

Review of NSW Community Legal Centre Services

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REVIEW OF NSW COMMUNITY LEGAL CENTRE SERVICES

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EXECUTIVE SUMMARY

Community legal centres (**CLCs**) have been a vital component of the NSW legal assistance sector for more than 35 years. They deliver an essential service to the NSW community by helping people to resolve legal problems and access the justice system. They also deliver tangible benefits both to individuals and the broader community. According to the Productivity Commission's 2014 Review of Access to Justice Arrangements:

“Numerous studies show that efficient government funded legal assistance services generate net benefits to the community ... Prompt, affordable and well understood dispute resolution arrangements can help avoid issues escalating into more serious problems that can place burdens on health, child protection and other community welfare services.”¹

Under the National Partnership Agreement on Legal Assistance Services (**NPA**), when expending Australian Government funds CLCs are required to focus on the groups within our community that are most likely to experience legal problems and least able to resolve them. These groups include, but are not limited to, people experiencing financial disadvantage, Aboriginal and Torres Strait Islander people, people with a disability or mental illness, young people, older people, and single parents. This reflects the fact that a large proportion of legal problems in the community are concentrated within these groups. As the National Strategic Framework for Legal Assistance states:

“People facing disadvantage are more susceptible to multiple and substantial legal problems. They are also less likely, or unable, to identify or manage legal problems themselves. Failure to address legal problems often impacts upon broader life circumstances, triggering other legal and non-legal problems and often resulting in, or furthering, entrenched disadvantage.”²

CLCs operate alongside other legal assistance providers, such as Legal Aid NSW, the Aboriginal Legal Service NSW/ACT, Family Violence Prevention Legal Services, and private lawyers who provide pro bono services. This mixed model of service delivery reflects the diverse needs of the community and provides maximum service coverage and flexibility. Within this mix, CLCs play a unique and essential role. While having multiple services on the ground creates a risk of duplication, the sector is appropriately managing this through collaborative service planning and other joint activities. The sector should continue to work together to enhance the collaborative service planning process.

¹ Productivity Commission, *Access to Justice Arrangements*, (2014), pp 2 and 7.

² Australian Government Attorney General's Department, *National Strategic Framework for Legal Assistance 2015-20*, Principle 1, p 4.

The services provided by CLCs are also delivered at very low cost to government. CLCs are extremely efficient, leveraging volunteer and pro bono support to maximise the total hours, dollar value and range of services they provide. Despite this, there is significant unmet demand for legal assistance services which cannot be met without additional funding. As the Productivity Commission concluded:

“While there is some scope to improve the practices of legal assistance providers, this alone will not address the gap in services. More resources are required to better meet the legal needs of disadvantaged Australians.”³

Given the extent of unmet legal need in the community, the Review recommends first, that existing funding levels should be preserved. This includes the additional \$3 million per annum announced by the NSW Government in April 2017. While it is acknowledged that government resources are finite, a number of specific service gaps have also been identified. The NSW Government should seek to identify additional funding to address these areas of need. Significant gaps include:

- Geographic areas where no legal assistance services operate or outreach is severely limited, particularly in rural, regional and remote areas
- Areas of law for which there is significant unmet demand, including housing, credit and debt, care and protection, domestic violence and consumer law
- Priority client groups who are under-serviced, including Aboriginal and Torres Strait Islander people, children and young people, and people with disabilities.

A number of submissions also identified areas of Commonwealth law for which there is unmet legal need, including social security, employment and family law. While this Review focuses on the most significant legal needs arising from State law, it is acknowledged that from a client perspective the distinction between Commonwealth and State law is unhelpful. Additional funding for Commonwealth areas of law should be sought from the Australian Government during the next round of National Partnership Agreement negotiations.

The NSW Government should provide guidance to the legal assistance sector regarding areas of State law that should be prioritised. A similar approach should be taken to that contained in the NPA. That is, service providers should focus on civil law problems that are likely to have a significant adverse impact if not resolved. Examples should be provided for guidance and should include the gap areas of law listed above. However, guidance should not be issued prescriptively. Service providers should continue to consider the collective civil law needs of their clients.

CLCs should continue to provide the full range of legal assistance services. This includes information and advice, representation and community legal education, as well as strategic advocacy and law reform activities. CLCs that engage in strategic advocacy and law reform activities that aim to remedy systemic issues, including in

³ Productivity Commission, *Access to Justice Arrangements*, (2014), p 2.

relation to environmental matters, should continue to be funded by the NSW Government.

The Review agrees with the conclusion reached by the Productivity Commission in its 2014 Access to Justice Review that funding levels for CLCs, and for the legal assistance sector more broadly, should be determined by reference to a comprehensive assessment of legal need. In addition, particular allocations to each CLC should also be tied to evidence of legal need. The Law and Justice Foundation of NSW (**LJF**) has undertaken significant work to develop the evidence base in NSW. The CLC peak body, Community Legal Centres NSW (**CLCNSW**), should partner with LJF to continue this important work in consultation with the broader sector.

An improved evidence base will not only ensure that funding is appropriate and targeted to areas of greatest legal need. It is also critical to implementing the application-based funding model proposed in section 8 of this Review. Currently, CLC funding allocations in NSW and generally reflect historical funding levels. This means that funding levels do not necessarily reflect the extent of unmet legal need within communities. Funding is also provided on an annual basis only, which creates a level of uncertainty and instability that should not be permitted to continue.

To remedy this, the Review recommends that the NSW Government implement minimum three year funding cycles from 2019–20. CLCs should also be required to apply for funding. Legal Aid NSW should no longer be responsible for determining funding allocations. This role should instead be performed by an evaluation panel consisting of representatives of the NSW Departments of Justice, Premier and Cabinet and the Treasury, as well as an independent member nominated by the Attorney General. This approach has been adopted in Queensland and is acknowledged by the National Association of Community Legal Centres as good practice. Legal Aid NSW should continue to administer CLC funding agreements.

It is acknowledged that an application-based funding model represents a significant shift for NSW CLCs. To support the sector to transition to the new funding environment, the Review recommends that the peak body, CLCNSW, should be funded to develop a resource application guide and other supporting materials. CLCNSW should also work closely with the LJF and the broader legal assistance sector to develop the evidence base. This evidence base can also be used by CLCs to plan service delivery to the most disadvantaged people in their communities.

Community legal services that are not currently funded by the NSW Government should also be eligible to apply for funding, including national centres that provide services to NSW citizens, provided that relevant governance standards are satisfied. However, the Review recognises that funding for CLCs available under present arrangements is already fully committed. Therefore, additional centres should only be considered for funding if extra resources are made available.

The CLC sector in NSW provides an invaluable service to the NSW community. The sector is supported by strong governance structures and delivers significant benefits to individual clients, the community and to government. These benefits include reductions in stress, reductions in financial costs and reductions in the likelihood of legal problems escalating into other forms of hardship. This not only supports our democratic society, it is also a sound investment. The Review recommends that an outcomes measurement framework be developed in order to further support the sector to demonstrate its impact.

The Review respectfully agrees with Sir Anthony Mason QC, who recently stated:

“The recent Annual Report of the National Association of Community Legal Centres ... recorded that 170,000 potential clients were turned away, in many cases because the centres lacked the resources to service them. Demand for legal services from the most disadvantaged is rising ... with increased funding, CLCs can make an even greater contribution to improve delivery of legal services, in particular to disadvantaged people.”⁴

⁴ Hon Sir Anthony Mason AC KBE GBM QC, ‘A lifetime in the law’ (speech on 19 October 2017 at the 2017 Law and Justice Awards at NSW Parliament).

Recommendations

1. CLCs should continue to provide a complete range of legal assistance services, including information and advice, community legal education, case work, representation and law reform activities.
2. The NSW Government should provide guidance to CLCs regarding priorities for service provision under State civil law, including housing, debt, and care and protection matters.
3. The NSW Government should continue to provide funding to CLCs that engage in strategic advocacy that seeks to identify and remedy systemic issues.
4. The existing funding envelope for CLCs should be preserved, including the \$3m p.a. announced by the NSW Government in the 2017–18 and 2018–19 financial years.
5. The NSW Government should seek to identify additional funding to:
 - (a) Address critical gap areas
 - (b) Ensure that services that do not currently receive NSW Government funding can be funded without reducing allocations to existing CLCs.Approximately \$2.2m would be required to meet the funding requests made to the Review by unfunded services.
6. The NSW Government should allocate additional funding for Wesley Community Legal Service from the Responsible Gambling Fund.
7. The NSW Government should adopt an application-based funding model from 2019–20.
8. The NSW Government should allocate funding in 2018–19 to enable:
 - (a) CLCNSW to work in partnership with LJF to develop an evidence base to inform applications for funding, similar to that developed in Queensland
 - (b) CLCNSW to support the CLC sector through the application process, including by developing an application resource guide and other supporting materials.The Review considers that approximately \$300,000 would be required to conduct this work.
9. Legal Aid NSW should no longer be responsible for determining funding allocations but should continue to administer CLC funding agreements.
10. A minimum three-year funding cycle should be implemented to provide CLCs with funding stability and certainty.
11. The NSW Government should invest in the development of an outcomes measurement framework.
12. Legal Aid NSW, in consultation with the CLC sector, should seek to identify unnecessary duplication in relation to reporting requirements and report its findings to the NSW Government.

1 INTRODUCTION

1.1 Community Legal Centres

Community legal centres (**CLCs**) are independent community organisations that provide free information, legal advice and related services to people and communities facing economic, social or cultural disadvantage. They offer a range of services to clients, including:

- Information and referral
- Advice on legal matters
- Legal casework and representation in targeted areas of law
- Community legal education
- Law reform, public policy development and advocacy.

1.2 Background to this Review

On 5 April 2017 the NSW Attorney General announced an additional \$6 million in NSW Government funding for NSW CLCs, to be allocated over the 2017–2018 and 2018–19 financial years. This funding was intended to replace Australian Government funding grants that were due to expire on 30 June 2017. While the Australian Government later reversed its decision to end these funding grants, the reinstated Australian Government funding must prioritise family law and family violence services.

On 29 September 2017, the NSW Attorney General announced a Review of Community Legal Centre Services (**the Review**). The purpose of the Review was to ensure that legal assistance is directed to people most in need, improve CLC service provision and assist the NSW Government in settling an approach to future funding allocations. The Review was asked to examine a range of issues, including:

- The type, scope and geographical spread of CLC services that should be funded by the NSW Government
- The funding levels that are required to enable CLCs to deliver those services
- The funding model that should be used to inform the allocation of available funding.

The full terms of reference for the Review are set out at **Appendix A**.

1.3 Previous reports

A number of reviews have been conducted that relate to the NSW legal assistance sector in recent years.⁵ These have been taken into account in the conduct of this Review and are referred to where relevant. Key reviews include:

- Productivity Commission Inquiry into Access to Justice Arrangements (2014)
- Allen Consulting Review of the National Partnership Agreement (2014)
- NSW Department of Justice Review of the Delivery of Legal Assistance Services to the NSW Community (2012)
- Commonwealth Review of the Commonwealth Community Legal Services Program (2008)
- Legal Aid Review of the NSW Community Legal Centres Funding Program (2006).

1.4 Conduct of the Review

The Review was led by Mr Alan Cameron AO, with support from the NSW Department of Justice's Strategy and Policy Division. Mr Cameron called for submissions on 29 September 2017, to which more than 70 individuals and organisations responded. In addition, the Review team conducted a literature review, researched approaches to legal assistance funding in other States and Territories, and visited a number of CLCs and other organisations in Sydney and regional NSW.

The Review team would like to thank the individuals and organisations that made a submission or spoke to the team. The information provided has been invaluable in helping to shape this report. A list of the submissions received is provided at **Appendix B**.

Mr Cameron also wishes to thank the members of the Review team, without whose energy, enthusiasm and diligence this Review could not have been completed in the allotted timeframe.

⁵ Reviews have also been conducted in a number of other Australian States and Territories, including in Victoria (1998 and 2016), Queensland (1999 and 2012), Western Australia (2003 and 2009) and South Australia (2016).

2 CONTEXT

2.1 Overview of the NSW legal assistance sector

A number of organisations in NSW provide free legal services to the community. The NSW legal assistance sector has four main service providers: community legal centres, Legal Aid NSW, the Aboriginal Legal Service NSW/ACT (**ALS**), and Family Violence Prevention Legal Services (**FVPLS**).

Each provider's remit is shaped by its history, funding arrangements and legal focus areas. This in turn influences service mix, resource allocation, target client groups and relationships with other providers. Service providers play discrete yet complementary roles in the legal assistance sector and work collaboratively to address legal need.

2.1.1 Community Legal Centres

Section 6 of the *Legal Profession Uniform Law (NSW)* defines 'community legal service' as an organisation that:

(a) holds itself out as—

- (i) a community legal service; or
- (ii) a community legal centre; or
- (iii) an Aboriginal and Torres Strait Islander Legal Service;

whether or not it is a member of a State or Territory association of community legal centres, and whether or not it is accredited or certified by the National Association of Community Legal Centres; and

(b) is established and operated on a not-for-profit basis; and

(c) provides legal or legal-related services that—

- (i) are directed generally to people who are disadvantaged (including but not limited to being financially disadvantaged) in accessing the legal system or in protecting their legal rights; or
- (ii) are conducted in the public interest.⁶

In NSW, most community legal services call themselves Community Legal Centres (**CLCs**) and are members of the peak body Community Legal Centres NSW (**CLCNSW**). Members of CLCNSW are required to be accredited under a National Accreditation Scheme administered by the National Association of Community Legal Centres (**NACLC**) and to pay a membership fee.

⁶ Section 6 *Legal Profession Uniform Law (NSW)*.

There are other community legal services that are not members of the peak body. Examples include Shopfront Youth Legal Service (a specialist youth service) and Wesley Community Legal Service (a specialist gambling service).

For the purposes of this Review, the term ‘community legal centres’ means all services that fall under the definition of ‘community legal service’ in the *Legal Profession Uniform Law*.

CLCs fall into two main categories:

- **Generalist CLCs:** provide services to people across a broad range of legal matters within a particular geographical catchment area. Just over half of NSW CLCs are generalist.⁷
- **Specialist CLCs:** provide services to clients from a particular priority group (for example, women, older people or refugees and recent immigrants) or services about certain subject matters, such as financial rights, public interest law or environmental and planning law.

Around 40 per cent of generalist CLCs also provide specialist services or programs that target particular groups or areas of law.⁸

While some CLC services cover criminal law matters, the vast majority of CLC services are focused on civil law and family law. CLCNSW reports that in 2015–2016, the proportion of advices provided by its member CLCs were:

- Civil law – 82.2 per cent
- Family law – 14.2 per cent
- Criminal law – 6.6 per cent.⁹

Within these broad categories, CLCs provide legal assistance about a broad range of legal topics, including:

- Credit and debt
- Welfare
- Mental health
- Disability
- Tenancy
- Immigration
- Employment.

⁷ CLCNSW, *Annual Report 2015-2016* p 12.

⁸ CLCNSW, *Annual Report 2015-2016* p 10.

⁹ CLCNSW *Annual Report 2015-2016* p 8.

CLCs are located in metropolitan and regional NSW and some conduct outreaches to rural and remote NSW. The geographical location of CLCs often reflects a local response to significant legal need arising in a particular community.

CLCs receive funding from a variety of sources, including State and/or Australian Government funding, the Public Purpose Fund, philanthropic donations, pro bono support from private law firms, and volunteer support.

2.1.2 Other legal assistance service providers

Legal Aid NSW

Legal Aid NSW is a statutory body established under the *Legal Aid Commission Act 1979* to provide legal aid and other legal services to socially and economically disadvantaged people in NSW.¹⁰ It is governed by a Board. Legal Aid NSW provides:

- Legal information and advice
- Duty lawyer services at courts and tribunals
- Legal representation for eligible people¹¹
- Dispute resolution services
- Community legal education
- Policy and law reform work.

Legal Aid NSW has a state-wide network of 24 offices and 248 regular outreach locations. In 2015–2016, Legal Aid provided 909,352 services through both in-house and private lawyers, which consisted of:

- Criminal law – 52.2 per cent
- Family law – 20.8 per cent
- Civil law – 24.6 per cent.¹²

Legal Aid NSW receives its funding from the NSW Government, Australian Government and the Public Purpose Fund. It also receives some income from interest and client contributions. As well as being a recipient of legal assistance services funding, it also administers funding to CLCs.

Aboriginal Legal Service

ALS is the Aboriginal and Torres Strait Islander Legal Service provider in NSW. ALS is an Aboriginal non-government organisation that provides culturally appropriate

¹⁰ *Legal Aid Commission Act 1979* (NSW) s 12.

¹¹ Legal advice and minor assistance from Legal Aid is free. However, if a person needs ongoing legal assistance, they must apply for a grant of legal aid. Grants are subject to a means test.

¹² Legal Aid NSW, *Annual Report 2015-2016*. Data taken from pp 13, 35, 38, 41.

legal services to Aboriginal and Torres Strait Islander people. It has 21 offices in NSW, most of which are in regional areas.

ALS provides legal advice, minor assistance and court representation in three main practice areas:

- Criminal law (including duty lawyer assistance)
- Children's care and protection law
- Family law.

ALS does not provide ongoing legal assistance or casework for civil matters. Its civil assistance is limited to information and referrals to other legal assistance providers. ALS's non-casework activities include community legal education, Work and Development Order (**WDO**) program partnerships, Custody Notification Service and advocacy and law reform activities. It receives its core funding from the Australian Government Attorney General's Department under the Indigenous Legal Assistance Programme.¹³

Family Violence Prevention Legal Services

FVPLS provides culturally sensitive legal and counselling services to Aboriginal and Torres Strait Islander adults and children who are victim-survivors of family violence, including sexual assault/abuse, or who are at immediate risk of such violence. They offer legal assistance for:

- Family violence law related legal matters
- Legal matters associated with family violence, such as family law, victims of crime compensation, child protection, tenancy and Centrelink assistance.

FVPLS also conducts law reform and advocacy, community legal education and early intervention and prevention activities. Four FVPLS are located in regional areas of NSW:

- Forbes
- Kempsey
- Moree (with outreach to Bourke and Walgett)
- Broken Hill.

FVPLS receive core funding from the Australian Government's Department of Prime Minister and Cabinet through the Indigenous Advancement Strategy.

¹³ The ALS also receives program funding for specific activities from other Government agencies, such as funding for the Custody Notification Service from the Australian Government Department of Prime Minister and Cabinet.

2.2 CLC funding arrangements

2.2.1 Funding levels and sources

The main sources of CLC funding are:

- Australian Government
- NSW Government
- Public Purpose Fund.

The majority of these funds are managed and allocated through Legal Aid NSW's Community Legal Centre Funding Program (**CLC Funding Program**), which provides funding to 32 NSW CLCs and the peak body CLCNSW.¹⁴ Funding allocations to CLCs under the CLC Funding Program in 2016–2017 are set out at **Appendix C**.

Australian Government funding

Australian government funding is allocated to CLCs under the terms of the National Partnership Agreement on Legal Assistance Services (**NPA**).¹⁵ The NPA is an agreement between the Australian Government and States and Territories that governs legal assistance funding.¹⁶ The current NPA commenced on 1 July 2015 and will expire on 30 June 2020.

The NPA (and the framework supporting the agreement, the *National Strategic Framework for Legal Assistance*) is the cornerstone of the Australian legal assistance funding framework. These documents:

- Establish the objectives and outcomes of funding
- Identify who is entitled to receive legal assistance services
- Determine how this funding will be allocated between States and Territories, and how it is to be accounted for.

The principles of the NPA will be discussed throughout this Review. The NPA provides Australian Government funding to States and Territories to distribute to Legal Aid Commissions and CLCs in line with the terms of the NPA. In total, the Australian Government estimated contribution for legal assistance services in NSW is \$388 million over five years as set out in the table below.

¹⁴ Legal Aid NSW, *Annual Report 2016-2017* p 49. Legal Aid NSW also refers to this program as the Community Legal Services Program (CLSP).

¹⁵ See Australian Government Attorney General's Department, [National Partnership Agreement on Legal Assistance Services](#) (2015) (**NPA**).

¹⁶ The NPA is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations, which '...recognises that the States have primary responsibility for many areas of service delivery but that coordinated action is necessary to address Australia's economic and social challenges.' See http://www.federalfinancialrelations.gov.au/content/intergovernmental_agreements.aspx.

Table 1: Estimated Australian Government financial contribution to NSW for legal assistance services under the NPA (\$m)

	2015-16	2016-17	2017-18	2018-19	2019-20
Legal Aid NSW	63.208	64.072	64.822	65.583	66.248
CLCs	11.440	12.553	12.935	13.238	13.563
Total	74.648	76.625	77.757	78.821	79.811

Source: National Partnership Agreement on Legal Assistance Services, p.10

In addition to making a general financial contribution to CLCs, in 2015–16 and 2016–17 the Australian Government also allocated defined funding to a specific list of NSW community legal centres. From 2017–18 onwards, the NPA requires specific funding to be directed to CLCs for family law services and family violence related services.¹⁷

Public Purpose Fund

The Public Purpose Fund (**PPF**) is a statutory fund governed by the *Legal Profession Uniform Law Application Act 2014*.¹⁸ The PPF’s revenue comes from interest earned on solicitors’ trust accounts and statutory deposits.

The PPF is administered and controlled by trustees, which make certain payments to the Law Society of NSW and the NSW Bar Association for regulatory and disciplinary activities.¹⁹ The trustees can also, with the approval of the Attorney-General, make discretionary payments for a variety of public interest or legal assistance purposes.²⁰ Legal Aid NSW and CLCs receive some of this discretionary funding.

The majority of PPF funding that is allocated to CLCs is distributed through the CLC Funding Program, alongside Australian Government and NSW Government funding. Legal Aid NSW also directs funding from the PPF to other CLC programs and activities, including:

- Children’s Court Assistance Schemes
- Court Support Scheme
- Aboriginal Legal Access Program.

The PPF also provides funding directly to some CLCs outside the CLC Funding Program.²¹

¹⁷ NPA, cl 14(d).

¹⁸ Part 5, *Legal Profession Uniform Law Application Act 2014 (NSW)*.

¹⁹ Section 53, *Legal Profession Uniform Law Application Act 2014 (NSW)*.

²⁰ Section 55, *Legal Profession Uniform Law Application Act 2014 (NSW)*.

²¹ In June 2017 the Trustees directly administered funding to the EDO and PIAC, and these grants fell outside the CLC Funding Program.

NSW Government funding

NSW Government funding for CLCs is generally allocated via Legal Aid NSW's CLC Funding Program. There is no equivalent agreement to the NPA that governs the allocation and use of NSW Government funding.²² NSW is a signatory to the NPA, which signals acceptance of the framework for allocation of Australian Government funds and its broad objectives.

The NSW Government also provides funding for CLCs outside the CLC Funding Program for specific areas of legal need, such as the Women's Domestic Violence Court Advocacy Program.

Some Tenants Advocacy and Advice Services (**TAAS**), which provide free information and assistance to vulnerable tenants, are co-located with CLCs. Eight out of 19 NSW TAAS are located within a CLC.²³ TAAS are funded separately by the Rental Bond Interest Account and the Property Services Statutory Interest Account. This funding is administered by NSW Fair Trading.

2.2.2 System administration

Under the NPA, State and Territory Governments are responsible for administering and distributing Australian Government funding to CLCs. State and Territory Governments are also responsible for determining the methodology for distributing these funds and conducting collaborative service planning activities.²⁴ In NSW, Legal Aid NSW performs these functions, which makes it both a funding body and State program manager.

As discussed above, Legal Aid NSW administers CLC funding from the Australian Government, the NSW government and the PPF through its CLC Funding Program. It retains some funding under the NPA for program management and jurisdictional planning to support this administration role.

Funding is provided to CLCs by Legal Aid NSW pursuant to individual service agreements.²⁵ These agreements define the obligations of each party and provide an accountability framework for the expenditure of the funds. Legal Aid NSW can also make grants for CLC programs and initiatives, such as the Administrative Efficiencies Program.²⁶

²² The Review notes that in 2012, *Principles for Funding of Legal Assistance Services* were introduced by former Attorney General Greg Smith to direct how Legal Aid and PPF disbursed NSW Government funding. These principles relate mainly to the use of funding for lobbying and political activities.

²³ Tenants Union of NSW submission p 3.

²⁴ NPA, cl 14(a), (c) and (f).

²⁵ See Legal Aid NSW, *Community Partnerships – Community Legal Centres* at <https://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/community-legal-centres> for an overview of service agreements and CLC Funding Program guidelines.

²⁶ CLCNSW submission p 68, Legal Aid NSW submission p 25.

2.2.3 Reporting and monitoring

CLCs are required to report on the expenditure of legal assistance funding received under the CLC Funding Program and how this funding is used. These reporting obligations are carried through in the service agreements between Legal Aid NSW and individual CLCs.²⁷

For funding from the Australian Government, the NPA establishes a funding framework which governs the use of legal assistance funding. Under the NPA, States and Territories are required to report to the Australian Government against progress every six months. CLCs report to Legal Aid NSW, which then reports back to the Australian Government on whether these requirements have been met. In relation to CLCs, the following performance indicators have been set:

- (a) The proportion of representation services delivered to a subset of priority clients²⁸
- (b) The proportion of clients receiving quality services that are delivered appropriately to match clients' legal needs and levels of capability, as measured through client surveys
- (c) From 2017–18, the number of services delivered to clients experiencing or at risk of family violence
- (d) The number of legal assistance services delivered disaggregated by service type and law type.²⁹

Performance benchmarks relate to the proportion of representation services delivered to people experiencing financial disadvantage. In 2016–17 the benchmark was 85 per cent or more of total representation services delivered to people experiencing financial disadvantage. This increased to 90 per cent from 1 July 2017. The benchmark is required to be achieved in aggregate across all community legal centres in each six month period.³⁰

2.2.4 Collaborative service planning

The NPA requires the Australian Government and States and Territories to work together with the legal assistance sector to coordinate and maximise the reach of

²⁷ Clause 9, Community Legal Service Program [Template Service Agreement](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0005/27266/CLSP-Service-Agreement-2017-18.pdf?_sm_au_=i5V55FPvDvN3V4VN) at https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0005/27266/CLSP-Service-Agreement-2017-18.pdf?_sm_au_=i5V55FPvDvN3V4VN

²⁸ NPA, cl 17(a). The subset of priority clients includes: children and young people (up to 24 years), people experiencing financial disadvantage, Indigenous Australians, older people (aged over 65 years), people experiencing, or at risk of, family violence, people residing in rural or remote areas, people who are culturally and linguistically diverse, people with a disability or mental illness.

²⁹ NPA, cl 17.

³⁰ NPA, cl 18(c).

services and to ensure that services are directed to where they are most needed.³¹ This is referred to in the NPA as “collaborative service planning”.³²

The NPA requires collaborative service planning meetings to be held. These must include representatives of the State and Australian Governments, Legal Aid NSW, CLCs and Indigenous legal assistance providers. Representatives of other legal or non-legal providers may also be invited.

In NSW, collaborative service planning meetings are currently held twice each year and are convened by Legal Aid NSW. The meetings are attended by representatives of the NSW Department of Justice, the Australian Government Attorney General’s Department, CLCNSW and ALS.

In order to progress collaborative service planning initiatives between these meetings, Legal Aid NSW has also initiated separate partnership meetings. One involves the NSW Department of Justice, Legal Aid NSW and CLCNSW. The other involves the NSW Department of Justice, Legal Aid NSW and ALS.

In addition to collaborative service planning meetings held under the NPA framework, Legal Aid NSW hosts quarterly meetings of the NSW Legal Assistance Forum (**NLAF**) and the Cooperative Legal Service Delivery (**CLSD**) Steering Committee.

2.3 CLC funding allocations

2.3.1 Background

The allocation of funding between CLCs reflects the origins of the CLC Funding Program as an application-based grants program. Funding for the first CLCs was provided in response to submissions from community organisations that identified the need for services and successfully applied to government to fund them.³³ Since then, new CLCs and new funded services have been generated by:

- A community of interest in response to demand (e.g. HIV/AIDS Legal Service)
- A community of interest in response to perceived need (e.g. Intellectual Disability Rights Service)
- An existing CLC developing a specialist service, which then became an independent CLC (e.g. the Consumer Credit Legal Centre was initially incubated by Redfern Legal Centre before becoming its own CLC³⁴)
- Government to meet needs generated by legislation (e.g. the Australian Centre for Disability Law)

³¹ NPA, cl A1.

³² NPA, schedule A.

³³ Legal Aid NSW, *Review of the NSW Community Legal Centres Funding Program* (2006) p161.

³⁴ The Consumer Credit Legal Centre is now the Financial Rights Legal Centre.

- Government in response to a clearly identified service gap (e.g. Far West Community Legal Centre, which was established to provide more accessible legal services in a geographically remote area).³⁵

As a result, there is significant variation in funding levels between CLCs, and a wide geographical spread of CLCs.³⁶

In the early 1980s, Legal Aid NSW adopted a ‘core funding’ model of CLC funding, which was based on funding four workers and overheads. This emphasised funding existing centres to reasonable levels, rather than funding multiple centres struggling with low resources.³⁷ This was later expanded to five workers and included loadings for Rural, Regional and Remote (RRR) and ‘high litigation’ CLCs.³⁸ Funding was provided directly by the Australian Government to Legal Aid NSW to distribute to CLCs.³⁹

Under the NPA, the State and Territory governments assumed responsibility for allocating and administering funding and reporting to the Australian Government on performance indicators. In NSW, this role is performed by Legal Aid NSW, which also receives funding under the NPA.

2.3.2 Current allocation methodology and decision making

As Legal Aid NSW administers the CLC Funding Program, the Legal Aid NSW Board is responsible for approving the allocation of individual funding amounts to each CLC. The distribution of PPF funds to CLCs through the CLC Funding Program must also be approved by the trustees of the PPF, with the concurrence of the NSW Attorney General.

In the past, CLC funding allocations have been primarily based on historical amounts. However, in 2017–2018, Legal Aid NSW introduced a needs-based methodology to allocate CLC funding. This methodology was based on the following principles:

- Prioritising clients in areas of significant disadvantage, particularly where there is a high likelihood of legal need having regard to the availability of other legal assistance services
- Prioritising the client groups and performance milestones agreed to by the Australian and NSW Governments under the NPA

³⁵ Legal Aid Review of the NSW Community Legal Centres Funding Program (2006) p 161.

³⁶ Legal Aid Review of the NSW Community Legal Centres Funding Program (2006) p 16.

³⁷ Legal Aid Review of the NSW Community Legal Centres Funding Program (2006) p 162.

³⁸ Legal Aid Review of the NSW Community Legal Centres Funding Program (2006) p 162.

³⁹ Legal Aid Review of the NSW Community Legal Centres Funding Program (2006) p 35.

- Ensuring sustainability of frontline services and recognising the need to implement administrative efficiencies in line with the findings of the Productivity Commission Inquiry into Access to Justice
- Taking a consultative and transitional approach to implementing the changes required to align with a needs-based methodology.⁴⁰

2.4 Benefits of legal assistance services

“The costs of providing legal services are concentrated among governments. What is less visible are the substantial benefits delivered by legal assistance services, both to the individuals that they serve directly, and more broadly to the community as a whole.” – Productivity Commission⁴¹

2.4.1 Benefits for individuals

In its 2014 Review of Access to Justice Arrangements, the Productivity Commission concluded that the legal assistance sector provides significant benefits to individuals who receive legal assistance services. These include help to resolve legal problems, reduced stress, reduced financial costs and a reduced likelihood of their legal problem escalating into other forms of hardship.⁴²

These benefits are illustrated by a Law and Justice Foundation (**LJF**) evaluation of a specialist mortgage hardship legal assistance service run jointly by the Financial Rights Legal Centre and Legal Aid NSW. The evaluation found that as well as receiving assistance to resolve their matters, clients of the service experienced other benefits including a reduction in the stress, increased financial stability and increased confidence in dealing with and seeking help for problems. Comments from surveyed clients included:

“It was amazing the amount of relief; could sleep at night and not be absolutely out of [my] head wondering what to do and being scared of being kicked out of the house.”

“The assistance put me at a better place and gave me an understanding of what to do ... The help provided settled me down and allowed me to focus. I was not stressing as much as a result.”

“It also taught me a really good lesson. I also learnt about how to keep other things in control. The whole situation was in many ways life changing. We had nowhere to go and [the solicitor] helped pick us up.”⁴³

The link between legal problems and other forms of hardship is also well documented. Research by the LJF has demonstrated that legal problems do not

⁴⁰ Legal Aid NSW submission p 23.

⁴¹ Productivity Commission, *Access to Justice Arrangements*, (2014), p 756.

⁴² Productivity Commission, *Access to Justice Arrangements*, (2014), p 757.

⁴³ Forell S & Cain M, *Managing Mortgage Stress: Evaluation of the Legal Aid NSW and Consumer Credit Legal Centre Mortgage Hardship Service*, Law and Justice Foundation of NSW, (2011), p67.

occur in isolation, and are often linked to other social, economic and health problems. The LAW Survey found that legal problems often lead to other problems including income loss and financial strain, stress related illnesses, physical ill health, relationship breakdown and housing instability.⁴⁴

Legal problems also often occur in defined clusters.⁴⁵ For example, debt, domestic violence and housing problems can lead to housing instability and homelessness. If unresolved, these issues can also prolong homelessness.⁴⁶

Legal assistance services can help to ameliorate these impacts. Resolving legal problems and supporting people to understand their legal options assists to avoid further legal and social problems arising and address entrenched disadvantage.

As Illawarra Legal Centre stated in its submission to the Review:

“Individuals in the community benefit as those who receive CLC services have their legal problems attended to, they become more resilient, stress is reduced and health benefits to individuals result.”⁴⁷

Case study: Legal assistance resolving health and housing problems

Redfern Legal Centre (**RLC**) runs a health justice partnership in collaboration with the Royal Prince Alfred Hospital (**RPA**). A solicitor from RLC provides onsite legal advice to patients at RPA, and trains health professionals to identify and refer patients with legal problems.

A case study from the service demonstrates how legal assistance can address other social problems. RLC assisted an elderly social housing tenant who had fallen and injured herself at home. The client needed a hand rail to walk up and down the stairs at her home, and although this has been recommended by an occupational therapist, it had not been installed by the social housing provider. The RLC solicitor contacted the housing provider and requested the hand rail be installed urgently. The housing provider agreed, allowing the client to be discharged from hospital early, and return to a home that was safe and fit for her needs.⁴⁸ This illustrates the significant benefits of legal assistance to individuals, as well as the tangible savings to other Government services that legal assistance can achieve.

⁴⁴ Coumarelos, C, Macourt, D, People, J, MacDonald, H, Wei, Z, Iriana, R & Ramsey, S, *Legal Australia-Wide Survey: legal need in New South Wales*, Law and Justice Foundation of NSW, Sydney, (2012), (**LAW Survey NSW**) p xvi.

⁴⁵ Coumarelos, C, McDonald, M, Forell, S, and Wei, Z, *Collaborative Planning Resource – Service Planning*, Law and Justice Foundation, (2015), (**Collaborative Planning Resource – Service Planning**), p3.

⁴⁶ Forell S, McCarron E and Schetzer L, *No Home, No Justice? The Legal Needs of Homeless People in NSW*, Law and Justice Foundation of NSW, (2005), pxvi.

⁴⁷ Illawarra Legal Centre submission, 1p3.

⁴⁸ Redfern Legal Centre submission, pp 8-9, Southward J, *A Day in the Life of Sue-Ellen Hills*, Law Society Journal issue 25, August 2016, pp 49 -50.

2.4.2 Benefits for communities and government

Numerous studies show that efficient government funded legal assistance services generate net benefits to the community.”

Productivity Commission Report on Access to Justice Arrangements

The Productivity Commission also commented on the benefits of legal assistance services to the wider community and to government.⁴⁹ These benefits include:

- **Ensuring that legal rights can be enforced:**

Legal assistance services play a crucial role in ensuring legal rights have a real effect and do not exist in concept only. Without legal assistance services, some people would not know about, or be able to exercise their legal rights, rendering those rights ineffectual and harming the community as a whole.

The availability of legal assistance services encourages the community to maintain a degree of faith in the legal system, and provides the community with confidence to enter into contracts and take part in economic activity.

“We value a society where all people in our communities enjoy an equality of opportunity and have equal access to the law.” – Hume Riverina Community Legal Service⁵⁰

- **Preventing civil problems from escalating into criminal matters:**

Research has shown that many types of civil legal problems are linked to criminal matters. For example, a report by the NSW Parliament Legislative Assembly Committee on Law and Safety commented on the link between fines debt, licence suspension, secondary offending and imprisonment.⁵¹ The Report noted that most licence suspensions occur because of unpaid fines, which includes fines that are unrelated to traffic offences, for example a penalty for not paying for a fishing licence. Licence sanctions from fines debt are a particular problem in Aboriginal communities and regional and remote areas.⁵² Legal assistance services help clients address such problems, which can prevent escalation to the criminal justice system.

⁴⁹ List of benefits from Productivity Commission, *Access to Justice Arrangements*, (2014), p757. Details on each benefit listed as footnoted.

⁵⁰ Hume Riverina Community Legal Service submission, p23.

⁵¹ Legislative Assembly of NSW, Committee on law and Safety, *Driver Licence Disqualification Reform*, Report 3/55, November 2013, pp3 and 17 – 19.

⁵² Legislative Assembly of NSW, Committee on law and Safety, *Driver Licence Disqualification Reform*, Report 3/55, November 2013, p18.

- **Avoiding costs to other government services:**

As discussed above, legal problems often lead to other health and social problems. The health costs of legal problems have not been calculated in Australia, however Canadian researchers have estimated that legal problems cost the Canadian government an additional \$101 million in health care costs each year.⁵³ The case study on the previous page provides an example of the tangible savings to health costs that legal assistance can achieve.

Homelessness also has significant social and economic costs for individuals and government. The cost of homelessness has been estimated as \$25,615 per person per year. A significant proportion of this is borne by government, with health costs estimated at \$8,429 and justice and crime costs estimated at \$6,182 per person per year.⁵⁴ Legal assistance services can assist people to address problems contributing to or prolonging homelessness, saving significant government resources.

- **Improving the efficiency of court proceedings:**

Legal advice or representation can reduce the time, delays and expense experienced by courts, tribunals and other parties when dealing with unrepresented litigants. The Productivity Commission pointed out that further work is required to properly quantify this benefit.⁵⁵

2.4.3 Funding addresses market failures

Government funding is also required to address gaps in the services provided by the private market. For example, in some areas, particularly rural and remote areas, there are not enough private solicitors to meet the legal needs of the community. There are also gaps in the areas of law in which sufficient numbers of private lawyers practise. This includes areas of law such as social security, tenancy, consumer matters and homelessness. There may also be gaps in services for people with special needs such as cognitive impairments or language barriers.

Government funding is justified to address these market gaps and support greater equality of access to legal assistance across the community.⁵⁶

⁵³ Farrow, T, Currie, Ab, Aylwin, N, Jacobs, L, Northrup, D, and Moore, L, [Everyday Legal Problems and the Cost of Justice in Canada: Overview Report](#), The Canadian Forum on Civil Justice, (2016), p18.

⁵⁴ Witte E, *The case for investing in last resort housing*, MSSI Issues Paper No. 10, Melbourne Sustainable Society Institute, The University of Melbourne, (2017), p23.

⁵⁵ Productivity Commission, *Access to Justice Arrangements*, (2014), p759.

⁵⁶ Productivity Commission, *Access to Justice Arrangements*, (2014), pp142-143 & 666, & Allen Consulting, *Review of NPA Working Paper 3*, (2014), p29.

2.4.4 Benefits of legal assistance services are magnified by pro bono and volunteer support

Students, volunteers and pro bono partnerships make a significant contribution to the CLC sector. This multiplies the value of government funding and increases the benefits of legal assistance services experienced by individuals and the community.

The Review agrees with submissions which asserted that volunteer and pro bono services are not a replacement for appropriate government funding for legal assistance services. CLCs must be adequately funded to provide legal assistance services to disadvantaged people, and to harness, co-ordinate and supervise pro bono and volunteer support. As the Australian Pro Bono Centre points out:

“CLCs play a crucial role as enablers of pro bono legal work that assists people experiencing disadvantage, by providing pro bono lawyers and firms with access to these clients, and by providing ongoing training and supervision of the work. However, building and maintaining pro bono partnerships requires substantial CLC resources.”⁵⁷

CLCNSW explained that CLCs “*extensively utilise pro bono lawyers, students and volunteers to increase their outputs and keep administrative costs down... CLCs are able to not just leverage the pro bono practices of the large to medium sized law firms, but also the goodwill and support of ordinary solicitors in small firms throughout the state... CLCs also tap into the students and community volunteers as a valuable resource to support the work of the centre.*”⁵⁸

All but one of the NSW CLCs who participated in the 2016 NACLCLC Census⁵⁹ stated that they make use of volunteers. CLCNSW advised that in the 2015–16 financial year, 2,306 individuals volunteers contributed 5,734 hours a week to the sector. More than 90 per cent of volunteers provided client facing services, and 71 per cent of CLCs also used volunteers for administrative support. 84 per cent of CLCs have an ongoing pro bono partnership (legal or non-legal) and 89 per cent of the nearly 20,000 total pro bono hours donated to CLCs are for direct legal services.⁶⁰

The huge benefit of volunteer support to individuals, community and government was illustrated in monetary terms by Redfern Legal Centre. It valued its volunteer support at over \$2 million per year, which is almost quadruple its core government funding.⁶¹ Some CLCs are also supported by philanthropic donations, and provided with other benefits such as free or subsidised rent. The extra funding and savings this support provides also flows to the sector and magnifies benefits for individuals and the community.

⁵⁷ Australian Pro Bono Centre submission, p 4.

⁵⁸ CLCNSW final submission, p62.

⁵⁹ 33 of 37 CLCs who are members of CLCNSW took part in the 2016 NACLCLC Census.

⁶⁰ CLCNSW final submission, p28.

⁶¹ Redfern Legal Centre submission, pp11 & 23.

Case study: Kingsford Legal Centre

Kingsford Legal Centre (**KLC**) is part of the University of NSW (**UNSW**) Law Faculty and provides clinical legal education to over 500 students each year. Every law student at UNSW will have some involvement with KLC throughout their studies and students also contribute to the running of the centre. UNSW provides significant funding and support to KLC, which flows directly to the CLC sector. KLC also has extensive pro bono relationships and volunteer support which also contribute significantly to its reach.⁶²

⁶² Kingsford Legal Centre submission, pp1-2 and 3-4.

3 THE LEGAL NEEDS OF DISADVANTAGED GROUPS AND THE SERVICES THEY REQUIRE

Key findings

- The NPA definition of financial disadvantage already captures a broad range of clients and does not need to be expanded.
- Additional priority client groups should not be recognised outside the NPA process.
- NSW Government funding for civil legal assistance services should be directed at problems that are likely to have a significant adverse impact if not resolved.
- The NSW Government should consider providing guidance to service providers in relation to priority areas of State law.
- CLCs should continue to provide the full range of legal assistance services, from the provision of information and advice through to case work and representation.
- CLCs should continue to be funded to engage in strategic advocacy and other law reform activities that seek to identify and remedy systemic issues.
- The forward work plan for Collaborative Service Meetings should include:
 - Consideration of measures such as dedicated hotlines to assist generalist services to access the expertise of specialist service on behalf of priority clients, and
 - Consideration of ways to promote co-location of legal and non-legal service providers to provide ease of access to priority client groups.

3.1 People experiencing disadvantage are more likely to have legal problems

Some sections of the community are particularly vulnerable to experiencing legal problems. In NSW, people with a disability and single parents are more than twice as likely to experience legal problems compared to people without those characteristics. People who are unemployed and people who live in disadvantaged housing are also more likely to experience legal problems.⁶³

Many people in our community experience multiple indicators of disadvantage. For example, more than two thirds of people with a disability aged 15 years and over in NSW are also financially disadvantaged.⁶⁴ Over a quarter of people who are single parents also have low education levels.⁶⁵

⁶³ Law and Justice Foundation, *LAW Survey NSW*, prevalence, pp66-68.

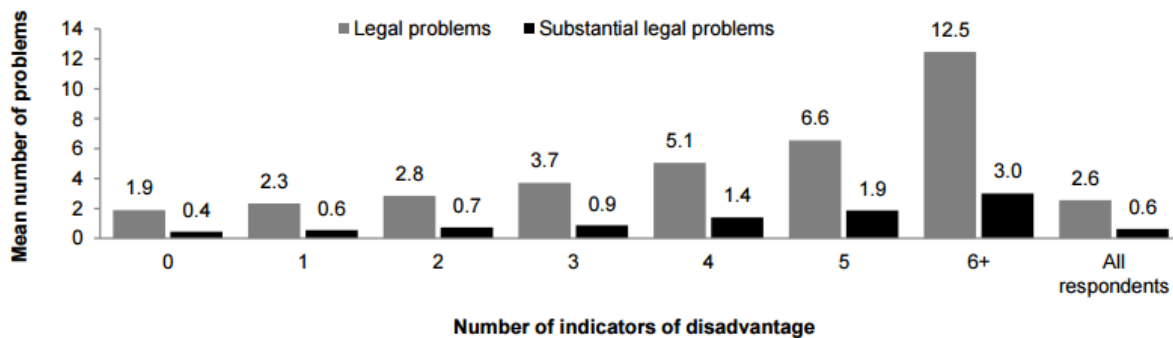
⁶⁴ Law and Justice Foundation of NSW, *Collaborative Planning Resource – Service Planning*, (2015), p60.

⁶⁵ Law and Justice Foundation of NSW, *Collaborative Planning Resource – Service Planning*, (2015), p36.

People who experience multiple indicators of disadvantage are more likely to experience legal problems, and to have a greater number of legal problems. Each additional form of disadvantage a person experiences further increases their likelihood of experiencing legal problems.⁶⁶ In fact, only nine per cent of people experience 65 per cent of the legal problems in NSW.⁶⁷

Figure 1 below illustrates how the average number of legal problems and substantial legal problems increases for each additional form of disadvantage a person experiences. People who experience six or more forms of disadvantage experience an average of 12.5 legal problems. This is 6.5 times the average number of legal problems experienced by people who do not have any forms of disadvantage, as measured by the Law and Justice Foundation Legal Australia Wide (LAW) Survey.⁶⁸

Figure 1: Mean number of legal problems and substantial legal problems by number of indicators of disadvantage



*Note: N=20 716 respondents.

Source: Law and Justice Foundation of NSW⁶⁹

3.1.1 Legal problems often co-exist with other problems

Legal problems do not occur in isolation and often cluster and co-exist with other problems. Legal problems can both result from, and cause, other social problems.

This is illustrated by Figure 2 below, which shows how legal and wider problems can reinforce each other. It shows how health problems can cause a disruption in work, which may bring about loss of income, leading to non-payment of rent, which may lead to eviction and possibly homelessness. Homelessness is likely to impact on

⁶⁶ McDonald H & Wei Z, *Concentrating Disadvantage: A Working Paper on Heightened Vulnerability to Multiple Legal Problems*, Updating Justice No 24, Law and Justice Foundation of NSW, May 2013, pp2-3.

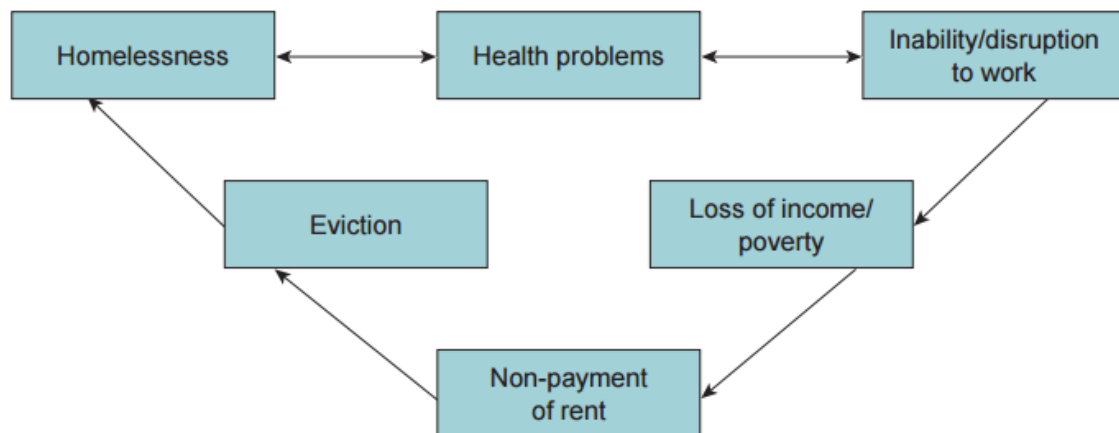
⁶⁷ Law and Justice Foundation of NSW, *Collaborative Planning Resource – Service Planning*, p3 citing the LAW Survey.

⁶⁸ McDonald H & Wei Z, *Concentrating disadvantage: a working paper on heightened vulnerability to multiple legal problems*, Updating Justice No 24, Law and Justice Foundation of NSW, May 2013, p3.

⁶⁹ McDonald H & Wei Z, *Concentrating disadvantage: a working paper on heightened vulnerability to multiple legal problems*, Updating Justice No 24, Law and Justice Foundation of NSW, May 2013, p3.

health and potentially further disrupt work. The arrows in the diagram show how problems can result from, and cause, other problems.⁷⁰

Figure 2: A vicious cycle of vulnerability



Source: Law and Justice Foundation⁷¹

3.1.2 Disadvantage is linked to lower personal capability to resolve legal problems

Research also suggests that disadvantaged people experience more challenges when it comes to solving legal problems. This includes poorer knowledge about rights and legal processes, which reduces a person's ability to recognise that a problem has legal aspects and potential legal solutions.⁷²

"Many people fail to realise until too late that their 'everyday problems' even are legal problems." - Justice Connect⁷³

Disadvantaged groups are significantly more likely than other members of the community to ignore problems or to take action without the benefit of legal or non-legal advice, resulting in worse outcomes.⁷⁴

⁷⁰ Pleasence, P, Coumarelos, C, Forell, S & McDonald, HM, *Reshaping legal assistance services: building on the evidence base: a discussion paper*, Law and Justice Foundation of NSW, Sydney, (2014) p8.

⁷¹ Pleasence, P, Coumarelos, C, Forell, S & McDonald, HM, *Reshaping legal assistance services: building on the evidence base: a discussion paper*, Law and Justice Foundation of NSW, Sydney, (2014) p8.

⁷² Balmer et al 2010, cited by McDonald, HM & Wei, Z, *How people solve legal problems: level of disadvantage and legal capability*, Justice issues paper 23, Law and Justice Foundation of NSW, Sydney, (2015), p3,

⁷³ Justice Connect submission to NSW Department of Justice consultation paper titled Justice for everyday problems: Civil Justice in NSW, p4.

⁷⁴ McDonald, HM & Wei, Z, *How people solve legal problems: level of disadvantage and legal capability*, Justice issues paper 23, Law and Justice Foundation of NSW, Sydney, (2015) p1.

3.2 The NPA acknowledges the impact of legal problems on disadvantaged groups

3.2.1 Priority client groups

The National Partnership Agreement on Legal Assistance Services (**NPA**) recognises that government resources are finite and must be directed towards those most in need. To support this goal, the NPA sets out Australian Government priorities regarding how funding should be expended by Legal Aid Commissions and CLCs.

The NPA requires legal assistance providers to focus services on people who are experiencing financial disadvantage and, where appropriate, plan and target their services to people who fall within one or more priority client groups.⁷⁵

Figure 3: Priority client groups

<ul style="list-style-type: none">• Children and young people (up to 24 years)• Older people (aged over 65 years)• People experiencing, or at risk of, family violence• People in custody and prisoners• People experiencing, or at risk of, homelessness	<ul style="list-style-type: none">• Indigenous Australians• People residing in rural or remote areas• People who are culturally and linguistically diverse (CALD)• People with a disability or mental illness• People with low education levels• Single parents
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Source: National Partnership Agreement on Legal Assistance Services, Schedule B, cl B3

This approach recognises that a large proportion of legal problems experienced by the community are concentrated within these groups. As the National Strategic Framework for Legal Assistance states:

“People facing disadvantage are more susceptible to multiple and substantial legal problems. They are also less likely, or unable, to identify or manage legal problems themselves. Failure to address legal problems often impacts upon broader life circumstances, triggering other legal and non-legal problems and often resulting in, or furthering, entrenched disadvantage.”⁷⁶

⁷⁵ NPA, Schedule B, cl B2 & B3.

⁷⁶ Australian Government Attorney General’s Department, National Strategic Framework for Legal Assistance 2015-20, Principle 1, p 4.

3.2.2 The definition of financial disadvantage is sufficiently broad

A number of submissions stated that government-funded services should be provided to a broader group of low income clients. However, the NPA definition of financial disadvantage already captures a broad range of clients. The NPA defines financial disadvantage to mean a person who does not have the means to pay for legal representation without incurring serious financial difficulty, including people who:

- Are in receipt of Centrelink benefits as their main source of income
- Have an income equal to or below the Henderson Poverty Line, which equates to an annual income of \$26,682 for a single person and \$50,117 for a family of four⁷⁷
- Cannot access finances temporarily due to circumstances outside of their control.⁷⁸

This is an inclusive definition. Further, the NPA does not prevent CLCs from providing services to clients who do not meet the definition. While the NPA requires the CLC sector to meet a benchmark in relation to the proportion of representation services⁷⁹ provided to financially disadvantaged clients, no benchmarks apply in relation to other CLC services.

3.2.3 Recognising additional priority client groups is not justified

The list of priority client groups identified in the NPA was agreed by the Australian, State and Territory Governments. CLCNSW submitted to the Review that, in addition to the existing list, three additional priority client groups should be recognised by the NSW Government. These are:

- LGBTIQ people
- Recently arrived migrants
- People and communities at risk from, or affected by, natural disasters.

It would not be appropriate to recognise additional priority client groups outside the NPA process. The next NPA negotiations would provide a more suitable forum to discuss the recognition of additional priority client groups. The NPA already

⁷⁷ These amounts are for single people in the workforce and families with the head in the workforce, and include housing expenses. There are a number of ways to measure poverty and financial disadvantage. The Henderson Poverty Line is a benchmark developed by the Institute of Applied Economics in the 1960s, which is updated quarterly by the Melbourne Institute. The most recent benchmark is *Poverty Lines: Australia - June Quarter 2017* at http://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0005/2540471/Poverty-lines-Australia-June-2017.pdf.

⁷⁸ NPA, Clause 52(d)

⁷⁹ Representation services are defined under clause 52(f) of the NPA as where a legal assistance service provider has carriage of a matter in an ongoing, representative capacity. It includes dispute resolution, court/tribunal services and other representation services.

encourages service providers to respond collectively to emerging issues such as natural disasters.⁸⁰ There may also be overlap between the proposed new categories and existing priority client groups. For example, many recently arrived migrants could also be categorised as culturally and linguistically diverse.

In any event, the NPA only requires CLCs to plan and target services to priority client groups 'where appropriate'. The list is provided for guidance only and is not intended to be exhaustive. It does not prevent CLCs assisting clients that fall outside the current list of priority client groups.⁸¹

3.3 The legal needs of priority client groups

3.3.1 The most significant legal needs experienced by disadvantaged groups arising from State law

Disadvantaged groups experience a wide range of legal problems. Nevertheless, research conducted by the Law and Justice Foundation of NSW (**LJF**) indicates that certain civil problem types arising from State law are commonly experienced across disadvantaged groups.⁸² These include (in alphabetical order):

- Consumer⁸³
- Credit and debt
- Government (including fines and payments)
- Housing.⁸⁴

These issues are not uniquely experienced by disadvantaged groups. LJF's LAW Survey found that consumer, money⁸⁵ and housing problems are also the most common civil law problems arising from State law across the general population.⁸⁶ More information on the LAW Survey is included in **Appendix D**.

However, as mentioned at section 3.1 above, disadvantaged groups within the community are particularly vulnerable to experiencing legal problems, which may also have a greater impact on their lives. Disadvantaged people are also:

⁸⁰ NPA, Schedule B, Clause B16.

⁸¹ NPA, Schedule B, cl B4.

⁸² Law and Justice Foundation of NSW, *Collaborative Planning Resource – Service Planning*, (2015) pp23-75.

⁸³ Consumer law is both a Commonwealth and state area of law. The Australian Consumer Law (ACL) is contained in the *Competition and Consumer Act 2010 (Cth)* and applies in all States and Territories. The ACL applies in NSW by virtue of *the Fair Trading Act 1987 (NSW)* and can be enforced in NSW courts and tribunals.

⁸⁴ Law and Justice Foundation of NSW, *Collaborative Planning Resource – Service Planning*, (2015), pp23-75.

⁸⁵ Incorporating LAW Survey categories credit/debt, fines, government payments and money.

⁸⁶ Law and Justice Foundation of NSW, *LAW Survey NSW*, p60.

- More likely to have lower capability when it comes to solving legal problems, leading to worse outcomes and an increased need for legal assistance services
- More likely to experience multiple or ‘clusters’ of legal problems.⁸⁷

It is also important to note that the legal needs of particular disadvantaged groups vary in terms of subject area and significance. For example, older people and low-income Aboriginal communities are key markets for funeral insurance, which may translate into increased demand for consumer law advice.⁸⁸ Housing, debt and family law issues are some of the legal issues commonly experienced by people in custody.⁸⁹ Legal service delivery must therefore be tailored to the needs of local communities.

Submissions agreed that housing, consumer and money problems are having a significant impact on disadvantaged groups. In addition, care and protection and domestic violence were also commonly raised in submissions as impacting local communities. This is reflected in the top 12 matter types recorded by CLCs during 2016–17 in relation to State law, which are outlined in Table 2 below.⁹⁰

Table 2: Top 12 matter types recorded by CLCs in 2016–17 relating to State law

Rank	Matter type
1	Tenancy
2	Credit and debt
3	Consumer
4	Other civil law (including Government / admin)
5	Traffic and vehicle regulatory offences
6	Domestic violence
7	Injury compensation
8	Wills and estates
9	Motor vehicle property damage
10	Discrimination
11	Care and protection
12	Environment

Source: Report from CLASS generated October 2017, contained in CLCNSW submission

⁸⁷ Law and Justice Foundation, *Collaborative Planning Resource – Service Planning*, (2015) p3.

⁸⁸ Cunneen C, Schwartz M, *The family and civil law needs of Aboriginal people in New South Wales*, Law Faculty, University of NSW, (2008), p96.

⁸⁹ Law and Justice Foundation of NSW, *Collaborative Planning Resource – Service Planning*, (2015) p48 citing Grunseit, A, Forell, S & McCarron, E, *Taking justice into custody: the legal needs of prisoners*, Law and Justice Foundation of NSW, Sydney (2008).

⁹⁰ CLCNSW advised the Review that this data should be treated with caution. CLCs transitioned to a new database in March 2017, which contains different data definitions to the previous database. This makes comparison between years difficult. Implementation issues have also prevented CLCs from being able to check the accuracy of data they have entered.

3.3.2 Guidance should be provided regarding priority areas of State law

The NPA provides direction on the areas of law service providers should focus on when expending Australian Government funding. It states that CLCs should focus on assisting people with civil problems that are likely to have a significant adverse impact if not resolved.⁹¹ Key areas of Commonwealth civil law are listed for guidance only (see Figure 4 below).

Figure 4: Key civil law areas listed in the NPA

<ul style="list-style-type: none">• Anti-discrimination• Bankruptcy• Consumer law• Employment• Extradition	<ul style="list-style-type: none">• Family law• Human rights• Insurance law• Migration• Social Security law
--	---

Source: National Partnership Agreement on Legal Assistance Services, Schedule B, cl 11,14

This list is not prescriptive. The NPA also states that service providers are expected to consider how to best meet the collective State and Commonwealth civil law needs of their clients within available resources.⁹²

No similar guidance is provided by the NSW Government in relation to how State funding should be expended. CLCNSW submitted to the Review that, as per NPA guidance in relation to Australian Government funding, State funding should also be directed at civil law problems that are likely to have a significant adverse impact if not resolved. The Review agrees with this position and recommends that the State Government adopt a similar formulation.

The NSW Government should provide guidance to service providers in relation to priority areas of State law. Areas of law such as housing, credit and debt, domestic violence, care and protection, and consumer law were identified in submissions as having a significant impact on disadvantaged people. However, it would not be appropriate to prescribe areas of law rigidly. As CLCNSW noted in their submission:

“Evidence indicates that legal problems tend to cluster – for instance, clients experiencing family violence are likely to also have legal needs in the areas of tenancy, credit/debt, employment and/or health.”⁹³

From a client perspective, there is also no clear distinction between State and Commonwealth law. Many clients may be experiencing problems that involve a combination of both. For example, family law disputes may involve child protection or domestic violence issues. Discrimination, employment and consumer law involve

⁹¹ NPA, schedule B, cl B13.

⁹² NPA, schedule B, cl B15.

⁹³ CLCNSW final submission, p37.

elements of both State and Commonwealth law. As the Elizabeth Evatt CLC stated in its submission to the Review:

“For many of our clients, the separation of State and Commonwealth law is an artificial one. Nowhere is this more apparent than in the area of family and domestic violence. State based law deals with care and protection, AVOs, criminal charges and victims’ compensation whereas family law is governed by Commonwealth laws.”⁹⁴

Guidance in relation to State law should therefore follow the existing NPA model. That is, the list of priority areas should be issued for guidance only and service providers should prioritise the needs of their particular communities when planning service delivery.

3.4 Services for clients

The National Strategic Framework for Legal Assistance 2015–20 sets out guiding principles for the delivery of legal assistance services. This Framework explicitly recognises that service delivery models must be multi-faceted to cater to the needs and capabilities of priority clients. The services will include information and other assistance, community legal education, legal advice, dispute resolution and assistance with court proceedings. Actual services provided to CLC clients include:

1. Online, telephone and face to face legal information and resources
2. Community legal education (**CLE**) and other prevention and early intervention services
3. Initial legal advice and legal and non-legal referrals
4. Minor assistance services (such as help with court forms)
5. Duty lawyer assistance
6. Representation
7. Advocacy, law reform and policy development.

In its report on Access to Justice Arrangements, the Productivity Commission considered that there are good grounds both for a continuum of services and for each of the individual components offered by legal assistance providers.⁹⁵

The majority of services provided by CLCs are in categories 1–4 above. Duty lawyer assistance and representation services are a relatively small component of CLC work. This is also true of Legal Aid NSW and for the Tenants Advice and Assistance Services (**TAAS**) which are sometimes co-located with CLCs.

⁹⁴ Elizabeth Evatt Community Legal Centre submission, p5.

⁹⁵ Productivity Commission, *Access to Justice Arrangements*, (2014), p 706

Table 3: Services statistics 2015–16

Service type	CLCs	Legal Aid NSW	TAAS
Information and referral	77,534	383,752	7904
Legal advice	26,593	74,291	17537
Total representation services	4,329	<i>Not available</i>	1525
Duty lawyer services	184*	25,127	2881
Community legal education	422	1,759	<i>Not available</i>

*This is an undercount. CLCs were only advised of the requirement to report this data in September 2015.

Source: Legal Aid NSW and Tenants Union

3.4.1 Services should relate to client need

The NPA makes clear that service delivery must cater to the needs and capabilities of priority clients. It follows then that the specific types of services provided to clients should be determined primarily by their individual needs. These needs will not be uniform for any category of priority client as research by the LJJ demonstrates (see section 3.3).

The LJJ recommended that legal assistance services should be:

- Targeted to reach those with the highest need and lowest capability.
- Joined up with other services to address complex life problems
- Timely to minimise the impact of problems and maximise the utility of services and
- Appropriate to the needs and capabilities of users.⁹⁶

Some clients will need minimal assistance while others will present with complex and interrelated problems that require a holistic response. Many submissions provided examples of highly vulnerable clients that required intensive support from a range of service providers.

A good example of holistic or ‘wraparound’ services for clients was provided by Wesley Community Legal Service, the only specialist service for people affected by problem gambling in NSW.

“All clients are referred to both gambling and financial counsellors. They are given referral to a psychologist or psychiatrist and other medical or mental health programs as required, including residential programs...”

“...clients are referred to the appropriate agencies for assistance with gaining employment or re-entering the workforce ...and many clients gain employment and no longer require Centrelink as a result of our assistance....Clients are also

⁹⁶ Law and Justice Foundation, *Collaborative Planning Resource – Service Planning*, (2015), p4.

referred, if required, to emergency relief services which include emergency housing, meals and other emergency assistance.”⁹⁷

The ability to provide a holistic response to complex problems will depend to some extent on the availability of services at locations that are convenient for vulnerable clients. The Mid North Coast Community Legal Centre submitted that co-location of relevant services should be considered whenever possible:

“We would encourage the NSW Government to look at supporting ways that similar service providers can be co-located in regional areas, to reduce overall costs, improve referral pathways and share resources. Services which might co-locate easily could include:

- Tenants advice and advocacy services*
- Domestic violence court assistance services*
- Financial counsellors*
- Mental health support services*
- Family referral services*
- Disability advocacy services*
- Migrant and CALD community support services.”⁹⁸*

While co-location will not be feasible in many cases, it should nonetheless be factored into future strategic planning. This is encouraged by the NPA, which places a strong emphasis on collaborative service planning including co-locating with other service providers.⁹⁹

The type of service provided to clients will also depend on the capacity and expertise of the people working at CLCs (both paid and volunteer). Generalist services frequently need the support of specialist services (for example, in complex welfare, tenancy or financial matters).

Effective referral arrangements are essential to ensure that clients do not find themselves on a referral ‘merry go round’. This is especially true for people living in rural, regional and remote areas.

The Hume Riverina Community Legal Service suggested consideration be given to a ‘fast track’ service to help generalist services provide a more comprehensive service to their clients:

“...the generalist RRR CLC’s would be greatly assisted by having a ‘fast track’ access system into specialist services. By way of example, in Victoria, at the Consumer Action Law Centre, they have a specific point of access

⁹⁷ Wesley Community Legal Service submission, pp4-5.

⁹⁸ Mid North Coast Community Legal Centre submission p 21.

⁹⁹ NPA, schedule A, cl A10 (e)

*[lawyer-only telephone number] for other CLC's to call and obtain quick advice and direction on specialist issues. This reduces the client need to directly contact the specialist service, it increases the 'reach' of the specialist services to clients, improves the expertise in the RRR centres and generally, provides quick outcomes for clients in RRR areas.*¹⁰⁰

There is considerable merit in this suggestion. A significant number of submissions emphasised the importance of face to face services for vulnerable clients. As most of the specialist services are located in Sydney, the service they provide to priority clients in rural and regional areas is necessarily phone advice. A hot line arrangement would allow CLCs in rural and regional areas to tap into the expertise of the specialist services and still provide the face to face service that meets the needs of their vulnerable clients.

3.4.2 Advocacy, law reform and policy development

Many submissions from CLCs stressed the importance of advocacy, law reform and policy development. While most CLCs stated they prepared submissions from time to time, this type of work tends to be undertaken more frequently by CLCNSW and some of the larger or specialist CLCs (for example, Financial Rights Legal Centre, Tenants Union, Public Interest Advocacy Centre and the Environmental Defenders Office NSW).

The NPA does not preclude CLCs or Legal Aid Commissions from making policy or law reform submissions. The NPA specifies that Australian Government funding should not be used to lobby government or engage in public campaigns. However it expressly states that *"lobbying does not include... mak[ing] a submission to a government or parliamentary body to provide factual information and/ or advice with a focus on systemic issues affecting access to justice."*¹⁰¹

The Productivity Commission considered that strategic advocacy and law reform that seeks to identify and remedy systemic issues, and so reduce the need for frontline services, should be a core activity of Legal Aid Commissions and CLCs (particularly peak bodies and the larger CLCs).¹⁰²

"These activities can benefit people directly affected by a particular issue, and, by clarifying or improving the law, they can also benefit the community more broadly and improve access to justice (through positive spill-overs). For example, addressing an underlying problem that has led to many disputes can free up the resources of affected parties, legal assistance providers, private lawyers, courts and governments.

¹⁰⁰ Hume Riverina Community Legal Service submission, p19.

¹⁰¹ NPA, schedule B cl B7.

¹⁰² Productivity Commission, *Access to Justice Arrangements*, (2014) pp 711-713.

...the Commission considers that in many cases, strategic advocacy and law reform can reduce demand for legal assistance services and so be an efficient use of limited resources.”¹⁰³

A number of submissions were received from community organisations, legal firms and leading public figures in support of the two CLCs that specialise in strategic advocacy, namely the Public Interest Advocacy Centre (**PIAC**) and the Environmental Defenders Office NSW (**EDO**).¹⁰⁴

PIAC undertakes significant and targeted casework, including complex litigation, on issues affecting vulnerable and disadvantaged groups across the community. In 2016–17, it ran 176 public interest cases.

PIAC’s legal work has had a particular focus on the following groups, all of whom are identified as priority client groups in the NPA:

- People who are homeless or at risk of homelessness
- People with a disability, including cognitive impairment and mental illness
- Aboriginal and Torres Strait Islander people
- Children and young people
- People in detention, including prisoners and immigration detainees.

The EDO specialises in public interest environmental law. Its work encompasses legal advice, strategic litigation and advocacy. In 2016-17, it represented clients in 14 matters before the courts and made more than 50 submissions to federal and state governments. Its work supports communities that may be impacted by environmental matters, such as:

“.. inappropriate developments by governments or the private sector that reduce air quality, water quality or the amenity of an area can impose costs on all residents in that area. Costs might include poor health outcomes or decreased land values.”¹⁰⁵

The EDO’s work does not have a close nexus with the objective of the NPA which is to improve access to justice for financially disadvantaged individuals and priority client groups. Nonetheless, these groups also benefit when the environment is protected in accordance with the law as a result of EDO’s advocacy.

The Productivity Commission was persuaded that CLCs, including environmental organisations such as EDO and other advocacy organisations like PIAC, play a vital

¹⁰³ Productivity Commission, *Access to Justice Arrangements*, (2014) pp 708 and 709.

¹⁰⁴ Ten out of 74 submissions expressed support for PIAC and/or EDO.

¹⁰⁵ Productivity Commission, *Access to Justice Arrangements*, (2014) p711.

role in identifying and remedying systemic issues, thereby reducing the demand for front line services. For this reason, it specifically recommended that:

RECOMMENDATION 21.1 The Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.¹⁰⁶

This Review agrees with this and recommends that the NSW Government continue to provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues.

Recommendations

1. CLCs should continue to provide a complete range of legal assistance services, including information and advice, community legal education, case work, representation and law reform activities.
2. The NSW Government should provide guidance to CLCs regarding priorities for service provision under State civil law, including housing, debt, and care and protection matters.
3. The NSW Government should continue to provide funding to CLCs that engage in strategic advocacy that seeks to identify and remedy systemic issues.

¹⁰⁶ Productivity Commission, *Access to Justice Arrangements*, (2014) 713.

4 THE GEOGRAPHICAL LOCATION OF DISADVANTAGED GROUPS AND COMMUNITY LEGAL CENTRES

Key Findings:

- The location of CLCs and outreach services is best determined through regular collaborative service planning that takes into account legal need and geographical prevalence of priority groups.
- LJF research indicates that need for legal assistance services exists in many parts of NSW. There are regional differences in likely demand and different priority client groups have different geographic profiles.
- CLCs in NSW are generally in appropriate locations.

4.1 Directing services to where they are most needed

4.1.1 Regular collaborative service planning is critical

The location of services, including outreach, is best determined through collaborative service planning that takes into account research on the geographical location and legal needs of priority client groups and people needing legal assistance services.

Legal Aid NSW submitted that:

“Until comprehensive collaborative planning has taken place...identification of the preferred types and location of CLC services may be premature...There are different challenges in different locations: a one-size-fits all approach across all regions of NSW is undesirable given the diverse geography of need and client capability, and the complexity of the human services environment.”¹⁰⁷

The Review agrees with that submission.

As explained at 2.2.4, collaborative service planning meetings are currently being held twice per year as required by the NPA. The NPA specifically states that these meetings should use evidence and analysis of legal need to inform service delivery planning.¹⁰⁸ Legal Aid NSW acknowledges that these meetings could be enhanced by adopting a more principled and evidence based approach to legal service design and delivery. This is explained further in section 8.3.4.

4.1.2 Identifying geographical areas with higher levels of priority client groups

As noted at section 3 above, the NPA recognises that certain groups within our community are more likely to experience legal problems or to have lower capability to resolve those problems. These are recognised in the NPA as ‘priority client

¹⁰⁷ Legal Aid NSW submission p 22.

¹⁰⁸ NPA, cl 19(e) and schedule A.

groups'. In order to ensure that legal assistance services are properly targeted, it is important to understand where these groups are located.

However, while it is important to take into account the geographic distribution of priority client groups, not everyone who falls within a priority client group will experience a legal problem, or require a legal assistance service. For example, not all single parents will necessarily have low legal capability.

LJF has therefore developed an alternative approach to service planning that focuses on identifying which people are most likely to need access to legal assistance services, and where they live. This tool is called the Need for Legal Assistance (**NLAS**) indicator.

4.1.3 Need for Legal Assistance Services (NLAS)

NLAS indicators use Census data to assess potential demand for legal assistance services for different priority client groups. The indicators can provide an absolute count (the total number of people) as well as a rate (the percentage of people) within an area who meet the criteria.¹⁰⁹ They include (amongst others):

- NLAS(Capability): identifies people aged 15 to 64 who have low income (less than \$26 000) and lower educational attainment and are therefore likely to have lower capability to solve legal problems (and be more likely to need legal assistance services).
- NLAS(ATSI): identifies people who have a low income who identify as Aboriginal or Torres Strait Islander.
- NLAS(CALD): identifies people who have a low income and are from culturally and linguistically diverse backgrounds.

NLAS has a number of limitations, including limitations associated with Census data such as undercounting of people who do not complete the Census or leave out information. Despite these limitations, NLAS is generally regarded by the CLC sector as the best available measure of need for legal assistance.

“The best available indicator or proxy of legal need is the Law and Justice Foundation’s NLAS (Capability).” – CLCNSW¹¹⁰

¹⁰⁹ The Law and Justice Foundation advises that the absolute number of residents who meet the NLAS criteria is generally most helpful for service planning. However, it recommends that reference should be made to both as areas with a high rate of legal need may impose additional demands for services due to the lack of capable support networks. See Mirrlees-Black & Randell, *Need for legal assistance services: developing a measure for Australia* (2017) at [http://www.lawfoundation.net.au/ljf/site/articleIDs/AE704CF1729F466A8525814F000812D9/\\$file/JI_26_pages_NLAS_indicator.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/AE704CF1729F466A8525814F000812D9/$file/JI_26_pages_NLAS_indicator.pdf).

¹¹⁰ CLCNSW Final Submission, p9.

4.1.4 Collaborative Planning Resource brings together research on legal need and geographic distribution

LJF has also developed a Collaborative Planning Resource¹¹¹ to provide a more detailed understanding of the legal needs and geographical locations of priority client groups. The resource is made up of:

- The geographic distribution of priority client groups in maps and data tables
- Survey findings on the prevalence of experiencing legal problems for each priority group
- Research evidence on the implications for planning legal services for each priority group
- Maps and data tables showing the geographic distribution of people most likely to be in need of legal assistance services (using Need for Legal assistance indicators, discussed at 1.1.3 above).

4.1.5 Geographic distribution of people who meet NLAS indicators

There are regional differences in likely demand for legal assistance services and different priority groups have very different geographic profiles.

The Collaborative Planning Resource¹¹² shows that 8.5 per cent of people aged 15 to 64 living in NSW have a low income (of less than \$26,000) and low educational attainment, and are therefore likely to be in need of legal assistance services (using the NLAS(Capability) criteria). These people are spread across NSW, but 56 per cent live in the Greater Sydney area.¹¹³

The top 10 areas in NSW with highest need using the NLAS(Capability) criteria are:

1. Cabramatta – Lansvale
2. Canley Vale – Canley Heights
3. Merrylands – Holroyd
4. Guildford – South Granville
5. Ashcroft – Busby – Miller
6. Fairfield
7. Liverpool
8. Greenacre – Mount Lewis
9. Cessnock
10. Fairfield – West.

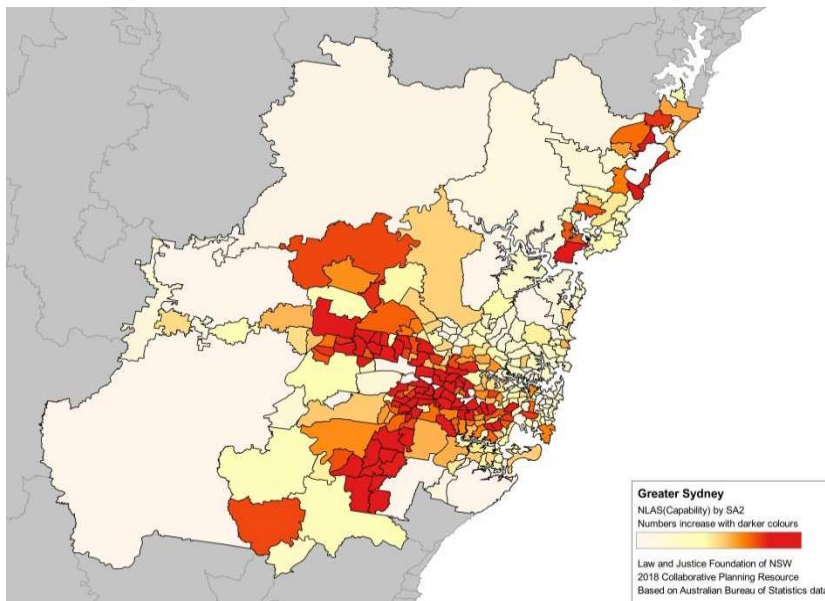
¹¹¹ Law and Justice Foundation, *About the Collaborative Planning Resource* at <http://www.lawfoundation.net.au/reports/aboutcpr>.

¹¹² This section refers to data in the updated 2018 Collaborative Planning Resource – Jurisdictional Data, available at <http://www.lawfoundation.net.au/reports/aboutcpr>.

¹¹³ LJF defines Greater Sydney as including metropolitan Sydney, the Blue Mountains, Central Coast and south to the Royal National Park.

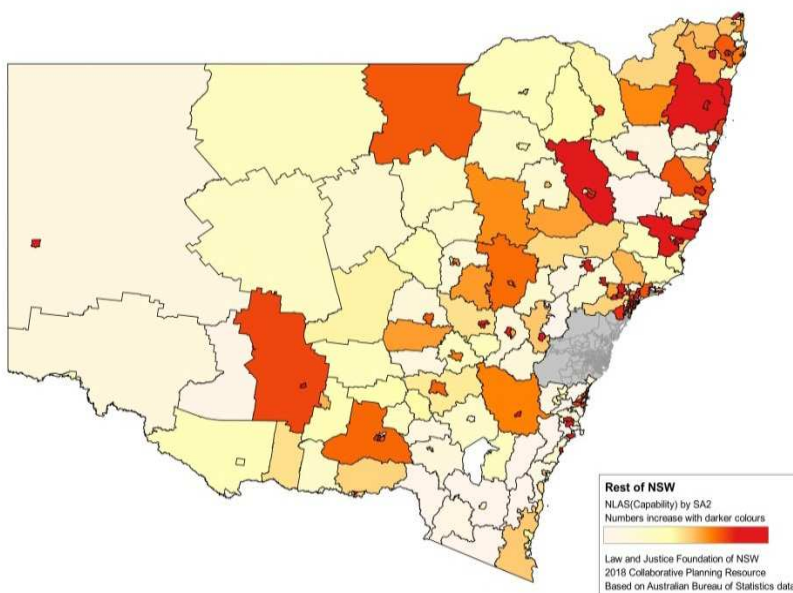
The distribution of people who meet the NLAS(Capability) indicator in the Greater Sydney region is represented in Figure 5 . Figure 6 shows the distribution of people in the rest of NSW outside of Greater Sydney who meet the NLAS (Capability) criteria. The darker areas represent higher numbers of people who meet the indicator and the paler the area, the lower the number. Areas shaded in grey are outside of the area depicted by the map.

Figure 5: Greater Sydney – NLAS(Capability)



Source: Law and Justice Foundation 2018 Collaborative Planning Resource

Figure 6: Rest of NSW – NLAS(Capability)



Source: Law and Justice Foundation 2018 Collaborative Planning Resource

There is a different geographical profile for Aboriginal or Torres Strait Islander people likely to need legal assistance services. A significant majority (70 per cent) of people who meet the criteria for NLAS(ATSI) live outside the Greater Sydney area.

The top 10 areas where people meet the NLAS(ATSI) indicator in NSW are:

1. Walgett – Lightning Ridge
2. Kempsey
3. Taree
4. Moree
5. Armidale
6. Dubbo – South
7. Nowra
8. Bourke – Brewarrina
9. Dubbo – East
10. Tamworth – East.

The geographic profile of people who are culturally or linguistically diverse and likely to need legal assistance services is different again. The Greater Sydney area is home to 92 per cent of people who meet the criteria for NLAS(CALD).

The top 10 areas where people meet the NLAS(CALD) indicator across NSW are:

1. Cabramatta – Lansvale
2. Canterbury (South) – Campsie
3. Hurstville
4. Sydney – Haymarket – The Rocks
5. Greenacre – Mount Lewis
6. Canley Vale – Canley Heights
7. Burwood – Croydon
8. Liverpool
9. Parramatta – Rosehill
10. Merrylands – Holroyd.

The top ten areas for each NLAS indicator are illustrative only. There are high levels of need in the top 50 areas for each indicator. The numbers of people who meet NLAS indicators in more regional and remote areas is often small, however the rates of people who need legal assistance can still be very high. These areas may require additional resources due to other factors such as accessibility and lack of other services. The NPA identifies people in rural, regional and remote areas as a priority client group.

Maps and data on the prevalence of people likely to need legal assistance are helpful and relevant to service planning. However, as discussed below, they should not be used in isolation. Other sources of information are also relevant to service planning.

4.1.6 Opportunities to further develop the evidence base and planning tools

The Collaborative Planning Resource provides useful information to assist legal assistance services undertake service planning and to understand the geographic distribution of legal need. However, community need for legal assistance services is complex and multi-dimensional.

Service planning should not rely on maps and data alone. Other local factors may impact on demand for legal assistance such as an aging population, business closures, seasonal events like droughts and floods, and local government policies.

An enhanced Collaborative Planning Resource, consisting of additional data and analysis by geographic region, would build and strengthen the evidence base and facilitate enhanced service planning. For example, in Queensland a range of additional information is collated at the regional level, including the location of service providers, prevalence of priority client groups, data from courts, tribunals and relevant government agencies, and gap analysis based on local consultations. The opportunity to improve the evidence base is discussed further at section 8.3.3.

4.2 Location of CLCs

4.2.1 Historical establishment of CLCs

The NPA requires the Australian and State and Territory Governments to work together with the sector to co-ordinate and maximise the reach of services and to ensure services are directed to where they are most needed. This involves a consideration of not only the local needs of priority groups, but the different focus of services provided by CLCs and Legal Aid NSW.

Community legal centres, like other legal assistance services, were established in particular locations at particular times in response to the needs of their local communities and the ability and willingness of those communities to respond. The following extract from the 2006 review of CLC funding provides a brief overview of the beginnings of CLCs in NSW:

“Redfern Aboriginal Legal Service first provided legal services in NSW in 1971 after several years’ development by Aboriginal people living in and near Redfern supported by some white lawyer activists. However, it was not described as a Community Legal Centre.

The Tenants Union began operating in NSW in 1976. It provided specialist education and advice to tenants but was not originally viewed as a Community Legal Centre. It

moved closer to being a CLC and applied for funding from the precursor of the CLSP around the end of the 1970s.

The first self-identified Community Legal Centre in NSW, Redfern Legal Centre, was established in 1977 by a group of staff and students of the Law Faculty of the University of NSW, with the involvement of other lawyers and community members. The Centre's location at Redfern was determined by the disadvantaged nature of the South Sydney area, its proximity for volunteers from the university and the city, and by an offer of accommodation in Redfern Town Hall by South Sydney Council. Redfern Legal Centre opened in March 1977 as an entirely volunteer organisation. After a few months, South Sydney Council provided a social worker and the NSW government provided funding for a staff solicitor within its first year.

Other Community Legal Centres were soon established at Parramatta and Marrickville (with strong involvement from law students from Macquarie University and Sydney University respectively). Inner City Legal Centre opened in 1980 largely as a result of the personal efforts of Bob Ellicott, QC, the local MHR and a former Attorney General. Several large law firms committed to provide it with pro bono support. A fifth Centre was opened at Kingsford to provide clinical legal education opportunities to law students at UNSW, as well as providing services to the community".¹¹⁴

The demographics of communities constantly change as do the legal needs of priority clients who live in those communities. For example, over time some communities may attract higher proportions of older people, leading to issues such as elder abuse becoming more prominent. For this reason, it is important for legal assistance services to regularly review community profiles and legal needs to ensure the services they provide are both appropriate and relevant and directed where they are most needed.

4.2.2 Location of generalist and specialist CLCs

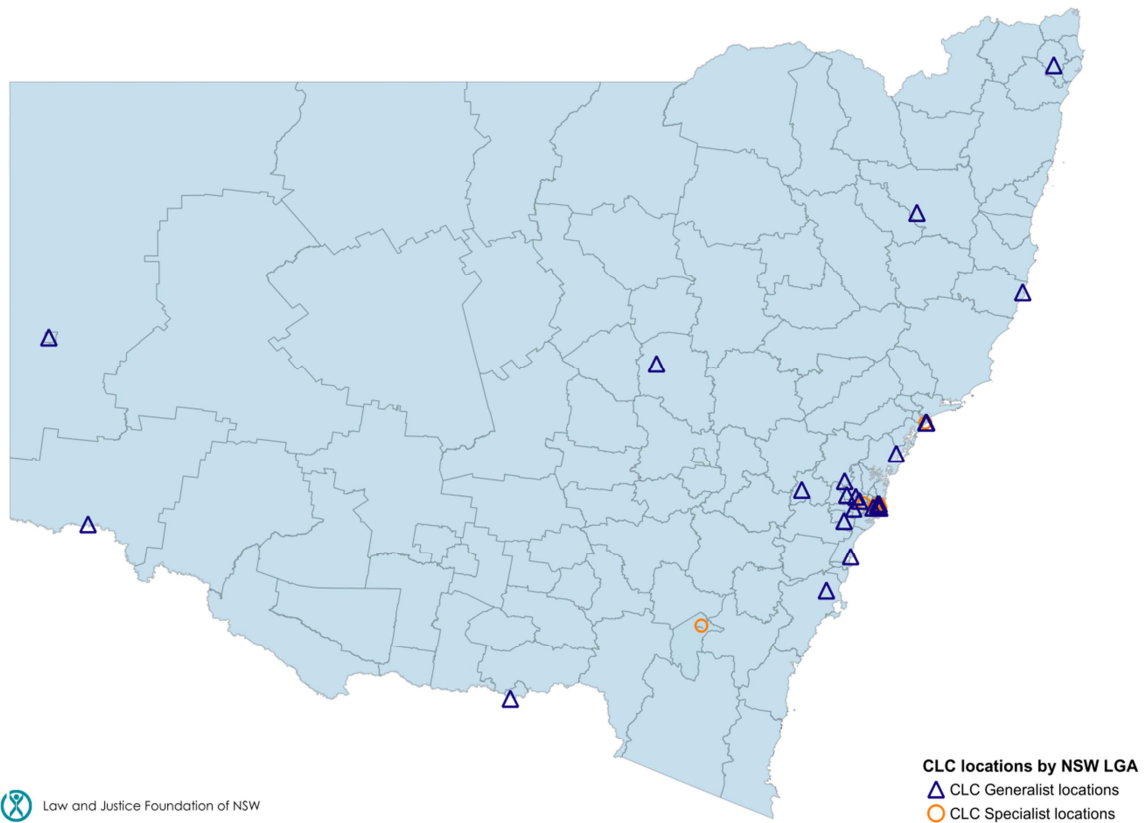
Most of the generalist and specialist CLCs are located in Sydney (69 per cent), the Central Coast, Hunter and Illawarra regions. Three are located west of the Great Dividing Range (North and North West CLC, Western NSW CLC and Far West CLC). There are two CLCs in the border districts of Albury-Wodonga (Hume-Riverina Community Legal Service) and Mildura (Murray Mallee CLC).

Figure 7 shows the location of CLCs in NSW, and figure 8 shows the location of CLCs in Greater Sydney.¹¹⁵ Generalist CLCs are shown as blue triangles and specialist CLCs are shown as orange circles.

¹¹⁴ Legal Aid NSW, *Review of the NSW Community Legal Centres Funding Program* (2006) pp 26-27.

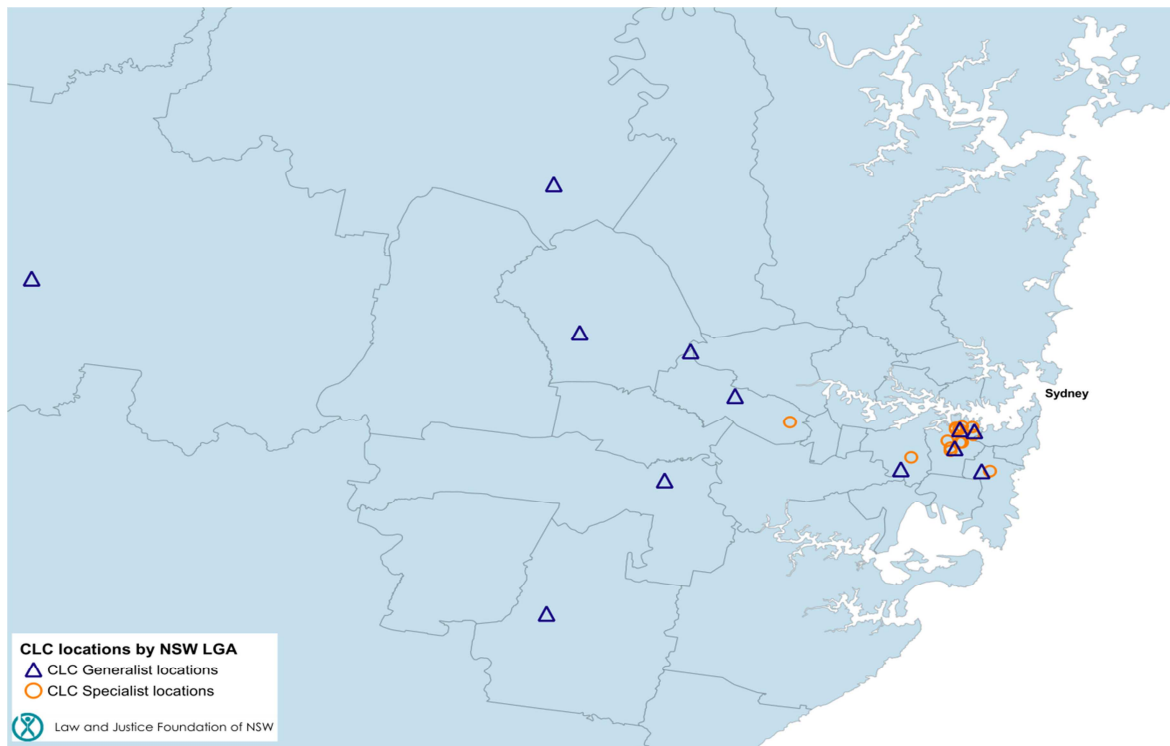
¹¹⁵ Murray Mallee Community Legal Service is located in Mildura Victoria however it has been included as it provides some services in NSW. The Animal Defenders Office is located in the Australian Capital Territory however it has been included as it is a national centre that provides some services in NSW.

Figure 7: Location of CLCs in NSW



Source: Law and Justice Foundation of NSW

Figure 8: Location of CLCs in Greater Sydney



Source: Law and Justice Foundation of NSW

A number of CLCs provide outreach services to other communities, some of which are hundreds of kilometres away. Some Sydney based CLCs are either specialist services that provide state-wide coverage, or generalist services that offer specialist state-wide services. Generally, these state-wide services are phone services only.

4.2.3 Assessment of CLC Locations

The Review agrees with LJF's assessment that CLCs in NSW are generally located in areas where there is a high demand for services.¹¹⁶ For example, the high concentration of CLCs in the Greater Sydney area is consistent with the finding that Greater Sydney is home to:

- 56 per cent of people with low income and low capability
- 92 per cent of CALD people with low income
- 30 per cent of Aboriginal or Torres Strait Islander people with low income.

The vast majority of specialist CLCs are in the inner Sydney. As they provide state-wide services (usually by phone) their geographical location is arguably of less relevance as long as services are directed to need. There are also benefits for CLCs located in Sydney. For example, many CLCs in Sydney are supported by free or subsidised rent. Central Sydney locations also provide CLCs with greater access to volunteers and pro bono support.

Outside of Sydney, generalist CLCs are in areas where there is high demand for services. Importantly, they are also located in places that serve as hubs within their regions. However there are a number of gap areas. This includes gaps in existing CLC locations where unmet demand remains, as well as locations where there are no permanent or outreach services, or limited outreach that does not meet demand. Service gaps are discussed further in section 6.

¹¹⁶ Email from Law and Justice Foundation of NSW dated 7 December 2017.

5 EFFICIENCY AND DUPLICATION IN THE LEGAL ASSISTANCE SECTOR

Key Findings

- CLCs are very efficient and effective. Improving CLC efficiency is unlikely to result in substantial cost savings
- There is little, if any, evidence of duplication. While services overlap in some areas, the extent of unmet legal need in NSW means that clients are not being ‘over-served’
- CLCs and Legal Aid NSW undertake significant work to reduce duplication on a state, regional and local level.
- A strengthened collaborative service planning program and creation of an authoritative evidence base would improve planning and further minimise the possibility of duplication.

5.1 Efficiency and effectiveness in the CLC sector

The NPA recognises the mutual interest of the Australian, State and Territory Governments in maximising the efficient service delivery of legal assistance services through effective and efficient use of available resources.¹¹⁷ The objectives and outcomes of the NPA are to be achieved using this approach.¹¹⁸

The CLC service model is very efficient and effective. It leverages large amounts of pro bono support to multiply its reach, fosters collaborative partnerships to build strong referral pathways, and engages in strategic advocacy to progress the interests of classes of clients. The CLC sector also incorporates efficiency measures into their sector-wide and individual service design and delivery. The submissions provided many examples of these initiatives, including:

- Bulk purchasing services through CLCNSW at a reduced price, including insurance, power, IT and hardware
- Renegotiating contracts to obtain better prices or longer-term leases
- Co-locating with other service providers to reduce overheads, or leasing premises at below-market price
- Mergers where appropriate.

In the context of looming funding cuts, in 2015–2016 Legal Aid NSW funded CLCNSW to conduct an Administrative Efficiencies Program. This funding supported the merger of three CLCs to become the Western Sydney CLC, and funding for a position in CLCNSW to support the establishment of a financial management and advice service for CLCs through a fee-for-service model.¹¹⁹

¹¹⁷ NPA, cl 2(a).

¹¹⁸ NPA, cl 10.

¹¹⁹ Legal Aid NSW submission p 25.

The submissions also identified factors outside the control of CLCs which create or contribute to inefficiencies:

- Funding instability. Northern Rivers Community Legal Centre identified this as: “one of the greatest inefficiencies in the system and a huge impediment to planning and innovation”.¹²⁰
- Multiple reporting arrangements under various agreements which place an administrative burden on staff.¹²¹

CLCs are generally regarded as ‘administratively lean’. They operate on small budgets and dedicate the majority of their resources to front-line services. CLCNSW’s data from 2015-2016 showed that almost 80 per cent of FTE CLC staff are in service delivery, a ratio of almost 4:1.¹²² Improving CLC efficiency is unlikely to result in substantial cost savings which can be repurposed for front-line staffing. As noted in the Allen Consulting Review:

“Efficiency of service provision varies across and within service provider types indicating room for improvements in efficiency overall. There is no evidence to suggest, however, that improvements in efficiency would lead to cost savings of sufficient magnitude to meet current shortfalls in demand for services by disadvantaged Australians.”¹²³

5.2 Shared coverage of legal assistance services

5.2.1 CLCs and Legal Aid NSW deliver similar civil law services with notable exceptions

CLCs and Legal Aid NSW both use mixed service delivery models, where a wide range of services can be utilised to assist a client or a community depending on their needs. The types of services each service provider offers are similar, and include:

- Discrete assistance (unbundled, once-off assistance, including providing information, making a referral, giving legal advice or preparing a document)
- Representation services (lawyer takes carriage of a matter in an ongoing, representative capacity)
- Duty lawyering
- Community legal education
- Law reform.¹²⁴

¹²⁰ Northern Rivers Community Legal Centre submission p 10.

¹²¹ Mid North Coast CLC submission p 22.

¹²² CLCNSW submission p 28.

¹²³ Allen Consulting, *Review of the National Partnership Agreement on Legal Assistance Services*, (2014), pviii.

¹²⁴ These terms are from the *National Data Standards Manual For Legal Assistance Services*, which applies to activities undertaken by both Legal Aid NSW and CLCs.

While CLCs and Legal Aid NSW generally offer similar civil law services, their areas of focus are somewhat different, particularly in the area of representation services. CLCs undertake comparatively little court or tribunal representation, instead focusing on early intervention and alternative dispute resolution to help clients resolve disputes without resorting to a court or tribunal.¹²⁵ Conversely, Legal Aid NSW is generally regarded as specialising, and being funded for, litigation work.¹²⁶ Matters are often referred between these organisations on this basis, ensuring the efficient use of resources.¹²⁷

CLCs and Legal Aid NSW generally cover the same areas of law, with some notable exceptions. Due to funding restrictions, Legal Aid NSW does not provide legal assistance in personal injury matters, family provision claims and wills and estates, matters involving disputes between family members and former family members over property or money, small claims in the Local Court (under \$3000), and environmental law matters.¹²⁸ There are no similar restrictions on what areas of law CLCs can assist with, but in practice CLCs may specialise in certain areas due to resourcing constraints. There is minimal overlap in criminal law as CLCs do very little criminal work, whereas this is a main area of practice for Legal Aid NSW.¹²⁹

CLCs and Legal Aid NSW often deliver services differently. Some submissions emphasised the qualitative difference of CLC's flexible and holistic service delivery model.¹³⁰ This includes longer appointment times, flexible eligibility criteria, co-location with non-legal services to deliver holistic services to clients with multi-faceted needs and the ability to responding quickly to emerging legal trends without a process of approval by head office.

CLCs have strong community ties, and Legal Aid NSW has observed that CLCs, 'as community-based agencies with good reach into their constituent communities, are well-placed to make considered and appropriate referrals to Legal Aid NSW (and the ALS)'.¹³¹ As noted by Legal Aid NSW in their submission to the Productivity Commission:

"By contrast, CLCs provide community or issue specific legal services often focused on information, community legal education, advice and advocacy. When they work well, CLCs provide community driven legal services, can identify emerging issues quickly and trial possible new or speculative approaches to tackling such issues

¹²⁵ CLCNSW submission p 30.

¹²⁶ Shoalcoast CLC submission p 16, Western NSW CLC submission p 16.

¹²⁷ Western NSW CLC p 16.

¹²⁸ Legal Aid NSW submission p 18.

¹²⁹ Legal Aid NSW submission p 19. Note that some CLCs have dedicated criminal law solicitors, such as PIAC's Homeless Persons Legal Service criminal solicitor and EDO NSW's Criminal Law Expert.

¹³⁰ Kingsford Legal Centre submission p 4-5, Northern Rivers CLC p 10.

¹³¹ Legal Aid NSW submission p 19.

before larger investment is committed to “scaling-up” such approaches, and add an important and different voice into the sector.”¹³²

5.2.2 CLCs and Legal Aid NSW often service the same client groups

Under the NPA, both CLCs and Legal Aid NSW are required to focus their services on people experiencing financial disadvantage and, where appropriate, people who fall within one or more priority client groups.¹³³ Numerous data reports, including those referenced at section 3 and 4, show that the vast majority of clients serviced by both organisations fall into these groups.

However, the Legal Aid NSW ‘means test’ means that not all people within this cohort are eligible for ongoing legal assistance.¹³⁴ The means test income limit is 59.9 per cent of the minimum weekly wage, the equivalent to an annual salary of \$20,800 per year, which is well below the Henderson Poverty Line.¹³⁵ The Productivity Commission noted:

“The income tests [of legal aid commissions] are below many established measures of relative poverty. It is not the case that people are ‘too wealthy’ to be eligible for legal assistance, but rather that they are ‘not sufficiently impoverished.’”¹³⁶

This strict means test has meant legal aid is increasingly ‘welfarised’: in 2016–17, 90 per cent of recipients of a grant of legal aid were on a Centrelink benefit.¹³⁷ People deemed ineligible can include people in full or part-time paid employment with a low income, or people who are asset-rich (for instance, with a part-paid mortgage) yet unable to pay bills due to domestic violence or family separation.

CLC’s flexible eligibility criteria mean they can support clients such as these who cannot obtain access to legal aid and who cannot afford a private lawyer. CLCs have discretion to set their own eligibility criteria for ongoing assistance and advice, as long as it complies with the objectives in the NPA and the CLC Funding Program.¹³⁸ The definition of ‘financial disadvantage’ is broader than the means test that Legal Aid NSW must apply, allowing for CLCs to help a broader group of people experiencing disadvantage.

¹³² Legal Aid NSW, *Submission to the Productivity Commission’s Inquiry into Access to Justice* (September 2013) at <https://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub102-access-justice.pdf>, p 9.

¹³³ NPA, schedule B.

¹³⁴ The means test applies if a person requires ongoing legal assistance. Legal advice and minor assistance from Legal Aid is free. The broad requirements of the means test are set out in NPA schedule B, clauses B23-B30. More information about Legal Aid NSW’s means test can be found at Legal Aid NSW, *Means Test Policy* at <https://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/7.-means-test>.

¹³⁵ Legal Aid NSW submission p 5.

¹³⁶ Productivity Commission, *Access to Justice Arrangements*, (2014), p 30.

¹³⁷ Legal Aid NSW submission p 8.

¹³⁸ Legal Aid NSW, *Community Legal Services Program Guidelines*, , cl 5.4 and 6.4 at https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0017/22445/CLSP-Guidelines.pdf.

CLCs also have internal processes for managing duplication. For example, PIAC's casework eligibility questions require a lawyer to ask, when considering taking on work, 'Would PIAC be duplicating the efforts of others?'¹³⁹

5.2.3 CLCs and Legal Aid NSW sometimes provide services to the same clients in the same locations

In some locations, particularly major metropolitan areas, CLCs and Legal Aid NSW share geographical catchment areas and service the same client groups. Both providers establish their offices in response to high legal need.

Multiple service providers in one geographical area does not mean that services are being duplicated. As noted by Legal Aid NSW:

*"Even where both CLCs and Legal Aid NSW service the same geographical area, or area of law, this 'duplication' may be desirable and even necessary, given the high level of demand and increasing disadvantage experienced in particular communities. CLCs and Legal Aid NSW may also provide services in the same location or area of law, but might have different target client groups."*¹⁴⁰

In some regional areas where the CLC and Legal Aid NSW share the same catchment area, they may focus on different areas of civil law. When a CLC and Legal Aid NSW provide advice on the same area of law, they might focus on different aspects or stages, making a referral where appropriate to whichever service is best placed to take the matter forward. As noted by Illawarra Legal Centre:

*"Services are complementary. There are more than enough people in need and fitting relevant criteria for both of us to work separately in our different capacities and together collaboratively where we can. CLCs and LA operate differently and there is no shortage of legal need for us all to be needed."*¹⁴¹

5.2.4 There is little evidence of duplication of services

There is little, if any, evidence of duplication. This conclusion is supported by the submissions of the CLC sector and Legal Aid NSW. While service coverage may overlap, clients are not being 'over-serviced'.¹⁴² This is due to the vast amount of unmet civil legal need in NSW and the high demand for services that cannot be met by the current levels of funding or the resources provided to Legal Aid NSW, CLCs or ALS.¹⁴³

¹³⁹ PIAC submission p 3.

¹⁴⁰ Legal Aid NSW submission p 19.

¹⁴¹ Illawarra Legal Centre p 13.

¹⁴² See Northern Rivers CLC submission p 9.

¹⁴³ CLCNSW submission p 30. See also Northern Rivers CLC submission p 9.

The mixed model of service delivery – having multiple providers servicing the same or similar client groups – is reflected in the terms of the NPA. It represents best practice for the legal assistance sector. As noted by the Productivity Commission:

“The current service delivery model for mainstream legal services involves a tripartite arrangement between LACs, private practitioners and CLCs. Each is intended to play a unique and complementary role in the delivery of legal assistance to the community.”¹⁴⁴

Under this model, CLCs and Legal Aid NSW predominantly complement each other to fill gaps in service delivery and address emerging legal issues. Legal Aid NSW notes this model has consistently found to provide ‘the greatest opportunity for efficiency and coverage of services’.¹⁴⁵

The need for multiple service providers is demonstrated by the issue of conflicts of interest (when a service provider cannot assist a client because they have acted for the ‘other side’ of the dispute in a previous matter). In the 2016 NACLC survey, 79.8 per cent of CLCs nominated conflict of interest as the most prevalent reason for turning away clients.¹⁴⁶ Without an alternative service provider such as Legal Aid NSW, these clients may have nowhere to turn. This issue is particularly exacerbated in rural and regional areas, where there are few or no alternatives. Working together in this way, CLC and Legal Aid NSW provide enhanced service coverage and ensure clients do not fall through the cracks.

5.2.5 CLCs and Legal Aid NSW work together to address possible duplication

CLCs and Legal Aid NSW undertake significant work to reduce duplication on a state, regional and local level. Under the NPA, legal assistance service providers are required to undertake collaborative service planning, which involves considering ‘strategies to streamline services and reduce any unnecessary duplication’.¹⁴⁷ Some notable examples of collaborative service planning include:

- The NSW Legal Assistance Forum (**NLAF**) which brings together key legal service providers across government, non-government and private sectors. NLAF working groups collaborate on specific legal issues to improve outcomes.
- Legal Aid NSW delivers community legal education under a state-wide strategic framework which emphasises engaging the CLC sector to minimise unnecessary overlap or duplication¹⁴⁸

¹⁴⁴ Productivity Commission, *Access to Justice Arrangements*, (2014), p 723.

¹⁴⁵ Legal Aid NSW submission p 19.

¹⁴⁶ NACLC, *National Census of Community Legal Centres 2016 National Report*, p 40.

¹⁴⁷ NPA, schedule A, cl A10.

¹⁴⁸ Legal Aid NSW submission p 19.

- The Cooperative Legal Services Delivery (**CLSD**) forum which brings together legal and non-legal service providers to proactively identify areas of overlap and duplication
- Regular meetings between staff of the local offices of Legal Aid NSW and the CLC, and strong working relationships emerging from these¹⁴⁹
- Partnering on law reform or CLE projects, such as jointly creating a legal education resource or sharing an information stall at a NAIDOC event¹⁵⁰
- Strong and established referral pathways between organisations so that clients can be referred when specialist advice is needed, a conflict of interest exists or more intensive resources are required (such as litigation, case complexity or limitations on representation services).¹⁵¹

CLCNSW is strongly supportive of CLSD, noting that it is

“supported by CLCs as a model of good practice, evidence-informed decision-making by people working on the ground to deliver legal services. The CLSD Program unit at Legal Aid NSW has a clear vision for how collaboration can work, and the program has strong trust and support across the local legal assistance sectors.”¹⁵²

The Review team attended the Kempsey Nambucca CLSD meeting to observe collaboration in action. Service providers shared information and insights and coordinated efforts to find efficient solutions to emerging legal problems. It was evident that strong relationships exist between the organisations in attendance.

5.2.6 Ensuring that duplication is avoided

There is little evidence of duplication of services due to the collaborative efforts of CLCs and Legal Aid NSW. However, it was acknowledged by Legal Aid NSW that duplication sometimes occurs, ‘because of a lack of communication or coordination of services’ and in this context, ‘there is a need for a better framework or process to minimise the prospect of this occurring.’¹⁵³ Likewise, CLCNSW noted it has observed that legal assistance service providers plan their service delivery with limited consultation outside their agency or sector.¹⁵⁴

The Review recommends a strengthened collaborative service planning program and the creation of an authoritative evidence base to be shared with all service providers. This will improve centralised planning and further reduce duplication. This is explored in section 8 below.

¹⁴⁹ Central Coast CLC submission p 15.

¹⁵⁰ Seniors Rights Service submission p 19, Western Sydney CLC submission p 10, Legal Aid NSW submission p 20.

¹⁵¹ See Senior Rights Service submission p 11, Hume Riverina Community Legal Service submission p 22, Mid North Coast CLC submission p 16.

¹⁵² CLCNSW submission p 35.

¹⁵³ Legal Aid NSW submission p 19.

¹⁵⁴ CLCNSW submission p 34.

6 SIGNIFICANT SERVICE GAPS

Key Findings

- A comprehensive assessment of legal need, developed in conjunction with the Law and Justice Foundation (LJF), should be conducted to quantify required funding and form the basis for funding allocations. This should be updated every three years.
- The Review has identified a number of service gaps, which include:
 - Capacity gaps where legal assistance providers have insufficient capacity to provide services to priority clients within their catchment area
 - Geographic areas where legal assistance services are not available or are severely limited
 - Areas of law for which there is unmet demand
 - Priority client groups who experience unmet demand.

6.1 The legal assistance sector is underfunded

Despite an overall trend of funding increases to legal assistance services, the sector remains chronically underfunded. Sir Anthony Mason QC in a recent speech, discussed the level of need:

... The recent Annual Report of the National Association of Community Legal Centres (CLCs) recorded that 170,000 potential clients were turned away, in many cases because the centres lacked the resources to service them. Demand for legal services from the most disadvantaged is rising. CLCs rely heavily on volunteers. They worked 890,000 hours last year, up from 575,000 hours the previous year.

The Productivity Commission in its 2016 Report on Access to Justice recommended that governments provide an additional \$200 million – an increase of 25 per cent – for legal aid and other legal services. If we put to one side other recommendations of the Commission to meet the shortfall in delivery of legal services to disadvantaged people, the amount of \$200 million is a low-ball estimate of need.

My own view is that, with increased funding, CLCs can make an even greater contribution to improve delivery of legal services, in particular to disadvantaged people, working in conjunction with other organisations such as Law Access, NSW Legal Aid, Indigenous Legal Services and Family Violence Prevention Legal Services.¹⁵⁵

Underfunding the legal assistance sector has real and significant consequences:

- People are unable to access legal advice when they need it

¹⁵⁵ Hon Sir Anthony Mason AC KBE GBM QC, 'A lifetime in the law' (speech on 19 October 2017 at the 2017 Law and Justice Awards at NSW Parliament).

- There are long delays in obtaining assistance, which can exacerbate problems
- Large service gaps for certain geographical areas and priority groups.

As a result, people who are experiencing legal problems are unable to access legal assistance in many cases.

6.2 Improving the evidence base to inform future funding allocations

There is currently no correlation between the amount of legal need experienced by priority clients and the funding allocated to CLCs in NSW. It is widely acknowledged that the legal assistance sector is underfunded to meet the needs of all priority clients.¹⁵⁶ The funding required to address these needs has not been quantified. However, it is likely to be substantial.

The Productivity Commission's proposal to inject \$200 million into the legal assistance sector was an 'interim' proposal designed to meet 'more immediate legal needs'¹⁵⁷. The Commission believed that 'future funding levels should be determined with reference to a comprehensive assessment of legal need'.¹⁵⁸ This approach would quantify the extent of legal need, and determine what funding would be required to address it.

The Productivity Commission found that the 'total quantum of funds allocated is not sufficient to achieve governments' stated priorities, nor are funds allocated across providers so as to maximise coverage of geographic areas or particular dispute types'.¹⁵⁹ It also noted that '[t]he global funding envelope provided to legal assistance providers by Australian governments should be broadly related to the costs associated with meeting these priorities'.¹⁶⁰ CLCNSW notes that assessing the total legal need was identified as a missing piece of work by the Productivity Commission but so far has not been completed.¹⁶¹

An assessment of legal need, developed in conjunction with the Law and Justice Foundation (**LJF**), should be conducted to quantify required funding and form the basis of a rational allocation of funding to meet the minimum legal needs of clients. This should be updated at least every three years with up-to-date information. The development of this evidence base is discussed at section 8.5.1 below.

Until this work has been completed, the best indicator of service gaps in legal need is evidence-driven research and reports of legal assistance service providers. The

¹⁵⁶ See Productivity Commission, *Access to Justice Arrangements Inquiry Report* (2014) chapter 21; Legal Aid NSW *Review of the NSW Community Legal Centres Funding Program* (2006) p 165.

¹⁵⁷ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, (2014) p 739.

¹⁵⁸ Productivity Commission, *Access to Justice Arrangements Inquiry Report* (2014) p 739.

¹⁵⁹ Productivity Commission, *Access to Justice Arrangements Inquiry Report* (2014) p 741.

¹⁶⁰ Productivity Commission, *Access to Justice Arrangements Inquiry Report* (2014) p 743.

¹⁶¹ NACLC *Budget Submission 2017-18* cited in CLCNSW submission p 49.

following section examines the gaps between available funding and the legal needs of priority clients.

6.3 There are multiple service gaps

The Review has identified a number of service gaps that contribute to unmet legal need for disadvantaged people. Submissions identified several types of service gaps, including:

- Capacity gaps where legal assistance providers have insufficient capacity to provide services to priority clients within their catchment area
- Geographic areas where unmet legal need is particularly pronounced either because legal assistance services are not available or are severely limited
- Areas of law for which there is unmet demand
- Priority client groups who experience unmet demand.

There is significant crossover between these different types of service gaps. Submissions often identified gaps for particular groups of client in particular areas of law or geographic regions. For example, Legal Aid NSW commented that there is ongoing demand for legal assistance regarding repairs and maintenance of housing for Aboriginal people in regional and remote NSW.¹⁶²

This demonstrates the complexity of legal need and how demographic factors and local conditions impact on demand for services.

6.3.1 Capacity gaps

Nearly all legal assistance providers submitted that demand for their services outstrips their resources. In a 2016 census conducted by NACLC, 35.9 per cent of participating CLCs reported turning away clients all of the time, with a further 44.2 per cent reporting turning away clients some of time.¹⁶³ Insufficient resourcing was the third most prevalent reason for turning away clients.

A snapshot review of drop-in advice clinics conducted by Legal Aid NSW in June 2017 also found that clients need for legal advice exceeds capacity.¹⁶⁴

Submissions to the Review reported on the high demand for services and limited resources to meet the needs of disadvantaged clients. Comments included:

¹⁶² Legal Aid NSW submission p 18.

¹⁶³ NACLC, National Census of Community Legal Centres 2016 National Report at <http://www.naclc.org.au/resources/NACLC%20Census%202016%20National%20Report%20-%20FINAL.pdf>, p 10.

¹⁶⁴ This review is an unpublished internal review that calculated the number of clients turned away from drop-in advice clinics because the maximum number of advice sessions available were filled. Turn away rates were calculated using data gained from a survey completed by administrative staff during a 2 week snapshot period.

“With current funding levels we have significant unmet need. Many of our practice areas would benefit from more legal caseworkers so that we could reduce turn-aways and provide a higher level of assistance to disadvantaged and vulnerable clients.” – Redfern Legal Centre¹⁶⁵

“In our daily work we come face to face with the service gaps arising principally from a lack of funding of legal assistance services. These gaps ultimately mean that legal issues go unresolved and result in a much greater impact on people’s lives and greater associated costs to the community.” - Northern Rivers Community Legal Centre¹⁶⁶

“Limited resources impacts greatly on our service. It contributes to the number of clients we turn away and results in a lack of full-time and consistent staff, who can provide continuous and comprehensive services and limits our ability to help clients with broad needs. Ultimately, ICLC would like to provide a holistic service to more clients but this is not possible in the current context of limited funding.”– Inner City Legal Centre¹⁶⁷

“Hume Riverina Community Legal Service is the only free legal assistance service in North East Victoria and Southern Riverina NSW, apart from Legal Aid NSW (Riverina Murray) and the Aboriginal Legal Service based in Wagga Wagga. Given the high demands upon HRCLS services, only a limited number of cases are able to be taken on.” – Hume Riverina Community Legal Service¹⁶⁸

Comprehensive statistics regarding capacity gaps are not currently available in NSW. Better information is available in Queensland, where Community Legal Centres Queensland (**CLCQ**) has developed an updated guide on legal need in regions throughout the State. This resource assists CLCs to apply for funding, and sets out for each region the total population, numbers of priority clients, numbers of clients meeting Need for Legal Assistance Services (**NLAS**) indicators, services in the area and amount of services delivered by Legal Aid Queensland and CLCs.

6.3.2 Geographic gaps

Submissions identified particular service gaps in a number of regional, rural and remote (**RRR**) areas, such as:

- Far West, including Broken Hill and Wilcannia
- North West, including Bourke, Brewarrina, Lightning Ridge and Walgett
- Central West, including Dubbo, Wellington, Mudgee and West Wyalong
- Northern Tablelands, including Moree, Toomelah and Boggabilla
- Northern Rivers, including the Clarence Valley and Grafton

¹⁶⁵ Redfern Legal Centre submission p 15.

¹⁶⁶ Northern Rivers Community Legal Centre submission p 8.

¹⁶⁷ Inner City Legal Centre submission p 7.

¹⁶⁸ Hume Riverina Community Legal Service submission p 17.

- Mid North Coast, including Gloucester, Nambucca and Macksville
- Murray and Riverina, including Wentworth, Dareton, Balranald, Hay, Cootamundra, Gundagai and Young
- Southern Highlands and Southern Tablelands, including Wingecarribee Shire, Goulburn, Queanbeyan and Cooma
- South Coast, including Batemans Bay, Moruya, Bega and Eden.

Within this list the extent of service provision varies. Some areas have a legal assistance service based in the town, while others are serviced by outreach only. In some areas, outreach may consist of as little as once per month.

6.3.3 Gaps relating to specific areas of law

Submissions also identified over 20 areas of State law for which there are significant service gaps. The most common areas raised by legal assistance providers included (in alphabetical order):

- Care and protection
- Consumer
- Debt (including fines)
- Discrimination
- Domestic violence
- Tenancy.

Comments included:

“Western NSW Community Legal Centre has been seeing, for several years now, significant unmet legal need in the area of care and protection law. Aboriginal families in our region are significantly over represented in the care system. This is further compounded by finite access to legal representation due to being located in a regional area that also covers remote communities.” – Western NSW CLC¹⁶⁹

“Since TAASs (Tenants Advice and Advocacy Services) have had a funding increase the number of rental bonds held [in NSW] has significantly grown from 551,777 [June 2003] to 800,799 [Dec 30 2016]. The growth in the actual number of people in rental accommodation is even higher as more and more families with children are now renting....Preliminary research by the Tenants’ Union indicates that TAASs are not able to help up to 1 in 3 people seeking their assistance for phone advice. In addition, the growing demand has led to a growth in wait times for tenants to access a tenant advocate. This has led to many instances when tenants receive assistance too late for the tenant to gain a fair or just outcome. TAASs have had to tighten intake criteria

¹⁶⁹ Western NSW Community Legal Centre submission p 10.

to the point where only those in the most dire circumstances can be assisted.” - Tenants Union¹⁷⁰

“[We] do not have capacity to represent the huge volume of clients that need credit and debt services in our catchment. All of these clients are on low incomes and many are Aboriginal.” – Redfern Legal Centre¹⁷¹

“The most common systemic issues in RRR NSW in the last year include...financial hardship (fines, Victim’s Restitution Orders, consumer leases, credit card debt, rent-to-buy scams, Local Council debt)” – Legal Aid NSW¹⁷²

The wide range of legal areas identified as gaps shows the far-ranging civil and family legal needs of communities in NSW. It also confirms that best practice service planning requires legal needs mapping to be conducted at a local level to best tailor services to the needs of local people. This is discussed further at section 8.3 below.

6.3.4 Gaps relating to particular priority client groups

A number of priority groups who experience service gaps and unmet legal demand were also identified by submissions. The group identified most often as experiencing service gaps were Aboriginal and Torres Strait Islander people.

“It is well established that Aboriginal people are among the most disadvantaged citizens of NSW. This includes significant disadvantage accessing the legal system and protecting legal rights... The interconnectedness of legal problems for Aboriginal people in NSW is important to recognise, as the inability to service the care and protection, family and civil law needs of Aboriginal people in NSW increases the demand for criminal law services.”¹⁷³ – ALS.

“Our consultations identified significant gaps in the legal resources available and accessible to people facing disadvantage. We heard for instance, that many legal assistance services for Aboriginal people do not have the capacity to address the multitude of legal needs that present for this group. Legal services are overburdened in the areas of crime and child protection, amongst many other areas.”¹⁷⁴ – NCOSS.

Other groups identified by service providers as experiencing unmet legal demand included children and young people and people with disabilities. The Mid North Coast CLC identified service gaps for:

“young people in out of home care... civil law services to Aboriginal people...[and] people with disabilities and cognitive impairment (in particular brain injury, mental illness and age-related cognitive impairment).”¹⁷⁵

¹⁷⁰ Tenants Union of NSW submission p 10.

¹⁷¹ Redfern Legal Centre submission p 17-18.

¹⁷² Legal Aid NSW submission p 17-18.

¹⁷³ Aboriginal Legal Service submission p 3.

¹⁷⁴ NCOSS submission p 2.

¹⁷⁵ Mid North Coast CLC submission p 13.

CLCNSW stated:

“There are several priority client groups and state law areas that CLCNSW believes are insufficiently serviced and should be prioritised for new funding. These are: legal services to children and young people; general legal services for people with disability; [and] appropriate legal services for Aboriginal people and communities and early intervention care and protection legal services.”¹⁷⁶

The Australian Centre for Disability Law (**ACDL**) commented:

“ACDL is the only specialist, front line disability discrimination legal advice service in NSW and has the specialist skills, knowledge and ongoing commitment to working exclusively with clients with a wide variety of disabilities, including physical, psychosocial and intellectual disabilities...”

The number of requests for assistance that ACDL receives for assistance outstrips our capacity... We hear frequent demands from clients with disabilities for more extensive legal services, and desire for recognition of the importance of their concerns.”¹⁷⁷

6.3.5 Unmet legal need for the ‘missing middle’

Redfern Legal Centre, Shoalcoast CLC and Toongabbie Legal Centre all identified the ‘missing middle’ as experiencing significant unmet legal demand. The expression refers to all those people who cannot afford legal representation but are ineligible for legal aid. The Productivity Commission also commented on the ‘missing middle’ and their limited capacity to meet the costs of significant legal problems.¹⁷⁸

As discussed at section 3.2, service providers are required to focus on people experiencing financial disadvantage. Many people in the ‘missing middle’ are likely to meet the definition of financial disadvantage under the NPA.

¹⁷⁶ CLCNSW final submission p 6, 38.

¹⁷⁷ Australian Centre for Disability Law submission, 7-8.

¹⁷⁸ Productivity Commission, *Access to Justice Arrangements*, (2014), pp 640-644.

7 FUNDING LEVELS NEEDED TO DELIVER REQUIRED SERVICES

7.1 Funding levels required to support existing service provision

At section 3 above, the Review recommended that CLCs should continue to provide a complete range of legal assistance services to their clients. This includes information and advice, case work, representation, and law reform activities. It was also concluded that, while efficiencies should be encouraged, CLCs are already administratively lean. This means that the vast majority of CLCs would not be able to absorb a reduction in funding without compromising frontline service delivery.

The Review therefore recommends that existing funding levels should be preserved in order to ensure that the CLC sector can continue to deliver existing levels of service provision. This includes the \$3 million per annum that the NSW Government allocated to the CLC sector in the 2017–18 and 2018–19 financial years. Recommendations regarding how this funding should be allocated in future are discussed at section 8 below.

7.2 Additional funding required to address identified service gaps

The Review has also identified a number of service gaps which cannot be met from within existing CLC resources. Addressing these gaps will require additional funding. As discussed at section 3.3, significant gap areas in relation to State law include:

- Areas of law for which there is unmet demand, such as housing, credit and debt, consumer law, care and protection, and domestic violence
- Capacity gaps where legal assistance services have insufficient resources to meet the legal need in their catchment area
- Geographical gaps where legal assistance services are not available or severely limited, particularly in rural, regional and remote (RRR) areas of NSW
- Priority client groups who are experiencing unmet legal need, such as Aboriginal people, young people and people with disability.

These categories are not mutually exclusive. CLC clients may fall into multiple gap areas. For example, an Aboriginal person may live in a remote community and require assistance with a tenancy issue. A young person may have a disability and require assistance with debt, housing and consumer issues.

While it is acknowledged that government resources are finite, a number of specific service gaps have also been identified. The NSW Government should seek to identify additional funding to address these areas of need. As noted at section 6.2 above, additional funding should be allocated by reference to legal need.

7.3 Addressing unmet legal need in Commonwealth areas of law

Submissions to the Review identified employment law, social security law and family law as areas of Commonwealth law for which there is unmet demand. Additional funding for these areas should be sought from the Australian Government during the next NPA negotiations.

7.4 Addressing the service gap for Aboriginal clients

7.4.1 There are multiple service providers on the ground

Aboriginal Legal Service

The ALS submitted that Aboriginal community organisations are most appropriately placed to provide services to Aboriginal people and to advocate on their behalf. This principle aligns with the rights to self-determination and self-government in the UN Declaration of the Rights of Indigenous Peoples. The ALS submitted that Aboriginal communities often have good awareness of Aboriginal controlled organisations and many prefer to use these services.¹⁷⁹ CLCNSW also stated its support for Aboriginal controlled organisations and State funding for the ALS.¹⁸⁰

Legal Aid NSW

Legal Aid NSW has a specialist service dedicated to Aboriginal clients, called the Civil Law Service for Aboriginal Communities (**CLSAC**). The team is multidisciplinary and has 15 staff including lawyers and a financial counsellor, and works with other legal and social services. CLSAC is currently working in 15 communities across NSW where there are no other legal services. CLSAC provides advice, assistance, and casework services for a range of civil problems.

CLC Aboriginal Legal Access Program

CLCNSW operates the Aboriginal Legal Access Program (**ALAP**), which currently funds part time ALAP workers in five CLCs across NSW as well as a full time ALAP co-ordinator role at CLCNSW. ALAP workers are not lawyers and do not give legal advice. Their work involves community development and field officer work, connecting Aboriginal people to CLC services and facilitating events such as outreach and community legal education in Aboriginal communities. A number of CLCs provide outreach specifically to Aboriginal communities, and in some instances work in collaboration with Legal Aid NSW's CLSAC team.

¹⁷⁹ ALS submission p 5.

¹⁸⁰ CLCNSW Final Submission p 41.

7.4.2 There is a strong case for funding multiple service providers

A number of submissions emphasised that Aboriginal people should be able to exercise choice when seeking legal support services. While many Aboriginal people may prefer to access Aboriginal controlled services such as the ALS, other Aboriginal people may prefer to access non-Aboriginal services.¹⁸¹

Conflict issues may also necessitate funding multiple services providers. Legal professional rules, and best practice, may prevent the same service from representing both parties to a dispute. This is especially relevant in care and protection and family law matters, where multiple parties to a dispute will often live in the same community. For other areas of law such as credit and debt, tenancy, consumer and discrimination, conflict issues are less common as the other party will not usually be represented by a legal assistance service (for example, a landlord, bank or other corporation).

7.4.3 Building the capability of ALS to provide civil law services

As noted at section 2.1.2 above, although it provides limited information and referral services in relation to civil law, the ALS does not currently practise in civil law. The NSW Government should consider options to build the capability of the ALS in relation to civil law. For example, Legal Aid NSW CLASC employees could be co-located in ALS offices to build capability. In the longer-term, the NSW Government should consider funding the ALS to provide a broader range of civil law services.

7.5 CLCs that do not currently receive NSW Government funding

7.5.1 Community legal centres that do not receive NSW Government funding

A small number of national CLCs provide services to NSW residents but currently receive no funding from the NSW Government. These are:

- National Children's and Youth Law Centre
- Animal Defenders Office.

The Review considers that national centres which also provide services to NSW clients should not be excluded from receiving NSW Government funding. A proposed funding model is outlined at Section 8 below.

In addition, the Review has also identified a small number of other not-for-profit legal services that operate in NSW but do not receive funding under the CLC Funding Program. These are:

- Justice Connect

¹⁸¹ ALS submission p 5, CLCNSW submission p 41.

- Murray Mallee Community Legal Service
- Salvos Legal
- Shopfront Youth Legal Service
- Toongabbie Legal Centre
- University of Newcastle Legal Centre
- Wesley Community Legal Service.

Justice Connect is an accredited CLC. Murray Mallee Community Legal Service is a Victorian CLC that provides outreach across the border into NSW. The remaining services are not accredited CLCs, although the University of Newcastle Legal Centre is an associate member of CLCNSW. The Review considers that, in principle, all of these services should also be eligible to receive NSW Government funding, provided they meet relevant quality standards.

7.5.2 Quantum required to fund additional services

Not all of the services outlined at 7.5.1 above made submissions to the Review or requested NSW Government funding in their submissions. However, the following services did make funding requests:

- Animal Defenders Office
- Justice Connect
- National Children's and Youth Law Centre (**NCYLC**)
- Toongabbie Legal Centre
- Wesley Community Legal Service.

Justice Connect, NCYLC, Toongabbie Legal Centre and Wesley Community Legal Service made specific funding requests. In total, these requests amount to approximately \$2.2m per annum. However, existing NSW Government funding for CLCs is already fully committed. The NSW Government should therefore seek to identify these additional funds to ensure that these services can be funded without resulting in funding reductions for existing services.

The Animal Defenders Office also requested additional funding, but did not specify an amount. It is therefore not possible to quantify the required funding for this service.

7.5.3 Alternative source of funding available for Wesley Community Legal Service

Wesley Community Legal Service is a small not-for-profit legal service, which provides free legal assistance to people who are affected by problem gambling. Wesley CLS currently consists of one full time principal solicitor and one part-time solicitor. It services approximately 600-700 clients per year and is entirely funded from the Responsible Gambling Fund. The Review recommends that the NSW

Government allocate additional funding for Wesley CLS from the Responsible Gambling Fund.

Wesley Community Legal Service should be eligible to apply for funding under the model proposed at section 8 below, whether or not that funding comes from the Responsible Gambling Fund.

Recommendations

4. The existing funding envelope for CLCs should be preserved, including the \$3m p.a. announced by the NSW Government in the 2017–18 and 2018–19 financial years
5. The NSW Government should seek to identify additional funding to:
 - (a) Address critical gap areas
 - (b) Ensure that services that do not currently receive NSW Government funding can be funded without reducing allocations to existing CLCs.

Approximately \$2.2m would be required to meet the funding requests made to the Review by unfunded services.

6. The NSW Government should allocate additional funding for Wesley Community Legal Service from the Responsible Gambling Fund.

8 HOW SHOULD FUNDING BE ALLOCATED

8.1 Overview of proposed allocation methodology

The Review recommends that NSW adopt an application-based funding model. The funding model should be supported by an authoritative evidence base developed as part of a collaborative service planning process. This process is based on the model used in Queensland. NACLC, CLCNSW and Legal Aid NSW have all expressed support for this model.

The refined funding model should consist of two parts.

1. Collaborative Service Planning

- a. Evidence and analysis of legal need
- b. Collaborative service planning meetings.

It is essential that collaborative service planning precedes a funding application process, as applicants for funding will be required to demonstrate:

- How the service they will offer will address the legal needs of priority clients in their region or catchment area
- How they will collaborate with other local providers to maximise service delivery within available resources.

2. Application process with mandatory evaluation criteria that reflect the outcomes of the NPA.

The proposed allocation methodology draws on the NPA framework to ensure that allocations support the achievement of the outcomes set out in the NPA.

This section will explore both these components in more detail. It begins with a brief overview of the current funding arrangements, before examining the two prongs of collaborative service planning under the NPA, including how an authoritative evidence base can be developed and current collaborative activities strengthened. It then sets out the proposed process and principles that will inform the funding allocation model, and discusses how the program will be administered.

8.2 Rationale for change

The current funding allocation framework requires Legal Aid NSW to determine an allocation methodology (an inherently complex exercise) and then distribute the funds accordingly. While the needs-based methodology developed by Legal Aid NSW brings evidence into funding allocation decisions, the model is still premised on historical funding levels. CLCs do not have to make the case for funding or

demonstrate that their services will align with the NPA or the State's strategic objectives.

The new model will increase accountability for the use of public funds and ensure that funding is allocated to promote effectiveness and efficiency. This model will ensure that funding is continually aligned with changing community needs and Government priorities. A CLC's management committee will be required to sign off on funding applications, which is appropriate governance and will strengthen community oversight of a CLC's strategic direction.

The Review is conscious of the need to reduce administrative burdens on CLCs and maximise front-line service delivery. The Review recommends that the NSW Government minimise burdens arising from this new model by:

- Consulting extensively with the CLC and broader legal assistance sector in the development and implementation of the model
- Funding CLCNSW to support CLCs in transitioning to the application-based model
- Introducing three year funding cycles to allow long-term service planning.

These recommendations are discussed below.

8.3 Collaborative service planning

8.3.1 Background

Under the NPA, States are responsible for determining the methodology for the distribution of Australian Government funding for the delivery of legal assistance services by community legal centres. This methodology must be informed by the outcomes of collaborative service planning which is detailed in Schedule A to the NPA.

Collaborative service planning requires the State and legal assistance services to work together to coordinate and maximise the reach of legal assistance services. The outcomes of the collaborative service planning process are to inform the distribution of Australian Government and State funding to CLCs within each jurisdiction.¹⁸²

There are two key elements to CSP:

1. Evidence and analysis of legal need
2. Collaborative service planning meetings.

These elements, and how they will be given full effect under the new proposed methodology, are discussed in detail below.

¹⁸² NPA, schedule A, cl A2.

8.3.2 Evidence and analysis of legal need

The NPA states:

“The first element of service planning is that the States use an evidence base to identify priority clients and the geographic locations in which people have the highest levels of legal need. This will enable the States to identify and analyse evidence of disadvantage, as a proxy for legal need, and target legal assistance services within their jurisdiction accordingly.”¹⁸³

In 2015–16 Legal Aid NSW (with the assistance of a consultant) undertook extensive work to develop a needs-based methodology to inform the allocation of funding for CLCs. The methodology took into account a range of core factors including:

- Data from the Australian Bureau of Statistics relating to socio-economic disadvantage
- Research undertaken by the consultant relating to the prevalence of legal need and priority client groups, as well as the 2012 LAW survey by the LJF
- Location of Legal Aid NSW services
- Other funding sources for CLCs and the extent to which CLCs are supported by pro bono and volunteer assistance
- The extent to which specialist CLCs provide services to priority client groups.

8.3.3 Developing an evidence base

The Review has considered the various ways States and Territories have approached the development of an evidence base. The methodology with the strongest support from the legal assistance sector is the approach taken in Queensland.¹⁸⁴ NACLC notes that it is ‘the most appropriate and useful approach to considering ways to map legal need at a jurisdiction-wide level to date.’¹⁸⁵

The evidence base used in Queensland draws heavily on the work of the LJF, especially its Collaborative Planning Resource (**CPR**).¹⁸⁶ As discussed at section 4 above, the LJF has developed a Collaborative Planning Resource – Jurisdictional Data (**CPR-JD**) for each Australian jurisdiction, which brings together three sets of information relevant to legal assistance provision:

- The geographic distribution of the NPA’s priority client groups

¹⁸³ NPA, schedule A, cl A4

¹⁸⁴ The submissions from CLCNSW, Legal Aid NSW and NACLC all commented favourably on aspects of the Queensland approach: Legal Aid NSW submission p 21; CLCNSW submission p 34, NACLC submission p 2.

¹⁸⁵ NACLC submission, p 2.

¹⁸⁶ For more information about the Collaborative Planning Resource, see Law and Justice Foundation of NSW, *About the Collaborative Planning Resource* at <http://www.lawfoundation.net.au/ljf/app/B6DC9E05711F044CCA257EF5000E995F.html>.

- The prevalence of legal problems for each priority group
- The geographic distribution of those most likely to be in need of legal assistance services for financial or other reasons (such as low education levels, Indigenous or CALD status).

Queensland has built on the work of the LJF by supplementing the CPR data with other relevant and available information (e.g. location of services, court data and data from relevant government agencies) and legal needs gap analyses based on local consultations.

How Queensland developed its evidence base

In 2014, the Queensland Department of Justice and Attorney General funded Community Legal Centres Queensland to develop the 'Updated evidence and analysis of legal need' (2016). This document was prepared to summarise evidence of legal need in Queensland. It used demographic information as a proxy for legal need, based on leading international and Australian research.¹⁸⁷

The Evidence and Analysis of Legal Need draws primarily from the work of the Law and Justice Foundation. It is grouped by Queensland's 13 'regions', which 'allows for higher level, regionalised analysis; aligns with Legal Aid Queensland planning, and with regional legal assistance forum areas, which will allow for better local coordination/collaboration'. (reference included)

The Evidence and Analysis of Legal Need:

- Summarises available data in regional profiles, which list the service providers, quantum of work, gap analysis and demographic profile
- Identifies each priority group and the number and percentage of this group which appear within the general population within each region
- Lists methods for making services more appropriate and accessible to target groups
- Makes recommendations about how organisations demonstrate they are targeting their services to each group (e.g. focus areas, referral pathways or relationships).

The NSW Government should fund CLCNSW to develop an evidence base similar to that developed in Queensland. The evidence base would build on information available in the CPR. This work should be conducted in partnership with LJF and in consultation with the broader legal assistance sector, and should be reviewed at the sector wide collaborative service planning meetings outlined at section 2.2.4. The Review notes that funding will need to be provided in the 2018–19 financial year to enable the application based funding model to commence in 2019–20. The Review considers that approximately \$200,000 will be required to develop the evidence base, with this amount split between CLCNSW and LJF.

¹⁸⁷ Queensland Government, Updated evidence and analysis of legal need at <https://publications.qld.gov.au/dataset/legal-assistance-strategy-and-funding-publications/resource/5d69ce04-5600-45ec-80d1-aacc4f24bf63>.

The evidence base should also be updated every three years to ensure that it reflects the changing demographics and legal needs of communities. Over time, the evidentiary base will steadily improve as the quality of data is enhanced and a broader range of relevant statistics becomes available.

8.3.4 Collaborative Service Planning meetings

The NPA states:

“The second element of service planning is that the States will conduct collaborative service planning meetings, the frequency of which is expected to be twice a year but is to be agreed with the Commonwealth, to promote discussion of strategies for the delivery of services within their jurisdiction.”¹⁸⁸

The collaborative service arrangements were discussed in section 2.2.4.

In its submission, Legal Aid NSW acknowledged that there is room to improve collaborative service planning to give it a more strategic focus. Specifically, it is considering working with both CLCNSW and the ALS to develop:

- Agreed key principles for legal service design and delivery
- A governance framework that would operate at both a state and more regional basis to work towards shared outcomes and outputs, drive new initiatives and support quality improvement
- Maps that can be overlaid with a range of data relating to legal need and services, to inform planning. This may lead to the development of a more agile platform to maintain comprehensive, up to date information about the services being provided by the legal assistance sector.
- Tools to identify gaps and issues
- Data systems capable of forecasting new and emerging levels of need.¹⁸⁹

The approach outlined by Legal Aid NSW would significantly enhance collaborative service planning and encourage both a shared understanding of client need and a more ‘joined up’ approach to service delivery.

The Review recommends that Legal Aid NSW consider including representatives of Financial Counselling NSW and the Tenants Union (representing TAAS’s) in collaborative service planning meetings. This would help to ensure that services are ‘joined’ up around the critical areas of financial hardship (credit and debt) and tenancy, key areas of legal need identified in submissions.

¹⁸⁸ NPA, schedule A, cl A7.

¹⁸⁹ Email from Legal Aid NSW dated 15 November 2017.

8.4 A new application process

CLCs are not required to apply for State and Australian Government funding under the CLC Funding Program. Funding is allocated to individual CLCs in accordance with a methodology developed by Legal Aid NSW (see section 2.3.2)

The Review recommends that the NSW Government adopt a funding allocation model similar to that which applies in Queensland. Queensland's model is an application-based model which was developed in consultation with the legal assistance sector.

The Queensland model requires applicants to:

- Demonstrate how they deliver legal assistance services according to the principles of the National Strategic Framework for Legal Assistance 2015–20
- Draw on the latest evidence and analysis of legal need to support their applications.¹⁹⁰

From NACLC's perspective, Queensland's funding allocation process reflects good practice and is the best approach NACLC has seen to date. NACLC specifies a range of reasons for its support of this model:

- *“Clear frameworks and forums for collaborative service planning (including at a state-wide and regional level) and decision-making*
- *Development of a strong evidence-base to inform funding decisions and service delivery planning*
- *Development of Queensland-specific funding principles to guide decision-making*
- *Central involvement of the Queensland Legal Assistance Forum, with representatives from all legal assistance bodies*
- *Funding and support for Community Legal Centres Queensland as the peak body to work with Government and the sector to ensure the most effective outcome, including by developing the evidence base; producing material to support centres to make funding applications; Lead sector collaboration and cohesion; and advise Government on an ongoing basis.”¹⁹¹*

According to CLCQ, which played a central role in developing the funding framework:

¹⁹⁰ Queensland Government, *Legal Assistance Services Investment* at <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/legal-advice-and-investment/legal-investment/legal-assistance-service-investment/legal-assistance-services>.

¹⁹¹ NACLC submission p 7.

“The [model] is an opportunity to ensure that resources for legal assistance are allocated in a way that reflects the values of:

- *Collaborative service planning;*
- *Maximising the accessibility of services; and*
- *Ensuring transparent decisions based on the available evidence of legal need.”¹⁹²*

8.4.1 Key features

In NSW, the application-based model would:

- Be directly linked to the NPA requirement to focus on the needs of priority clients
- Have clear and transparent evaluation criteria.

The application-based model would also be:

- Evidence-based: Applicants would be required to substantiate their funding bids with reference to evidence of legal need within their catchment area and demonstrate that their proposed service mix addresses this legal need
- Consistent: Applicants would use a consistent and authoritative evidence base, which utilises the best data sources available, to support funding requests
- Principles-based: The principles of the NPA would be incorporated into the funding application process, so there is a clear line of sight between the NPA and services that are funded
- Independent of the legal assistance services sector: the evaluation of applications would be undertaken by an independent panel which would make recommendations to the Attorney General.

8.5 New funding allocation process and methodology

8.5.1 The evidence base is developed

The first stage of the process would be to develop the evidence base that CLCs would use when applying for funding (see also section 8.3.3).

This evidence base would show, region by region:

- The demographic profile

¹⁹² Community Legal Centres Queensland, *Application Resource Guide: Queensland and Commonwealth Legal Assistance Service Delivery Funding 2017 – 2020* (October 2016) p 3.

- The prevalence of priority client groups
- Evidence of legal need
- Existence of other service providers (legal and non-legal) in the region.

CLCs would be able to use the regional profile(s) most relevant to their Centre as evidence to inform and frame their application for funding. The Cooperative Legal Service Delivery Program has already developed Regional Profiles which are being used by CLCs and other service providers to coordinate regional service delivery.

8.5.2 CLCs apply for funding

CLCs would be able to submit applications for funding to the NSW Department of Justice. As in Queensland, this would involve filling out a standard application form that requires each applicant to explain (briefly) how they meet the mandatory evaluation criteria.

The mandatory criteria should reflect the five outcomes set out under the NPA, and be supplemented by additional criteria to promote value for money, effectiveness and innovation.

Proposed funding methodology - mandatory criteria

No	Criteria	Source
1	Targeted: Legal assistance services are targeted to priority clients with the greatest legal need	NPA outcome 9(a); National Strategic Framework principle 1
2	Collaborative: Legal assistance service providers collaborate with each other, governments, the private legal profession and other services to provide joined up services to address people's legal and related problems	NPA outcome 9(b); National Strategic Framework principle 3
3	Appropriate: Legal assistance services are appropriate, proportionate and tailored to people's legal needs and levels of capability	NPA outcome 9(c); National Strategic Framework principle 2
4	Timely intervention: Legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate	NPA outcome 9(d); National Strategic Framework principle 4
5	Empowerment and resilience: Legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems	NPA outcome 9(e); National Strategic Framework principle 5

6	Value for money: The model for delivering legal assistance services provides value for money in the context of client needs and locality	
7	Efficient and innovative: Legal assistance services will strive towards innovative ways to address service delivery challenges to maximise front-line services	

The application would require the CLC to demonstrate:

- Deliverables (the types and numbers of services that the CLC would provide). This would take into account the representation services ‘benchmark’ under the NPA
- In the context of client needs and locality, how the model for delivering the services would provide value for money in terms of the services that could be delivered (including how they might collaborate with other service providers).

The applicant would be expected to use the evidence base (outlined at 8.3.3) to inform their application. The management committee of a CLC should approve the application before it is submitted.

Generalist and specialist CLCs should be required to submit the same application forms and address the same mandatory criteria outlined at 8.5.2 above. Funding for generalist and specialist CLCs should come from the same funding pool (specialist CLCs are discussed at 8.5.6 below). If generalist CLCs with the same or overlapping catchment areas submit funding applications, they would be required to demonstrate how they will rationalise their service provision.

It is possible that some smaller, less relatively well resourced CLCs may experience challenges preparing a well-argued application. For this reason, it would be highly desirable to produce an application resource guide that could guide CLCs in framing their applications.

In Queensland, CLCQ was funded to produce an application resource guide and to support CLCs through the application process, including by hosting webinars and seminars. The Review recommends that the NSW Government fund CLCNSW perform a similar role. The Review considers that approximately \$100,000 will be required for this task.

8.5.3 Applications are screened and evaluated

Applications would be screened initially by Department of Justice staff to determine whether the mandatory evaluation criteria had been addressed.

All applications that address the criteria would then be forwarded to an independent Evaluation Panel. This panel would consist of representatives from the Department

of Justice, the Department of Premier and Cabinet and Treasury. Consideration might also be given to including on the Panel a nominee(s) of the Attorney General who has particular knowledge of the legal assistance sector and the needs of priority clients.

The Evaluation Panel would review each application with reference to the funding principles and mandatory evaluation criteria. The Evaluation Panel would also consider the need to ensure an appropriate mix of services to ensure viability of the service system.

Finally, the Panel would make a recommendation to the Attorney-General, who would have the final say over the allocation of funding.

8.5.4 Funding cycles

CLCs require certainty and stability in their funding levels to plan and deliver efficient and effective legal assistance services. Unfortunately, this stability has been historically lacking. CLC funding has often been unpredictable and last-minute. Since July 2015, CLCs in NSW have been on one-year annual funding agreements.¹⁹³

In their submissions, CLCs detailed the many negative consequences of funding uncertainty:

- Difficulty in attracting appropriately skilled and qualified staff, or upskilling staff in specialist areas of law while on short-term contracts
- High staff turnover, leading to 'brain drain' to places with higher wages and longer-term stability, such as Legal Aid NSW
- High levels of stress among staff due to the instability of the working environment
- Less effective planning and service provision
- A negative impact on community capacity building, which requires long-term commitment and involvement
- Limiting program effectiveness as uncertainty complicates the management of community expectations
- Diversion of management and coordination resources away from core legal services and towards planning for sudden changes to the funding environment, including advocacy and making arrangements for cuts. Northern Rivers CLC reported that in the lead-up to funding cuts due to take effect from July 2017, service planning was completely arrested as planning for cuts took place (e.g. redundancies and prioritisation of resources).¹⁹⁴

¹⁹³ Note that one-year funding cycles have also been a feature of past funding arrangements.

¹⁹⁴ Northern Rivers CLC submission p 10.

Far West Community Legal Centre’s submission described the impact of unstable funding:

“Two years ago when funding cuts to our organisation were imminent, there was an understandable mass resignation of staff, who sought other, more secure, jobs. This resulted in a subsequent decimation of services provided by our CLC to the Broken Hill Community, and a very slow resumption of services when funding was restored, due to the community’s loss of trust in our organisation’s ability to assist them.”¹⁹⁵

According to submissions from the CLC sector, funding certainty is the main factor in creating an efficient and effective legal assistance sector. Creating a more stable funding environment, alongside the other reforms discussed above, should greatly improve the scope and quality of CLC service provision to priority clients.

8.5.5 Minimum three year funding cycles

Longer funding cycles are critical to improving CLC sector service delivery. In submissions, the sector overall supported five-year funding agreements for CLC recurrent core funding to ‘ensure stability and value for money from the Government’¹⁹⁶ and to align operational and reporting requirements with Australian Government funding. Five year funding cycles were also supported by the Productivity Commission:

*“[G]reater predictability of funding is required. This would enable providers to better plan their services, avoid ‘break costs’ associated with the unexpected reversal of programs and would provide some consistency for service users”.*¹⁹⁷

Funding for Aboriginal and Torres Strait Islander Legal Services from the Australian Government is now available for up to five years.¹⁹⁸

One-year funding agreements are an anomaly in the not-for-profit sector. The Review recommends that a minimum of three-year funding cycles be implemented to give CLCs stability and certainty.

8.5.6 Relevance of other funding sources

CLCs are increasingly seeking funding from sources outside Australian Government and State legal assistance funding programs. These sources can include:

- Grants from other government departments or agencies
- Philanthropic donations or grants from foundations or trusts

¹⁹⁵ Jillian Heeley, Far West CLC submission p 1-2

¹⁹⁶ CLCNSW submission p 76.

¹⁹⁷ Productivity Commission, *Access to Justice Arrangements*, (2014) p 753

¹⁹⁸ Australian Government Attorney General’s Department, *Programme Guidelines: Indigenous Legal Assistance Programme from 2015–16* at <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Pages/Indigenous-Legal-Assistance-Programme.aspx>.

- Fundraising from the community
- Direct grants from the PPF
- Limited fee-for-service arrangements.

Some CLCs have significant alternative sources of funding, while others struggle to attract support notwithstanding high legal need in their areas. This can be a particular issue in rural, regional and remote and outer metropolitan areas.

Other sources of government funding

A number of CLCs that provide legal assistance services in NSW receive funding through the CLC Funding Program and also receive funding from other government agencies. For example:

- Hume Riverina Community Legal Service provides legal assistance services in NSW and Victoria and receives funding from both States
- Marrickville Legal Centre receives funding from the NSW Department of Family and Community Services (**FACS**) for its Family and Domestic Violence Support Service.

Some CLCs do not receive any funding through the CLC Funding Program but receive significant funding from other government sources. For example:

- The Intellectual Disability Rights Service receives around half of its funding from FACS and half from the Australian Government Department of Social Services. IDRS' FACS funding is set to end in 2018, which will have serious implications for its clients
- The Arts Law Centre receives funding under an arts-specific National Partnership Agreement.

In determining the amount of funding that a CLC should receive under the new application process, funding obtained through these sources should not be ignored. This is particularly the case when the funding is for the same service type (legal assistance services) and on the same basis that CLC Funding Program funding is awarded (ongoing and mostly for staff costs).

Pro bono and philanthropic contributions

Many CLCs harness pro bono resources to expand their service reach. Pro bono work makes a significant contribution to addressing unmet legal need and also extends the value of the government dollar. It can also encourage collaborative partnerships with the private sector and innovations in service delivery. Private and philanthropic donations also expand the reach and effectiveness of CLCs, providing flow-on benefits at no extra government cost.

However, in order to establish and maintain successful pro bono partnerships, CLCs require adequate staffing levels to develop and maintain the necessary relationships and to run pro bono programs.¹⁹⁹ As noted in the submission from Clayton Utz, which provided over 38,231 hours of pro bono assistance in 2017, ‘we cannot provide effective pro bono assistance in NSW without an effective Legal Assistance Sector’.²⁰⁰

As noted by the Australian Pro Bono Centre:

“Although pro bono legal work in Australia is steadily growing, it is not, and cannot be, a substitute for substantial publicly funded legal assistance services such as legal aid and community legal centres. The Australian pro bono culture is built on the fundamental premise that the primary responsibility for ensuring that access to justice is within the reach of every Australian lies with the government.”²⁰¹

The availability of pro bono, philanthropic and other in-kind support does not displace the government’s role in adequately and appropriately funding CLCs to provide essential legal services. The more resources that a CLC can leverage, the greater impact it will have in assisting priority clients. Accordingly, CLCs should be encouraged to seek out and obtain alternative sources of funding.

Diversified funding streams give CLCs greater stability when funding may be limited, reduced, or tied to certain outcomes. It provides CLCs with greater control over their funding sources and strategic direction. PIAC notes that ‘seeking alternative sources of funding increases the resources available to the sector overall, helping to better meet legal need.’²⁰²

8.5.7 Relevance of service type

The NPA does not distinguish between generalist and specialist CLCs. However, this distinction is well recognised in NSW and around Australia. There is a clear need to fund specialist services (which work with a particular priority groups or particular areas of law) in NSW.

One CLC, the Environmental Defenders Office NSW (**EDO**), may not readily be able to establish its value against the proposed funding methodology set out in section 8.5.2, which adopts the NPA funding priorities, including that legal assistance services should be targeted towards people experiencing financial disadvantage and a specific list of priority clients.

¹⁹⁹ Australian Pro Bono Centre submission p 4.

²⁰⁰ Clayton Utz submission p 1.

²⁰¹ Australian Pro Bono Centre submission p 4.

²⁰² PIAC submission p 12.

EDO has a unique and important place within the NSW legal assistance sector. As noted by the Hon Justice Brian J Preston SC, Chief Judge of the Land and Environment Court of New South Wales:

“The matters litigated by EDO NSW have all been important cases that have advanced environmental jurisprudence and upheld important rights and interests of the community and the environment.”²⁰³

The EDO receives funding from the NSW Government and the PPF under the CLC Funding Program, but not the Australian Government. The Review recommends that funding for EDO should continue outside the application-based model described above. However, the EDO should still be required to apply for funding and meet appropriate mandatory criteria. This will ensure accountability for the use of legal assistance funding.

Otherwise, the application-based model outlined above is sufficiently flexible to allocate funding to both specialist and generalist CLCs. The main criterion which CLCs would be required to demonstrate to be eligible for funding is that they are delivering efficient and effective legal services for priority clients in line with the requirements in the NPA.

Rural, regional and remote (**RRR**) CLCs experience unique challenges in delivering services to priority clients. These services are located in regional centres but provide outreach services to communities within their area, some of which are many hundreds of kilometres away. Funding allocations to RRR CLCs should make due allowance for the costs associated with delivering outreach services.

8.5.8 CLCs should not be dependent on PPF funding

Many NSW CLCs are dependent on PPF funding for their core operational costs. The PPF is the primary State funder for many CLCs, with 13 out of 34 CLCs funded under the CLC Funding Program receiving more PPF funding than State funding.²⁰⁴ This dependency leaves CLCs vulnerable to the resources of the PPF and the decision of the Trustees, which contributes to uncertainty and hinders efficient service planning.

PPF funding is allocated through annual discretionary grants made by the Trustees of the PPF. Inadequate funding from other sources means that PPF funding is often used to employ frontline staff in ongoing services. The unpredictable grant nature of PPF funding, including its yearly funding cycle and discretionary allocation basis, makes it inappropriate for supporting these core ongoing costs.

²⁰³ EDO NSW submission p 8.

²⁰⁴ See Legal Aid NSW, *Legal Aid NSW Annual Report 2016-2017*, Appendix 5 - Community Legal Centres Program Funding, p 163.

Providing legal assistance services for the most disadvantaged is a core government responsibility and should be supported by government revenue. CLCs should have sufficient certainty of their funding arrangements that they can focus on front-line service delivery. The NSW Government should take steps to improve the predictability of funding sources and amounts. The Review recommends that CLCs should not be dependent on PPF funding so long as that funding is administered under present arrangements, and distributed annually.

8.5.9 Minimum base funding

Several proposals have been made over the years to set a minimum funding level.²⁰⁵ In its submission, CLCNSW recommended that each CLC should continue to receive the funding allocated to them in the 2016–2017 funding rounds (i.e. their ‘historic’ funding) and funding should not fall below a minimum baseline level sufficient to employ five FTE and pay associated operational overheads.²⁰⁶ CLCNSW believes this staffing complement gives a CLC ‘the core stability needed to seek other sources of funding, operate a volunteer program effectively, and adapt to changing legal needs’.²⁰⁷ NACLCL also supports the introduction of a minimum baseline funding below which funding for a CLC should not fall.²⁰⁸

Historically-based allocations have preserved significant disparities in the staffing levels of NSW CLCs. Staff numbers range from 2.5 FTE to 40 FTE. These levels are not always related to the level of legal need in a community or relative need in relation to an area of law.

There is currently no minimal funding level in NSW. The pure needs-based methodology initially considered by Legal Aid NSW in 2016–2017 would have resulted in some centres falling below a staffing level required to keep them open. This outcome was avoided by making adjustments (partly with the additional funding provided by the NSW Government) to ensure that no centre was worse off in 2017–2018.

There is an argument that a minimum baseline funding approach, which prioritises keeping centres open and operational, could potentially distort the primary purpose of the NPA which is to ensure services are directed where they are most needed. The NPA makes clients’ needs, rather than a service’s continuation, the primary objective of funding. Further, the minimum baseline approach does not take into account changes in demographics, emerging needs and new service delivery

²⁰⁵ For instance, the 2006 Legal Aid Review recommended a common, minimum funding baseline for all Centres to cover salaries of three full-time positions for all CLCs in NSW and a portion of on-costs – Legal Aid NSW, *Review of the NSW Community Legal Centres Funding Program* (2006) p 17.

²⁰⁶ CLCNSW submission p 75.

²⁰⁷ CLCNSW submission p 75.

²⁰⁸ NACLCL submission p 16.

models (including greater use of technology), which could influence the core funding requirements of a CLC.

CLCNSW advocates a divided model of funding, whereby a base level of funding is allocated for core operational costs (this is long-term, recurrent funding) and the quantum of additional funding, for instance, 'when a government has identified a new priority, program, or wishes to provide additional funding', be determined by reference to 'evidence-based, transparent methodologies'. Similarly, Legal Aid NSW believes consideration should be given to a 'combined model', where allocation methodologies for base funding and additional funding are different, 'to provide some certainty and stability in the sector'.²⁰⁹

The Queensland model does not establish a minimum baseline funding or preserve a separate baseline funding allocation for CLCs. The Review considers that establishing a minimum baseline funding level is not required, and funding should be allocated with reference to the evidence-base and the funding principles.

The concept of minimum baseline funding is less important when a pure needs-based methodology is not used. This is because the application-based model's flexibility allows funding to be allocated to keep centres open when legal need exists (for instance, it recognises CLCs which service a small but high-needs client base and which would otherwise face closure under a needs-based methodology).

8.5.10 Transitioning to the proposed allocation model

According to submissions from CLCs:

- Changes to the funding model should include transitional arrangements to ensure that service delivery is not interrupted²¹⁰
- Changes to funding allocations should be announced with a long lead time, to allow for CLCs to recruit and prepare for additional staff; or make cuts or divert resources where required.²¹¹ CLCNSW recommended that if a CLC was facing a significant funding cut (such as \$50,000 p.a.) this be staggered across several years, and funding be made available to assist CLCs to negotiate redundancies, office closures or cancellation of contracts.²¹²

The Review recommends that for 2018–2019, the current funding model and allocation process should continue. This will allow the sector time to prepare for the new application process from 2019–2020, and for the necessary supporting documentation (evidence base and an application resource guide) to be prepared.

²⁰⁹ Legal Aid NSW submission p 23.

²¹⁰ Hume Riverina Community Legal Service submission p 28.

²¹¹ Illawarra Legal Centre submission p 15.

²¹² CLCNSW submission p 76.

If in future funding allocation rounds there are particular CLCs that face significant funding cuts, these should be phased in over the period of that funding round.

8.6 Program Administration

8.6.1 Legal Aid's role as program manager is perceived as a conflict of interest

Legal Aid NSW is the program administrator of CLC funding in NSW, and allocates and administers funding from the Australian Government, State and the PPF through the CLC Funding Program. This involves:

- Making decisions about funding allocations
- Entering into service agreements with CLCs
- Briefing the NSW Department of Justice on issues relating to legal assistance sector
- Monitoring CLC compliance with their service agreements, including managing and reviewing CLC reporting requirements
- Reporting to the Australian Government Attorney-General on the delivery of legal assistance services under the NPA.

Legal Aid NSW's position of program administrator, when it is also the recipient of funding for legal assistance, has created a perception of a conflict of interest. According to Legal Aid NSW:

"Legal Aid NSW is...under the [NPA]...expected to work collaboratively with CLCs, as an equal partner in the legal assistance sector, to plan and deliver services to disadvantaged people in NSW..."

We see an inherent tension between our role in allocating funding to CLCs and monitoring their use of that funding, and working with them in planning service delivery. We question whether it is appropriate for Legal Aid NSW to continue to manage the CLC program in NSW.²¹³

Legal Aid NSW acknowledges that Queensland has given 'at least part of this responsibility to their Justice Department and encourages the Review 'to consider whether such a shift would be beneficial in NSW.'²¹⁴

The CLC sector has also raised concerns about Legal Aid's position of perceived conflict of interest. NACLC, with its national perspective, notes:

²¹³ Legal Aid NSW submission p 4.

²¹⁴ Legal Aid NSW submission p 4.

“...NACLC is concerned about, as a matter of principle, any model under which LACs—or any other legal service 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 allocation of funds to other legal service providers, as it invites lack of confidence in the model and process.”²¹⁵

CLCNSW also notes:

“As the CLC funding program manager, Legal Aid NSW is the government agency that provides advice to the Department about the funding and service delivery issues facing CLCs. However, it also provides advice about Legal Aid NSW’s funding needs and priorities. This raises potential issues when Legal Aid NSW and CLCs have competing funding needs or priorities, creating the unfortunate perception that Legal Aid NSW may first look after its own service delivery priorities at the expense of the NGOs for which the agency is also responsible.”²¹⁶

NACLC notes that this does not mean that Legal Aid NSW should not play a role in administering or managing the funding once allocation has been determined.²¹⁷

CLCNSW has suggested that DOJ ‘explore alternatives to the management of the CLC Funding Program in NSW’.²¹⁸ NACLC also recommends that the body responsible for the funding and administration of CLCs should be state and territory governments and not Legal Aid NSW.²¹⁹ CLCNSW believes this change in role would ‘have the effect of greatly improving collaboration amongst legal assistance providers, to the overall benefit of increasing access to justice in NSW’.²²⁰

Requiring Legal Aid NSW to determine the allocation of funding has created a level of tension between legal assistance providers that has been hindering collaboration. For this reason it has recommended that this role be undertaken by an Evaluation Panel (see section 8.5.3 above).

However, Legal Aid NSW has developed considerable experience in administering and reporting on the CLC Funding Program. The Review recommends that it continue in this role.

²¹⁵ NACLC submission p 17.

²¹⁶ CLCNSW submission p 34.

²¹⁷ NACLC submission p 17.

²¹⁸ CLCNSW submission p 34

²¹⁹ NACLC submission p 17.

²²⁰ CLCNSW submission p 34.

8.7 Promoting efficiency and effectiveness

8.7.1 Adopting a funding framework that prioritises service efficiency

Examples of innovation in the community legal sector

The **National Children’s and Youth Law Centre’s** website ‘Lawmail’ connects children and young people with free, confidential and hassle-free legal advice. Clients can submit questions at any time from their home or phone, and lawyers will respond via email. NCYLC effectively targets this service model to the needs of their clients, recognising that children and young people are not intimidated by seeking help online and find it easy to navigate web-based services. In 2015–2016 it provided 1,992 legal advices and referrals via *Lawmail* throughout Australia.

South West Sydney Community Legal Centre provides a reduced-fee service for clients who do not qualify for legal aid but cannot afford private legal assistance, and have the capacity to afford low-fee legal services. ‘A2J Legal’ program offers a range of legal services including drink driving, motor car damage, family law, and probate, power of attorney and enduring guardianship matters. The fees are indexed against a client’s income, and are used to continue to provide legal services for the legal centre’s most disadvantaged clients.

Mid North Coast Community Legal Centre provides public access to a dedicated computer and printer in a private room. This allows people to access online governments services and court applications and is available on a drop in basis. If someone asks the receptionist for assistance understanding the forms or advice about preparing documents, a staff member can either assist the client on the spot or make an appointment for the client to see a solicitor at a later date.

Financial Rights Legal Centre has developed the Motor Vehicle Accident Problem Solver, an online self-help tool that asks users a series of questions about their situation, and then provides tailored advice on their problem and next steps. It also provides sample letters that can be downloaded and modified and contact details to speak to a solicitor. The problem solver empowers clients to resolve their own problems, freeing up lawyers’ time to assist more disadvantaged clients or clients dealing with complex issues.

Redfern Legal Centre and **Legal Aid NSW’s** participation in the Redlink Outreach Project is an excellent example of integrated service delivery and collaboration. Redlink provides social housing tenants with access to a range of support services onsite at the McKell Building in Redfern. Services include social workers, community workers, financial counsellors, health professionals and lawyers. Clients can be referred between service providers on the spot, ensuring joined-up and client-centred service delivery.

The application-based model prioritises the efficient delivery of legal services. It will require CLCs to draw on evidence of legal need to support their application and explain how they will use resources to meet this legal need effectively and how they will collaborate with other service providers to get value for money.

This requires CLCs to re-evaluate continually the legal need in their catchment area and the adequacy of their service delivery model. The nature of legal need may have changed significantly since a CLC was established, however this factor has not been explicitly considered in funding allocations or funding methodologies to date.

The new model requires CLCs to plan service delivery on the basis of data that reflects actual legal need, instead of relying on anecdotal reports or historical service provision. This change will lead to improved efficiency and effectiveness in the legal assistance sector and ensure that the NSW community receives best value for money.

8.7.2 Reducing the administrative burden of reporting requirements

Several CLCs identified the administrative burden on reporting under various Australian Government and State funding agreements. This is exacerbated with frequent funding cycles. The regulatory burden on a CLC reporting under various agreements can often be onerous. This was recognised in the Victorian Access to Justice Review, which recommended that the Victorian Government centralise State funding to the legal assistance sector, where appropriate, to reduce the burden of reporting.²²¹ The Victorian Government agreed with this recommendation.²²²

The Review recommends that Legal Aid NSW, as program administrator, and in consultation with the CLC sector, should identify unnecessary duplication in reporting requirements and advise government on ways to streamline these requirements.

8.7.3 Moving towards an outcome-based reporting framework

Outcomes measurement is a way of demonstrating the value of a particular investment. It involves identifying the outcomes a service is intended to deliver, and developing a framework to evaluate how successful the services has been in achieving this outcome. Without a way of measuring outcomes, it is difficult to establish whether a service is achieving what it set out to do.

Outcomes measurement is increasingly becoming a means for evaluating the efficient and effective use of government resources and for social impact investing. As part of the Victorian funding framework, CLCs are required to demonstrate 'how they develop, maintain and evaluate the quality of their service delivery and its outcomes'.²²³ For CLCs themselves, it helps them demonstrate their impact, advocate for increased funding, and refine their service delivery to areas of high need.

²²¹ Victoria State Government, *Access to Justice Review, Volume 2 – Report and Recommendations* (August 2016) p 397.

²²² Victoria State Government, *Access to Justice Review – Government Response* at https://engage.vic.gov.au/download_file/3300/612.

²²³ Victoria Legal Aid, *VLA guiding principles for CLC funding decisions* (Adopted by the VLA Board in December 2012).

Outcomes measurement is not a feature of the current funding framework in NSW. While the NPA is clear about the service outcomes it is seeking to facilitate, the performance indicators largely focus on activities rather than outcomes.²²⁴ Consequently, the reporting under the CLC Funding Program administered by Legal Aid focus on the number of activities undertaken – ‘outputs’, rather than ‘outcomes’.²²⁵ These measurements then become the basis of the service agreements and the reporting requirements arising from them.

A shift towards outcomes measurement will take time and investment. CLCNSW believes that the NSW Government should support CLCs to re-orient their reporting away from outputs and towards outcomes.²²⁶ Similarly, NACLC notes:

“There is a need for monitoring, evaluation and outcomes measurement to be built into the funding and administration of CLCs. Individual centres should also be funded and supported to undertake this work within a broader framework.”²²⁷

Other jurisdictions have begun introducing outcomes-measurement methodology into CLC service planning. Victoria’s Outcomes Measurement Framework, launched in November 2017, is designed to help CLCs to demonstrate, articulate and measure the outcomes it achieves through its activities and service delivery.²²⁸ Queensland is currently developing a CLC Outcomes Framework to build the capacity of CLCs to better measure and understand the outcomes of their work in the community within a shared sector outcomes framework.²²⁹ In both these states, the peak CLC body was funded to undertake these projects.

The Review recommends the NSW Government invest in the development of an outcomes measurement framework. The framework should be developed in collaboration with the broader legal assistance sector. The models discussed above can inform the development of a NSW-specific outcomes framework.

²²⁴ See clauses 9 and 17 of the NPA.

²²⁵ CLCNSW submission p 51.

²²⁶ CLCNSW submission p 51.

²²⁷ NACLC submission p 4.

²²⁸ Federation of Community Legal Centres, *Outcomes Measurement and Evaluation Capacity Building Project* at http://www.fclc.org.au/cb_pages/outcomes_measurement.php.

²²⁹ Community Legal Centres Queensland, *Measuring our Impact* at <http://communitylegalqld.org.au/evaluation>.

Recommendations

7. The NSW Government should adopt an application-based funding model from 2019-20
8. The NSW Government should allocate funding in 2018–19 to enable:
 - (a) CLCNSW to work in partnership with LJF to develop an evidence base to inform applications for funding, similar to that developed in Queensland
 - (b) CLCNSW to support the CLC sector through the application process, including by developing an application resource guide and other supporting materials.

The Review considers that approximately \$300,000 would be required to conduct this work.

9. Legal Aid NSW should no longer be responsible for determining funding allocations but should continue to administer CLC funding agreements
10. A minimum three-year funding cycle should be implemented to provide CLCs with funding stability and certainty
11. The NSW Government should invest in the development of an outcomes measurement framework.
12. Legal Aid NSW, in consultation with the CLC sector, should seek to identify unnecessary duplication in relation to reporting requirements and report its findings to the NSW Government.

9 THE ROLE OF THE COMMUNITY LEGAL SECTOR IN DELIVERING THE CIVIL JUSTICE STRATEGY

Findings

- CLCs can continue to play a key role in the delivery of the Civil Justice Strategy, including at the strategic level and in the implementation of particular actions.

9.1 CLC sector should play a key role in implementing the Civil Justice Strategy

The NSW Department of Justice is currently developing a Civil Justice Strategy for NSW. The purpose of the strategy is to promote access to justice and make it easier for people to resolve common legal problems. It will include a number of concrete actions to achieve these objectives and is expected to have a strong focus on practical measures that can support early dispute resolution and prevent problems from escalating. However, as the Strategy has not been finalised yet this review is not able to comment in detail on the role the CLC sector should play in its delivery.

The community legal sector has been closely involved in the development of the Strategy to date. Ten CLCs made submissions to the 'Justice for Everyday Problems' consultation paper in February 2017. Three CLCs, the Financial Rights Legal Centre, Justice Connect and Tenants Union of NSW, are members of the Civil Justice Collaboration Group. The role of the Collaboration Group is to assist the Department to formulate ideas and ensure that the strategy recognises the practical realities of delivering legal assistance services on the ground.

The community legal sector can continue to play a key role in the delivery of the strategy, including at the strategic level and in the implementation of particular actions. CLCs are uniquely positioned to contribute subject matter expertise and provide advice on the issues that are having the greatest impact on their clients and the broader community. The continued involvement of the sector will help to ensure that the strategy is delivered in a way that meets community expectations and that it works in practice.

Review of community legal centres (CLC) services

A review is proposed to assist the NSW Government to ensure CLC legal assistance services are directed to people most in need, to improve the efficiency and effectiveness of CLC service provision and to assist the NSW Government plan how best to distribute available funding to CLCs to respond to demand and support access to justice.

The delivery of Commonwealth funded legal assistance services by community legal services is outside the scope of this review.

The review will commence in September 2017 and report to the Attorney General by mid December 2017. The review will consult with stakeholders including Legal Aid NSW and the CLC sector.

Terms of reference for the review

1. The review will catalogue the type, scope and geographic spread of activities of CLCs in NSW.
2. The review will provide recommendations on the type, scope and geographic spread of activities of CLCs that should be funded by the NSW government, having regard to matters including, but not limited to:
 - a. the type, scope and geographic spread of legal assistance services also provided to priority clients by the NSW Legal Aid Commission;
 - b. the most significant legal needs experienced by disadvantaged people arising from the operation of State law;
 - c. the most significant service gaps in legal assistance service provision to disadvantaged people;
 - d. which types of legal assistance services CLCs should provide, including specialist and generalist legal services, in which locations;
 - e. whether government-funded services should be provided to a broader group of low income clients, and not just those considered to be at most disadvantage;
 - f. whether funding should be allocated to centres which, because they provide national services in addition to services to NSW clients, are not currently funded as NSW CLCs;

- g. whether CLCs should play a role in the delivery of the NSW Government's Civil Justice Strategy (which is still in development) and, if so, what that role should be; and
 - h. whether there is any duplication in the legal assistance services presently delivered by CLCs and the NSW Legal Aid Commission, and options for reducing that duplication.
- 3. The review will provide recommendations on funding levels required to enable CLCs to deliver the legal assistance services that the review considers should be provided by CLCs, having regard to matters including, but not limited to:
 - a. the benefits that are expected to accrue to the community, the justice system, and the government and non-government sectors; and
 - b. measures that should be put in place to maximise the efficiency and effectiveness of CLC service provision, having regard to the need to minimise administrative burdens and maximise front line service delivery;
 - c. the extent to which the delivery of the legal assistance services that the review considers should be provided by CLCs is best facilitated by use of a recurrent funding model, a program based funding model, a combination of these funding models or by some other funding approach.
- 4. The review will recommend a refined funding model for informing the allocation of the funding available for NSW CLCs. In developing the refined funding model, the review will have regard to:
 - a. the need to provide sufficient stability in funding arrangements to allow for effective planning and service provision;
 - b. direct legal assistance to disadvantaged people who do not have the means (financial or other) to access private legal services being the highest priority for state government funding;
 - c. what impact, if any, funding or potential funding from other sources should have on the allocation methodology;
 - d. the type, scope and geographic spread of present activities of NSW CLCs; and

- e. transitional arrangements for CLCs that would be affected by any changes in the funding model.

Notes

1. In relation to the refined funding model, the review should not adopt a methodology that determines allocations only by reference to an assessment of socio-geographic need and the geographic proximity of CLCs to areas of high such need. Rather, the methodology should have due regard to the types of services provided by CLCs and the extent to which CLCs deliver targeted services to those most in need that effect measurable change for the better.
2. The refined funding model should be scalable having regard to available funding allocations in any financial year. This being so, the review may find that different CLC sector total annualised funding thresholds trigger the applicability of different allocation methodologies.
3. In undertaking its work, the review should have regard to, among other sources, the Productivity Commission's Inquiry Report: Access to Justice Arrangements (September 2014); the Law and Justice Foundation's Report – Legal Australia-Wide Survey: Legal Need in New South Wales (August 2012); and the National Partnership Agreement on Legal Assistance Services. The review will also have regard to the Department of Justice's recent and ongoing work on the civil justice system.
4. The Review should have regard to the Public Purpose Fund and the quantum of funding available for CLCs from the PPF and other State sources.

Appendix B – Submissions to the Review

No.	Received from
1	Confidential
2	Elizabeth Evatt Community Legal Centre
3	Confidential
4	Nick Carey
5	Sean Bowes
6	Regie Anne Gardoce
7	Community Legal Centres NSW
8	The Hon Michael Kirby AC CMG
9	Minter Ellison
10	Pottsville Beach Neighbourhood Centre
11	Oliver Ray
12	Macarthur Legal Centre
13	Justice Connect
14	The Hon Elizabeth Evatt AC
15	Illawarra Legal Centre
16	Shoalcoast Community Legal Centre
17	Australian Pro Bono Centre
18	Marrickville Legal Centre
19	Kingsford Legal Centre
20	University of New South Wales Law Society
21	Mental Health Coordinating Council
22	Central Coast Community Legal Centre
23	Hume Riverina Community Legal Service
24	University of Newcastle
25	Australian Lawyers for Human Rights
26	Far West Community Legal Centre

27	Redfern Legal Centre
28	Eastern Suburbs Domestic Violence Network
29	Penrith Women's Health Centre
30	Australian Human Rights Commission
31	Herbert Smith Freehills
32	Public Interest Advocacy Centre
33	Western NSW Community Legal Centre
34	Far West Community Legal Centre
35	Inner City Legal Centre
36	Wesley Community Legal Service
37	Refugee Advice and Casework Service
38	Western Sydney Community Legal Centre
39	Welfare Rights Centre
40	Tenants Union of NSW
41	Women's Legal Service NSW
42	Animal Defenders Office
43	Northern Rivers Community Legal Centre
44	HIV/AIDS Legal Centre
45	Arts Law Centre of Australia
46	Just Reinvest
47	Hunter Community Legal Centre
48	National Association of Community Legal Centres
49	Financial Rights Legal Centre
50	Immigration Advice and Rights Centre
51	Hall & Wilcox
52	Environmental Defenders Office NSW
53	Seniors Rights Service
54	Jenny Leong MP
55	CHOICE

56	Clayton Utz
57	Bathurst Family Relationship Centre
58	Ashurst
59	Toongabbie Legal Centre
60	Legal Aid NSW
61	Mid North Coast Community Legal Centre
62	NSW Bar Association
63	National Children's and Youth Law Centre
64	Shopfront Youth Legal Centre
65	Australian Centre for Disability Law
66	Leichhardt Women's Community Health Centre
67	Wirringa Baiya Aboriginal Women's Legal Centre
68	Women's Domestic Violence Court Advocacy Service and Domestic Violence NSW
69	NSW Council of Social Services
70	Aboriginal Legal Service NSW/ACT
71	People With Disability
72	The Law Society of NSW Young Lawyers
73	Financial Ombudsman Service
74	Intellectual Disability Rights Service
75	Homelessness NSW

Appendix C – Funding for CLCs through Legal Aid NSW’s CLC Funding Program in FY2016–2017

Appendix 5 Community Legal Centres Program Funding

Community Legal Centre (CLC)	Commonwealth funding \$	State funding \$	Public Purpose Fund Funding \$	Total payments \$
Australian Centre For Disability Law	338,614	45,714	87,722	\$472,050
Central Coast Community Legal Centre	506,006	20,543	199,642	\$726,191
Community Legal Centres NSW	327,782	326,641	90,750	\$745,173
Court Support Scheme	39,210	7,295	6,261	\$52,766
Domestic Violence Advocacy Service	0	511,492	0	\$511,492
Elizabeth Evatt Community Legal Centre	250,095	208,108	98,470	\$556,672
Environmental Defender's Office Ltd	0	223,647	825,000	\$1,048,647
Far West Community Legal Centre	494,587	0	67,657	\$562,244
Financial Rights Legal Centre	431,131	153,851	0	\$584,982
HIV/AIDS Legal Centre	151,346	100,102	135,313	\$386,762
Hume Riverina Community Legal Service	76,440	0	75,984	\$152,424
Hunter Community Legal Centre	646,215	298,436	0	\$944,651
Illawarra Legal Centre	559,497	235,272	103,857	\$898,627
Immigration Advice & Rights Centre	215,976	283,555	0	\$499,532
Inner City Legal Centre	185,193	189,017	72,360	\$446,570
Intellectual Disability Rights Service	0	0	104,088	\$104,088
Kingsford Legal Centre	303,439	152,008	0	\$455,447
Macarthur Legal Centre	422,240	231,960	103,857	\$758,058
Marrickville Legal Centre	334,897	336,441	0	\$671,339
Mid North Coast Community Legal Centre	368,133	133,934	0	\$502,067
North & North West Community Legal Service	411,298	20,622	104,088	\$536,008
Northern Rivers Community Legal Centre	573,666	58,982	145,338	\$777,986
Public Interest Advocacy Centre	135,606	143,470	990,000	\$1,269,076
Redfern Legal Centre	237,877	293,636	0	\$531,512
Refugee Advice & Casework Service	0	80,000	104,088	\$184,088
Seniors Rights Service	123,224	2,920	239,267	\$365,410
Shoalcoast Community Legal Centre	476,421	264,380	41,250	\$782,050
South West Sydney Legal Centre	469,754	277,117	0	\$746,871
Tenants' Union of NSW	89,148	143,127	0	\$232,274
Welfare Rights Centre	434,541	144,472	0	\$579,013
Western NSW Community Legal Centre	499,351	59,315	104,088	\$662,753
Western Sydney Community Legal Centre - Parramatta	478,000	323,275	250,427	\$1,051,702
Western Sydney Community Legal Centre - Rookby Hill	509,510	20,516	0	\$530,026
Western Sydney Community Legal Centre - Windsor	245,450	149,433	139,720	\$534,602
Wirrunga Baiya Aboriginal Women's Legal Centre	0	548,641	104,088	\$652,729
Women's Legal Service NSW	816,774	378,912	0	\$1,195,686
Interpreter Services	0	50,708	0	\$50,708
Administrative Efficiencies Project Allocation	430,770	0	0	\$430,770
TOTAL	11,582,192	6,417,541	4,193,314	22,193,047

NOTES

- The above funding excludes funding provided to CLCs of \$442,223 Care Partner arrangements under the 'Safe Home for Life' Reforms.
- Excludes \$405,000 paid to the National Association of Community Legal Centres for developing the CLASS Database.
- The Commonwealth funding includes \$430,770 in project funding provided to CLCs for projects to implement administrative efficiencies. This was provided to Marrickville Legal Centre, Welfare Rights Centre, Far West CLC, Elizabeth Evatt CLC, and CLC NSW.
- Both State and Commonwealth funding includes the Social and Community Services Equal Remuneration Order supplementation.
- The Public Purpose Fund funding includes allocations for the Children's Court Assistance Schemes run by four CLCs.
- The table excludes funding from the National Partnership Agreement that is retained by Legal Aid NSW for program management and jurisdictional planning.

Appendix D – the LAW Survey

The Legal Australia Wide Survey (LAW Survey) conducted by the Law and Justice foundation and published in 2012 is the most comprehensive quantitative analysis of legal need ever conducted in Australia. It involved telephone interviews with over 20,700 people across Australia, including over 4,000 people from NSW. It provides insights into the prevalence of legal problems across the community and for different groups, the impact of legal problems, how they are resolved and the reasons people do not resolve legal problems.²³⁰

It also collected 11 categories of demographic data on respondents including:

- Gender
- Age
- Indigenous status
- Disability status
- Education level
- Employment status
- Family status (single parent or other)
- Main income (government payment or other)
- Main language (English or non-English)
- Housing type (disadvantaged housing or other. Disadvantaged housing referred to respondents who at any time during the previous 12 months were homeless, lived in emergency or basic accommodation, lived with relatives or friends because they had nowhere else to live, or lived in public housing)
- Remoteness of residential area (remote, regional or major city).²³¹

Whilst the LAW Survey provides invaluable insights, it also has some limitations. Participants were randomly selected by random digit dialling landlines, and only one respondent per household was interviewed. Quotas were used to help ensure the participants represented the demographics of the community. However, as only landlines were used, the LAW Survey is unlikely to have reached people living without landlines including many Indigenous people, particularly in remote areas, homeless people and other households without landline access.²³²

²³⁰ Law and Justice Foundation, *LAW Survey NSW*, one page summary.

²³¹ Law and Justice Foundation, *LAW Survey NSW*, pp 46 & 305-307.

²³² Law and Justice Foundation, *LAW Survey NSW*, pp 52- 54.