



Review of the National Partnership Agreement on Legal Assistance Services 2015-2020

Submission to Urbis Review Team
July 2018

[Contents](#)

- CONTENTS.....2**
- OVERVIEW3**
 - INTRODUCTION.....3
 - OVERVIEW3
 - KEY POINTS4
- WHAT ARE COMMUNITY LEGAL CENTRES?5**
 - SERVICE DELIVERY7
 - SECTOR EFFICIENCY7
 - Volunteer and Pro Bono Contributions.....8*
 - QUALITY SERVICES AND CONTINUOUS IMPROVEMENT9
 - The National Accreditation Scheme9*
 - Risk Management and PII Scheme10*
 - STRATEGIC POLICY, ADVOCACY AND LAW REFORM WORK.....11
- IMPACT AND OPERATION OF THE NPA12**
- COLLABORATIVE SERVICE PLANNING.....13**
- CURRENT FUNDING ARRANGEMENTS.....14**
 - QUANTUM OF FUNDING14
 - THE NEED FOR CERTAIN, PREDICTABLE AND LONG-TERM FUNDING14
 - INTERACTION OF NPA AND OTHER FUNDING ARRANGEMENTS.....15
- PERFORMANCE MONITORING AND REPORTING15**
 - SECTOR DATA AND CLASS15
- ROLES AND RESPONSIBILITIES.....17**
 - OVERVIEW17
 - THE WORK AND VALUE OF PEAK BODIES17
- NEXT STEPS AND FURTHER INFORMATION18**

Overview

Introduction

The National Association of Community Legal Centres (NACLC) provides this preliminary submission to Urbis for the purposes of informing the current review of the *National Partnership Agreement on Legal Assistance Services 2015-2020* (NPA).

NACLC is the national peak body for the community legal sector. Our members are the eight State and Territory Community Legal Centre Associations. A number of Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) are members of their State and Territory CLC Association, and so also fall under the NACLC umbrella.

NACLC will be engaging with the Review through a variety of mechanisms, including as a member of the Advisory Group; this initial submission; further written submissions; and direct consultations and engagement with the Review Team. The purpose of this submission is to provide a preliminary overview of the sector and some of the key issues NACLC suggests the Review Team should consider in the early stages of this Review.

Each of the four publicly funded legal assistance services: Community Legal Centres (CLCs), Legal Aid Commissions (LACs), ATSILS and FVPLS play an important, unique and complimentary role in providing legal help to people across Australia. However, the focus of this submission is on CLCs. NACLC will engage separately in the concurrent review of the Indigenous Legal Assistance Program (ILAP) and evaluation of the FVPLS.

Overview

Community legal centres provide free legal assistance to hundreds of thousands of everyday people as well as vulnerable and disadvantaged members of the community every year. CLCs are a critical and unique part of the legal assistance sector. CLCs are imbedded in local communities, working in a holistic, client-centred and multidisciplinary way. Centres play a crucial and effective role in assisting people to resolve their legal problems at an early stage, and in meeting rising demand for legal assistance as well as contributing to systemic reform.

The commencement of the NPA in 2015 fundamentally changed the administration and funding of CLCs nationally. In particular, State and Territory Governments have become increasingly involved in mapping and planning delivery of legal assistance services and allocating funding to the sector. There is significant inconsistency across jurisdictions and State and Territory Governments have taken vastly different approaches to the funding and administration of the sector since 2015, with mixed results.

This Review provides a useful opportunity to consider the operation of the NPA, the various roles and responsibilities of the parties to the NPA as well as the legal assistance sector and ways to improve the NPA and funding and administration of the sector moving forward. Importantly however, the NPA is one component of the broader legislative and policy setting within which the legal assistance sector operates.

The Review builds on a substantial evidence base and a number of reviews and inquiries over recent years, including the key national review by the Productivity Commission through its 2014 Access to Justice Arrangements Inquiry.¹ In addition, there have also been a number of state and territory reviews of CLC funding programs and CLCs more broadly. Reviews were completed in Victoria in 1998² and 2016,³ Queensland in 1999 and 2012,⁴ Western Australia in 2003 and 2009⁵, New South Wales in 2006⁶ and 2012⁷ and South Australia in 2016.⁸ Current reviews of the sector in NSW and Tasmania are ongoing.

Key Points

At the outset, NACLCL makes the following high-level points and suggestions to inform the Review, many of which are explained in more detail later in the submission:

- There is significant **unmet legal need** across Australia.⁹ While we understand additional research on legal need in Australia is outside the scope of this Review, it is important to note that significant unmet legal need exists and that measurement of that need is an important component of determining what funding is necessary to meet legal need, and to provide a baseline for planning of services.
- Commonwealth, State and Territory Governments all have responsibility for funding and supporting the legal assistance sector. However, the **Commonwealth Government has a particular leadership role** to play in a number of key areas.
- NACLCL supports the principle that decisions about CLC and legal assistance funding should be made by way of a **transparent, consistent and evidence-based mechanisms** or models taking into account evidence and analysis of met and unmet legal needs.
- Ensuring **certain, predictable, long-term and sustainable funding** for the sector is a vital part of ensuring it can operate most effectively
- Current resourcing of the legal assistance sector is insufficient in the face of existing and rising legal need across Australia. As a result, and consistent with the findings of numerous inquiries and reviews, there is a need for **additional funding** for the legal assistance sector from Commonwealth as well as State and Territory Governments.

¹ See relevant NACLCL submissions to the Productivity Commission Access to Justice Arrangements Inquiry here: http://www.naclcl.org.au/cb_pages/submissions.php

² Impact Consulting Group, *Review of the Victorian CLC Funding Program*, Final Report (1998).

³ Victorian Government, *Access to Justice Review*, Report and Recommendations, Volumes 1 & 2 (2016).

⁴ Department of Justice and Attorney General Queensland, *Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund: Final Report* (2012).

⁵ Community Legal Centre Review Steering Committee, *Joint Review of Community Legal Centres* (2003); URS, *Demographic and Socio-economic Analysis of Western Australia* (2003), prepared for the Joint Review of WA Community Legal Centres; and Kalico Consulting, *2003 Joint Community Legal Centre Review Update Report* (2009), prepared for WA Community Legal Centre Consultative Committee.

⁶ Legal Aid Commission of New South Wales, *Review of the NSW Community Legal Centres Funding Program* (2006).

⁷ NSW Department of Attorney General and Justice, *Review of the Delivery of Legal Assistance Services to the NSW Community* (June 2012).

⁸ Ernst and Young, *SA Community Legal Centres Service Review Project*, Final Report (January 2016) accessed at:

<https://www.agd.sa.gov.au/projects-and-consultations/new-community-legal-service-model/review-community-legal-services>

⁹ See, eg: Law and Justice Foundation NSW, Collaborative Planning Resource- Jurisdictional Data (2016); Productivity Commission, *Access to Justice Arrangements*, Final Report (December 2014), sections 21.4 and 21.5. CLCs across Australia report very high rates of turnaways, for example the 2016 National CLC Census reported 169,513 people turned away nationally, largely due to lack of resources: NACLCL, *National CLC Census* (2016).

- In recommending and implementing changes to the legal assistance sector and broader justice system, as well as the funding and administration of the sector, NACLCL emphasises the importance of **co-design, collaboration and consultation** with all legal assistance providers. Importantly, this requires true and genuine partnership, including clear agreements and partnership principles that outline how government, system managers and the sector work together and the roles and expectations of each.
- NACLCL considers that a **collaborative approach** to identifying and responding to legal need, planning services and allocating funds accordingly is the most appropriate and effective approach.
- A key part of ensuring the legal assistance system operates effectively and the objectives and outcomes of the NPA are met is the work undertaken by peak sector bodies nationally and in individual jurisdictions. Funding and support for, as well as engagement with, a **peak sector body** results in more positive outcomes for government, the sector and the community.
- 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.
- In considering the work or value of CLCs, or designing funding methodology, it is vital to recognise the importance of the prevention and early intervention work of CLCs, including **law reform, policy and advocacy and broader public interest work**.

What are Community Legal Centres?

There are around 190 CLCs nationally and in 2017-2018 centre provided over 470,000 services to people across Australia.

The CLC sector includes:

- generalist CLCs that provide legal assistance in a wide range of areas of law people in their local community, including in relation to family law and family violence, credit and debt, consumer law, social security, migration, tenancy, discrimination, employment and child protection
- specialist CLCs which provide services to a particular target group and/or in a particular specialist area of law. For example, there are specialist services for women, tenants, consumer and credit, welfare rights, refugees, older persons, children and youth, and people with disability, among others.
- a number of national centres and several that provide cross-border services, or have offices in multiple jurisdictions
- stand-alone centres and a number that are auspiced as part of larger organisations, and
- a number of National Networks of community legal centres which bring together centres working in particular areas of law or with particular population groups to share information, undertake policy and advocacy work.

The key characteristics of a CLC, as recognised in the sector agreed definition and criteria for recognition of an organisation as a CLC is as follows:

A community legal centre is an organisation that:

- Is independent from government, commercial and professional bodies
- Is not-for-profit, community based, and has goals and priorities established in response to the needs of its community (geographic / specialist)

- Provides legal and/or related services
- Develops effective ways of informing community members of their legal rights and responsibilities
- Provides disadvantaged members of the community, and/or the public generally in public interest matters, with access to legal and related information and/or services
- Advocates for the development of laws, administrative practices and a legal justice system which are fair, just and accessible to all
- Develops and maintains close links with its community to ensure that areas of unmet legal need are detected and appropriate services developed
- Has developed, and continues to develop, management and operational structures which enable the involvement of the community or communities it serves.

Community legal centres deliver a range of services including information, legal advice, non-legal support, casework and representation services, duty lawyer services and provide referrals. CLCs also utilise a range of early intervention and preventative strategies such as community legal education and community development, individual skill building, systemic advocacy and law and policy reform activities. More broadly, CLCs also play a key role in community engagement, developing and facilitating partnerships between legal assistance providers and legal and non-legal services, and developing and maintaining referral networks and protocols.

Importantly, the uniqueness of CLCs includes that centres are:

- imbedded in and connected to their communities (whether geographical or based on a characteristic or experience)
- provide client-centred, wrap-around, holistic and culturally appropriate services
- deliver efficient, effective and innovative services
- often comprise multidisciplinary teams and service delivery models
- have strong national quality service systems focused on continuous improvement, in particular the National Accreditation Scheme coordinated by NALCLC
- respond to the needs of their community and have sufficient flexibility to be able to adapt service delivery responses quickly in response to changing legal need
- use frontline service delivery to inform broader systemic work, including law reform, policy and strategic advocacy
- are able to increase the capacity and services of centres through utilising significant volunteer programs and pro bono assistance
- are designing and implementing innovative approaches and solutions to working with clients and addressing legal problems

Service Delivery

Community legal centres provide services across a range of areas of law, primarily civil and family law. The top four areas of law in which centres provided services in 2017-2018 were:

1. Family law (in particular, parenting arrangements)
2. Credit and debt
3. Housing
4. Family violence protection orders

Centres provide a range of services across Australia, including for example:

- Information, legal advice, non-legal support, casework and representation for individual clients across a wide range of civil law areas (for example: family law, credit/debt, housing/tenancy, social security, victims' compensation, family violence, elder abuse)
- Duty lawyer services
- Community legal education- activities and resources
- Outreach to rural, regional and remote locations and communities as well as places like prisons
- Services through specialist programs and units, including for example for people experiencing homelessness, elder abuse or family violence
- Multidisciplinary practices, including for example through Health Justice Partnerships

Community legal centres aim to put the client at the centre of their work and service planning and delivery. Often people seeking assistance from CLCs are experiencing a range of legal problems which may require both legal and non-legal assistance and solutions. As a result, in providing holistic and client-centred services, CLCs often:

- seek to assist clients by providing legal services as well as attempting wherever possible to assist people in resolving the causes of their legal problems
- coordinate client access to other legal services, for example, by seeking tertiary advice from a specialist legal centre, or doing a supported or 'warm' referral to another legal service
- rely on multidisciplinary teams to provide clients with support by non-legal staff including financial counsellors, social workers, Aboriginal and Torres Strait Islander Liaison officers/support workers and others as well as through the establishment of Health Justice Partnerships
- have strong partnerships with other community organisations and support services

Sector Efficiency

CLCs are committed to achieving the best possible outcomes for their clients through the delivery of efficient, effective and innovative services and commitment to continuous improvement. As part of this, CLCs are at the forefront of leveraging better outcomes through a variety of means and the peak CLC bodies further support and enhance the efficiency of CLC operations and service delivery.

NACLCLC and State and Territory CLC Associations provide and continue to explore ways to further enhance the efficient operation of the sector and centres. For example, NACLCLC coordinates a number of national services and schemes such as the National Community Legal Sector Insurances Scheme which

provides tailored and highly discounted bulk insurances to the sector. Importantly, a number of State and Territory Associations have recently completed projects looking at other 'efficiencies' and savings.¹⁰ Importantly however, many such projects have identified limited areas for reductions or savings in the operating budgets of CLCs due to historical underinvestment in core services and systems (with funding instead primarily directed to frontline services).

As CLCs are imbedded in community and are often relatively small organisations, they are well placed to respond to the needs of their community and have sufficient flexibility to be able to adapt service delivery responses quickly in response to changing legal need. Centres are also able to innovate and adapt to meet the needs of their clients.

In addition, numerous centres across Australia have undertaken or explored mergers, co-location, bulk purchasing arrangements, shared services, joint investments, fee for service, social enterprises and similar.

Volunteer and Pro Bono Contributions

The extent of volunteer involvement that CLCs are able to garner sets them apart from the other legal assistance providers and significantly increases their capacity and extends areas of expertise. For example, volunteers contributed over 889,096 hours to CLCs in 2015-2016.¹¹ Using 2013-2014 figures, NACLCL estimates that the total return on investment amount, (that is the monetary contribution of volunteer lawyers and law students in 2013-2014 with a deduction for time spent by CLC staff on induction, supervision and training) was \$8.47 million.

CLCs are also effective at gaining significant pro bono contributions from private law firms, adding to both their service delivery capacity but also saving money in other areas of their operations, money that is put to legal service delivery. For example, in 2015-16 over 57,848 hours were contributed by pro bono partners to CLCs across Australia.

It is, however, important to recognise that pro bono resources are only available in limited supply and that the resources required to establish and maintain pro bono relationships can be significant. Whilst CLCs will continue to utilise the valuable support of pro bono lawyers, the scope for leveraging greater efficiencies via these important relationships is limited. CLCs are well versed in leveraging the maximum client benefit from the resources available to them. Across Australia CLCs are proactively examining any possible opportunities for further efficiency. Where assessed as valuable, such approaches build on the already highly efficient nature of CLC operations, which already generally operate on extremely tight budgets.

CLCs also have a long history of collaboration with universities, primarily through student legal clinics and similar, which further expand the capacity of the sector.

¹⁰ For example, Community Legal Centres Queensland, Blood from a stone: Trying to reduce costs in an underfunded community legal sector (2017); Community Legal Centres Association of WA, Models of Sustainability Project (2017); and Community Legal Centres NSW Administrative Efficiencies Program (2015-2017). Other projects and initiatives include for example, the Community Legal Centres NSW Financial Services Project and ICT projects.

¹¹ NACLCL, National Census of CLCs, National Report (2016)
<http://www.naclc.org.au/resources/NAACLCL%20Census%202016%20National%20Report%20-%20FINAL.pdf>

Quality Services and Continuous Improvement

Community legal centres are subject to a number of governance arrangements and accountability requirements, including:

- the NALCL National Accreditation Scheme's (NAS) continuous assessment of CLCs against the Scheme's Accreditation Criteria and Standards
- the Mandatory Standards of NALCL's Risk Management Guide (RMG)
- obligations arising from CLCs' status as companies and associated incorporations, and in many cases as charities and not-for-profit organisations duplicated at a Commonwealth and State and Territory levels
- requirements arising under Commonwealth, state and territory government funding agreements and the terms of funding arrangements with other bodies such as philanthropic organisations
- memoranda of understanding and agreements made in relation to formal partnerships and collaborations
- legal profession regulation and ethical obligations contained in legislation, Solicitors Conduct Rules (or equivalent) and case law, and
- professional regulation requirements of other professionals who work with or within CLCs, such as social workers and counsellors, youth workers, and accountants.

The National Accreditation Scheme

NALCL is unsure how much information the Review Team has been provided with in relation to the National Accreditation Scheme (NAS), but NALCL considers that it plays a vital role in quality assurance for all CLCs as well as in directly informing the work of peak bodies in providing training and support across the sector in areas identified through the accreditation of centres.

The NAS is an industry-led quality assurance partnership between NALCL and the eight state and territory CLC associations. The Scheme was developed in 2011 to provide an industry-based certification process for CLCs that supports organisational development and gives recognition to good practice in the delivery of community legal services.

Full members of state and territory CLC associations are required to participate in the NAS and demonstrate that they satisfactorily comply with or they are actively working towards satisfactory compliance with, the NALCL Accreditation Criteria. The NALCL Accreditation Criteria include the 17 NAS Standards listed in the NAS *Guidelines* and the Mandatory Standards of the Risk Management Guide (discussed in more detail below).

Importantly, the independent review of the NAS conducted in late 2014 found that the Scheme had benefitted the CLC sector and had positive effects on the operation of CLCs and their services.¹² The Scheme is currently in Phase 2, with a third Phase planned for roll-out.

The National Accreditation Standards cover four main areas:

- Governance, management and Administration

¹² The Review Report is available from the NALCL website, here: <http://www.nalcl.org.au/resources/Final%20report%20of%20Review%20of%20the%20NAS%20%20%20November%202014.pdf>

- Provision of Legal Services
- Community Development, Education and Reform Activities
- Access, Inclusion and Client Feedback

Assessment against these Standards is a rigorous process and involves online self-assessment, external assessment of the resulting reports, and site visits to test implementation and practices 'on the ground', including interviews with staff, Board/Management Committee members and clients by an Accreditation Coordinator.

The Scheme takes a continuous improvement approach: its aim in the first phase was to support and gradually improve the quality of services in CLCs, however during the second three-year phase, centres are expected to move past simple compliance, and toward good (and better) practice. Accreditation is for a three-year period, during which time the centres must show progress towards key actions in their Implementation Plan.

Importantly, various State and Territory Governments, particularly in NSW and Queensland rely heavily on the NAS which has replaced and/or supplemented state government led quality reviews or audits of service standards. For example, in Queensland accredited CLCs are regarded as complying with the Human Services Quality Framework which is specifically designed to reduce red tape by allowing state funded non-government organisations to conform with only one set of quality standards. The NAS Standards have been specifically mapped against the HSQF. In addition, a number of other funding bodies have expressed support for the NAS as a strong quality assurance framework for delivery of legal assistance services.

Risk Management and PII Scheme

As noted above, full members of state and territory CLC associations are required to comply with the NAS Accreditation Criteria as well as the Mandatory Standards of the Risk Management Guide. The RMG:

- sets out the national policy framework for risk management of legal practice and related services delivery in CLCs
- provides information about the National Professional Indemnity Insurance (PII) Scheme and its requirements
- sets minimum risk management Mandatory Standards for centres that are full members of a state or territory CLC association
- provides additional recommended risk management guidelines and procedures that are good practice and can be adopted by centres

The Mandatory Standards cover issues including:

- supervision of a centre by a Responsible Person
- delegations
- insurance, notifications and claims
- trust monies
- the work of non-legal staff such as social workers, financial counsellors and others
- confidentiality and conflicts of interest
- specialist programs and auspiced programs

- intake and files, and
- cross-checking (which is an annual process through which every full member centre is assessed against their compliance with the RMG).

The obligation on centres participating in the National PII Scheme to comply with the RMG's Mandatory Standards has been specifically reinforced by provisions in the common membership rules adopted by all CLC state and territory associations. Centres that are full members of a state or territory association, but do not obtain their PII through NACLCL's scheme, are still required to comply with the Mandatory Standards of the RMG.

The PII Scheme is recognised by state and territory law societies, which allow CLC lawyers to be part of this PII policy rather than jurisdiction-specific schemes, and exempt CLC lawyers from payment of fidelity fees.

As a result, the RMG provides an essential framework for risk management framework of legal service delivery by CLCs.

Strategic Policy, Advocacy and Law Reform Work

Community legal centres have a long and successful history of bringing about systemic change through policy, advocacy and law reform. This work is crucial in identifying and encouraging reform of laws, policies and practices that are not operating effectively or equitably.

Unfortunately however, CLCs that receive Commonwealth funding under the NPA have been restricted from undertaking advocacy work with Commonwealth funding. NACLCL and the sector have long expressed the view that the NPA should be amended to remove this restriction and acknowledge the value of this work.

The work CLCs undertake is interrelated- assisting individual clients through advice and casework enables CLC lawyers to not only assist the individual, but also identify laws, policies and practices that adversely or inequitably impact on disadvantaged people or vulnerable groups in the community. As a result, CLCs are in an excellent position to identify recurring causes of legal problems, such as unclear laws, or unlawful or unfair practices.

The work done by CLCs benefits individual CLC clients, most of whom are disadvantaged or vulnerable in multiple ways, and this is the focus of CLCs' work. However, it is also important to recognise the broader benefit generated by law reform and advocacy work to other members of the community. In some instances, the most efficient means of avoiding or resolving civil disputes, particularly those arising from unfair operation or application of a law or policy, is to advocate for legislative, policy or practice reform. Accordingly, this work constitutes a core prevention strategy.

The value of this work has been recognised in a number of contexts, including the Productivity Commission Inquiry into Access to Justice Arrangements.

In its report, the Productivity Commission stated that CLCs play a key role in law reform, policy and advocacy, that it should be a 'core activity' of CLCs and 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'.¹³

¹³ Productivity Commission of Australia, Access to Justice Arrangements Inquiry (2014) Final Report, Vol 2, 709.

The Commission also expressed the view that ‘strategic advocacy can benefit those people affected by a particular systemic issue, but, by clarifying the law, it can also benefit the community more broadly and improve access to justice (known as positive spill-overs or externalities)’. It ultimately recommended that “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.”¹⁴

Impact and Operation of the NPA

As outlined above, the commencement of the NPA in 2015 fundamentally changed the administration and funding of CLCs nationally. In particular, State and Territory governments have become increasingly involved in mapping and planning delivery of legal assistance services and allocating funding to the sector.

While the NPA contains a number of high-level requirements about funding and administration of CLCs as well as performance indicators and benchmarks, NACLCL has observed there is significant inconsistency across jurisdictions and state and territory governments have taken vastly different approaches to the funding and administration of the sector since 2015, with mixed results.

CLC have been providing high quality services to communities over many years. The NPA has not had a significant impact on the delivery of these services.

More broadly however, in our view, the negotiation and implementation of the NPA has largely been a ‘missed opportunity’. The potential opportunities for a shift to transparent and evidence-based funding allocations; greater funding certainty; more effective collaboration between governments and the legal assistance sector; and a true and shared responsibility for the funding and administration of the sector by Commonwealth and State and Territory Governments have not been realised.

That said, despite this and the associated challenges (for example the 30% ‘funding cliff’ facing centres in 2017), the sector has continued to provide extremely high-quality services to hundreds of thousands of people across Australia each year.

NACLCL will make more detailed submissions about the impact and operation of the NPA throughout the Review, however at the outset we make the following points. The implementation of the NPA in practice has revealed, for example:

- The need for greater Commonwealth leadership to support good practice and national consistency
- The need for more meaningful and shared engagement and responsibility between the Commonwealth and State and Territory Governments for the sector, including in relation to ‘vision’ for the sector and funding quantum
- The potential for improvements to the design and operation of Collaborative Service Planning (outlined in more detail below)
- The impact of limited up-front investment in sector-wide initiatives by Government, without adequate ongoing funding (for example, CLASS and the National Accreditation Scheme)
- The need for greater research into and formal evaluation and articulation of sector work and initiatives

¹⁴ Ibid, Vol 1, rec 21.1.

These issues are explored in more detail later in this submission and will be addressed in further written submissions.

Importantly, the NPA is one component of the broader legislative and policy setting within which the legal assistance sector operates and it is important that this is considered in the course of the Review.

Collaborative Service Planning

There are a number of components to ensuring appropriate coverage of services across Australia and that those services are responsive, effective and holistic. The central component is adequate, sustainable and predictable funding of services to meet legal need.

To ensure legal and related services are provided in an appropriate and effective way, there is also a need for co-design, coordination and collaboration between governments, the community legal sector, LACs and other providers of legal and non-legal support and assistance. Given the availability of insufficient funding to meet legal need, there is also a need to determine ways in which to target and tailor delivery of services to best meet the needs of priority groups or people who seek legal help in priority areas.

One of the key processes and mechanisms most likely to support the achievement of these things is collaborative service planning (CSP). While CSP is a term developed in the context of the NPA, collaboration in relation to service delivery and planning has been occurring across the sector over many years.

There is significant inconsistency and limited information-sharing across jurisdictions, resulting in widely different practice and duplication of work underlying CSP. In our view, CSP under the NPA is not currently occurring in an effective way across Australia, or in a way that contributes to the objective and outcomes of the NPA.

As a result, there are significant opportunities for improvement upon existing CSP frameworks, mechanisms and processes across Australia.

NACLC suggests the following hallmarks of CSP that could usefully inform consideration of CSP in the course of the Review:

- **All legal assistance providers**, including Community Legal Centres, Legal Aid Commissions, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services should be involved in CSP (whether funded under the NPA or not)
- All providers must be treated **equally** as part of collaborative service planning. Consultation, discussion and collaboration must be genuine, respectful and in good faith.
- **Additional and specific funding** should be provided to the sector to undertake and engage in CSP
- CSP processes should be governed by **clear structures, processes, project plans and timetables** (including appropriate implementation and monitoring mechanisms and provision of progress reports) as well as appropriate timeframes for consultation and decision-making.
- CSP should occur at (or be informed by input from) **national, State and Territory and regional/local levels**, each feeding into the other
- **Peak CLC bodies** have a key role to play in CSP and should be funded accordingly

- It is vital that a solid, relevant and current **evidence-base** is established to inform CSP that is easily accessible to governments and the sector.
- There is a need to ensure that both quantitative and qualitative data is captured and considered as part of CSP so that it is a **‘data informed’** process rather than ‘data driven’ process.
- CSP processes and outcomes should inform **the allocation of Commonwealth and State/Territory funding** for legal assistance services (not limited to the NPA), but those decisions should be made by way of separate and independent process(es).
- It is important that senior and wherever possible, consistent representatives from organisations are involved in CSP mechanisms and processes and that they are provided with appropriate **support, training and resources** to support their engagement.
- It is important for CSP to consider and account for specialist and generalist services; national and state-wide services; and pro bono services and partnerships
- CSP should involve mapping and planning of direct client service delivery, but also **Community Legal Education and systemic law reform/policy work**
- CSP is likely to be an iterative process and it is important for there to be **monitoring and accountability mechanisms** in place, including reviews of CSP to ensure the structure, processes and outcomes are effective and appropriate.

Current Funding Arrangements

Quantum of Funding

The Terms of Reference for this Review are clear about the purpose of the Review, which includes assessing the “effectiveness, efficiency and appropriateness of the NPA as a mechanism for achieving its objectives and outcomes within available resources”. However it also states that the Review will not consider whether existing funding is sufficient to meet legal need in Australia.

In our view, the insufficient level of funding currently provided to the sector under the NPA to meet legal need is a key barrier to meeting its stated objectives and outcomes.

As a result, while acknowledging that the issue of the overall quantum of funding may fall outside the scope of the Terms of Reference for this Review, NACLC strongly encourage the Review Team, consistent with the Terms of Reference, to ensure that in considering whether the outcomes and objectives of the NPA have been met, there is also consideration of the resources that have been available (or not available) to meet those and the implications.

The Need for Certain, Predictable and Long-Term Funding

In addition to issues that arise from the quantum of funding for the legal assistance sector, funding for the sector has also been characterised by significant uncertainty.

This uncertainty has arisen despite the 5-year NPA being in place as a result of:

- the particular funding circumstances under this NPA
- the allocation of the Commonwealth component of sector funding to each State and Territory Government which is then subject to varying decision-making processes and mechanisms for allocating the funding (either directly from the relevant Department of Justice or in some jurisdictions, the Legal Aid Commission). For example, State Governments often wait for their

- own State Budget processes and/or allocations of solicitors' trust funds prior to making decisions about the allocation of overall funding to individual centres, and
- varying length of service agreements across jurisdictions

Funding uncertainty has which makes decisions about service delivery, staffing, and related issues very difficult. This uncertainty and the ongoing need for CLCs to undertake funding-related activities including fundraising and applying for grants reduces the ability of CLCs to dedicate resources to front-line service delivery, or explore innovative service delivery models. For example, the results of the 2016 NACLCLC Census indicate that CLCs spent over 2,477 per week during 2015-2016 on funding-related activities.

It also makes effective service planning difficult. For example, the 2016 Victorian Review recommended that the Victorian Government (and Victoria Legal Aid) should provide four-year funding allocations for legal assistance specifically to improve the ability of legal assistance services (including CLCs) to plan service provision.¹⁵

Accordingly, one of the key reflections on the NPA is its failure to provide certain, predictable or long-term funding for the sector and the need to consider ways to ensure these principles underlie funding decisions and processes under any new NPA.

[Interaction of NPA and Other Funding Arrangements](#)

NACLCLC will address issues relating to the interaction of the NPA and other funding arrangements in more detail in later submissions. However, the important preliminary point is that one of the key outcomes following introduction of the NPA that the sector was supportive of was a shift to transparent, evidence-based funding allocations. The NPA framework provided an opportunity to consolidate multiple funding sources to be governed by and decided using one framework/mechanism.

Unfortunately however, Government announcements of welcome additional funding to the sector, including for example under the Women's Safety Package and more recently in relation to elder abuse, have been provided outside the NPA. As a result, there continue to be multiple Commonwealth funding streams to the sector, a lack of transparency or consistency in the way decisions about sector funding allocation are made, and multiple reporting obligations which impose a regulatory burden on the sector.

[Performance Monitoring and Reporting](#)

[Sector Data and CLASS](#)

There is a need for strong, consistent and reliable data to provide a basis for informing government, service providers and others in the development of evidence-based policy with respect to legal assistance and the justice system more broadly.

However, the transition to new data definitions and data collections tools with the introduction of the NPA, has been difficult.

¹⁵ Victorian Government, *Access to Justice Review*, Report and Recommendations, Volumes 1 & 2 (2016), rec 6.7.

Previous national reviews have highlighted problems with data inconsistency and quality and there have been some positive developments in this space, including: development of a National Data Standards Manual; development of a new CLC IT system and associated training; and efforts by NACLC to provide ongoing guidance and support to centres in relation to data entry and reporting and develop nationally consistent approaches to data. However, implementation of these initiatives has been undermined by inadequate dedicated resources.

Data standards

In 2015, the Commonwealth Attorney-General's Department released the National Legal Assistance Data Standards Manual (DSM). The aim of the DSM is to introduce common client and service data recording across all four legal assistance services (CLCs, Legal Aid Commissions, ATSILS and FVPLS).

NACLC is in the process of working with State and Territory Association to develop a national consensus on the implementation of the DSM and will subsequently provide training to all CLCs.

Database

The beginning of 2017 introduced a change in systems for CLCs. Prior to 2017, any CLC funding by Commonwealth Attorney-General's Department was required to use the Community Legal Services Information System (CLSIS).

However with the advent of the NPA, Commonwealth AGD made the decision it would decommission CLSIS. NACLC was provided with some initial but inadequate funding to develop a new system – Community Legal Assistance Service System (CLASS). CLASS was rolled out to CLCs commencing in February 2017.

CLASS is designed to support legal practice management in CLCs (and FVPLS) and fulfil reporting requirements under the NPA and some other funding agreements. Although the first iteration of CLASS is not yet complete, NACLC is continuing to build upon the existing platform to better meet the needs of the sector.

While AGD provided initial development funding, it did not provide enough to meet the costs of development and does not provide ongoing/maintenance funding. The lack of sufficient initial funding, or provision of ongoing funding by AGD, has meant that NACLC is carrying much of the cost of CLASS from within its core budget. NACLC has sought funding from each State and Territory Government to access CLASS reports, and this money is generally taken out of the CLC NPA allocation for each State and Territory.

Challenges

The introduction of the DSM and the roll out of CLASS at the same time has led to some issues with respect to the quality and recording of consistent data across the sector. NACLC is working with State and Territory Associations to develop a common position on data entry into CLASS and has been provided recent additional funding to provide sector training on these issues (which ideally would have been provided prior to the roll-out of CLASS and the DSM). Ultimately, NACLC is working towards improving the quality and recording of consistent data and enhance data collection, reporting and analysis at a national and state level. However, we are currently in a process of change management.

As with any new IT system, there have also been some system and reporting functionality issues which NACLCL continues to work with the developers to address. Many issues that were present when CLASS went “live” have since been resolved. We hope that CLASS will enhance the ability of individual centres to manage their legal practice and access and analyse data about their service delivery, clients and areas of service delivery.

In light of this, NACLCL has developed advice about understanding data reports from CLASS, in particular for the first three years of the NPA. The advice is provided at **Appendix A** of this submission.

Roles and Responsibilities

Overview

In reflecting on the operation of the NPA in practice and the roles and responsibilities of governments and the sector, NACLCL suggests that there is a clear need for:

- a clear vision for the sector moving forward, not only driven by the sector but developed and implemented jointly between governments and the sector
- greater Commonwealth leadership to support good practice and national consistency
- more meaningful and shared engagement and responsibility between the Commonwealth and State and Territory Governments in relation to the funding and administration of the sector
- greater sharing of information and good practice across jurisdictions
- greater co-design, collaboration and consultation with legal assistance providers through true and genuine partnership, including clear agreements and partnership principles that outline how government, system managers and the sector work together and the roles and expectations of each
- increased funding for sector engagement in administrative, funding and planning-related processes and mechanisms, and
- strong and adequately funded peak sector bodies

These issues will be dealt with in more detail in NACLCL’s further written submissions as part of the Review.

The Work and Value of Peak Bodies

Under the NPA, State and Territory Governments are now responsible for determining the allocation of Commonwealth funding to individual CLCs. However, as outlined above approaches to the implementation of the NPA vary significantly between jurisdictions and there is a lack of national consistency or effective operation of a number of processes and mechanisms under the NPA.

As a result, NACLCL plays a key national coordination and support role in relation to the NPA, assisting governments, State and Territory CLC Associations and centres across Australia in relation to funding and NPA implementation issues. NACLCL plays a key role in building the evidence base and supporting good practice service delivery and provides particular assistance to the CLC Associations and centres in many of the jurisdictions that do not have currently have a funded CLC Association.

In the context of a number of ongoing reviews of CLCs at a state and territory level as well as this review, the Indigenous Legal Assistance Program (ILAP) review and FVPLS review, NACLCL will be undertaking considerable additional work of this type in 2018-2019.

In addition, the Commonwealth Government is now reliant on States and Territories to allocate Commonwealth funding under the NPA. However, no additional Commonwealth funding was provided to CLCs or State or Territory CLC Associations across jurisdictions to provide expert input and guidance as part of State and Territory collaborative service planning and processes around the allocation of Commonwealth funding.

Good practice, effective and evidence-based approaches to collaborative service planning and funding allocation should involve the relevant CLC Association in the jurisdiction and/or NACLCL.

Based on NACLCL's experience, funding and support for, as well as engagement with, peak State and Territory CLC associations have resulted in more positive outcomes for government, the sector and the community in specific jurisdictions. As a result, we encourage the Review Team to recognise the importance of the work and funding of NACLCL and State and Territory CLC associations as well as constructive, timely engagement around funding, administration, service delivery planning and policy development for legal assistance services.

We also note the broader importance of peak legal assistance bodies and the need for appropriate funding and support of those bodies, including in particular NATSILS and NFVPLS.

Next Steps and Further Information

We trust that this preliminary submission is useful in informing early understanding of and thinking about the sector in the context of the Review. NACLCL is looking forward to engaging positively with the Review Team throughout the Review through its role on the Advisory Group, consultations and additional written submissions.

Please feel free to contact us if we can provide any additional information. The key NACLCL contacts for the purposes of the NPA Review are:

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