLSIS. Many use this data for analysis that informs their strategic and service delivery planning, and funding submissions.

The example of the South East Region Legal Needs Analysis Project in Victoria is an important one in demonstrating the way in which CLCs undertake legal needs analysis. The project involves four CLCs and a number of Victoria Legal Aid regional offices working together to share data and undertake a joint legal needs analysis of the entire South-Eastern Metropolitan region of Melbourne. The intention is to use the outcomes of legal needs analysis to work together to look at how best to respond to the identified legal need.

CLCs use connection with local community and communities (whether geographically defined in the case of generalist CLCs, or by an area of law or client base in the case of specialist CLCs) to identify and address legal needs in the target community. This identification and response to legal needs has also resulted in the establishment and work of specialist CLCs, often borne from generalist CLCs identifying a legal need.

CLCs also often develop targeted strategies to assist particular groups as part of this approach. This means that CLCs rarely provide services that duplicate the work done by other service providers. In circumstances where a CLC and another legal assistance provider are providing similar services in one area, this occurs in a complementary way. This includes cross-referrals where the volume of need requires, or where clients may feel more culturally safe with one service than other, or where one is unavailable to provide the service because of actual or potential conflict of interest.<sup>47</sup>

It is also important not to make assumptions that a reference to more than one legal assistance provider undertaking a particular type of matter, may not indicate duplication but rather ensuring legal advice

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<sup>46</sup> L Curran, *Solving Problems-A Strategic Approach: Examples, Processes and Strategies* (March, 2013), prepared for Consumer Action Law Centre and Footscray Community Legal Centre, 45 and see 45-50.

<sup>47</sup> For discussion of high referral rates see Productivity Commission, above n 5, 668.

and representation of both parties. For example, LAC may represent an accused perpetrator of family violence and a CLC or FVPLS may represent the person experiencing family violence.

## Location of CLCs

NACLC agrees that CLCs should be located, wherever practicable, where they can most effectively meet legal need, or their target legal need. This is not necessarily the same as being located in areas of high need.

With respect to the geographical location of CLCs, the Commission suggests that ‘the current geographic distribution of CLCs revealed a mismatch between areas of greater disadvantage and the placement of centres’.<sup>48</sup>

It is correct that the placement of CLCs is in many, but not all, cases historically based. This does not recognise however that the CLCs continuing existence in those places may have been or is the subject of review and that the decision to remain there is an evidence-based one. Nor does it recognise that some CLCs that have remained in the same location have modified their organisation, services, or service delivery methods to meet the changed profile and needs of their changed and changing communities.

Other factors affecting efficiencies, effectiveness and service planning decisions must be taken into account. Some of these are pragmatic. For example, it may be ideal to have lawyers located in a wide range of places in regional or remote areas. However it is important to consider the number of people needing services in a particular area and the extent of legal needs in the area. It is also necessary to take account of the type of legal matter and need. It may be that the legal need is extreme but for comparatively few people, and that a significant proportion of those people’s legal needs are for representation in criminal trials that are held in a regional centre – they also need legal advice early and in between hearing dates in their home community. It may be more cost effective for the limited number of legal assistance lawyers to be based in the regional centre, and for an arrangement to be made for regular outreach services to be provided in outlying areas.

The practical reality is that recruitment and retention – and supervision and support, and quality assurance – is much better on this model, than if lawyers are required to be placed in more remote areas of high levels of disadvantage and legal need.

In addition, geographic location is not necessarily the same as where services are being provided. Approximately half of CLCs are specialist. For example, the Consumer Credit Legal Centre NSW (CCLC) is in the Sydney metropolitan area but operates national and statewide telephone services. The Credit and Debt Hotline is accessible from across NSW and provides assistance to clients who are in financial difficulty. Telstra records for the Credit and Debt Hotline reveal that 56% or more calls to CCLC (successful or not) originate from outside the capital city. The other advice line is the Insurance Law Service, which is accessible nationally and offers free telephone legal advice to consumers on insurance law matters or disputes involving insurers. Further, despite being located in Sydney CCLC is able to reach clients from a large geographical area. For example, the Mortgage Hardship Service operating out of CCLC between 2009 and 2012 reached clients from 116 LGAs (76% of the all the LGAs in NSW).<sup>49</sup>

The Report discusses the location of CLCs by reference to SEIFA deciles and states that ‘those CLCs located in “better off” areas tend to serve “better off” clients’ and that CLCs may be incorrectly located where there is not sufficient evidence of greatest need.<sup>50</sup> The location of CLCs does not directly correlate with their provision or targeting of legal assistance according to legal need. Many areas have

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<sup>48</sup> Productivity Commission, above n 5, 32.

<sup>49</sup> Consumer Credit Legal Centre NSW, *Submission 87 to Productivity Commission Access to Justice Arrangements Inquiry*, (November 2013). Note the service continued until funding ceased in July 2013 but the evaluation occurred in 2011. CCLC continues to offer mortgage hardship assistance but no longer has any dedicated positions for this service.

<sup>50</sup> Productivity Commission, above n 5, 584.

pockets or communities of disadvantage. For example, Redfern in inner Sydney has large proportion of public housing, Aboriginal peoples and other disadvantaged people. Similarly, consideration of SEIFA decile or household income level does not always appropriately reflect the level of legal need. For example, where a woman from an 'advantaged area' is experiencing family violence she may not have access to financial resources, regardless of the overall income level of her household.

We note three additional points with respect to the location of CLCs:

- the location of CLCs in an area which is serviced by public transport, safe to travel in at night, and which is close to other services needed by disadvantaged people such as police, courts, medical services, and schools is vital
- in addition, the level of pro bono and volunteer assistance provided to CLCs is significant. The location of a CLC in an area which is not close to the CBD or an urban centre in which barristers and solicitors work could potentially impact on the availability of these professionals to provide pro bono services to assist in the provision of legal advice, and
- finally, as CLCs often occupy office space provided by local councils or on a subsidised basis, their location is subject to the availability of such premises, which may not correlate with residential areas, or areas of socioeconomic disadvantage.

## State and territory reviews

While some CLCs are located in particular areas on the basis of past decisions about legal need, in many circumstances at a Commonwealth, state and territory level legal need has shaped and informed the planning of legal service provider location and service delivery. In particular, the various reviews of CLCs and legal assistance have increasingly informed the funding, planning and location of CLCs across Australia. For example, in Western Australia CLC reviews in 2003 and 2009 involved a detailed demographic and socio-economic analysis of disadvantage and legal need in WA, the findings of which then provided a guide for action and informed consideration of the appropriateness of the location of CLCs and the areas of highest need for new CLC services in WA.<sup>51</sup> Similarly, the 2012 SA review categorised unmet legal needs in terms of geographic areas of need, areas of law, and vulnerable and disadvantaged client groups,<sup>52</sup> which has been used as the basis for the development of a collaborative legal services plan for CLCs in Queensland.

## National approaches

In addition to the work of specific CLCs, the NACLC Legal Needs Assessment Toolkit, developed in 2010, represents an important attempt mechanism through which CLCs can measure met and unmet legal need in their area and plan strategically to meet it, review progress and respond accordingly. The Toolkit represents a national approach that builds on the work done in NSW by CLCNSW and Judith Stubbs and Associates in conducting a Legal Needs and Strategic Planning Project, which aimed to develop a model strategic planning process and a legal need assessment toolkit.<sup>53</sup> The application of this work at a Commonwealth and state and territory level has resulted in NACLC and CLCs applying a consistent evidence-based approach to understanding the distribution of both met and unmet legal need in Australia through the use of the NACLC Legal Needs Assessment Framework and Toolkits. State and territory governments are also using this framework to identify and respond to legal needs.<sup>54</sup>

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<sup>51</sup> Community Legal Centre Review Steering Committee, *Joint Review of Community Legal Centres* (2003); URS, *Demographic and Socio-economic Analysis of Western Australia* (2003), prepared for the Joint Review of WA Community Legal Centres; and Kalico Consulting, *2003 Joint Community Legal Centre Review Update Report* (2009), prepared for WA Community Legal Centre Consultative Committee.

<sup>52</sup> Department of Justice and Attorney-General Queensland, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts*, Final Report, (December 2012).

<sup>53</sup> National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry* (November 2013), 11.

<sup>54</sup> See, eg, Department of Justice and Attorney-General Queensland, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts*, Final Report, (December 2012), [4.1], [6.1].

This focus is also reflected in the CLC Strategic Service Delivery Model which entails three key elements: identifying legal need using evidence-based assessment; planning and developing service responses; and delivering legal and related services to clients.<sup>55</sup>

## Measuring efficiency and effectiveness: comparing legal assistance providers

NACLC welcomes the Commission's focus on ensuring that the funding and provision of legal assistance services are efficient and effective.

One of the objectives of the NPA is to ensure 'a national system of legal assistance that is integrated, efficient and cost effective, and focussed on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness'.<sup>56</sup> NACLC strongly endorses these principles and submits that all five are critical and should form the framework of consideration of any aspect of legal assistance delivery in Australia, including funding. We note however that efficiency should be viewed more broadly than cost efficiency.

The Report states that 'LACs are also better able (than the CLCs) to achieve economics of scale through high volume service delivery. Evidence presented to the Commission suggests that the LACs are more efficient in terms of the number of cases held per civil law lawyers when compared with the CLCs.<sup>57</sup> It is not clear what evidence was taken into account to reach this conclusion, what definitions were used (including for example of 'case' or 'civil law lawyer'), or the methodology and sample size. NACLC suggests that examination of efficiency in these terms requires consideration of issues such as how efficiency was determined; whether the cases were of comparative type; whether the role of lawyers included was comparable, particularly given the broad role of CLC lawyers; whether lawyers had similar resources to conduct similar types of matters; and which variables such as court delays or availability of witnesses were considered or excluded.

In some types of matters, the much larger and resourced LACs may provide greater efficiencies in running some matters, especially if there are a number of similar matters. However, NACLC emphasises that this is not to say that this can or should be extrapolated to mean that this is always the case- and, in any event, efficiency measured in this way is only one important consideration.

We make a number of broader points below with respect to measuring efficiency and effectiveness and comparing legal assistance providers. First, NACLC agrees with Dr Curran that 'when examining efficiency of legal assistance services care is needed' as 'over concern with efficiency can actually erode the outcome and be counterproductive or even reduce the good work possible'.<sup>58</sup>

Secondly, the nature, purpose, work, resources and consequently capacities of legal assistance service providers vary markedly. Assessments of efficiency and effectiveness should be made taking these factors into account. At present, each legal assistance service has aims and objectives, and agreed strategic and work plans, developed in accordance with their respective funding programs and agreements and - in the case of LAC - legislation. For this reason, it is not appropriate at this time to assess any provider other than the LACs against NPA objectives, set out in an agreement to which they were not parties. Performance assessment of these other services should only be made on the basis of their achievement of the objectives and requirements of their respective funding programs, and, at the individual provider level, also against their strategic and work plans.

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<sup>55</sup> National Association of Community Legal Centres, *Principles for Commonwealth Community Legal Services Program (CCLSP) Funding 2013-2016*.

<sup>56</sup> *National Partnership Agreement on Legal Assistance Services*, cl 15.

<sup>57</sup> Productivity Commission, above n 5, 633.

<sup>58</sup> L Curran, A Literature Review: Examining the Literature on How to measure the 'successful outcomes': quality, effectiveness and efficiency of Legal Assistance Services, (2012) prepared for Commonwealth Attorney-General's Department, 34.

Thirdly, the differences between CLCs and other legal assistance providers make it particularly difficult to compare 'efficiency' or 'effectiveness' with any certainty. One of the biggest issues in this context is the fact that the data collected by the legal service providers is not common.<sup>59</sup> It is very difficult, if not impossible to modify or interpret current data across legal assistance providers in a way that would make comparative analysis possible. As discussed further in Section 7, the work undertaken by the National Data Working Group went a significant way to developing a data collection framework for legal assistance, but a number of issues still need to be resolved. NACLCL suggests that this work could provide a foundation for consideration of data for the purposes of determining efficiency and effectiveness.

It is critical to understand however that establishing common data does not mean that comparative assessment across providers can necessarily be accurately or fairly done. Comparative analysis only on data does not take sufficient account of the different operational and service characteristics or circumstances across organisations. For example, there is no recognition of the fact that, unlike other providers, many CLCs services are boosted by large numbers of volunteers. There is also limited recognition of the difference in size or significance of work done (if this has not been addressed in weighting in the data framework). For example, an advice may take hours to provide, or be provided in a day by a busy duty lawyer at court.

In addition, current data systems do not have the capacity to recognise or record the time, effort and expertise involved in the non-direct activities of CLCs. For example, many CLCs spend significant time establishing and maintaining community relationships. This is an essential part of ensuring client groups are able to access a safe and culturally appropriate service; informing difficult to reach client groups of available services; and informing assessments of legal need. Similarly, community liaison, victim support, court support, capacity building of individuals and communities, and even community legal education, are all hard to record other than by time and difficult to demonstrate 'value'. However, this work is critical to effective service delivery for disadvantaged people. Any mechanism for measuring effectiveness and efficiency must take these factors into account to ensure the broader impact and effectiveness of spending additional time within communities or with individual clients, and responding to them in a holistic way, is not ignored in measuring efficiency and effectiveness.

Further, consistent with the holistic approach to service delivery taken by CLCs, dealing with the most disadvantaged clients will inevitably mean taking more time with each one. This is particularly the case for clients with a mental illness, or who require an interpreter and in some cases for people with disability. Many legal assistance clients have one or more of these characteristics.

Finally, for CLCs there are also factors identified by the Commission associated with the difficulty of attracting and retaining staff. These include time taken to recruit appropriate staff, and high turnover resulting in 'lost' time for recruitment, induction and training. These issues are exacerbated in RRR areas.

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<sup>59</sup> See Section 7.

## Section 3: A National Framework and National Funding Model

### Draft Recommendation 21.5

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

### Summary

NACLC supports the development and implementation of an equitable, consistent and transparent framework for legal assistance funding in Australia. Renegotiation of the NPA following the current agreement expiring, or any equivalent agreement negotiated with respect to legal assistance provision in Australia, is an important process. However, this should occur against the backdrop of a broader national framework that would provide a blueprint for a sector-wide approach to meeting the needs of disadvantaged Australians. This section outlines the key elements NACLC considers should be included in any national framework, national funding model and NPA, all of which should be developed in consultation with national representatives of the four legal assistance providers and with the States.

### Current NPA

The current NPA is an agreement between the Commonwealth and State and Territory Governments, the objective of which is ‘a national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficient and effectiveness’.<sup>60</sup> The NPA includes a number of objectives and outcomes. The NPA refers to the CLCs, ATSIILS and FVPLS but they were not consulted about its terms, nor are they parties to the agreement.

### Review of NPA

The Review of the NPA was undertaken by the Allen Consulting Group commissioned by the Australian Government Attorney-General’s Department, between May 2012 and June 2013. The focus of the review was the contribution made by the Commonwealth funded legal assistance services to the achievement of objectives and outcomes specified in the NPA.<sup>61</sup> The Review consisted of a number of phases and to date has produced draft versions of an evaluation framework; assessment working paper; analysis working paper; and a Legal Aid-specific report. A Draft Report was made available to the Convenor and Executive Director of NACLC, as members of the Advisory Committee, in April 2014 for comment on any errors of fact.

NACLC submits that the Commission should have regard to the submissions made commenting on the NPA Draft Report, but notes that the request for comment was confined to correction of errors, and therefore NACLC’s submission was confined in this way. As a result, lack of comment on conclusions should not be taken to signify agreement.

### A new Commonwealth framework

NACLC supports the development and implementation of an equitable, consistent and transparent national framework for legal assistance funding in Australia. NACLC supports the development and implementation of an equitable, consistent and transparent framework for legal assistance funding in Australia. The function of any framework should be to provide national coordination and ensure high-level national consistency, regular analysis of legal needs to inform its setting of national priorities,

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<sup>60</sup> *National Partnership Agreement on Legal Assistance Services.*

<sup>61</sup> *Review of the National Partnership Agreement on Legal Assistance Services, Terms of Reference.*

facilitation of expert input and the allocation of funding. In particular, NACLC submits that any national framework should include some of the elements identified in the Commission’s Draft Recommendation 21.5, and should:

- provide for a transparent and evidence-based funding model
- govern Commonwealth, state and territory legal assistance funding
- cover all four legal assistance providers (Legal Aid, CLCs, ATSILS and FVPLS)
- contain agreed national principles or objectives
- identify agreed national core priorities of legal need
- identify agreed national priority client groups, and
- specify consistent high-level eligibility principles.

The national principles or objectives, core priorities of legal need and priority client groups articulated in the framework should guide the development of a national funding level and allocation of funds under that model, as well as the development and negotiation of a new NPA. However, the national framework should allow flexibility for identification of further priorities, both in legal needs and in target groups of clients, at the state, territory, and if needed, regional level. This would provide sufficient flexibility to allow for state and territory policies and priorities in addition to—and not inconsistent with—the national priorities.

NACLC submits that any national framework or funding model, and the NPA, must be developed in consultation with national representatives of the four legal assistance providers and with the states and territories.

NACLC considers that there are a number of key elements that should be contained in any national framework with respect to legal assistance provision in Australia, and ultimately reflected in the funding model and the NPA. NACLC agrees with the Commission that it is important to have a NPA that represents a joint commitment between the Commonwealth and states and territories. NACLC submits that where appropriate, such as with CLCs, there should be tri-partite agreements within the NPA framework. NACLC also submits that, consistent with the overarching principles, the agreement/s must recognise and provide for the differences in structure, operations, service delivery models and target client groups, of the different legal assistance providers.

NACLC believes that it may be possible to agree a common set of high-level principles within which each legal assistance service provider must operate consistently. This would ensure that legal assistance, by all providers, is conducted consistently within an articulated and transparent social justice policy framework and consistent with agreed priorities.

It will be necessary to resolve a number of issues relating to the scope and operation of the framework, funding model and any agreement, several of which are discussed later in this submission.<sup>62</sup> These include: the degree to which requirements can be common across the four legal assistance providers, or need to be different; performance criteria and assessment, including any proposed targets, or outputs or outcomes measurement; reporting mechanisms; and, one of the most problematic to resolve – data recording and reporting requirements, including consideration of what, if any, data can reliably and fairly be assessed across the service providers. The resource implications of any proposed changes and the funding to be provided for these purposes will need to be a primary consideration. It will also be necessary to consider interaction with other national plans and strategies.<sup>63</sup>

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<sup>62</sup> For example, to the extent that the NPA should provide the framework within which any new funding model should operate, is discussed further in Section 6 of this submission; and data issues are discussed in Section 7.

<sup>63</sup> For example, the *National Disability Strategy 2010-2020* and the *National Plan to Reduce Violence against Women and their Children 2010-2022*.



## Coverage of all legal assistance providers

Under the current NPA, LACs are the only service providers to be funded under the NPA and therefore subject to its national performance benchmarks. Consolidating the various agreements and funding mechanisms relating to legal assistance services and providing for coverage of all legal assistance providers is likely to provide greater clarity, a consistent national framework, and principles for legal assistance in Australia.

With regard to CLCs, NACLC confirms its view that all CLCs funded through the CLSP, whether by the Commonwealth, state and territory, or both, should be included in the national framework, funding model and the NPA. NACLC emphasises the importance of these formally recording an understanding and endorsing of the differences between the legal assistance providers, their priority clients and services, the complementary nature of their operations and the strength of this mix of services.

## National priorities

NACLC considers that the development of agreed high level national objectives and core priorities would provide a useful overarching framework for the planning and provision of legal assistance services.

The Commission suggests that the Commonwealth, states and territories seek to agree to national objectives and core priorities for legal assistance services, rather than have separate priorities at the two levels of Government. This is linked to the Commission's view that direction of legal assistance funding is constrained by current separate Commonwealth and state priorities and funding arrangements.<sup>64</sup> The Commission also suggests that determining national priorities should be based on 'where the community-wide benefits are the greatest, taking into account the extent to which unresolved legal problems impact on a person's life and the community more broadly'.<sup>65</sup>

NACLC agrees in broad terms with the Commission's conclusion but submits that while some priorities can be agreed nationally, it will be always necessary and important to allow flexibility for recognising some variation in needs and priorities at the state, territory and possibly in some cases, regional level for targeted groups or issues. This would create a nationally consistent but flexible tailored set of priorities to guide the delivery of legal assistance services across Australia.

It may also go some way to addressing the Commonwealth/State divide in legal assistance funding, which relies on an overly simplistic classification of legal problems into one or the other categories (when this is not always possible and, in any event, does not recognise the interconnection of multiple legal problems of many disadvantaged people).

NACLC submits that determination of national priorities should be done in consultation with all legal assistance providers. This would allow consideration of a range of benefits, as well as the appropriate criteria for assessing those benefits. For example, it is not appropriate only to apply an economic cost-benefit analysis to this question, as legal assistance policy derives from legal obligations (such as the right to a fair trial), social policy objectives and human rights.

## Priority client groups

A number of agreements and reviews either contain, or have recommended, the targeting and tailoring of legal assistance services to groups or areas with the highest level of legal need, or those people 'who experience, or are at risk of experiencing, social exclusion'.<sup>66</sup>

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<sup>64</sup> Productivity Commission, above n 5, 632.

<sup>65</sup> Productivity Commission, above n 5, 632.

<sup>66</sup> See, eg, NSW Department of Attorney General and Justice, *Review of the Delivery of Legal Assistance Services to the NSW*

The identification of any nationally decided priority client groups must be informed by a recent and sound evidence base, such as the LAW survey, although a number of other key reviews and inquiries which highlighted particular groups with high levels of need remain relevant. Indeed, it is notable that the research, nationally and internationally (as applicable), is generally very consistent: groups such as Aboriginal and Torres Strait Islander peoples, people with disability, single parents are among the groups with the highest legal need. There are additional challenges in accessing these groups, which makes identification and prioritisation particularly important.

NACLC submits however, that it is necessary to consult the legal assistance sector, and regularly conduct new research, to test for changes in need, especially unmet need. This added enquiry and consultation is also important more broadly in determining any national priority client groups, to guard against any traditional (or new) biases, such as the gendered bias in the allocation of grants of legal aid.

### **Eligibility principles**

NACLC strongly advocates against common eligibility tests or criteria. The differences in legal service models, resources and infrastructure, type of services provided and target groups for the different legal assistance providers, render this inappropriate, inefficient and would add onerously to the administrative burden of the less resourced providers.

Accordingly, NACLC considers development of high-level eligibility principles, rather than common criteria, to be the preferable approach to targeting legal assistance services and ensuring program delivery to accord with policy objectives. These principles should be developed collaboratively by representatives of the four legal assistance services and government, and appear in the framework, funding model and/or the NPA.

This issue is discussed in more detail in Section 5.

## Section 4: Civil Law Legal Assistance Funding

### 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.*

### Summary

This section addresses the Commission's consideration of the potential for separate determination and management of legal assistance funding for civil and criminal law matters. NACLC supports the suggestion but considers a number of difficulties with demarcating funds in this way and emphasises the need to ensure that a proportion of criminal law funds are not simply redistributed to civil law matters, but rather that there is an overall increase in funding to meet unmet need.

### Civil law and demarcation of funds

There is a high level of unmet legal need with respect to civil law. Increased access by disadvantaged Australians to legal assistance for civil matters is vital and will have a broad range of positive flow on effects and costs. The Commission highlighted a number of case studies of civil legal problems spiralling and recognised that 'not providing legal assistance for civil matters can be a false economy as the costs of unresolved problems are often shifted to other areas of government spending'.<sup>67</sup>

The Commission's Draft Recommendation recognises this and supports action to address the issue. It recommends that Commonwealth, state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters. The Commission also seeks views on the appropriateness of such demarcation and whether this would be sufficient to ensure that appropriate resources are directed towards non-criminal and, it adds, non-family law matters.

NACLC supports the suggestion that funding should be determined and allocated for civil law services separately from the funding for criminal law services. It agrees that this is a necessary and appropriate action to ensure that legal assistance funding is not "swallowed" by the demand for legal assistance in criminal matters. It should also make easier tracking the breakdown of the services provided with legal assistance funding.

In addition, it is important in order to address the unequal gendered impact of funding priorities and distribution and the consequences in part arising from the decision in *Dietrich*,<sup>68</sup> discussed earlier in Section 2.

Importantly, by agreeing with this draft recommendation, NACLC is not suggesting that any increase in funding for civil law matters occurs at the cost of criminal law funding—an overall increase in funding to meet unmet civil legal needs is required.

In a practical sense however, there are difficulties in strict demarcation. For example, where a client experiences multiple disadvantages and legal problems. These may include both civil and criminal law

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<sup>67</sup> Productivity Commission, above n 5, 631.

<sup>68</sup> *Dietrich v R* (1992) 177 CLR 292.

matters, for example unpaid fines can lead to risk of imprisonment, despite not commencing as a criminal matter. Another common example is action over family violence may include applying for an Apprehended Violence Order, criminal injuries compensation application and a police and criminal law matter. These complexities must be recognised and addressed in advance in determining the appropriate way of determining and allocating funding, and in recording or any other management requirements.

There is also a need to avoid any extra administrative burden for organisations that provide both civil and criminal law services, for example in terms of funding submissions or reporting to funders.

NACLC notes that Information Request 21.1, in contrast to Draft Recommendation 21.1, refers to a further demarcation: criminal law, family law and civil law. NACLC notes that the Report's Explanations note that for the purposes of the Report, the term 'civil law' is 'used broadly and includes family law matters. It excludes criminal law matters'. This is how NACLC understood Draft Recommendation 21.1, that is, as including family law in civil law.

NACLC does not have a strong view on further demarcation by separating family law from other civil law but repeats its concern that it is very important not to add any administrative burden to busy service providers; and notes that it will be particularly important for there to be clear and consistent definitions and usage by all parties in relation to these classifications.

NACLC notes that commonly civil law (when excluding family law) refers to areas of law including: employment, social security, consumer credit and debt, housing, immigration, environment, wills and estates, health, mental health, guardianship, and a number of other areas of civil law.

## Section 5: Targeting Legal Assistance Funding: 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.*

### **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.*

## Summary

It is appropriate to have eligibility tests for access to legal assistance services. NACLCL considers that some high-level principles with respect to eligibility may be appropriate, but are of the view that the imposition of consistent eligibility tests between legal assistance providers such as LACs and CLCs is not the preferable approach. This section examines current targeting and eligibility tests, difficulties with common eligibility criteria, and outlines its suggestion with respect to the development of Eligibility Principles.

## Current targeting and eligibility tests

Presently there is a range of eligibility tests for access to legal assistance services in Australia. For example, applications of legal aid are generally assessed against a means and a merits test, and are required to fit within the particular LAC's Guidelines (which vary from time to time as the LAC makes fresh policy decisions on eligibility – often in response to Budget and funding announcements. The eligibility criteria for ATSILS also include a means, matter and merits test. Eligibility for FVPLS requires that the applicant must be of Aboriginal and/or Torres Strait Islander descent, identify as such, and not be a perpetrator of family violence.

As the Report notes, CLCs generally determine their own eligibility criteria, however as a general rule CLCs will consider:

- whether or not the client is in the Centre's catchment – which may be based on geographic area or target groups, or both
- area of law or legal problem
- urgency of the matter
- type of legal assistance required
- availability of legal aid or other legal assistance
- merits of the matter
- whether the matter is in the public interest
- ability of the client to manage the matter or help themselves (including any disability or language or other needs), and
- capacity (resources including whether the centre can do the work required in the particular time required if there is a deadline) and capability (relevant expertise, available at the required time) of the centre to assist.

Relevantly, almost half of CLCs are specialist services. This means they only provide services to a particular area of law, such as migration and refugee law or consumer credit and debt, or to particular

target groups, such as people experiencing family violence, women, tenants or people experiencing homelessness.

The Report states that CLC approaches to ‘determining their own eligibility criteria ... lacks transparency and could encourage forum shopping (and inequitable outcomes)’.<sup>69</sup> The Commission also expresses the view that CLC eligibility criteria is ‘possibly too lax, although it is hard to know given the lack of transparency’.<sup>70</sup>

NACLC has a number of concerns with these conclusions, addressed below.

## CLSP Guidelines

We note that some of the Commission’s primary concerns about legal services provided by CLCs include the lack of transparency with respect to eligibility criteria for legal services.

At a broad level however, it is important to note that CLCs do not set their eligibility criteria in isolation or without review or monitoring. CLSP funded CLCs must operate in accordance with the CLSP aims, Guidelines, the terms of their individual Service Agreements and plans approved by the relevant State or Commonwealth Program Manager. In addition, CLCs that are members of NACLC’s PII scheme are required to have written guidelines about the types of work they will, and will not, take on, including specification of any criteria, parameters or priority considerations relating to type of matter and clients.

While specific eligibility tests vary between CLCs, funding service agreements contain a number of factors that must be considered in determining eligibility. For example, the CLSP Guidelines state that ‘while there is no simple rule on how to allocate finite resources, decisions should be based on an assessment of individual situations’ and provides that a service provider must consider the following 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.<sup>71</sup>

NACLC submits that these types of Guidelines, which are directive without being prescriptive, and retain some flexibility for consideration of the individual and their circumstances, are appropriate and effective for legal assistance determination. The criteria in the Guidelines should be considered together with the approved Service Plans that can provide for more specific targeting relevant to the particular CLC, taking into account its circumstances and context, its potential and actual client, analysis of their communities’ legal needs group and any identified target groups.

## Current client profile

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<sup>69</sup> Productivity Commission, above n 5, 644.

<sup>70</sup> Productivity Commission, above n 5, 647.

<sup>71</sup> Commonwealth Attorney-General’s Department, *Commonwealth Community Legal Services Program Guidelines*, [6.6].

NACLC notes that it appears that despite the Commission's doubts, the evidence supports the view that CLC services are currently well targeted and provided to disadvantaged clients. The Commission acknowledges that majority of CLC clients are low income (less than \$500 week or \$26,000 per annum) and on government payments. The Commission figure based on CLSIS data is 43% of CLC clients. We suggest that this figure is much higher. For example, the 2008 CLSP Review indicated that 58% of clients received some form of income support, 82% were low income and almost 9% of clients had some form of disability.<sup>72</sup>

Accordingly, NACLC submits that the targeting of legal assistance by CLCs to financially disadvantaged people, one of the outcomes sought by the Commission in making recommendations with respect to eligibility criteria, already occurs to a very significant extent. Further, NACLC submits that, for the reasons outlined above, if services are delivered CLCs on the ground to people earning more than \$26,000 pa, it should not be assumed that those people are not disadvantaged in some other and significant way/s.

### **Difficulties with common eligibility criteria**

NACLC submits that it is appropriate to have different eligibility tests for different types of service provision. Importantly, in light of the role played by CLCs in filling a gap by assisting those clients who are unable to access legal aid, other legal assistance services, or private lawyers, the imposition of consistent criteria is likely to result in many people being unable to access legal assistance. Common eligibility criteria for different legal assistance providers actually work against effective targeting to disadvantaged people.

Given the significant differences between legal assistance service providers, areas of work, and client base, there is a need for sufficient flexibility to allow a mix of criteria, rather than common criteria, to be adapted appropriately if relevant to a service's particular circumstances or target clients.

As the Commission acknowledged, financial disadvantage is only one measure of disadvantage. It cannot and should not be measured only in terms of financial income and it is not appropriate to impose an income test on all types of services. Such a test is problematic in circumstances where, for example, a person has no access to, or control over, their financial assets,<sup>73</sup> as in circumstances of family violence. People experiencing family violence do not necessarily have their own incomes, or were not able or willing to try and access common bank funds for the purpose of seeking legal advice about the family violence. These people who, from their address or household income, may not appear to come within a criterion of 'disadvantaged' but may still be highly vulnerable and at risk – they can need urgent and expert legal advice and family violence counselling and support – services and expertise not offered by most private lawyers.

NACLC also notes that the development, roll-out and application of eligibility tests, particularly means tests, involve significant time and resources and may therefore divert resources away from service delivery of CLCs.

### **Eligibility Principles**

The social justice policy aim of government funding of legal assistance services is to provide, as far as is possible, equitable access to the potential benefits and protections of the legal system. Appropriately, its primary focus has therefore been on the disadvantaged and people with special needs or who are otherwise vulnerable to disadvantage.

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<sup>72</sup> Commonwealth Attorney General's Department, *Review of the Commonwealth Community Legal Services Program* (2008), 6.

<sup>73</sup> Productivity Commission, above n 5, 641.

Given limited taxpayer funds, and the number of competing social policies requiring funding, it is appropriate for government to determine its policy priorities for allocation of funding. These should be at a high, national level. Accordingly, NACLC considers development of high-level eligibility principles, rather than common criteria, is the preferable approach to ensuring that legal assistance services delivery is focussed according to government policy objectives and priorities.

The development of high-level principles and guidelines would make the approach applied by CLCs and other legal assistance providers more transparent, addressing the Commission's concerns, without limiting appropriate flexibility. In NACLC's submission, these principles should be developed collaboratively by representatives of the four legal assistance services and government, and appear in the NPA or equivalent agreement.

The flexibility offered by high-level principles is important in a number of respects.

It is critical to the scheme of effective legal assistance that one-off assistance and its triage and referral function, should have more flexible eligibility criteria. The triage and provision of early help, including information, referrals, one off advices and minor assistance, is a highly critical and useful function that CLCs in particular provide. In providing early assistance, this work can serve to deflect people who may otherwise present at other providers later with escalated or more complex problems. Engagement with clients at this time can also serve to inform the CLC about the client and their circumstances and their problem/s, enabling a more accurate assessment of whether or not the person is experiencing or vulnerable to, disadvantage.

The development of high-level principles would provide sufficient flexibility to allow state and territory governments to have different or additional criteria for services they fund. In addition, a number of CLCs may have to, or wish to, have additional or different criteria or weighting to reflect programs funded from other sources.

NACLC submits that there is also a need for flexibility to ensure that access to legal assistance is not denied in circumstances where there is no other means available to the person to access legal help. The Commission itself recognised the need for flexibility in an eligibility test.<sup>74</sup> The NPA Review suggested that it is not appropriate to define eligibility solely by reference to the characteristics and circumstances of the individual, matter type, or area of law in light of the multiple legal problems experienced by disadvantaged clients. This accords with NACLC's proposal of having high-level principles guiding eligibility.

Finally however, there are a number of key questions which need to be resolved, including for example: whether and when the principles should be applied. These arise in light of the triage role played by CLCs, and also because, in NACLC's submission, different considerations – or possibly the same considerations but with a greater or lesser weighting – should be applied to different service activities.

In light of the above, requiring CLCs to apply formal eligibility criteria for the provision of services other than in accordance with high-level principles, including for example by requiring common eligibility criteria across providers, would potentially limit the work and effectiveness of CLCs in assisting disadvantaged members of the Australian community. However, we support the development of high-level eligibility principles by Government, including through consideration of the existing factors under the CLSP Guidelines and any recommended by the Commission, in collaboration with representatives from the legal assistance sector.

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<sup>74</sup> Productivity Commission, above n 5, 645.



## Section 6: Commonwealth Funding for Legal Assistance Services

### 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.*

## Summary

Additional funding for legal assistance services is required to properly meet the legal needs of disadvantaged Australians. NACLC submits that this is within the Inquiry's Terms of Reference and encourages the Productivity Commission to identify and quantify the level of funding required to adequately fund legal assistance services in Australia.

In addition, in this section we examine potential funding models, focusing on the different roles of the Commonwealth and the states and territories; the need for jurisdiction specific forums for determining legal need and allocating funding; and highlight the benefits of a collaborative rather than competitive tendering-based approach to funding of legal assistance services.

## The economic cost benefit ratio of CLCs

An independent study commissioned by NACLC in 2012 confirmed that the high economic return on public investment in community legal centres far outweighed the economic costs.<sup>75</sup> The study found that on average, community legal centres have an economic cost benefit ratio of 1:18; that is, for every dollar spent by government on funding community legal centres, these services return a benefit to society that is 18 times that cost. To express this in dollar terms, if the average held constant for community legal centres across Australia, the \$47.0 million spent on the program nationally in 2009-2010 would yield around \$846.0 million of benefit to Australia.

It is worth noting that not all of the work done by CLCs was quantified in the study. The study assessed only information, advices and casework and did not include the important community development work including community legal education, law reform or systemic advocacy conducted by CLCs. As the costs considered in the study included the total cost but not the benefit of all the reviewed centres' activities, the resulting ratio is conservative.

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<sup>75</sup> Judith Stubbs and Associates, *Economic Cost Benefit Analysis of Community Legal Centres* (2012), prepared for the National Association of Community Legal Centres.

## Current funding level and arrangements

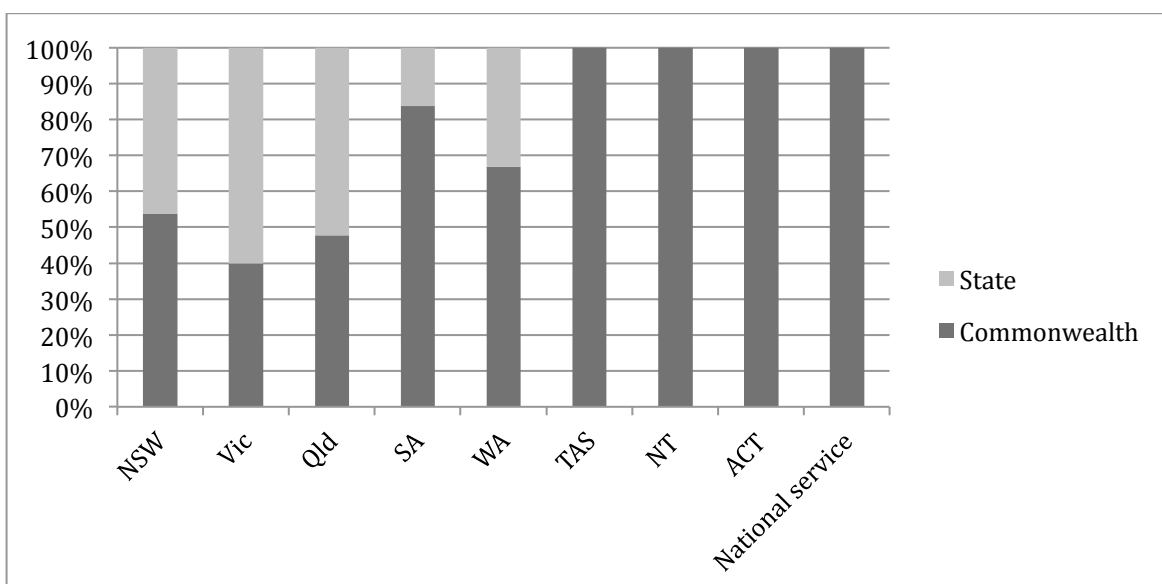
The inadequacy of CLC funding and the detrimental effect of this on CLCs' ability to meet client demand has been catalogued in the course of a number of inquiries and reviews.<sup>76</sup> While some CLCs derive funding from a range of sources, including: Commonwealth and/or State CLSP, other government programs, fundraising, philanthropic donations, and other sources, in light of the Terms of Reference for this Inquiry, the focus of this section is on CLSP funding.

NACLC is concerned that the Commission's statement that 'at a national level, funding for CLCs has been increasing'<sup>77</sup> may not reflect the entire funding picture for CLCs. Importantly, as the Commission notes, Commonwealth funding 'as a proportion of all government contributions... has fallen over time, from around 70 per cent in 1996-97 to around 54 per cent in 2012-13'.<sup>78</sup> In addition, as the overall number of centres increase, the limited pool of funding is shared between greater numbers of centres that results in individual centres being required to function with less funding. Also, in many instances funding is provided on a one-off basis, which makes it difficult for CLCs to plan in a long-term way for service delivery.

In addition, NACLC draws the Commission's attention to additional funding cuts to legal assistance services announced in 2014. These cuts of \$19.61 million over four years to CLCs announced as part of the 2014 Mid-Year Economic and Fiscal Outlook, and an additional \$6 million cut to CLC funding as part of the 2014-2015 Federal Budget further reduce the ability of legal assistance providers to meet the legal needs of disadvantaged Australians.

A related point, raised in Information Request 7.4, relates to the most efficient use of money from 'public purpose' funds. While the administration and allocation of public purpose funds differs between jurisdictions, we emphasise the need to ensure that this source of funding continues to fund the range of important work of CLCs.

Approximately half of CLC income comes from CLSP funding, and the 'split' between CLSP contributions from states, territories and the Commonwealth varies across jurisdictions, as these 2013-2014 figures show:



<sup>76</sup> See, eg, Senate Standing Committee on Legal and Constitutional Affairs Committee, *Inquiry into Legal Aid and Access to Justice* (2004); Commonwealth Attorney-General's Department, *Review of Commonwealth Community Legal Services Program* (2008).

<sup>77</sup> Productivity Commission, above n 5, 603.

<sup>78</sup> Productivity Commission, above n 5, 603.

The Commission states in its Draft Report that: ‘Commonwealth funding is allocated to CLCs on a historical basis and includes an indexation factor. In contrast with the systematic approach for allocating Commonwealth funds to LACs and ATSILS, there appear to be no metrics for allocating Commonwealth funding to CLCs’.<sup>79</sup>

NACLC agrees that a systematic and transparent funding model is necessary, and has been advocating for such a model for some time.

While NACLC agrees that there is no overall systematic basis for funding allocation for CLCs, the reference to funding for CLCs being only historic is not entirely accurate. For example, it does not recognise funding outcomes flowing from various Commonwealth, state and territory reviews (discussed in more detail below) not instances of clear policy driven funding decisions based on assessment of unmet legal needs, such as the centres that were funded under the Justice Initiatives in the 1990s.<sup>80</sup>

Further, the statement does not acknowledge that despite the absence of a funding model requiring funding decisions to be made on a transparent and sound evidence base, CLCs have and increasingly are, using a sophisticated evidence-based approach to assessing and responding to identified legal need, an issue discussed earlier in Section 2.

## The quantum of funding for legal assistance services

### Information Request 21.4

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

NACLC welcomes Information Request 21.4. While NACLC acknowledges the difficulties associated with quantifying the extent of funding needed in the legal assistance sector to meet legal needs, NACLC considers that the Commission should play a key role in identifying and quantifying this resource question in order to inform future funding decisions and policy development. NACLC suggests that any assessment should take into account the need for appropriate specialist services for some client groups, for example dedicated, culturally safe services for Aboriginal and Torres Strait Islander peoples, specialist trauma informed services for survivors of sexual abuse and other violence in institutional family or community settings, and refugee applicants.

NACLC encourages the Productivity Commission to identify and quantify the level of funding required to adequately fund legal assistance services in Australia, noting that additional funding is required to properly and appropriately meet the legal needs of disadvantaged Australians. There are a number of issues NACLC draws to the Commission’s attention in considering this issue.

### Base minimum funding

NACLC endorses a Strategic Service Delivery Model (SSDM) and a minimum base funding level that is required for a CLC to operate efficiently, effectively and safely. This minimum base funding level, based on five effective full-time workers is included for the Commission’s information at Appendix B.

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<sup>79</sup> Productivity Commission, above n 5, 598.

<sup>80</sup> Commonwealth Attorney-General’s Department, The Justice Statement, (May 1995).

## Turn-away rates

Unfortunately, CLCs are not always able to provide even initial advice or assistance to everyone who contacts the CLC. The 2013 ACOSS Australian Community Sector Survey found 63% of the community legal services respondents reported being unable to meet demand for their services; and noted that community legal services had the highest turn-away rate (20%) of any of the community services surveyed by ACOSS.<sup>81</sup> These rates do not take into account the large numbers of people who, for a range of reasons often associated with compound disadvantage, do not seek legal help. This reflects significant levels of unmet legal need in Australia and should be considered in attempting to quantify the extent of underfunding in the legal assistance sector.

## Pro bono and volunteer contributions

As outlined earlier in this submission, the role of pro bono partnerships with private firms and the work done by volunteers significantly contributes to the capacity and range of expertise of CLCs, and can save money that is directed into providing more legal service delivery. CLCs harness the energy and expertise of thousands of barristers, solicitors, law students and others to provide legal and related services.

While pro bono partnerships are vital, the resources required by CLCs to appropriately establish and nurture pro bono arrangements, and the skills required to successfully navigate relationships between the CLC and the private firm are significant.

Further, both volunteers and pro bono partners usually require significant training in the types of legal problems experienced by disadvantaged peoples and in communicating effectively and respectfully with the diverse groups of clients. Their work must also be supervised and checked by employed CLC lawyers. There is also a significant administrative load in establishing and maintaining rosters and arrangements for outreach, recruitment, induction, training, supervision and quality assurance. This needs to be taken into account when calculating the quantum of funding for CLCs.

## Relevant reviews and inquiries

A number of relevant reviews and inquiries examining the effectiveness and efficiency of CLCs and legal assistance, including considering implications for funding allocation, have been conducted across Australia. Some of these reviews have contributed to the planning, location and service delivery of new and existing CLCs according to legal needs across Australia. In addition, the conclusions of several of these reviews may provide useful lessons for consideration of or incorporation in any funding model for legal assistance services. These include: the importance of CLCs in delivering community legal services, and a consistent preference for collaborative and cooperative models of funding distribution.

## Review of the Commonwealth Community Legal Services Program

The review of the CCLSP was commissioned with the goal of improving legal services targeted at disadvantaged Australians and ensuring that they continue to be appropriately and effectively targeted at demonstrated legal need.<sup>82</sup> The Review found that CLCs are uniquely placed to address the multiple disadvantages experienced by many Australians.<sup>83</sup>

The Review proposed a funding model with a minimum level of funding for CLCs, needs-based funding based on an assessment of the existing demand and cost of service provision, and unmet needs funding for the delivery of services to meet potential demands that are either under-served or not serviced at

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<sup>81</sup> ACOSS, *Australian Community Sector Survey 2013: National Report*, ACOSS Paper 202 (2013).

<sup>82</sup> Commonwealth Attorney General's Department, *Review of the Commonwealth Community Legal Services Program* (2008), 5.

<sup>83</sup> Commonwealth Attorney General's Department, *Review of the Commonwealth Community Legal Services Program* (2008), 6.

all.<sup>84</sup> The Review was particularly positive about collaborative and cooperative funding models, commenting that a collaborative model may ‘contribute to providing a shared response to resolution, increased consistency and, where appropriate, cost efficiencies.’<sup>85</sup>

Following the review there was a period of significant consultation and collaborative work between the Attorney-General’s Department and NACLC representing (and consulting with) the CLC sector, and the Department and the State Program Managers of the CLSP the legal assistance sector. The focus of this work was on developing and refining a new proposed funding model that specifically focussed on SEIFA and other disadvantage information. The extensive consultation and input resulted in, NACLC considers, significant improvements to the proposed model, and demonstrates the time and resources required to develop any such funding model. Despite this early work, it was not further progressed by government.

## State and territory reviews

There have also been a number of state and territory reviews of CLC funding programs and CLCs more broadly. Reviews were completed in South Australia in 1997,<sup>86</sup> Victoria in 1998,<sup>87</sup> Queensland in 1999 and 2012,<sup>88</sup> Western Australia in 2003 and 2009<sup>89</sup> and in New South Wales in 2006<sup>90</sup> and 2012.<sup>91</sup>

In particular, the two major reviews of CLCs in Western Australia provided an agreed framework for the funding, planning and coordination of CLC services, as well as influencing the establishment of collaborative partnerships with other legal assistance providers. The collaborative approach in WA, which involved collaboration between Legal Aid WA, Commonwealth and state representatives, and CLC representatives may provide a useful model for determining priorities and principles for appropriate allocation of funds under the CLSP at a state and territory level.

## A national funding framework and model

NACLC supports the development and implementation of an equitable, consistent and transparent framework for legal assistance funding in Australia. The function of any framework should be to provide national coordination and ensure high-level national consistency, regular analysis of legal needs to inform its setting of national priorities, facilitation of expert input and the allocation of funding.

NACLC agrees with the Commission’s expressed preference for allocation of legal assistance funding according to where ‘legal needs are greatest, legal problems have the most significant consequences (including any potential consequences if problems remain unresolved), and where the market does not provide services’.<sup>92</sup> We would add that legal assistance funding should also be allocated where the ‘market’ does offer services but in circumstances or a way where disadvantaged people are unable or unwilling, for example for reasons of being unsure of their physical, emotional or cultural safety, to access those services. Accordingly, NACLC suggests that any funding model under the framework

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<sup>84</sup> Commonwealth Attorney General’s Department, *Review of the Commonwealth Community Legal Services Program* (2008), 61.

<sup>85</sup> Commonwealth Attorney General’s Department, *Review of the Commonwealth Community Legal Services Program* (2008), 41.

<sup>86</sup> Keys Young, *Review of Community Legal Centres in South Australia* (1997).

<sup>87</sup> Impact Consulting Group, *Review of the Victorian CLC Funding Program*, Final Report (1998).

<sup>88</sup> Department of Justice and Attorney General Queensland, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund: Final Report* (2012).

<sup>89</sup> Community Legal Centre Review Steering Committee, *Joint Review of Community Legal Centres* (2003); URS, *Demographic and Socio-economic Analysis of Western Australia* (2003), prepared for the Joint Review of WA Community Legal Centres; and Kalico Consulting, *2003 Joint Community Legal Centre Review Update Report* (2009), prepared for WA Community Legal Centre Consultative Committee.

<sup>90</sup> Legal Aid Commission of New South Wales, *Review of the NSW Community Legal Centres Funding Program* (2006).

<sup>91</sup> NSW Department of Attorney General and Justice, *Review of the Delivery of Legal Assistance Services to the NSW Community* (June 2012).

<sup>92</sup> Productivity Commission, above n 5, 611.

should have as its primary (but not only) determinant, needs based distribution and an evidence-based approach to assessment of legal needs. Indeed, NACLCL has been calling for a model that reflects this approach for many years.<sup>93</sup>

As a matter of principle, NACLCL submits that no one legal assistance provider should determine funding allocation alone.<sup>94</sup> As a result, the funding model that NACLCL articulates below involves, at its core, interagency forums at a national and state and territory level, which are informed by the experience and expertise and perceptions of all four legal assistance providers, as well as by government.

Importantly, NACLCL distinguishes between the suggested model of determining funding allocation, and functions relating to the administration and management of that funding. As a result, NACLCL considers that, for CLC funding for example, separate from allocation decisions made by the interagency forums, LACs and the relevant program areas of AGD (currently the CLSP), should continue to be involved in the administration and management of the program and funds. The CLSP sections and State Program Managers within AGD, the LACs, and the state Attorney-General's Department in South Australia (if this arrangement continues), have significant experience and expertise in administering this area of legal assistance funding. As a result, they are best placed to perform a secretariat role, which would in turn assist national, state and territory interagency forums.

## National framework

NACLCL supports the development and implementation of an equitable, consistent and transparent national framework for legal assistance funding in Australia. As outlined in Section 2, any national framework should:

- provide for a transparent and evidence-based funding model
- govern Commonwealth, state and territory legal assistance funding
- cover all four legal assistance providers (Legal Aid, CLCs, ATSILS and FVPLS)
- contain agreed national principles or objectives
- identify agreed national core priorities of legal need
- identify agreed national priority client groups, and
- specify consistent high-level eligibility principles.

The national principles or objectives, core priorities of legal need and priority client groups articulated in the framework should guide the development and negotiation of a NPA and the allocation of legal assistance funding under a national funding model. Importantly however, the framework, NPA and funding model should allow flexibility for identification of further priorities, both in legal needs and in target groups of clients, at the state, territory and regional or local level, if appropriate. This would provide sufficient flexibility to allow for additional state and territory policies and priorities not inconsistent with national principles and priorities.

## A national funding model

The Commission suggested in its Draft Report that the LAC 'model' be used to allocate CLSP funding across jurisdictions and that it would then be a matter for the states and territories to determine specific funding allocation.<sup>95</sup>

In principle, NACLCL supports a model for allocating funding that uses a formula that takes into account difference in legal need (both met and unmet). However, one of the key difficulties with the existing LAC

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<sup>93</sup> See, eg, *NACLCL Principles for Commonwealth Community Legal Services Program (CCLSP) Funding 2013-2016*, Appendix A.

<sup>94</sup> While this is a joint submission of NACLCL and all state and territory CLC associations, the Victorian Federation of CLCs and the Northern Territory Association of CLCs do not have a confirmed position on the question of which body should allocated funding at a state level, and therefore do not endorse the NACLCL position on these issues.

<sup>95</sup> See Productivity Commission, above n 5, 654.

model (at least with respect to civil law matters) is that it assumes that demand for legal assistance is uniform across states and territories. NACLC suggests that determination of the way in which legal need should be measured, and the relevant characteristics to be considered at a state level (for example, socio-economic composition), which is discussed elsewhere in this submission, should be developed collaboratively with legal assistance providers.

In determining the exact way in which any new funding model could operate at a national level, it is necessary to determine whether the allocation of funding from the Commonwealth to states and territories would occur through provision of lump sum funding to either state and territory governments or LACs, or through provision of funds earmarked for particular legal assistance services. In NACLC's submission, it is important that the national body or stage of the process does not simply allocate one lump sum to each state or territory, without some direction as to allocation among the four service providers. Experience has shown that the large LACs in particular are more likely to be successful in lobbying their respective State Governments, and this could perpetuate the current weighting to criminal law legal representation, among other issues. Any separate determination and allocation of funding for civil law services as distinct from the funding for criminal law services, as discussed in Section 4, would also need to be considered at a national, state and territory level.

As noted above, other considerations, such as the need for funding to be allocated in amounts which establish and maintain services at effective, effective and sustainable operational levels, should be written into national principles that the states will have to implement consistently.

### *A national interagency forum*

An important component of any national funding model is the need for a national interagency forum. Such a forum would provide oversight and decision-making with respect to funding allocation and should include representatives from each of the four key legal assistance providers, through their peak bodies, as well as representatives from the Commonwealth government and state and territory governments, if considered appropriate. NACLC suggests that the government should liaise with the Australian Legal Assistance Forum (ALAF) to establish, or perhaps form part of, the forum.

### **Funding allocation at a state and territory level**

NACLC acknowledges the theoretical benefit of more detailed allocation of funding occurring at the state level, informed by state, territory and regional legal needs assessment and awareness of local circumstances and issues.

The Commission suggested two key approaches to state and territory involvement in determining the allocation of CLSP funding. The first approach suggested by the Commission was that it may be possible to divert CLSP funding into the NPA to allow state and territory governments to directly manage the funds. State and territory governments would then be responsible for needs based planning and the allocation of funds to legal assistance providers. Commonwealth funding would be subject to the achievement of agreed outcome based performance indicators. The second approach discussed by the Commission involves diversion of CLSP funding to LACs, which then determine funding allocation within the specific jurisdiction, in consultation with CLCs.

In NACLC's view, funding should be allocated to the state and territory governments and not to the LACs.<sup>96</sup> NACLC is against, as a matter of principle, any option where LACs—or any other provider—is 'in charge' of or is the only provider involved in, allocating funds for which that provider is eligible. NACLC considers that is not appropriate for one of the funded bodies to also be the decision-maker for

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<sup>96</sup> While this is a joint submission of NACLC and all state and territory CLC associations, the Victorian Federation of CLCs and the Northern Territory Association of CLCs do not have a confirmed position on this issue and therefore do not endorse the NACLC position.

allocation of funds to providers, as it invites lack of confidence in the model and process. This is not to say that LACs should not play a role in administering or managing the funding once allocation has been determined, continuing the valuable role they presently perform. NACLCL also acknowledges that in practice state and territory governments may delegate this function to LACs, but that in such circumstances allocation-related decisions should remain the responsibility of the relevant state interagency forum.

Accordingly, NACLCL considers allocation by state and territory governments may be the preferable approach. Importantly however, under any allocation model it is vital to build on the cooperative relationships established between CLCs, LACs, ATSILS and FVPLS, and to ensure that their combined experience and expertise is reflected in allocating funding.

### *State interagency forums*

In light of the complex legal problems experienced by many clients of legal assistance providers, and the need to be responsive to ensure services are appropriately targeted and effective, there is a need to ensure that allocation of funding at a state and territory level is guided by state and territory interagency forums. These forums would bring together representatives from the four key legal assistance service provider peak bodies and state and territory governments at a minimum.

Existing state Legal Assistance Forums and Jurisdictional Forums may be a good basis for establishing such forums, but it should not be assumed that they can or should automatically take up that role. Participation in the LAFs varies around the country and some of the less resourced providers, especially those operating in RRR areas, may not be as involved or find it easy to be so. Consistent with a move to a transparent and accountable process, it would be important to develop role descriptions and functions with the relevant criteria or experience and skills required of representatives on the interagency forum, and to make these publicly available.

The involvement and regular meeting of such forums would enable monitoring of legal need at a jurisdictional basis and allocation of resources as appropriate in light of diverse and changing legal need of communities. This is consistent with the Commission's recommendation that 'measures of need should be based on regular and systematic analyses in conjunction with consultation at the local level'. The role of such forums could involve, but not be limited to:

- identifying opportunities for and supporting collaborative arrangements to meet legal needs, where appropriate
- determining funding allocation based on legal needs and other agreed considerations, consistent with the national principles and priorities
- deciding the most appropriate service delivery model and provider or collaborative arrangement of providers for meeting identified unmet needs
- identification of any additional or different legal needs in the specific jurisdiction, or other regional considerations that should be taken into account (for example, barriers to access)
- promoting collaborative service delivery
- identifying and incorporating best practice, and
- engaging and sharing information across service provider in the jurisdiction and across jurisdictions (including with the national body and governments).

### **Methods for determining funding**

Regardless of whether governments or LACs administer the funding at a state and territory level, guided by the proposed interagency forums, it is necessary to determine the methods by which any allocation of funding would be determined. Two of the key potential methods discussed by the Commission include collaborative partnerships and competitive tendering.



NACLC is of the view that a collaborative approach to identifying and responding to legal need and allocating funds accordingly is the most appropriate and effective approach. NACLC has serious reservations about any suggestion of moving to competitive tendering for a number of reasons and considers that it is at odds with the approach taken in other parts of the Report, and would undermine the holistic and collaborative approaches to service delivery the Commission highlights as being desirable.

### *Legal need*

As the Commission emphasises, underlying any method for determining funding should be analysis of legal need, and responsiveness to changing legal needs. At a broad level, NACLC suggests that the NACLC Legal Needs Assessment Framework and Toolkit could form the basis for future assessments of legal need at a state and territory level, including of needs within target groups as well as geographical areas. This Framework takes into account both disadvantage indicia and indicia of legal need. It also includes assessment based on met need calculated through service data, and indicators of unmet legal needs. The Framework only requires comparatively limited resources to update it with new Census and SEIFA data, other demographic information, the placement of other legal services, and some related programming. The Framework and Toolkit are simple and easy to use and have been demonstrated to be effective for CLCs and FVPLS that have used them to assess legal need in specific regions to inform strategic planning as well as monitoring, assessment, and reporting on the effectiveness of their services in reaching client groups and providing planned services.

The detailed demographic and socio-economic analysis of disadvantage and legal need that was conducted in WA in 2003 may also continue to provide a useful model for the determination and mapping of legal need in order to inform funding allocation,<sup>97</sup> as may other state-based work from other reviews.<sup>98</sup>

### *Collaborative approaches*

The current NPA contains a priority of ‘increased collaboration and cooperation between legal assistance providers themselves and with other service providers to ensure clients receive “joined-up” service provision to address legal and other problems’.<sup>99</sup>

Consistent with this approach to service delivery, with respect to funding the Commission suggested the development of ‘collaborative partnerships’ between community based legal assistance providers and governments underpinned by an outcomes framework.<sup>100</sup>

NACLC strongly supports the development of a funding model built on a collaborative approach to addressing identified legal needs in a region: CLCs have been leaders in developing and implementing collaborative responses since their inception in Australia over 40 years ago. Building a requirement to consider such approaches where appropriate, into the funding model is the most effective way to encourage all providers to participate as much as possible. Establishing this type of funding approach would have important flow on effects for integrated and collaborative service delivery, which would be better able to address the complex and multi-dimensional difficulties experienced by many CLC clients. A collaborative model of funding recognises the unique ability of CLCs to identify and meet specific, emerging needs of local communities,<sup>101</sup> as well as drawing on the knowledge and experience of other legal assistance providers and relevant health and community services provider where appropriate.

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<sup>97</sup> URS, *Demographic and Socio-economic Analysis of Western Australia* (2003), prepared for the Joint Review of WA Community Legal Centres.

<sup>98</sup> See also, Department of Justice and Attorney General Queensland, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund: Final Report* (2012).

<sup>99</sup> *National Partnership Agreement on Legal Assistance Services*, cl 16.

<sup>100</sup> Productivity Commission, above n 5, 657-658.

<sup>101</sup> Community Legal Centre Review Steering Committee, *Joint Review of Community Legal Centres* (2003), 3.

CLCs have demonstrated the capacity to build partnerships and work collaboratively with both legal and non-legal service providers. For example, the National Bulk Debt Project is a key example of a successful collaborative approach to work between CLCs and LACs.<sup>102</sup> Further, the very successful Cooperative Legal Service Delivery Program in NSW offers another example of a regionally based collaborative approach to the delivery of legal assistance services through cooperative and strategic networks of key organisations at the regional level.<sup>103</sup>

NACLC understands that one of the key successful outcomes of the CLSP program in WA following the reviews referred to above is the development of a collaborative approach to decision-making, priority setting and policy development and suggests that this may provide a useful example.

While supportive of a collaborative model, NACLC notes that establishing and maintaining collaborative approaches requires time and resources and that this would need to be provided for in funding – and recognised in data collection, recording and weighting.

### *Competitive tendering*

The Commission suggests competitive tendering on the basis of identified need and that in tendering service providers would prioritise identified needs for services covered by the funding and innovative ways to meet identified needs.

NACLC rejects the idea that competitive tendering is necessary to elicit innovative ways by legal assistance providers and CLCs in particular, to address legal need and suggest that the evidence is to the contrary (ie many innovative ways are being demonstrated now, without there being competitive tendering).

For example, the Western Region Community Legal Centres Project provides an excellent example of four CLCs in Victoria working collaboratively to explore options for different methods of service delivery, the sharing of services, and options for changed governance including possible amalgamation. This demonstrates an example of CLCs recognising the potential for change and taking the initiative to examine the potential for greater efficiency and effectiveness through different ways of working together. This project was facilitated by a project officer, the additional funding for which was provided by Victoria Legal Aid.

Similarly, there is no evidence to suggest that competitive tendering has any greater ‘pull’ for funding applicants to prioritise their proposed services to identified priority needs. Indeed, again, the evidence is that this occurs already under existing funding programs and according to CLCs’ and other providers’ strategic plans to meet identified needs and priorities.

As outlined above, NACLC has serious concerns about any move towards competitive tendering and suggests that there do not appear to be any evidence-based reasons for a move towards this option. Significantly, the four legal assistance providers, who together have the most relevant experience and expertise, see it as very expensive and not useful. NACLC is also of the view that it would undermine the collaborative approaches to service delivery the Commission highlights as being desirable. Competitive tendering would undermine effective collaborations between legal assistance service providers. For example, the Commission referred favourably to the reduction of seven generalist centres into four ‘super centres’ in South Australia,<sup>104</sup> however CLCs in that jurisdiction have since expressed concern about the impact of the competitive tendering process on the traditionally

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<sup>102</sup> See: National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry* (November 2013).

<sup>103</sup> See, eg, NSW Department of Attorney General and Justice, *Review of the Delivery of Legal Assistance Services to the NSW Community* (June 2012), 38-39.

<sup>104</sup> Productivity Commission, above n 5, 658.

cooperative approach of CLCs.<sup>105</sup> Further, the mere fact of seven centres being 'reduced' into four does not say anything about whether the subsequent services were better, or more efficient or effective, or appropriate or accessible for clients, or whether this change led to meeting more legal needs, or more priority legal needs.

In addition, in her submission to this Inquiry, Dr Liz Curran highlights practical examples of circumstances in which tendering for community services has led 'to a culture of secrecy and competition which provides a significant barrier for agencies who should be working together'.<sup>106</sup>

Further, NACLC is concerned that, under a competitive tendering model, the larger and more resourced legal assistance providers would be advantaged over the smaller and less resourced CLCs and FVPLS, for example, despite those services having sufficient capacity to provide the service, the subject-matter expertise and relationships with local community that may make them the most appropriate and effective provider in some cases.

Related to this, NACLC is concerned about the Commission's suggestion that LACs should be able to compete with CLCs and other potential providers for CLSP funding.<sup>107</sup> Conflict of interest issues and size and resource implications of tendering are problematic, and as mentioned, this may also undermine opportunities for collaboration and cross-referral, and work against those initiatives.

Finally, the time and resources involved in a competitive tendering process are also significant. This may divert resources away from front line service delivery. For example, the Commission's 2010 Report, *Contribution of the Not-For-Profit Sector* highlighted that in the context of human and community-based services, tendering, contracting and reporting requirements 'have become overly prescriptive and process driven and impose a significant compliance burden on providers'<sup>108</sup> - NACLC suggests there is a similar risk associated with competitive tendering in the legal assistance sector.

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<sup>105</sup> See, eg, Northern Community Legal Service, *Submission 196 to Productivity Commission Access to Justice Arrangements Inquiry*, (May 2014).

<sup>106</sup> Liz Curran, *Submission 170 to Productivity Commission Access to Justice Arrangements Inquiry*, (May 2014). See also M Noone, 'Towards and Integrated Service Response to the link between Legal and Health Issues' *Journal of Primary Health*, (2009) 15, 203-2011; Louise Glanville, 'Can CLCs Advocate for Themselves' (1999) 24(3) *Alternative Law Journal*, 154.

<sup>107</sup> Productivity Commission, above n 5, 658.

<sup>108</sup> Productivity Commission, *Contribution of the Not-for-Profit Sector*, Research Report, (January 2010) 338.

## Section 7: Other Issues

There are a number of other issues raised in the Report that we consider are necessary to respond to, even briefly, including in relation to: information provision and a single entry point (chapters 5 and 21); data (chapter 24 and comments in chapters 20 and 21); and the legal expenses contribution scheme (chapter 19).

### Information provision

Ensuring that disadvantaged Australians are able to understand and navigate the legal system is vital to ensuring equitable access to justice. Accordingly, we agree in principle with the Commission's support for a 'strategic and co-ordinated approach to providing legal information, advice and referrals'. There are two particular information provision-related issues that NACLC wishes to comment upon: the single entry point recommended by the Commission; and the Commission's conceptualisations of information provision and the role of CLCs in providing such information.

### Single entry point

#### **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.*

For over forty years, CLCs have been at the forefront of recognising and attempting to address the difficulties many people have with obtaining legal assistance. A number of inquiries and reviews have recognised the role of early intervention and triage, including through a central point of contact for legal assistance.<sup>109</sup>

In response to these difficulties, the Commission recommends that 'each jurisdiction should have a centralised source of legal information, advice and referrals'.<sup>110</sup> The Commission suggests the single entry point could provide:

- phone and web-based legal information
- a preliminary diagnosis of the legal problem (basic advice for simple matters), and
- suitable referral to appropriate services for more complex matters, or to other human services.

The Commission suggests that this would assist people to navigate the system and increase community awareness of services available. In principle NACLC supports a centralised source of legal information, such as LawAccess NSW, an approach considered in a number of forms in recent years. NACLC's support is, however, contingent on the service being sufficiently well resourced both for its establishment and ongoing functioning.

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<sup>109</sup> See, eg, Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009), 77; Senate Legal and Constitutional Affairs References Committee, *Access to Justice* (December 2009), xvii. See also principles and minimum standards for providing seamless access to legal information and services to the community: Standing Committee of Attorneys General, *Meeting Communiqué*, 21-22 July 2011.

<sup>110</sup> Productivity Commission, above n 5, rec 5.1.

The quality of the service provided by LawAccess now is the result of significant time, work and resources that were dedicated to establishment and further development. This should not be underestimated. In terms of ongoing resources, in 2011-2012 LawAccess' total funding was approximately \$5,739,8515 and it had 60.4 FTE staff including a pool of casual staff.<sup>111</sup>

Law Access has the resources to actively work to make its services accessible to people with disability, people from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander peoples. It also maintains a referrals database that requires ongoing resources to ensure that it is up-to-date and appropriate. Its single search engine LawAccess Online only has content that has been reviewed by LawAccess NSW. Only with this level of commitment and resources can a legal information website and a legal information and advice service be effective.

However, as the Commission recognises, there are also people for whom telephone or website information services are not accessible or appropriate.<sup>112</sup> Importantly, not all people have access to a telephone, or telephone credit, or to the Internet. In the case of Law Access, not all languages and dialects are available through the telephone services. In some instances, people are likely to continue to directly contact legal assistance providers because they are known and trusted in the community.

In NACLCL's view, another factor contributing to Law Access's effectiveness is that it is a joint initiative of, and maintains its connection with, government, Legal Aid NSW, the private profession bodies and the NSW State CLC Association. It also works to connect with and raise its profile in the community, including for example by regularly visiting and delivering presentations to government and community service providers and participating in events such as festivals, conferences and expos. Its board includes representatives from state government, Legal Aid NSW, the Law Society, the Bar Association and the state CLCs Association. A number of CLC lawyers are involved in training Law Access workers. In turn Law Access delivers information sessions and educates other providers about its services. There are many reasons why these connections are important but ensuring well-informed and effective referrals is one of them.

However, despite being comparatively well resourced and a highly effective model of operation and service, LawAccess is still comparatively little known by the general public: only 1 per cent of respondents in NSW as part of the LAW Survey were aware of the existence of the service.<sup>113</sup>

For these reasons, and because we believe that it is highly unlikely that many, perhaps any, other states will resource a LawAccess-type service, NACLCL submits that a more effective approach to the 'strategic and co-ordinated approach to providing legal information, advice and referrals' is the 'no wrong door' approach.<sup>114</sup> This approach ensures that regardless of the way in which a person attempts to access legal assistance, they are provided with a holistic and client-centred response which may involve assistance or cross-referral, whether to legal or non-legal services. This approach is central to the way CLCs operate and ensures legal assistance providers work collaboratively with other legal assistance providers as well as non-legal service providers and benefits clients who may otherwise not be able to access legal assistance services.

## Other information provision issues

The Draft Report states that of the four legal assistance providers, LACs 'are the best resourced, and have demonstrated that they have the capabilities to be the main information providers' and that 'the

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<sup>111</sup> See, eg, NSW Department of Attorney General and Justice, *Review of the Delivery of Legal Assistance Services to the NSW Community* (June 2012), 19.

<sup>112</sup> Productivity Commission, above n 5, 164.

<sup>113</sup> Productivity Commission, above n 5, 165; C Coumarelos et al, *Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia*, Law and Justice Foundation NSW (2012).

<sup>114</sup> See, eg, Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) recs 6.1, 6.2.

same cannot be said of the CLC's'. The Commission comments on 'evidence of duplication'<sup>115</sup> and concludes that 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'.<sup>116</sup>

Legal Aid Commissions are of course by far the most resourced of the legal assistance providers and on this basis are best placed to produce and distribute information materials in their areas of practice and for their client groups. Legal information is an important function for LACs. However, in some instances LAC policies may limit areas in relation to which they may provide information, leaving an information gap that CLCs, ATSILS and FVPLS must fill. Like all legal assistance providers, LACs must prioritise their work and their priority areas are legal representation, particularly in criminal matters, and other priority areas such as family law. They cannot and do not deal with the same range or amount (proportionately) of civil matters in which CLCs assist clients.

CLCs are aware of the need to share resources, best practice and draw on existing material in designing and delivering community legal education and other legal resources, as demonstrated through NACLC's CLEAR database project. Indeed, CLCs do rely in many instances of information sheets and material produced by Legal Aid to supply to clients; just as Legal Aid often utilises, and in some cases adopts and adapts, CLC legal information resources. Further, there are numerous examples of CLCs and lawyers or other workers from Legal Aid, ATSILS and FVPLS collaborating to provide legal information.

However, there are some topics and types of legal information or resources, or information for particular target groups, which are best or most appropriately developed and delivered by particular legal assistance providers. In many instances where CLCs produce original information or community legal education initiatives, these are specifically tailored to a particular client group where generalist LAC resources are not sufficient. For example, Women's Legal Services have produced a number of resources aimed specifically at women, their particular client group, including *Women and Family Law*, a publication written by Women's Legal Service NSW now has a 10<sup>th</sup> edition and is a vital resource which provides information for women about family law matters.<sup>117</sup> It is also the case that information materials may need to complement or refer to particular services and providers who are the experts in their areas.

As with other areas of legal assistance, information and resources sharing, and collaborative efforts are very beneficial to clients and can also allow service providers to leverage off work that has already been done by others. NACLS supports a 'strategic and co-ordinated approach to providing legal information, advice and referrals' in this respect.

## Data

### **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 de-identification of new data sets*
- *developing, where practicable, outcomes based data standards as a better measure of service effectiveness.*

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<sup>115</sup> Productivity Commission, above n 5, 615.

<sup>116</sup> Productivity Commission, above n 5, 616.

<sup>117</sup> Women's Legal Services NSW, *Women and Family Law* (2014, 10<sup>th</sup> ed), accessed: [www.womenslegalsw.asn.au/wlsnsw/wp-content/uploads/Women-and-Family-Law-May-2014.pdf](http://www.womenslegalsw.asn.au/wlsnsw/wp-content/uploads/Women-and-Family-Law-May-2014.pdf) at 26 May 2014.

*Research findings on the legal services sector, including evaluations undertaken by government departments, should be made public and released in a timely manner*

NACLC recognises the need for strong, consistent and reliable data to provide a basis for informing government, service providers and others in the development of evidence-based policy with respect to legal assistance and the justice system more broadly. This need was emphasised by the Commission as well as by the Access to Justice Taskforce in the report, *A Strategic Framework for Access to Justice in the Civil Justice System*.<sup>118</sup>

Under the CLSP, all CLCs are required to collect and record on the Commonwealth's CLSIS database, data about client demographics and service provision. All data provided to the Commonwealth in relation to individual clients is de-identified to ensure that client privacy and client legal privilege is protected. Individual CLCs collect and retain additional demographic and service data at the local CLC level. Some CLCs maintain service data for services provided with non-CLSP funding in other databases; some record it (separately) in CLSIS. Not all CLC data is in the NPC and therefore would not have been available to the Commission in undertaking its analysis for the purposes of this Inquiry.

NACLC acknowledges that there are significant limitations with respect to data available in relation to legal assistance services. Many of these limitations were identified by the Commission.<sup>119</sup>

However, the Draft Report states that 'one example where data are not being properly collected occurs in CLCs ... the data collected by CLCs is patchy, even when that data may be directly relevant to their stated goal'.<sup>120</sup> While NACLC acknowledges the need to improve data collection on a number of levels, it notes that in 2011-2012, for over 74% of clients, the rate of data collection across eight client demographic data items was 70% or better. In 2012-13 this improved to 79% of clients.<sup>121</sup>

In addition, some of the limitations identified by the Commission arise as a result of the capability of the current CLSIS system, which with additional funding could provide significantly better information. It remains the case, however, that CLCs do have access to significant and useful data, increasingly use the available data strategically, and have been proactive in improving data quality as well as working with other legal assistance providers to develop consistent approaches to data.

While NACLC supports approaches to develop and implement improved data collection and reporting, including some common data definitions and requirements, there are significant resource implications associated with developing the common data sets envisaged by the Commission.

It is important to have, if possible and practicable, some common data sets for legal assistance. The data system, data requirements, and any weighting must allow and provide for the differences between the legal assistance service providers and their difference in services and operating contexts. For example, for different providers a 'case' may be a short hearing of less than a day, or a six months terrorism trial.

## Previous work

These data issues have been the focus of work done at a high level on a long-term project by the Civil Justice Evidence Working Group. The Working Group involves civil justice system stakeholders and data experts in attempting to develop a framework to guide the collection of consistent data to create an evidence base for civil justice system.

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<sup>118</sup> Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) 57, 72.

<sup>119</sup> Productivity Commission, above n 5, 752.

<sup>120</sup> Productivity Commission, above n 5, 756, Box 24.1.

<sup>121</sup> Community Legal Service Information System, accessed 27 May 2014.

There has also been a significant amount of work done towards developing a common data framework for the legal assistance sector by the Legal Assistance Data Collection Working Group between mid 2011 and mid 2013. The Group included representatives from the Commonwealth Attorney-General's Department, NALCLC, National Legal Aid, ATSILS and FVPLS. The work of the group was not completed but significant progress was made and this work should be utilised and if further work is to occur, it should start from where that work reached, not start from scratch.

### *Data Reporting Standards*

The Legal Assistance Data Collection Working Group worked to develop draft National Legal Assistance Data Reporting Standards (NLADRS), the purpose of which was to ensure that there is a core of consistent data about legal assistance services funded by the Australian government. The draft NLADRS contained a number of data items to which it was proposed that standard definitions and counting rules were to be applied, including: legal assistance categories and service types; service user characteristics; problem types; service delivery characteristics; and service outcomes.

### *Draft principles*

The principles that guided the development and use of the NLADRS, and were still being refined, included:

- that national legal assistance data collection should provide a comprehensive overview of the services provided by the legal assistance sector
- that data collected should assist in conjunction with qualitative analysis, to measure the achievement of higher level outcomes sought by governments;
- data collected should be accurate, consistent and reliable and support the development of an evidence base in relation to the provision of legal assistance services;
- quantitative data collected should provide consistent information across all legal assistance service providers; and
- data should support assessment of services based on the principles set out in the Strategic Framework for Access to Justice: Accessibility, Appropriateness, Equity, Efficiency and Effectiveness.

NALCLC remains of the view that these are appropriate principles for a legal assistance data framework.

## **Legal Expenses Contribution Scheme**

### **Information Request 19.2**

*The Commission seeks feedback on the strength of the case for a Legal Expenses Contribution Scheme and views on any relevant design features, including what legal expenses should be covered and whether it should be limited to particular matters.*

The Commission is seeking information and views with respect to an income-contingent loan, similar to HECS-HELP that requires students to pay their debt through the tax system when their earnings reach the minimum threshold for compulsory repayment.<sup>122</sup>

The Commission suggested a Legal Expenses Contribution Scheme (LECS) would benefit low-middle income Australians who do not qualify for legal aid grants but cannot afford private legal representation.<sup>123</sup> In particular, the Commission suggested such a scheme would reduce the financial burden by extending the period of time for recipients to pay back a loan and improve equity by providing another avenue for individuals to access legal assistance. Public provision of an income-

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<sup>122</sup>Productivity Commission, above n 5, 566.

<sup>123</sup> Productivity Commission, above n 5, 567.



contingent loan scheme assists those who cannot borrow from private banks due to a lack of collateral.<sup>124</sup>

NACLC only intends to make brief comments in relation to this issue. NACLC believes that equitable access to legal services is fundamental to a fair and just society. Private means should not determine whether a person is able to access legal assistance. While it is important to consider options that may assist disadvantaged Australians access legal assistance, NACLC submits that a LECS model is not appropriate, nor would it be effective, for legal assistance clients. In particular, NACLC notes:

- a high proportion of CLC clients are highly disadvantaged, with a large proportion reporting Centrelink benefits as their only source of income<sup>125</sup>
- there does not appear to be any consideration of an applicant's capacity to repay the loan, or a minimum income level, in the context of assessing eligibility
- a high proportion (about 20%) of HELP debt is never repaid,<sup>126</sup> and in light of the predominantly low income levels of CLC clients, there is a likelihood that an even higher proportion of LECS debts will never be repaid. On the other hand, the mere fact of the debt is likely to contribute further to the person's disadvantage and vulnerability, for example, they may not be able to rent accommodation, and
- Finally, one of the justifications for HECS-HELP loans fees is that the people accessing that service are benefiting themselves and significantly improving their future earning capacity for their working lives. While there is some basis for thinking that they will generally be able to pay back the debt, this is not the case for disadvantaged peoples.

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<sup>124</sup> Productivity Commission, above n 5, 567.

<sup>125</sup> For example, 43.1% of CLC clients in 2012-2013 reported receiving a government pension, benefit or allowance: National Association of Community Legal Centres, *The Work and Clients of CLSP CLCs in Numbers* (February 2014).

<sup>126</sup> See, eg, A Norton, *Doubtful Debt: The Rising Cost of Student Loans*, (April 2014) Grattan Institute.

# Appendix A

## *NALCL Principles for Commonwealth Community Legal Services Program (CCLSP) Funding 2013-2016*

### **1. Decision-making**

CCLSP funding decisions should be made by a funding decision making body, however described, that is established in consultation with the CLC sector.

The funding decisions of that body should be made on the basis of funding principles (CCLSP Funding Principles) that are developed in consultation with the CLC sector. The decision making process should be consistent and transparent.

Funding priorities, including any priority client groups for services, should be determined in consultation with the sector and these decisions made publicly available. The priorities should be reviewed regularly, in consultation with the sector.

Where a funding decision is to be, or is being, made that would or may have an adverse effect on a particular CLC or CLCs (for example, funding reduced), or a funding decision has a disparate adverse impact upon a particular CLC or CLCs (for example where funding is allocated to most, but not all, CLCs that undertake a particular type of work), then the affected CLC/s should be given notice and an opportunity to be heard in relation to the proposed decision. This principle should apply to all decisions concerning recurrent<sup>127</sup> funding, and wherever practicable to one-off funding decisions.

### **2. Funding allocations**

CCLSP funding should be made available for:

- Base funding
- Supplementary funding
- New funding (to address demonstrated unmet legal need)
- Special funding, and
- Sector development and support initiatives.

Each of these allocations is discussed below.

CCLSP funding should be indexed annually to take account of real increases in costs of wages and wage-related oncosts as well as goods and services. It should be indexed annually using a composite of the annual Labour Price Index (LPI)<sup>128</sup> and the Consumer Price Index (CPI). Wages and wage-related oncosts generally account for around 75% of a centre's total budget. Accordingly, the LPI should be the indexation rate applied to 75% of CCLSP funding and the balance of CCLSP funding should be indexed using the CPI.

### **3. Commonwealth Responsibility**

The Commonwealth should accept primary responsibility for funding CLCs because it has:

- sole power to levy income taxes
- responsibility for ensuring that Australia complies with its international treaty obligations including human rights treaties and ensuring the legal protection of people's human rights

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<sup>127</sup> Funding is regarded as 'recurrent' where it is for three years or more.

<sup>128</sup> This index reflects changes to the cost of wages as well as superannuation, annual and public holiday leave, payroll tax and workers' compensation. Accordingly it more accurately reflects real cost increases than the Wage Price Index (formerly called the Wage Cost Index) that reflects only changes to the cost of wages.

- a particular duty of care for social security recipients, Indigenous peoples, newly arrived migrants and refugees, people within the family law system, and consumers of a range of insurance and other financial services, and
- responsibility for many of the areas of law and policy which affect the lives of the disadvantaged and people with special needs.

Accordingly, the Commonwealth should provide at least 60% of total CLSP funding and take responsibility for negotiating with State governments to provide the balance. Further, the Australian Government should accept responsibility for making up any shortfalls in State funding in any particular region.

#### 4. Base funding

There should be an allocation of funding sufficient to fund, on a recurrent basis, the core services provided by CLCs.

CCLSP funding should be based on, and enable compliance with, the CLC **Strategic Service Delivery Model (SSDM)**.

The **SSDM** entails:

- Identifying legal needs using evidence based assessment.
- Planning and developing service responses.
- Delivering legal and related services to clients and including some or all of the following: law reform and policy advocacy, community legal education, strategic litigation (test cases to establish or clarify the law or the legality of application of a policy or practice, often with the effect of avoiding multiple individual actions), community development activities including building the skills, capacity and resilience of individuals and communities to avoid or resolve problems in the future.

A minimum base funding level is required for CLCs (generalist and specialist) to meet the SSDM and operate efficiently, effectively and safely. This **minimum base funding level**, based on 5 Effective Full Time (EFT) workers, is as follows:

Position	Salary <sup>129</sup>	Oncosts <sup>130</sup>	Total salary costs	Operating expenses <sup>131</sup>	Total position cost
Centre Manager	110,891	15,525	126,416	42,134	168,550
Principal Solicitor	110,891	15,525	126,416	42,134	168,550

<sup>129</sup> Salaries are 85% of the median of Australian Public Service (APS) salaries for positions at the equivalent levels, as assessed by Mercer (March Mercer Holdings (Australia) Pty Ltd). The  Mercer Benchmarking Review of CLC salaries (2011) entailed work value assessments of 6 CLC positions and benchmarking against a number of awards and data sources. Mercer recommended 'alignment with APS salary levels as the broadest and most relevant comparator market for all CLC positions given the comparable range of legal, management and administrative based positions'. Mercer stated that salaries within a +-15% range of desired market salaries are regarded as competitive. The minimum base funding level calculations adopt the Mercer assessments except that the Finance Officer and Administrator positions have been combined into one position with a salary reflecting the potential work responsibilities of a Finance Officer. APS salary data is sourced from the 2012 APS Remuneration Report (Australian Public Service Commission) recording salary data as at 31 December 2012.

<sup>130</sup> 14% of gross salary to cover costs such as compulsory superannuation, workers' compensation insurance, long service leave, leave loading.

<sup>131</sup> 33.33% of total salary cost which roughly equates to 25% of the total position cost. This reflects our understanding that centres nationally spend an average of 25% of their budget on operating costs.

Solicitor	71,806	10,053	81,859	27,284	109,143
Community Worker/Educator	61,614	8,626	70,240	23,411	93,651
Finance Officer/Administrator	56,885	7,964	64,849	21,614	86,463
<b>Total</b>					<b>\$626,357</b>

The minimum base funding may be provided by the Australian Government or a State Government through the CLSP, or by contributions from both. Where the State is not contributing, the Commonwealth should provide 100% of the minimum base funding.

All existing generalist and specialist CLCs<sup>132</sup> and new generalist and specialist CLCs<sup>133</sup> should be funded to the minimum base funding level for a minimum of three years unless an assessment has been made that there are, in relation to a particular CLC, exceptional circumstances warranting greater or lesser funding as its base level, having regard to:

- the service delivery area, estimation of actual/potential service population and cost of service delivery (for example, CLCs in rural and remote locations)
- evidence-based assessment of profile of disadvantage of the target groups and community/ies
- evidence-based legal needs assessment and analysis of the level and nature of met and unmet legal needs (as distinct from 'disadvantage') taking into account other relevant and appropriate service providers available in the service area and the particular needs, profiles and wishes of individuals and groups within the service area
- the actual/proposed forms of organisational structure (eg need for self sufficient branch office/s)
- the actual/proposed methods of service delivery, including types of services provided, whether large amount and/or spread of outreach etc
- the actual/proposed operational structure, including availability of and reliance on volunteer and pro bono assistance
- the organisational and employment capacity of the centre at the particular stage of its development and operation<sup>134</sup>
- whether the centre is/will be auspiced by another agency that will provide some staffing or other measurable support to the centre.

This is 'core' funding (as distinct from separate project/program funding that is tied to specific specialised projects or services) – it is for the basic running of the centre and to provide core legal and related services consistent with the aims of the CLSP and the centre's objectives.

Some centres receive funding from more than one source. When considering the funding required by a CLC to bring it to the minimum base funding level, the following should be taken into account:

- existing *recurrent*<sup>135</sup> CCLSP funding provided for the core services of the CLC

<sup>132</sup> For these purposes, a CLC is an organisation that is providing the core services under the CLSP Service Agreement.

<sup>133</sup> For these purposes, a CLC is an organisation or that part of an organisation that is proposed to provide the core services under the CLSP Service Agreement.

<sup>134</sup> For example, a particular CLC receiving less than the minimum base level of funding may itself consider that it does not, in the relevant period, have the organisational capacity to expand to (or house) 5 EFT workers.

<sup>135</sup> Funding is regarded as 'recurrent' where it is for three years or more. We accept that if a particular centre has a long history of receiving continuous annual funding grants from a particular source, and there is no reason for thinking the centre will not obtain that funding in the forthcoming year, this funding should be regarded as recurrent funding. However, this requires consideration on a case-by-base basis.

- existing *recurrent* funding from other sources, including State CLSP funding and, if recurrent, Public Purpose Funding, that is provided for the core services of the CLC for which it is funded by the CLSP.

The following funding should *not* be taken into account:

- non-recurrent<sup>136</sup> funding
- funding, whether or not CLSP funding, that is tied to a specific project or the delivery of other (non-core) legal services, for example, funding under the Child Support Scheme Legal Services program, funding under the Rural Women’s Outreach sub-program.

## 5. Supplementary funding

There should be an allocation of funding or a ‘funding pool’ to enable supplementary (recurrent) funding of centres where an assessment has been made that exceptional circumstances warrant funding the centre/s above the minimum base level: see 4.4. For example, some centres may incur significant extraordinary costs in delivering services, such as:

- a CLC may operate a branch office in a location where, because of the distance from the main office, the nature of the community and/or their legal needs, or the volume of work, a few staff are required to meet significant and otherwise unmet legal need. Indeed some branch offices essentially operate as another centre, and may themselves require a minimum of 5 EFT employees
- some CLCs have special service delivery needs and incur significant additional costs when providing core services to meet these needs, such as the costs of providing significant outreach services and providing services to people with special needs<sup>137</sup>, additional interpreter costs for services targeted at CALD communities, additional costs incurred by rural and remote CLCs.<sup>138</sup>

There should be a procedure for an evidence-based application to be made by a centre for supplementary funding from this funding pool.

## 6. New funding to address demonstrated unmet legal need

There should be an allocation of funding for new initiatives within existing CLCs and/or the establishment of new centres in order to meet identified (evidence-based) unmet legal needs of communities. Priority should be given to addressing ‘black spots’, areas of high disadvantage and high unmet legal needs that are currently not addressed by a legal assistance provider. Relevant unmet legal needs may be geographic or in respect of a particular target group.

There should be a procedure for an evidence-based application to be made by a centre or other organisation or individual for funding, on a recurrent basis, from this funding pool. Any new centre should be funded to the minimum base funding level unless an assessment has been made that exceptional circumstances warrant greater or lesser funding: see 4.4.

## 7. Special funding

There should be an allocation of funding or a ‘funding pool’ that is available to be expended by way of one-off grants made upon application by an individual CLC for funding to meet an unusual and non-

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<sup>136</sup> One-off or for less than three years.

<sup>137</sup> For example, facilities for people with hearing impairments, support persons for some clients.

<sup>138</sup> For example, travel and communications, possibly relocation and/or housing allowances, increased costs for recruitment and retention.

recurring circumstance, for example, the start-up costs<sup>139</sup> of a new CLC, significant replacement costs (eg after fire or flood), relocation costs of an existing CLC, or funding a CLC to enable it to respond over a short term to new and urgent legal needs arising from a natural disaster.

## **8. Sector development and support initiatives**

There should be an allocation of funding for initiatives aimed at supporting CLCs in providing effective, efficient, accessible and appropriate services and operating accessible, effective and efficient organisations in a continuous improvement framework. These initiatives may require one-off or recurrent funding and may be made to state, territory or national associations of CLCs, individual centres or networks of centres, or to CLCs in partnership with other organisations.

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<sup>139</sup> Including for the initial fit-out of the premises and associated costs (eg lease guarantees), furniture and fittings, capital costs (eg equipment).

## Appendix B

### *NACLC Funding Principles, Minimum Base Funding*

A minimum base funding level is required for community legal centres (generalist and specialist) to meet NACLC's Strategic Service Delivery Model (SSDM) and operate efficiently, effectively and safely. This minimum base funding level, based on 5 Effective Full Time (EFT) workers, is as follows:

Position	Salary <sup>140</sup>	Oncosts <sup>141</sup>	Total salary costs	Operating expenses <sup>142</sup>	Total position cost
Centre Manager	105,519	14,773	120,292	40,093	160,385
Principal Solicitor	105,519	14,773	120,292	40,093	160,385
Solicitor	67,622	9,467	77,089	25,694	102,783
Community worker/educator	57,878	8,103	65,981	21,991	87,972
Finance officer/administrator	53,757	7,526	61,283	20,426	81,709
<b>Total</b>					<b>\$593,234</b>

<sup>140</sup> Salaries are 85% of the median of Australian Public Service (APS) salaries for positions at the equivalent levels, as assessed by Mercer (March Mercer Holdings (Australia) Pty Ltd). The Mercer Benchmarking Review of community legal centre salaries (2011) entailed work value assessments of 6 community legal centre positions and benchmarking against a number of awards and data sources. Mercer recommended 'alignment with APS salary levels as the broadest and most relevant comparator market for all community legal centre positions given the comparable range of legal, management and administrative based positions'. Mercer stated that salaries within a +-15% range of desired market salaries are regarded as competitive. The minimum base funding level calculations adopt the Mercer assessments except that the Finance officer and Administrator positions have been combined into one position with a salary reflecting the potential work responsibilities of a Finance Officer. APS salary data is sourced from the 2011 APS Remuneration Report (Australian Public Service Commission) recording salary data as at 31 December 2011.

<sup>141</sup> 14% of gross salary to cover costs such as compulsory superannuation, workers' compensation insurance, long service leave, leave loading.

<sup>142</sup> 33.33% of total salary cost which roughly equates to 25% of the total position cost. This reflects our understanding that centres nationally spend an average of 25% of their budget on operating costs.

*NACLC acknowledges the traditional owners of the lands across Australia and particularly the Gadigal people of the Eora Nation, traditional owners of the land on which the NACLC office is situated. We pay deep respect to Elders past and present.*