

Submission by Tony Woodyatt regarding the Productivity Commission's draft recommendation 21.4

The Commission's draft recommendation 21.4 states:

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.

The draft report's discussion about overcoming problems in community legal centre (CLC) funding by discontinuance of the historically-based funding model in favour of an NPA deserves further consideration.

Thinking of the current model as just a history of payments to continue existing or establish new CLCs without consideration of legal need gives a skewed view of the funding history. There are also risks in using the NPA model even if tempered with the recommendation that funds be transparently allocated on the basis of need identified through local consultation. If the draft recommendation is unchanged, it is important for the commission to give some structure to support this recommendation.

I understand too that the NPA review has recommended greater direction from government about who should receive publicly funded legal assistance services and for what kind of problems.

'Other' history

I urge the commissioners to take the following history into consideration when making final recommendations on this issue:

- The development of new CLCs and maintenance of existing ones has generally been the result of community need, identified either by local communities or lawyers working on the ground in the community sector and private profession.
- Where deviation from this situation has occurred, funding has been determined by political conceptions of need (i.e. the latest concern in the media) or for purely political reasons rather than on the basis of identified need.
- Governments generally have not consulted well with service providers in setting priorities and many decisions have been taken by government without consultation resulting in the unequal distribution of resources and injustices in the way issues are managed.
- With CLCs and legal aid commissions in the middle, governments can pass the buck over who has responsibility for certain areas of law.
- For as long as I can remember, CLCs have been trying to engage with government for more targeted funding based on local knowledge of legal need and a better system for distributing funding to where it is most needed. QAILS has submitted to government a number of detailed strategies over the last 30 without real take up.
- The recent Queensland LPITAF inquiry did not find examples of duplication or that CLCs were wrongly placed or not fulfilling a need. It did however find gaps in certain locations and areas of law and that some efficiencies could be achieved through the sharing of resources (including expertise), greater use of technology, outreach services etc.

- The focus on physical location of services in any event is not a good measure. It overlooks valid reasons for location decisions, such as access to volunteers (a fundamental strength of CLCs), access to facilities and the ability of services to operate outside their physical locations.
- The recent LPITAF review resulted in a new CLC funding framework that pools LPITAF and State funding and provides certainty and stability for most Queensland CLCs for three years.
- Through that process, several CLCs were defunded by the State Government for political reasons or without consultation. However, it should be noted that the legal issues serviced by those CLCs have not gone away. They have been diverted to other CLCs without the expertise to meet those legal needs.
- In my view, the Allens NPA review argument is counter-intuitive because it is in fact government direction rather than consultation and partnership that has led to the situation where there are inefficiencies and gaps.
- Over the last five years, Queensland's legal assistance forum (QLAF) has started to work at a state level to gather the views of on-the-ground workers and has been working on some of the issues raised in the draft report, but there are no resources to support this work. QLAF is a group comprised of representatives of legal assistance sector members and state and federal governments.
- ALAF does not work as a mechanism to formally pass on information from the state LAFs in a structured way.
- Some people have the view that organisations like QLAF cannot transcend the vested interests of its individual members. In my view this is cynical and wrong.
- CLCs provide a complementary role to the LACs. This is vital because it permits flexible and responsive services that the LACs are unable to provide through the current prescriptive NPA process or are unable to respond to quickly. The prescriptive approach is more appropriate for the LACs because they provide the essential crime and family (and some civil) casework services through the profession and in-house and are better able to focus on the bigger issues that governments have to be seen to respond to.
- There are historical examples when LACs have competed with and retained funds intended for CLCs.
- Because there has been no clear funding distribution strategy, competition for funding between recurrent services has been a de facto policy. This policy has stifled cooperation within the sector and has not fostered innovation.
- However, I support competitive based funding for project development. Reasonably regular ad hoc grants outside the CLSP process are made without a structured allocation process.
- The existing governance arrangements have not been used to encourage effectiveness or efficiency. In the worthy cause of promoting the best use of taxpayers funds, governments micro-manage CLCs. Funders rightly want to ensure that funds are not wasted or maladministered, but the current system does not do this effectively. Also, the red tape employed in the name of accountability effectively wastes funds and diverts providers from service delivery.

- The CLC sector itself has developed its own accreditation scheme to improve service quality and accountability.

Lessons from this history

- Development of an NPA for CLCs will not automatically change the perceived negative aspects of historical funding allocation. Political imperatives are still driving some allocations and will continue as long as politicians make funding decisions, which is their role as elected representatives.
- A competitive funding approach will not work for ongoing services provided by CLCs that have proven their effectiveness and are addressing a recognised need.
- A cooperative and collaborative approach will achieve greater efficiencies and promote coordination. Collaboration can be achieved through a mechanism that promotes goodwill through its working rules where vested interests are exposed in a transparent process.
- More resources have always been required to meet new needs posed by Australia's rising population and increasing social and legal complexity. New funding will in future be required to fill the gaps as efficiency gains will not suffice.
- A better approach to respond to emerging problems and issues would be through legal needs research and local knowledge and the development of strategies to meet those needs through the LAF processes providing advice to government for systematic funding. If accepted politically, those funds could then be distributed to the appropriate service providers, either the LACs or existing CLC network or for the creation of new CLCs in accordance with best practice service delivery.
- Competitive based project funding to complement the CLSP would be a way to foster innovation.
- Funding for CLCs must be quarantined from funding for LACs, otherwise CLCs will be deprived of funds and their client base will suffer.
- The existing CLC network should be supported and secured by the Commonwealth, not placed purely in the control of any one government. The Commonwealth Government should stipulate continuation of the network it has helped build over 30 years, subject to review of effectiveness through improved governance arrangements.
- The data collection system is still inadequate and the expense of retrieving data will remain a barrier for some time, so workers on the ground with intimate practical knowledge must be able to pass up information through effective consultative mechanisms. Enhanced consultation and collaboration through formal mechanisms (e.g. LAFs) will yield better results than just relying on an agreement reached every three years, usually after limited consultation.
- Finally, a one size fits all approach will not necessarily work in all jurisdictions/locations with different needs and different resources to support them. I urge the commission to recommend that state and local coordinating bodies (the LAFs and member peaks) are encouraged to find the solutions that are right for them with government oversight to ensure national standards are met.

I submit that the commission's recommendation 21.4 should focus on:

- maintaining the current funding model, with needs based new funding recommended through strategic consultative processes and project funding for innovation;
- developing a CLC NPA if the Commission is convinced of this approach, but recommending the Commonwealth maintain existing services and stipulate only broad standards and priorities that are needs and best practice based through research and information obtained from the recommended consultative processes;
- improving governance arrangements to ensure effectiveness and efficiency, using the CLC accreditation process rather than micro-managing individual services;
- developing a mechanism at the national level that is more transparent, consultative and collaborative to make recommendations to government for appropriate distribution of funds (recurrent, new and project) to the states and territories based on needs that are identified at the state, regional and local levels and fed up through the state and territory coordinating mechanisms. This will ensure the transparency the commission recommends and will not undermine the government's responsibility to decide; and
- resourcing the collaborative mechanisms.

Summary

In summary, I support the provision of funding by the Commonwealth for distribution by the states and territories to improve efficiencies and avoid management duplication. However, the commission should be wary of supporting a prescriptive approach for CLCs at the Commonwealth level and should encourage government to allow CLCs to be flexible in the services they provide. Broad guidance would be sufficient. This would provide the safety net for clients who may not fit within strict policies, priorities or guidelines but are nonetheless experiencing hardship warranting free or low cost legal assistance. There also needs to be strong mechanisms to feed local information to all levels of government to ensure effective coordination of appropriate funding and to ensure security and continuity of the CLC arm of the justice system.

It would be a mistake if we lose the ability of the CLC network to provide flexible, independent and innovative services that enable it to fill its vital complementary role in the justice system in order to improve efficiencies and effectiveness that can be achieved by other and better means through enhanced collaboration, coordination and governance.