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Attorney-General's Department

By email: Esther.Bogaart@ag.gov.au

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Dear Esther

Feedback on Legal Assistance Discussion Papers

Thank you for the opportunity to provide feedback in relation to the AGD Discussion Papers on Service Priorities and Priority Groups and Jurisdictional Service Planning. As you are aware, ALAF, of which NACLC is a member, has already provided comments in relation to the Draft National Strategic Framework, and will be submitting comments in relation to the Discussion Papers. This letter is a consolidated summary of feedback received from community legal centres (CLCs), state associations of CLCs and NACLC's views.

The Discussion Papers have been considered in their broader context, including the draft National Strategic Framework and discussions between AGD, NACLC and other legal assistance providers.

Service Priorities and Priority Groups Discussion Paper

Priority Groups

NACLC does not have any concerns with the priority groups identified in the Discussion Paper. However, there are some other critical priority groups of disadvantaged people with high levels of legal needs that should be included in any national priority groups in addition to those in the current National Partnership Agreement (NPA).

NACLC considers that it is particularly important that the following groups should be formally recognised as priority groups in future legal assistance arrangements and using the following terminology:

- Aboriginal and Torres Strait Islander peoples
- people with disability, including physical, cognitive and psychosocial disability
- no and low income/financially disadvantaged people, a formulation we suggest is more appropriate than 'people on Government payments'

- people experiencing or at risk of family violence
- people experiencing or at risk of homelessness, and
- children and young people.

NACLC has received feedback from the sector that people in regional, rural and remote areas as well as older people are particular groups that in CLCs' experience should be included in the priority groups.

Given that the overriding aim of the Framework and associated documents is to facilitate equitable access to justice for disadvantaged people, NACLC considers that it is very important that there is flexibility to enable legal assistance service providers to assist particular disadvantaged and vulnerable people who are outside the priority groups.

Further, there should also be provision for legal assistance providers, in appropriate cases, to assist clients in matters in the public interest, for example where their case has the capacity to set a precedent or effect other systemic change, improving the position of a broader group of people, particularly vulnerable and disadvantaged members of the community.

Ideally, regular research to test for changes in legal needs and their indicators and guard against traditional (or new) biases would be conducted to review the priority groups, and, in NACLC's submission, Government should fund such work as needed.

Service Priorities

With respect to the service priorities, NACLC again has no issues with the areas listed but considers that in addition to the current service priorities in the NPA, the following should be included in any national service priorities:

- Commonwealth family law should be expanded to include property matters where the client has complex needs, in particular circumstances that render him or her disadvantaged or vulnerable to disadvantage (but does not have children and is not experiencing or at risk of family violence)
- Commonwealth civil law matters, defined to include employment and anti-discrimination, social security and Commonwealth benefits including the NDIS, migration matters, matters involving the National Credit Code and consumer law including insurance, housing and tenancy issues, and assistance for war veterans, and
- Commonwealth criminal law matters.

NACLC is also of the view that there should be provision for the inclusion of additional service priorities and priority groups at a state/territory level, and in some circumstances, at a regional or local level.

Jurisdictional Service Planning— Decision Making Process Discussion Paper

The Discussion Paper outlines what AGD considers to be the key elements of a jurisdictional service planning process. At the outset, NACLCL reiterates our comments pointing out the existing legal needs assessment work being undertaken by CLCs across Australia, as outlined for example in our submission to the Productivity Commission's Access to Justice Arrangements Inquiry.

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

In NACLCL's view, funding should be allocated to the state and territory governments and not to the LACs, though there are concerns amongst the CLC sector with respect to how this might operate in practice. NACLCL is against, as a matter of principle, any option where any one provider is 'in charge' of, or is the only provider involved in, allocating funds for which that provider is eligible. NACLCL considers that is not appropriate for one of the funded bodies to also be the decision-maker for allocation of funds to providers, as it invites lack of confidence in the model and process. This is not to say that LACs should not play a role in administering or managing the funding once allocation has been determined, continuing the valuable role they presently perform. NACLCL also acknowledges that in practice state and territory governments may delegate this function to LACs, but that in such circumstances allocation-related decisions should remain the responsibility of an independent body informed by advice from an interagency advisory body.

Importantly, under any allocation model it is vital to build on the cooperative relationships established between CLCs, LACs, ATSILS and FVPLS, and to ensure that their combined experience and expertise is reflected in targeting resources to best meet legal needs. NACLCL considers that if the Commonwealth delegates decision-making about distribution of funding to the state level, any model for service planning should include a requirement that legal assistance providers including the CLC sector have input into those decisions, for example through a state interagency advisory body which comprises of representatives from each of the four legal assistance providers.

The Service Planning Discussion Paper currently references this as something that may be done at a state level and NACLCL submits that the Commonwealth should make this a requirement of the funding agreement. This is important to ensure an appropriate (high) level of national consistency and some minimum requirements concerning the funding allocation process, for example that it be independent, based on published criteria and transparent.

As noted in recent discussions at ALAF, in considering the role of state interagency forums that might advise on funding allocation, existing state Legal Assistance Forums and Jurisdictional Forums may be a good basis for

establishing such forums, but it should not be assumed that they can or should automatically take up that role, for a range of reasons. The manner in which the LAFs operate varies around the country, and none are resourced to perform such a function – nor the participants ‘chosen’ for this role. Further, participation in the LAFs varies around the country and some of the less resourced providers, especially those operating in RRR areas, may not be as involved or find it easy or even possible to be involved.

Consistent with a move to a transparent and accountable process, it would be important to develop role descriptions and functions with the relevant criteria and experience and skills required of representatives on an interagency forum, and to make these publicly available. The involvement and regular meeting of such forums would enable monitoring of legal need at a jurisdictional basis and allocation of resources as appropriate in light of the diverse and changing legal needs of communities.

As mentioned above, the funding decision-making process itself should be publicly explained and understood.

Importantly, NACLCL considers that the Commonwealth should include a number of basic requirements for state jurisdictional service planning as well as providing additional guidance to state and territory level decision-makers/bodies. For example, we suggest that there should be a requirement that there be no open competitive tendering.

If decisions about distribution of funds are to move to a clearer evidence-based process (something NACLCL supports), the evidence relied upon must be broader than the Australian Bureau of Statistics’ *Socio-Economic Information for Areas* (SEIFA) Index of Relative Socio-Economic Disadvantage (IRSED) data. As identified in the Discussion Paper, there are a number of analytical tools and modelling that may be useful. NACLCL suggests that the National Legal Needs Assessment Toolkit would be useful in assessing legal need in this context.

Relevantly, NACLCL has commissioned a consultant to review the Legal Needs Assessment Framework toolkit and update the legal needs indicators and mapping to LGA level across Australia. This revised version of the toolkit will be available on the NACLCL website within the week. Further legal needs analysis and mapping to a postcode or other lower level is advanced and will be available soon. This work was paid for by NACLCL. Maintenance and update of this toolkit (or similar tools) for use in jurisdictional service planning processes would require Government funding.

NACLCL emphasises that assessment and identification of disadvantage and met and unmet legal need—which are different but overlap—is complex. Consultation with existing legal service providers is important to ensure that other relevant considerations are taken into account. Such considerations include: existence, accessibility and appropriateness of other service providers in the area/s for the particular type of legal needs; other characteristics of some client groups that affect their capacity or willingness to access some types of

services; local demographic considerations such as pockets of disadvantage in affluent LGAs; and types of legal needs that render otherwise well-resourced people vulnerable and disadvantaged.

Finally, in identifying legal needs, service planning should also have regard for additional issues such as the need:

- to identify legal need at national, state and regional/local levels
- for funding and resources to support evidence gathering/data collection
- to retain some flexibility to respond to newly-emerging issues, including for example as a result of the potential effect of Government (at all levels) policy decisions and legislative reform, on legal need
- to recognise that geographic location of services is not necessarily the same as where services are being provided or accessed, and
- to recognise the effect of conflicts of interest and other legal practice requirements on the manner and method in which services can be provided, where, and by whom.

NACLC would be pleased to answer any questions, or discuss these issues with you further.

Yours sincerely



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National Convenor



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