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Steering Committee
Evaluation of the Tasmanian Legal Assistance Sector
c/o Department of Justice
Office of the Secretary
Tasmanian Government

By email: Secretary@justice.tas.gov.au

2 July 2018

Dear Steering Committee Members

Re: Evaluation of the Tasmanian Legal Assistance Sector

The National Association of Community Legal Centres (NACLC) welcomes the opportunity to make a submission to the Evaluation of the Tasmanian Legal Assistance Sector (the Evaluation).

NACLC is the national peak body for the community legal sector. The community legal sector nationally is made up of almost 200 community-based legal services that take client-centred, trauma informed and systemic approaches to legal service delivery. NACLC's members are the eight state and territory community legal centre associations, including relevantly Community Legal Centres Tasmania.

NACLC endorses the submissions made by its member, CLCTas to the Evaluation. This submission is provided to complement and support the CLCTas submission and to provide information on a number of key national and comparative points of relevance to the Review, including:

- the national context for the conduct of the Review
- a discussion of measurement of legal need in Australia
- an overview of funding and administration of CLCs nationally and relevant recent reviews in a number of jurisdictions
- discussion of a number of national 'threads' relating to work of the sector, funding quantum, funding certainty, collaboration, centralised access points and the role of 'system manager'
- an overview of the strong national governance, risk management and continuous improvement framework in place around CLCs
- an overview of the national data framework and systems, and
- the value of a funded peak CLC body at a state level.

Overview

The commencement of the *National Partnership Agreement on Legal Assistance Services 2015-2020* (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, NACLC 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.

In addition, the funding and administration of CLCs across Australia has been the subject of a number of reviews and inquiries and there have been marked changes in a number of jurisdictions. The key national review is the Productivity Commission's 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

In **Appendix A**, NACLC briefly outlines the funding and administration of CLCs in each jurisdiction, highlighting any recent reviews or changes of relevance to this Evaluation.

In this context, NACLC makes the following high-level points and suggestions to inform the Evaluation, many of which are explained in more detail later in the submission:

- There is significant **unmet legal need** across Australia, including in Tasmania.⁹ While no single recent comprehensive mapping of legal need has been undertaken nationally, NACLC suggests that the work done in

¹ See relevant NACLC submissions to the Productivity Commission Access to Justice Arrangements Inquiry here: http://www.naccl.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: NACLC, *National CLC Census* (2016).

Queensland, which draws upon the work of the NSW Law and Justice Foundation, is useful in considering ways to map legal need at a jurisdiction-wide level to date, and that work being undertaken in Victoria may also be useful.¹⁰

- NACLC 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.
- The development of **state level principles and priorities**, consistent with the NPA and National Strategic Framework on Legal Assistance, provide a useful framework to inform policy development and funding allocation
- While it is important to identify legal need, there is no question that resourcing of the legal assistance sector is insufficient in the face of existing and rising legal need. As a result, NACLC strongly recommends provision of **additional funding** to CLCs in Tasmania.
- In recommending and implementing changes to the legal assistance sector and broader justice system in Tasmania, as well as the funding and administration of the sector, NACLC 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.
- Based on NACLC's experience in other jurisdictions, funding and support for, as well as engagement with, a **peak state or territory CLC association**, as occurred in Queensland, have resulted in more positive outcomes for government, the sector and the community. NACLC strongly recommends significantly increased funding for CLCTas as the peak body as well as constructive, timely engagement around funding, administration, service delivery planning and policy development for legal assistance services in Tasmania.
- Based on NACLC's experience in other jurisdictions, where significant changes in the funding or administration of CLCs are likely, including for example where funding cuts are predicted, it is important that appropriate **consultation, support and transitional arrangements** are in place. Conversely, where additional funding is available, there must be recognition of the time taken to develop service delivery plans and

¹⁰ See, eg, Community Legal Centres Queensland, *Updated Evidence and Analysis of Legal Need in Queensland*, (September 2016).

programs and put in place the necessary arrangements to commence new/additional service delivery.

- NACLC considers that a **collaborative approach** to identifying and responding to legal need and allocating funds accordingly is the most appropriate and effective approach. NACLC has serious reservations about any model involving competitive tendering, which in our experience holistic and collaborative approaches to service delivery.
- 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. There are a number of useful outcomes measurement and evaluation projects that have recently been completed by the Federation of Community Legal Centres in Victoria and Community Legal Centres Queensland that could inform thinking and work in Tasmania.
- 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**. Importantly, the Productivity Commission in its 2014 Access to Justice Arrangements Inquiry Final Report endorsed the crucial role that CLCs play through their advocacy and law reform work and stated that ‘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’.¹¹

Legal Need in Australia

Chapter 2 of the Consultation Paper considers legal need in Tasmania. We welcome this consideration given that the assessment of legal need, both by individual centres to inform their approach to service delivery and at a jurisdiction wide level is a vital element of an effective legal assistance sector.

By way of background, ‘legal need’ is defined as legal issues that individuals have not been able to resolve effectively by their own means.¹² The distinction between ‘met’ and ‘unmet’ legal needs is an important one.

Establishing a strong evidence base outlining legal need in Tasmania is an important step in facilitating informed decisions about the funding and administration of the sector, as well as service planning. We understand that to date other than the LAW Survey, this work has not been undertaken at a system-wide level in relation to legal need in Tasmania.

¹¹ Productivity Commission, *Access to Justice Arrangements*, Final Report (December 2014), 709.

¹² JT Johnsen, ‘Legal Needs in a Market Context’ in F Regan, P Paterson, T Goriely and D Fleming (eds) *The Transformation of Legal Aid* (2009), 205-232.

Accordingly, and in response to Consultation Question 2.2, we strongly encourage the Tasmanian Government to fund research and analysis on legal need in Tasmania.

By way of reference, the most recent work done in terms of measuring legal need at a jurisdiction-wide level in Australia (some of which is noted in the Consultation Paper) includes:

- the Collaborative Planning Resource- Service Planning developed by the NSW Law and Justice Foundation (LJF) in 2016 and funded by the Commonwealth Attorney-General's Department which summarises the research evidence on legal need and access to justice and the implications for planning legal service delivery
- the Collaborative Planning Resource- Jurisdictional Data also developed by the LJF in 2016 which brings together three sets of information relevant to making decisions about legal assistance provision including the geographic distribution of the Commonwealth's priority groups for services; the prevalence of experiencing legal problems for each priority group; and the geographic distribution of those most likely to be in need of legal assistance services for financial or other reasons
- updated Evidence and Analysis of Legal Need (2016) developed by Community Legal Centres Queensland which used demographic information as a proxy for legal need and relied heavily on the work of the LJF
- the Legal Australia-Wide Survey (the LAW Survey) conducted by the LJF in 2009
- the Indigenous Legal Needs Project, based at James Cook University, which is the first comprehensive analysis of the civil and family law needs of Aboriginal and Torres Strait Islander people undertaken in Australia,¹³ and
- Australian Council of Social Services (ACOSS) Community Services survey.¹⁴

In addition, the key piece of work that facilitates individual centre-level assessment of legal need is the NACLC Legal Needs Assessment Toolkit. While this tool was designed for individual CLC use, the principles underlying the Toolkit are also useful for jurisdictional-wide service mapping of legal need and related service planning.

The Toolkit represents a way in which CLCs can measure met and unmet legal need in their area and plan strategically to meet it, review progress and respond

¹³ Indigenous Legal Needs Project, accessed at <https://www.jcu.edu.au/indigenous-legal-needs-project>

¹⁴ See, eg, *Australian Community Sector Survey 2014*, accessed at http://www.acoss.org.au/images/uploads/ACSS2014_final.pdf

accordingly. The Toolkit allows centres to analyse their client data and compare it to SEIFA and other data relating to particular client groups in their geographic region. The Tool steps centres through a strategic planning process, so they can base decisions about service delivery on evidence.¹⁵ The Toolkit was updated in 2016 and NACLCL is considering ways in which it might be integrated into CLASS to make it even more useful for CLCs moving forward.

To date there has been no perfect measure of legal need and NACLCL has at least some concerns in relation to many of the bodies of work outlined above. For example:

- with respect to the LAW Survey, the methodology of the survey may have resulted in some common users of CLCs not being surveyed, for example people without landline telephones,¹⁶ and
- the Queensland work was undertaken within a very short timeframe which meant it was not possible to source all necessary data, and was limited somewhat by existing sector data collection tools including CLSIS.

However, for the purposes of this Review NACLCL recommends that the work done in Queensland is the most appropriate and useful approach to considering ways to map legal need at a jurisdiction-wide level. In addition, NACLCL draws the attention of the review team to the work and testing being undertaken in Victoria, outlined in more detail below.

NACLCL also supports the consideration and mapping of legal need at the lowest statistical aggregation possible. NACLCL understands that Statistic Area Level 1 (SA1) is currently the smallest unit for the release of ABS census data and therefore recommends mapping of legal need to SA1 level.

The Work of Community Legal Centres

In our view, the discussion in Chapter 3 about legal assistance service providers does not reference what NACLCL considers to be the hallmarks of CLC identity, practice or service delivery.

It is important to acknowledge the unique role of CLCs in the legal assistance landscape. CLCs play a complementary but distinct role to other providers of legal assistance.

Community legal centres provide legal advice, legal information and referrals and casework. 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

¹⁵ More information about the Legal Needs Assessment Toolkit is available here: http://www.naclc.org.au/cb_pages/legal_needs_assessment_framework.php.

¹⁶ National Association of Community Legal Centres, *Submission to the Productivity Commission Access to Justice Arrangements Inquiry* (November 2013), 11.

non-legal services, and developing and maintaining referral networks and protocols.

The service delivery model of CLCs is a holistic one—in addition to employing lawyers and providing legal services, their work is both responsive, in providing legal services as needed, and proactive, in that they attempt wherever possible to assist people in resolving the causes of their legal problems. Many CLCs also comprise multidisciplinary teams and the involvement of social workers, financial counsellors, Aboriginal and Torres Strait Islander support workers and others as well as models such as Health Justice Partnerships is increasingly common in CLCs across Australia.

Some of the **key distinguishing features** of CLCs not captured in the Consultation Paper include that CLCs:

- are imbedded in and connected to local communities
- respond to the needs of their local community and have sufficient flexibility to be able to adapt service delivery responses quickly in response to changing legal need
- are able to increase the capacity and services of centres through utilising significant volunteer programs and pro bono assistance
- have strong national quality service systems focused on continuous improvement, in particular the National Accreditation Scheme coordinated by NALC (see overview provided at **Appendix B**).

Strategic law reform, policy and advocacy work

In response to Consultation Question 3.18, NALC strongly recommends that State funding fund both frontline service delivery and strategic law reform, policy and advocacy work.

Community legal centres undertake a range of work, including individual casework, community legal education and law reform. These activities interrelate. 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. 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 Draft Report, the Productivity Commission acknowledged that CLCs play a key role in law reform, policy and advocacy and expressed the view that these services should be a 'core activity' of CLCs and that CLCs 'play a key role in identifying and acting on systemic issues'.¹⁷

Further, while the contribution made by CLCs undertaking law reform and advocacy work can be difficult to quantify, the Commission also expressed the view that: 'advocacy can ... be an efficient way to use limited taxpayer dollars' and stated that strategic advocacy can benefit those people affected by a particular systemic issue, but, by clarifying the law, it can also benefit the community more broadly and improve access to justice (known as positive spill-overs or externalities). Advocacy can also be an efficient use of limited resources. It can be an important part of a strategy for maximising the impact of legal assistance sector work.¹⁸

The law reform, policy and advocacy work of CLCs is entirely consistent with the Government's commitment to improving access to justice through the effective and efficient use of available resources. As a result, and in particular given the current restriction on the use of Commonwealth funding to undertake this work, NACLC strongly recommends that the Tasmanian Government fund this work.

National Threads and Key Issues

This section considers a number of important national threads which are relevant to issues raised in the Consultation Paper, including:

- the quantum, or amount, of funding
- long-term, predictable and sustainable funding
- collaboration
- centralised access points, and
- governance

The Quantum of Funding

CLCs are efficient and innovative providers of free legal assistance to everyday people across Australia, including in Tasmania. Unresolved legal problems generate a range of flow-on effects, including multiple and related problems and significant costs to the government and broader community. CLCs as part of the legal assistance sector, play a crucial and effective role in assisting people resolve their legal problems and in meeting rising demand for legal assistance.

The work of CLCs generates savings to governments and the community as a whole. As the Productivity Commission has noted, 'legal assistance services can

¹⁷ Productivity Commission of Australia, Access to Justice Arrangements Draft Report (April 2014), 609, 622, 623, 625.

¹⁸ Productivity Commission of Australia, Access to Justice Arrangements Draft Report (April 2014), 623.

prevent or reduce the escalation of legal problems, which in turn can mean reduced costs to the justice system and lower costs to other taxpayer funded services (in areas such as health, housing and social security payments).¹⁹

As noted above, people experiencing legal problems in Australia are increasingly unable to access legal assistance and there is significant unmet legal need in Australia.²⁰ This is occurring against the backdrop of underfunding of the legal assistance sector (for example, Australia is one of the lower funding nations of legal assistance services on a per capita basis).²¹ The effect of this is that people who are experiencing legal problems are unable to access legal assistance in many cases, and this crisis in legal assistance is worsening.

Chapters 5 and 7 of the Consultation Paper discuss funding streams and methodology for the Tasmanian legal assistance sector.

NALCLC understands that CLCs in Tasmania receive funding from a number of sources, including:

- the Commonwealth Government under the National Partnership Agreement on Legal Assistance Services 2015-2020;
- the Commonwealth Government through funding outside the NPA including as part of the Women's Safety Package
- the State Government- to cover the shortfall in Commonwealth funding under the NPA, a commitment which ends on 30 June 2019; as well as under the Safe Homes, Safe Families- Tasmania's Family Violence Action Plan
- the Solicitors' Guarantee Fund, and
- other State-based sources, including the Law Foundation.

State and Commonwealth Cooperation

Funding for CLCs must be a responsibility shared jointly by Federal, State and Territory Governments.

However, in considering the appropriate level of funding for CLCs in Tasmania there is a clear gap. There has been and continues to be no transparent, public or evidence-based assessment of what the overall quantum of funding for legal assistance should be in Australia to meet legal need. As the Productivity Commission has suggested, 'the total quantum of funds allocated is not sufficient to achieve governments' stated priorities'²² and that 'the global funding envelope

¹⁹ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.

²⁰ See, eg, NALCLC Census; Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014); Senate Legal and Constitutional Affairs Reference Committee, Access to Justice (2009); C Coumarelos et al, Legal Australia-Wide Survey: Legal Need in Australia, Law and Justice Foundation of NSW (2012); Indigenous Legal Needs Project; ACOSS, Australian Community Sector Survey 2014.

²¹ See, eg, Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 735.

²² Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 741.

provided to legal assistance providers by Australian governments should be broadly related to the costs associated with meeting these priorities',²³ which is not currently the case.

As a result, NACLC suggests that to properly inform decisions about allocating funding between jurisdictions using the Funding Allocation Model under the NPA or the right mix of services/clients/areas of law/locations,²⁴ it is necessary to re-examine how decisions are made about the quantum of funding for legal assistance, to quantify the existing extent of underfunding and to determine an appropriate and sustainable quantum of funding in the long-term in light of legal need.

Accordingly, NACLC recommends a cooperative approach between the Commonwealth, State and Territory Governments and the legal assistance sector to determine what the appropriate quantum of funding is for the sector, what the contribution of Commonwealth, State and Territory Governments should be to that quantum, and the appropriate allocation of the quantum to the four key legal assistance providers. Given the variety of Government sources from which CLCs receive funding, a whole-of-government approach to such a determination is vital.

Importantly, the assessment of legal need (both met and unmet) and the need for additional assessment at a national level and existing research and modelling done by the Productivity Commission, must be key considerations in any such process.

Tasmanian Government Funding

The Tasmanian Government contributes a relatively small proportion of funding to CLCs relative to the Commonwealth Government. NACLC understands that State funding makes up less than 15% of CLC funding (compared to between approximately 40-60% in a number of other jurisdictions).

NACLC strongly recommends that the Tasmanian Government should increase State funding for the legal assistance sector consistent with the recommendation made by the Productivity Commission.

In its 2014 Report, the Productivity Commission recommended an immediate injection of \$200 million per year into legal assistance to meet existing need, with 60% contributed by the Commonwealth Government and 40% contributed by State and Territory Governments. Accordingly, NACLC recommends that the Tasmanian Government fund its share of the \$80 million injection from State and Territory Governments.

²³ Ibid 743.

²⁴ "In an environment of constrained resources, it is important to establish that legal assistance providers are providing the 'right' mix of services, to the 'right' clients, in the 'right' areas of law and in the 'right' locations" and "resources are deployed where legal needs are greatest and legal problems have the most significant consequences": Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 704.

Importantly, the Productivity Commission did not recommend how that funding amount should be allocated between legal assistance providers. NACLC does not necessarily consider that the existing proportionate allocation of funding between legal assistance providers is appropriate or should be continued. This is something that should be considered as part of the process for determining an appropriate quantum.

Importantly, funding methodologies and allocation models must be underpinned by a strong evidence base and be transparent as well as providing long-term, predictable and sustainable funding (outlined in more detail below).

Long-Term, Predictable and Sustainable Funding

As recognised in the Overview of the Consultation Paper, in addition to issues that arise from the quantum of funding for the legal assistance sector, funding has also been characterised by significant uncertainty.

This uncertainty continues despite the 5-year NPA being in place, because across jurisdictions the length of service agreements vary, which makes decisions about service delivery, staffing, and related issues very difficult.

Funding 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 NACLC 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.²⁵

As a result, NACLC highlights the importance of recurrent funding, a minimum baseline funding below which funding for a CLC should not fall, and the transparent and evidence-based allocation of any new program funding.

In addition, NACLC recommends that:

- funding agreements for CLCs be long-term, for example for a five-year period to enable funding certainty and facilitate long-term service planning, and
- CLCs should be consulted about and advised of any changes to their individual funding at least 6 months before the change occurs.

²⁵ Victorian Government, *Access to Justice Review*, Report and Recommendations, Volumes 1 & 2 (2016), rec 6.7.

Collaboration and Collaborative Service Planning

Collaboration and Collaborative Service Planning are considered in Chapter 3 of the Consultation Paper.

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, Legal Aid Commissions, 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 National Partnership Agreement on Legal Assistance Services 2015-2020, in this National Position Paper the community legal sector outlines its vision of what collaborative service planning could and should be, and the hallmarks of good practice CSP.

As the national peak body for CLCs, NACLC is aware of significant inconsistency and limited information-sharing across jurisdictions, resulting in widely different practice and duplication of work underlying CSP.

NACLC understands that CSP in Tasmania has been extremely limited. To date we understand a number of Working Groups have been established (family law, criminal law and civil law and community legal education) and that while the Department of Justice undertook some preliminary mapping and analysis of CLSIS data and data provided by centres, this has not been consolidated or provided to the sector.

As a result, there are significant opportunities for improvement upon the limited existing CSP frameworks, mechanisms and processes in Tasmania. In our view, the Commonwealth Government should provide greater leadership, guidance and support in relation to CSP, but the Tasmanian Government also needs to invest in and properly develop CSP in Tasmania.

In response to Consultation Questions 3.19-3.23, NACLC suggests the following hallmarks of CSP that could provide the basis for improvements to CSP in Tasmania:

- **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 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 such as **CLCTas**, 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.

Centralised Access Points

Chapter 4 of the Consultation Paper discusses the background to discussions about the possible establishment of a 'well-recognised entry point' in Tasmania and referral pathways.

The conclusions and recommendations made by the Productivity Commission in its Access to Justice Arrangements Inquiry, in which it examined the rationale

and potential usefulness of a well-recognised entry point provide useful information to inform thinking about the entry point in Tasmania.

Briefly, NACLC emphasises that the establishment of such entry points should:

- be done in a coordinated with all legal assistance providers
- have the 'no wrong door' principle as the underlying principle
- recognise the costs associated with implementing and maintaining such entry points
- recognise and account for the number of clients that are likely to contact CLCs directly given the standing and connection CLCs have in their communities and with other non-legal services, and
- recognise the potential hesitancy some highly vulnerable and disadvantaged clients may have in contacting or attending the Legal Aid Commission as a 'Government' body.

Governance

Chapter 6 of the Consultation Paper considers governance arrangements for the Tasmanian legal assistance sector.

National Accreditation Scheme

The National Accreditation Scheme, coordinated by NACLC, is referred to on page 96 of the Consultation Paper, with a note about more information requested in relation to governance policies and procedures.

As a result, NACLC has compiled an overview of the strong quality assurance and risk management frameworks that apply to CLCs in Tasmania in **Appendix B**.

Reducing the Regulatory Burden

As recognised in the Consultation Paper, in considering ways to improve the administration of CLCs and maximise limited resources, NACLC suggests the Steering Committee consider ways to reduce the regulatory burden on CLCs, particularly through multiple and overlapping government reporting requirements, as is suggested by Consultation Paper 5.11 and was recommended in the Victorian Access to Justice Review.²⁶

Outcomes-Based Reporting

Nationally, NACLC recognises the potential benefits of a greater focus on outcomes in measuring the impact of the work of CLCs. There is a need for monitoring, evaluation and outcomes measurement to be built into the funding and administration of CLCs and this could potentially include reporting. Importantly, individual centres should also be funded and supported to undertake this work within a broader framework.

²⁶ Victorian Government, *Access to Justice Review*, Report and Recommendations, Volumes 1 & 2 (2016). rec 6.8.

There are a number of useful outcomes measurement and evaluation projects that have recently been completed by the Federation of Community Legal Centres in Victoria and Community Legal Centres Queensland that could inform thinking and work in Tasmania.

For example, Community Legal Centres Queensland undertook a Self-Evaluation toolkit project, supported by the Queensland Government. This project developed a Theory of Change for the Queensland community legal centres sector with a practical set of tools that community legal centres could apply to compile an impact report and provide input for internal service improvement processes. This toolkit can be found at www.communitylegalimpact.org

The Federation of CLCs in Victoria has recently completed a Victorian Community Legal Sector Outcomes Measurement Framework which is intended to assist the Victorian community legal sector to demonstrate, articulate and measure the outcomes it achieves through its activities and service delivery. The Framework can be accessed here:

https://www.fclc.org.au/outcomes_measurement_framework

There is also discussion about NALCLC undertaking National Outcomes/Evaluation Framework for the sector.

Sector Data and CLASS

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

There are a number of national developments with respect to sector data that NALCLC considers have and will address some of the issues of data inconsistency and quality highlighted in previous national reviews and inquiries that may be of interest to the Steering Committee. These include: development of a Data Standards Manual; development of a new CLC IT system and associated training; and work by NALCLC to provide ongoing guidance and support to centres in relation to data entry and reporting and develop nationally consistent approaches to data.

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). NALCLC is in the process of developing a national consensus on the implementation of the DSM and will subsequently provide training to all CLCs. 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 and NACLCL was funded to develop a new system – Community Legal Assistance Service System (CLASS). CLASS was rolled out to CLCs commencing in February 2017.

CLASS provides a contemporary cloud based platform that more effectively supports legal practice management in CLCs (and FVPLS) as well as fulfils reporting requirements under the NPA.

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 C** of this submission.

Overall however, NACLCL considers that CLASS and the DSM will improve the quality and recording of consistent data and enhance data collection, reporting and analysis at a national and state level. CLASS will also 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.

Importantly and for the purposes of the Evaluation, NACLCL is confident that in the near future CLASS will be a repository of nationally consistent data reflecting CLC practice across Australia that will provide a solid evidence base for government decision-making moving forward.

The Need for a Funded CLC Association Secretariat

One of the key mechanisms which, in our view, contributes to the effectiveness of legal assistance service delivery in a jurisdiction is the existence of a funded CLC secretariat.

NACLCL is strongly supportive of State Government funding for a CLC secretariat in Tasmania. The current funding of 0.4 FTE is insufficient to allow for the operation of CLCTas as a state peak body.

NACLCL cannot overestimate the efficiencies and benefits that flow when a sector has a funded peak body. In our experience both as a peak, as well as working with the eight state and territory associations that are our members, the broad benefits of a funded secretariat include:

- increased collaboration and information sharing between CLCs, both within that state and across Australia, which avoids duplication and allows dissemination of good practice in service delivery
- a greater focus on the client, rather than on the centre through facilitation of system-wide discussions about the needs of clients across the jurisdiction
- increased learning and development activities – a funded secretariat can facilitate, or tap into, mandatory legal education sessions for solicitors and other training opportunities

- advice and support on administration, data management, strategic planning, service delivery and accreditation which improve both quality and efficiency of the individual centres
- support for centres wishing to co-locate, share back-office resources and otherwise explore bulk purchasing and similar efficiencies
- the ability to leverage project funds from other sources
- improved collaboration and cooperation with other legal assistance providers, government and justice system stakeholders

In the context of the funding and administration of CLCs, collaborative service planning and reviews, NACLCL highlights that in jurisdictions such as Queensland where the peak body has been provided with additional State Government funding early in the review and reform process, it has resulted in:

- positive co-design and engagement between government and the sector
- development of a clear evidence base and agreed funding principles, and
- a strong basis for ongoing partnership in the planning and funding of legal assistance services.

As a result, NACLCL strongly recommends that the State Government fund a CLC secretariat in Tasmania to undertake a range of work, including in relation to collaborative service planning moving forward.

Conclusion

We trust this submission has been useful and would welcome the opportunity to engage further, or provide any additional information that you may require moving forward as part of the Evaluation.

Yours sincerely

Nassim Arrage
Chief Executive Officer
National Association of Community Legal Centres

Appendix A: National Overview of Funding and Administration of Community Legal Centres

Queensland

The funding allocation process and service delivery planning in Queensland under the NPA reflects 'good practice' from a NACLCL perspective, for a range of reasons including:

- 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.

Legal Need

In 2016, Community Legal Centres Queensland was funded by the Queensland Government to summarise evidence of legal need in Queensland. The Queensland approach uses demographic information as a proxy for legal need, based on leading international and Australian research, primarily the LJF.

The report released in September 2016 presents data that indicates the number and proportion of the Queensland population that fits into the NPA's 'priority client groups', across 13 regions in Queensland.²⁷ The report enabled discussion of the 13 legal assistance regions, with the services available and delivered in each region, as well as the proportion of the population in those regions that are priority clients under the NPA. It also enabled discussion about the most appropriate approach to service delivery for priority clients.

The report formed part of the evidence-base for funding decisions and service delivery planning moving forward.

Funding Principles

The State Government, with the sector, also developed some funding principles which adapted the principles from the *National Strategic Framework on Legal Assistance 2015-2020* as well as some additional principles. These principles served as the basis for the funding application process.

By way of background, the National Strategic Framework was developed alongside the NPA by the Commonwealth and state and territory governments,

²⁷ Greater Brisbane; Ipswich; Logan; Gold Coast; Sunshine Coast; Moreton; Toowoomba; Bundaberg; Rockhampton; Mackay; Townsville; Cairns; Mt Isa.

with input from the sector. It is intended to provide context and principles to guide legal assistance policy development, service delivery and sector planning. The majority of Commonwealth, state and territory governments endorsed the Framework through the National Justice and Policing Senior Officials Group.

Funding Application Process

CLCs in Queensland were then required to submit funding applications as part of an application process for the allocation of funding. Applications closed in October 2016 and funding announcements were made in April 2017.

Importantly:

- the application process had a number of mandatory evaluation criteria, including that applicants had to meet one of the 'quality standards', that is either accreditation under the NALC National Accreditation Scheme (discussed in more detail below), or the Queensland Government Human Services Quality Standards or equivalent
- Community Legal Centres Queensland was provided with additional funding from the Queensland Government to support the sector to build the evidence base; prepare a guide to assist centres to most effectively highlight their work against the criteria; develop an outcomes measurement framework; assist in development of collaborative service planning tools and models, including in particular regional service planning; and engage with stakeholders, and
- the evaluation criteria for the application process were directly related to the funding strategies developed in consultation with the sector and largely adapted from the National Strategic Framework for Legal Assistance

The funding principles and evidence-base, along with the applications, formed the basis for funding decisions by the Queensland Government in relation to both Commonwealth and State legal assistance funding for 2017-2020.

Victoria

The funding and administration of CLCs in Victoria was recently considered as part of a broad review, completed in late 2016. Government implementation of the review is ongoing, but has resulted in some changes to the administration of CLCs in Victoria, including for example the establishment of Legal Aid Victoria as the system manager.

Importantly, the Federation of Community Legal Centres, the peak CLC body in Victoria, has been provided with ongoing funding from the Victorian Government, led engagement with the review and is actively engaged in co-design of the service planning and funding models and mechanisms moving forward.

Access to Justice Review

In October 2015, the Victorian Attorney-General asked the Victorian Department of Justice and Regulation to undertake the Access to Justice Review. The review was undertaken by the Department of Justice and Regulation with the assistance of Crown Counsel, Melinda Richards SC, and the former Chair of the Queensland Legal Aid Commission, Rachel Hunter.

The review report released in October 2016 included 60 recommendations, many of which were relevant to CLCs, including recommendations in relation to the coordination of the legal assistance sector in Victoria.²⁸

The sector welcomed many elements of the review including:

- recognition of the effectiveness of an integrated and mixed model of service delivery modelled by CLCs and the central role of all legal assistance services, and
- recognition of high levels of demand for services and the urgent need for additional funding.

However, the sector also had a number of key concerns, including that it:

- recommended establishing Victoria Legal Aid as the singular coordinating system manager for the legal assistance sector, with limited consideration of alternatives
- did not adequately consider or acknowledge the importance of systemic policy and advocacy work undertaken by CLCs

The Federation of CLCs in Victoria had instead suggested that a collaborative system manager model was preferable through a legal assistance forum and would leverage the experience across Aboriginal and Torres Strait Islander Legal Services, the community legal sector and Victoria Legal Aid in addressing legal need and service delivery responses, as well as existing coordination and collaboration.

As outlined in more detail later in this submission, NACLCL shares concerns about the role of any one provider as system manager where they are also eligible for that funding.

NACLCL understands that the Victorian Government has responded to the review, accepting 54 of the 60 recommendations and is working with the sector and other stakeholders to implement reforms.

The sector in Victoria remains concerned about some of the proposed reforms and has sought to actively engage with the Victorian Government about reform implementation.

Collaborative Service Planning

Collaborative service planning under the NPA did not significantly progress while the review was undertaken, however is now being led by the Victorian

²⁸ Victorian Government, *Access to Justice Review*, Report and Recommendations, Volumes 1 & 2 (2016).

Legal Assistance Planning (VLASP) Committee established by the Victorian Department of Justice and Regulation. The aim is to build a state-wide evidence base and a model to measure legal need and service provision to inform future service planning. The project envisages three phases:

- Phase 1 – Develop a state-wide evidence base and model to measure legal need and current service provision (the model), as well as testing of the model in test sites
- Phase 2 – Service planning using the model
- Phase 3 – Identify options for improved service delivery

NACLC understands that a model for measuring legal need and service coverage has been developed that considers:

- the geographic region of interest
- the level of legal need (considering a sector planning data product and survey of practitioners), and
- the level of service coverage.

Intensive place-based testing is being undertaken at a number of sites.

In addition, Victoria Legal Aid engaged the University of Melbourne to undertake the data work and develop a data tool to underpin CSP, including use of data from the NSW LJF, CLISIS/CLASS, police information, ABS data, VLA Atlas data and similar.

Importantly, the Federation of Community Legal Centres, the peak CLC body in Victoria has been provided with ongoing funding from the Victorian Government, has led engagement with the review and is seeking to be actively engaged in co-design of the service planning models and mechanisms moving forward. The Federation has established an internal sector Committee on CSP which is guiding the Federation position and engagement.

South Australia

NACLC remains extremely concerned about the most recent review of CLCs in South Australia and resulting decisions by the South Australian Government in relation to the funding and administration of CLCs.

In summary:

- the review of CLCs conducted by Ernst and Young was conducted hastily with very limited consultation and made a number of concerning conclusions and recommendations in the Final Report
- the South Australian Government adopted the review report in its entirety, without appropriately consulting the sector or considering the practical implications of the recommended approach
- NACLC and the sector have ongoing concerns about the establishment of a centralised approach to intake, assessment of eligibility and referral operated by the Legal Services Commission

- the competitive tender process for funding forced CLCs to compete against each other for a shrinking pool of resources, undermining cohesion and collaboration
- there were extensive delays in decisions about funding allocation which resulted in significant uncertainty for the sector, making it extremely difficult for centres to plan appropriately with respect to frontline service delivery, as well as ongoing operations.
- the outcomes of the competitive tender process resulted in the closure of a number of centres and those centres which have taken over the service area/type from those centres have been provided with approximately 1/3 of the funding to do so. This has and will have a significant impact on the ability of people in SA to access the legal help they need
- the South Australian Government failed to incorporate the increased Commonwealth funding as a result of the reversal of scheduled funding cuts into funding allocation decisions, instead establishing a new and separate process
- SA has amongst the lowest ratios of Commonwealth to State funding for CLCs, and
- the lack of funding for the South Australian Council of Community Legal Services (SACCLS) as the peak body has had a significant impact on the ability of the sector to collaborate to deliver the most effective services to people in South Australia, or engage fully with Government through the reform process.

Western Australia

Community legal centres in WA receive funding from a number of sources, including the NPA, other Commonwealth departments and programs, WA Public Purposes Trust, WA Legal Contributions Trust and other private and philanthropic sources of funding. The WA Government has also indicated an additional source of CLC funding from proceeds of crime.

Legal Aid WA has played the system manager role in WA.

Some of the key concerns about the current funding and administration of CLCs in WA include:

- burdensome administrative and reporting requirements from multiple government funding sources
- funding uncertainty
- concerns about the role of Legal Aid WA in the funding and administration of CLCs, including a lack of transparency about decision-making and concerns about the conflict of interest between Legal Aid as a funder and service provider shared by other jurisdictions

- lack of genuine co-design and collaboration in the funding and administration of CLCs

However, NACLC understands that a number of changes in WA may contribute to positive changes to the funding and administration of CLCs moving forward, including additional State Government funding; a new approach by Legal Aid WA; and clarification that the WA Government Supporting Communities Policy that is intended to underpin collaboration between government and community services which will apply to Legal Aid WA. There are a number of important aspects of this Policy that may be useful to consider in the Tasmanian context, including for example long-term funding and reduction in red-tape/burdensome administrative requirements.

Collaborative Service Planning

From the perspective of the sector, NACLC understands that collaborative service planning in WA under the NPA to date has not been an effective process.

There is a Jurisdictional Forums as well as a Collaborative Services Planning Group in WA. NACLC understands that the Jurisdictional Forum primarily acts as an information-sharing forum.

The Collaborative Service Planning Group more actively undertakes collaborative service planning. Its membership includes: CLCs, Legal Aid WA, Aboriginal Legal Service of WA, Indigenous Family Violence Prevention Legal Services, Law Access, the Commonwealth Attorney General's Department and the WA Department of the Attorney General.

The Group has established a number of separate working groups including in relation to legal needs mapping (the group responsible for updating the 2009 legal needs report), referrals and others.

NACLC understands that there are sector concerns about a gap between the collaborative service planning project plan and its implementation, limited timeframes for consultation and reform, as well as work undertaken as part of the collaborative service planning process not appearing to inform funding allocation decisions.

New South Wales

The NSW Government recently completed a review of CLCs in NSW, however the final report has not yet been released. The aim 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 funding allocation.

Community Legal Centres NSW made a number of important submissions to the Review. Please contact us if you would like further information about the Review, or CLCNSW's submissions.

Appendix B: Governance, Risk Management and Continuous Improvement Framework

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

- the NACLC National Accreditation Scheme's (NAS) continuous assessment of CLCs against the Scheme's Accreditation Criteria and Standards
- the Mandatory Standards of NACLC'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
- 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

NACLC is unsure how much information the Steering Committee has been provided with in relation to the National Accreditation Scheme (NAS), but NACLC considers that it plays a vital role in quality assurance for all CLCs.

The NAS is an industry-led quality assurance partnership between NACLC 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 NACLC Accreditation Criteria. The NACLC 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.²⁹ 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
- 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

²⁹ The Review Report is available from the NACLCL website, here: <http://www.naclcl.org.au/resources/Final%20report%20of%20Review%20of%20the%20NAS%20%20%20November%202014.pdf>

- 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 NACLC'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, including in Tasmania.

Appendix C: NACLC Advice on CLASS Data and Reporting