

Submission to Australian Government  
**Federal Budget 2018-2019**



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## Overview

This submission is made by the National Association of Community Legal Centres (NACLC), which is the peak body for Community Legal Centres (CLCs) in Australia,<sup>1</sup> to inform Federal Government priorities and decisions with respect to the 2018-2019 Federal Budget. This submission builds on those made in relation to the last two Federal Budgets.<sup>2</sup>

Community legal centres provide free legal assistance to everyday people as well as vulnerable and disadvantaged members of the community. CLCs are a critical and unique part of the legal assistance sector. CLCs are imbedded in local communities, working in a holistic and multidisciplinary way and engaging with a range of community-based organisations. Unresolved legal problems generate a range of flow-on effects, including multiple and related problems and significant costs to the government and broader community. By being embedded in communities and proactive in reaching people, 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.

The vital work of CLCs generates savings to governments and the community as a whole. As the Productivity Commission has noted, 'legal assistance services can 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).'<sup>3</sup>

In the 2017-2018 Federal Budget, a 30% reduction to Commonwealth funding for CLCs across Australia under the National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA) was reversed, with \$39 million reinstated over the remaining years of the NPA.

This was a welcome and important decision. NACLC also welcomes the Attorney-General's commitment that the current level of funding will provide the baseline for funding under any new National Partnership Agreement (or other Commonwealth funding agreement or arrangement) following the expiration of the current NPA in 2020. As a result, it is vital that provision for this funding is made in the forward estimates.

People experiencing legal problems in Australia are increasingly unable to access legal help and there is significant unmet legal need in Australia.<sup>4</sup> While welcome, the Government's decision simply reversed scheduled funding reductions rather than increasing investment in the sector as has been recommended consistently, including by the Productivity Commission in its major 2014 Access to Justice Arrangements Inquiry.

NACLC acknowledges that the Federal Government is not and should not be alone in funding or supporting CLCs. NACLC and its members are acutely aware of inconsistent funding of CLCs by State and Territory Governments and of the inadequacy of State and Territory funding in many jurisdictions.

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<sup>1</sup> NACLC's members are the eight State and Territory Associations of Community Legal Centres.

<sup>2</sup> NACLC's submissions to the 2017-2018 Federal Budget is available here: <http://www.naccl.org.au/resources/NACLC%20Federal%20Budget%20Submission%202017-18%20Final.pdf> and to the 2016-2017 Federal Budget is available here: [http://www.naccl.org.au/resources/NACLC\\_Federal\\_Budget\\_Sub\\_2016\\_17\\_Final\\_PDF.pdf](http://www.naccl.org.au/resources/NACLC_Federal_Budget_Sub_2016_17_Final_PDF.pdf)

<sup>3</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.

<sup>4</sup> See, eg, NACLC National Census, National Report 2016; 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.

Similarly, the sector is working hard to ensure it continues to be efficient and innovative and at exploring ways to maximise available resources.

In the context of a solid Mid-Year Economic and Fiscal Outlook and given the significant direct benefits investment will have for hundreds of thousands of people accessing legal help, as well as the downstream benefits for the justice system and in other areas of government spending, investment in the community legal sector by the Federal Government is an important and economically sound decision

In light of the above, NACLC makes a number of recommendations related to the funding and administration of CLCs and the legal assistance sector more broadly. NACLC also makes a number of recommendations in relation to Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services, based on the 2018-2019 Federal Budget submissions made by National Family Violence Prevention Legal Services and National Aboriginal and Torres Strait Islander Legal Services, which NACLC endorses.

NACLC would welcome the opportunity to engage further with the Treasury in relation to these issues. The most appropriate contact person for this submission is:

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## Recommendations

**Recommendation 1:** Confirm Commonwealth funding levels under the current National Partnership Agreement for Legal Assistance Services as the baseline for Commonwealth funding for Community Legal Centres beyond 2020.

**Recommendation 2:** Build on the Government's commitment to addressing family violence through provision of ongoing funding for domestic violence units and Health Justice Partnerships established as a pilot under the Women's Safety Package and additional funding for national roll-out of the units.

**Recommendation 3:** Implement the Productivity Commission's recommendation from its Access to Justice Arrangements Inquiry and provide an immediate injection of at least \$120 million per year additional funding into the legal assistance sector, including at a minimum an additional \$14.4 million per year to Community Legal Centres, amounting to at least \$43.2 million between 2018-2019 and 2020-2021.

**Recommendation 4:** Amend the National Partnership Agreement on Legal Assistance Services 2015-2020, with the agreement of State and Territory Governments, to remove the restriction on the use of Commonwealth funding by Community Legal Centres to undertake law reform and policy advocacy work.

**Recommendation 5:** Develop an appropriate process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector by Federal, State and Territory Governments, in consultation with the sector and provide such funding on an ongoing basis.

**Recommendation 6:** Recognise the vital and increased role played by peak CLC bodies in facilitating the efficient and effective operation of the sector and coordinating engagement with government under the NPA, through provision of \$2.1 million in additional funding between 2018-2019 and 2020-2021 to State and Territory CLC Associations and NACLC to fund sector coordination and support.

**Recommendation 7:** Support the national community legal sector quality and continuous improvement framework and scheme coordinated by NACLC through provision of \$1.37 million between 2018-2019 and 2020-2021 to enable ongoing support of the sector nationally, as well as in each state and territory.

**Recommendation 8:** Provide funding for a regular national survey of legal need, similar to the *Legal Australia-Wide (LAW) Survey*, to examine met and unmet legal need in Australia.

**Recommendation 9:** In considering policy, legislative and related initiatives and reforms, Government should consider what if any impact these will have on the need for access to legal help and appropriately fund the community legal sector to respond to and provide that help.

### Aboriginal and Torres Strait Islander Community-Controlled Legal Services

**Recommendation 10:** Reinstatement of the Family Violence Prevention Legal Services as a stand-alone national programme and provide it with a direct allocation of funding.

**Recommendation 11:** Commit to 5-year funding agreements for Family Violence Prevention Legal Services, with CPI increases for all 14 services.

**Recommendation 12:** Provide \$2 million additional funding to each existing Family Violence Prevention Legal Service.

**Recommendation 13:** Commit to national coverage of Family Violence Prevention Legal Services commensurate with need within 3-5 years.

**Recommendation 14:** Provide the National Family Violence Prevention Legal Services Forum with additional funding and commit to long-term funding and support of the Forum.

**Recommendation 15:** Reverse the 2020-2021 forward estimate budget reduction to Aboriginal and Torres Strait Islander Legal Services.

**Recommendation 16:** Provide Aboriginal and Torres Strait Islander Legal Services with additional long-term and predictable funding, including 5-year funding agreements.

**Recommendation 17:** Provide National Aboriginal and Torres Strait Islander Legal Services with additional funding and commit to long-term funding and support of National Aboriginal and Torres Strait Islander Legal Services.

## Improving Access to Legal Assistance in Australia

### What is the Problem?

People experiencing legal problems in Australia are increasingly unable to access legal assistance. A number of inquiries and reviews have made clear that there is significant unmet legal need in Australia.<sup>5</sup> For example, the 2016 NACLIC National Census showed that over 170,000 people were turned away from CLCs in part due to a lack of resources, which is a conservative number.

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)<sup>6</sup>, and other parts of the justice system.

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.

### What Are Community Legal Centres and How Do They Help?

There are four publicly funded legal assistance providers in Australia—Community Legal Centres (CLCs), Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS).

CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to everyday people, including vulnerable and disadvantaged members of the community.

In 2017, centres have already helped **254,073 people**.

In 2017, the top four areas of law in which centres provided assistance were:

1. Family/domestic violence
2. Family law
3. Credit and debt
4. Housing

However, in 2015-2016, centres were forced to turn away over **170,000 people**.

There are 189 CLCs nationally. 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.

There are also 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.

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<sup>5</sup> See, eg, 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 2013: National Report*, ACOSS Paper 202 (2013).

<sup>6</sup> See, eg, Productivity Commission of Australia, *Access to Justice Arrangements Inquiry Report No 72* (September 2014) 735.



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 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.

The work of CLCs generates savings for Government and the community. The Productivity Commission has indicated that the ‘positive spill-over or flow on effects to the wider community from providing legal assistance services’<sup>7</sup> justify government involvement in, and funding of, legal assistance services. It has also highlighted that in many types of disputes, the avoided or flow-on costs are greater than the cost of providing funding to legal assistance services to provide the assistance.<sup>8</sup>

CLCs are also efficient and innovative. For example, CLCs:

- Coordinate significant **volunteer** involvement, increasing the capacity and expertise of centres. For example, volunteers contributed over 889,096 hours to CLCs in 2015-2016.
- Attract high levels of **pro bono** assistance from private law firms. For example, in 2015-16 over 57,848 hours were contributed by pro bono partners to CLCs across Australia
- leverage better outcomes through **collaborations** within the legal assistance service system and with other sectors through, for example, the establishment of Health Justice Partnerships
- undertake community legal education and other early intervention work, aimed at empowering vulnerable people to prevent and avoid the escalation of legal issues

Clearly, the capacity of CLCs to provide legal assistance to clients is extended significantly through volunteer and pro bono arrangements and partnerships. The ability of the sector to continue to utilise this assistance is jeopardised in an environment of ongoing resource limitations given the time and resources taken to supervise, train and build or oversee volunteer and pro bono relationships as well as partnerships.

The sector is also focused on continuous quality improvement, driven through the industry-led National Accreditation Scheme under which all CLCs are required to demonstrate how they comply with key quality standards for service delivery. This is discussed in more detail later in this submission.

## What Is Needed?

There are a range of Budgetary, administrative and policy steps the Commonwealth Government could take to address the crisis in legal assistance.

At the outset NACLC notes that the importance of the Government working cooperatively and collaboratively with the legal assistance sector to address these issues cannot be underestimated. Drawing on the significant experience and expertise of bodies such as NACLC, NFVPS, NATSILS and NLA in decision-making, including policy formulation, would assist the Government and result in better

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<sup>7</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.

<sup>8</sup> See, eg, Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) Appendix K, 1054.

outcomes for people seeking legal assistance across Australia. More specifically, NALCLC outlines a number of key recommendations for reform relating not only to CLCs, but the legal assistance sector more broadly.

### **Additional Funding**

Community legal centres receive funding from a range of sources, including Commonwealth, State and Territory Governments, philanthropic grants, donations and fundraising, interest, and other activities. However the majority of CLC funding comes from Government.

There are five key areas relating to Commonwealth funding for CLCs that NALCLC focuses on and makes recommendations about in this submission:

1. Using the current NPA funding as a baseline for CLC funding beyond the expiration of the NPA in 2020
2. Funding for national rollout of domestic violence units and Health Justice Partnerships established under the Women's Safety Package
3. An immediate injection of additional funding to meet existing legal need, consistent with the recommendations of the Productivity Commission
4. Amendment of the NPA to remove the restriction on the use of Commonwealth funding by Community Legal Centres to undertake law reform and policy advocacy work
5. Developing an appropriate process for determining the quantum of funding necessary for the legal assistance sector and committing to provision of such funding.

The ongoing and inadequate funding of legal services in Australia, particularly community-based legal services, means hundreds of thousands of people across Australia are missing out on the legal help they need. There are also significant costs to the justice and related systems, government and community more broadly.

Additional funding of legal assistance is an efficient use of Commonwealth resources. A relatively small investment (in Federal Budget terms) in CLCs and the legal assistance sector by the Federal Government will have significant direct benefits for people accessing legal help, downstream benefits for the justice system and in a range of other areas of government spending.

### *NPA Funding as a Baseline*

The National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA) provides \$1 billion over 4 years for Legal Aid Commissions and CLCs. However CLCs only receive \$142.90 million of total NPA funding, and approximately 12% of overall Commonwealth funding for the legal assistance sector.

In the 2017-2018 Federal Budget, a 30% reduction to Commonwealth funding for CLCs across Australia under the NPA was reversed, with \$39 million reinstated over the remaining years of the NPA.

As a result, under the NPA, the Commonwealth contribution to 189 CLCs nationally is 48.64 million in 2018-2019 and \$50.07 million in 2019-2020.

*Commonwealth Contribution to CLCs under NPA 2018-2019 and 2019-2020 (\$ Mill)*

Jurisdiction	2018-2019	2019-2020	Total
NSW	13.238	13.563	26.801
VIC	11.192	11.538	22.73
QLD	9.478	9.746	19.224
WA	6.256	6.513	12.769
SA	4.121	4.233	8.354
TAS	1.576	1.616	3.192
ACT	1.138	1.173	2.311
NT	1.639	1.688	3.327
<b>TOTAL</b>	<b>48.638</b>	<b>50.07</b>	<b>98.708</b>

There is no current provision for CLC funding beyond the life of the NPA. However, the Attorney-General Hon George Brandis MP QC and Attorney-General's Department have indicated their intention that the current level of funding under the NPA should and will be the baseline for Commonwealth funding for CLCs beyond 2020. Accordingly, NACLRC recommends that this commitment be reflected in the 2018-2019 Budget with provision made in the forward estimates for this level of funding at a minimum.

**Recommendation 1: Confirm Commonwealth funding levels under the current National Partnership Agreement for Legal Assistance Services as the baseline for Commonwealth funding for Community Legal Centres beyond 2020.**

*National Roll Out of Domestic Violence Units and Health Justice Partnerships*

Community legal centres are a vital part of the legal framework in responding to and addressing family violence. In recognition of this, some CLCs have received specific Commonwealth family violence-related funding in recent years. For example, since 2015 some CLCs have also been provided limited specific funding under the Women's Safety Package and Third Action Plan under the National Plan to Reduce Violence against Women and their Children, including:

- \$15 million (of the \$100 million Women's Safety Package) announced in 2015 to establish 12 new specialist domestic violence units and fund five health justice partnerships within existing legal assistance services located in domestic violence 'hot spots'
- \$5 million (of the \$30 million funding for legal assistance under the Third Action Plan under the National Plan to Reduce Violence against Women and their Children) announced in 2016 for CLCs and LACs to extend the Women's Safety Package pilot projects by 1 year, and
- \$3.4 million to establish six new domestic violence units and support the expansion of an existing unit, announced in October 2017.

This funding and these units were established as a pilot and an evaluation of the units established under the Women's Safety Package is scheduled to be completed in 2018. Given these units were funded as a pilot to establish appropriate and effective models of service delivery for people experiencing family violence, it is important that ongoing funding is provided for effective units and to facilitate national rollout of these units.

Importantly, the flow-on effects of family violence are clear in a range of the other work CLCs undertake, including for example credit and debt, tenancy, homelessness and access to social security,

which means core funding for CLCs is an integral part of ensuring people experiencing family violence have access to the legal assistance they need.

**Recommendation 2: Build on the Government’s commitment to addressing family violence through provision of ongoing funding for domestic violence units and Health Justice Partnerships established as a pilot under the Women’s Safety Package and additional funding for national roll-out of the units.**

*Implementation of Productivity Commission Recommendation*

In the face of rising demand for legal help across Australia there is an urgent need for additional funding for the legal assistance services. As a result, and based on the recommendations made by the Productivity Commission, NACLC recommends that the Commonwealth Government provide an immediate injection of additional funding of a minimum of \$120 million per year for the legal assistance sector.

The Productivity Commission was clear—there is a need for an immediate injection of \$200 million per year into legal assistance with 60% contributed by the Commonwealth Government and 40% contributed by State and Territory Governments. In 2014 when the report was released, the Productivity Commission expressed the view that this was an urgent and interim measure, necessary to address “the pressing nature of service gaps” and needs including maintaining existing frontline services.<sup>9</sup> Since 2014 there has been three Federal Budgets, each failed to address these services gaps by providing additional funding, resulting in an extra \$360 million shortfall since 2014 and thousands of people turned away from essential legal services.

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 as discussed below.

However, for the purposes of determining an appropriate allocation of the recommended \$120 million immediate funding injection, if existing proportionate allocations were retained under which CLCs receive 12% of total Commonwealth funding for legal assistance, this would equate to an additional \$14.4 million for CLCs per year. Over the forward estimates, until 2020-2021, this would equate to an additional \$43.2 million.

To avoid unnecessary administrative burden and ensure consistency in decision-making processes about funding, in the case of LACs and CLCs any additional funding should be provided through the NPA until its expiration, rather than as a separate funding allocation with separate funding agreements, as was the case with the Women’s Safety Package funding provided to CLCs.

**Recommendation 3: Implement the Productivity Commission’s recommendation from its Access to Justice Arrangements Inquiry and provide an immediate injection of at least \$120 million per year additional funding into the legal assistance sector, including at a minimum an additional \$14.4 million per year to Community Legal Centres, amounting to at least \$43.2 million between 2018-2019 and 2020-2021.**

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<sup>9</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 738-739.

## *Funding for Early Intervention, Law Reform and Systemic 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'.<sup>10</sup>

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 LAC and CLC work.*<sup>11</sup>

Accordingly, NACLC suggests that 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 and therefore recommends that this work be permitted and funded under the NPA.

**Recommendation 4: Amend the National Partnership Agreement on Legal Assistance Services 2015-2020, with the agreement of State and Territory Governments, to remove the restriction on the use of Commonwealth funding by Community Legal Centres to undertake law reform and policy advocacy work.**

## *Determine the Appropriate Quantum of Funding and Fund Accordingly*

NACLC is supportive of one of the key intentions behind the Federal Government's legal assistance reforms, including the NPA- the introduction of a transparent and publicly accountable funding model that takes into account evidence-based research on legal needs (met and unmet) in making funding decisions.

However, 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

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<sup>10</sup> Productivity Commission of Australia, Access to Justice Arrangements Draft Report (April 2014), 609, 622, 623, 625.

<sup>11</sup> Ibid 623.

meet legal need. As the Productivity Commission has suggested, ‘the total quantum of funds allocated is not sufficient to achieve governments’ stated priorities’<sup>12</sup> and that ‘the global funding envelope provided to legal assistance providers by Australian governments should be broadly related to the costs associated with meeting these priorities’,<sup>13</sup> which is not currently the case.

In addition, funding for CLCs and the legal assistance sector continues to be piecemeal, resulting in unnecessary administrative requirements, red tape and uncertainty.

As a result, NACLC suggests that to properly inform decisions about allocating funding between jurisdictions using the Funding Allocation Model or the right mix of services/clients/areas of law/locations,<sup>14</sup> 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.

In addition, once the appropriate quantum is determined it is vital that State, Territory and Commonwealth Governments commit to provision of such funding on an ongoing basis.

**Recommendation 5: Develop an appropriate process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector by Federal, State and Territory Governments, in consultation with the sector and provide such funding on an ongoing basis.**

### **National and State and Territory Support and Coordination**

Under the NPA, State and Territory Governments are now responsible for determining the allocation of Commonwealth funding to individual CLCs. However, 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. NACLC will raise these issues in the context of the NPA Review in 2018.

NACLC 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. NACLC plays a key role in building the evidence base and supporting good practice service delivery. NACLC also provides particular assistance to the CLC Associations and centres in 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 a NPA review, Indigenous Legal Assistance Program (ILAP) review and FVPLS review, NACLC will be undertaking considerable additional work of this type in 2018-2019.

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<sup>12</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 741.

<sup>13</sup> Ibid 743.

<sup>14</sup> “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.

In addition, the Federal 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. NACLCL strongly recommends ongoing funding state peak CLC bodies as well as constructive, timely engagement around funding, administration, service delivery planning and policy development for legal assistance services.

Accordingly NACLCL suggests that the Federal Government provide additional funding for NACLCL and State and Territory CLC Associations and bodies to undertake Commonwealth funding-related work at a national and jurisdictional level. We recommend the following allocation of additional funding:

- NACLCL \$300,000 per year over 3 years
- State and Territory Associations (or NACLCL) for jurisdictions with large numbers of CLCs: (NSW, Queensland, Victoria and WA): \$200,000 per year over 3 years
- State and Territory Associations (or NACLCL) for jurisdictions with small numbers of CLCs (SA, ACT, NT and Tasmania): \$100,000 per year over 3 years
- Total funding between 2018-2019 and 2020-2021: \$2.1 million.

Allocation of the funding to either NACLCL or the State or Territory CLC Association should be decided following consultation with NACLCL and the relevant State or Territory CLC Association.

**Recommendation 6: Recognise the vital and increased role played by peak CLC bodies in facilitating the efficient and effective operation of the sector and coordinating engagement with government under the NPA, through provision of \$2.1 million in additional funding to NACLCL and State and Territory CLC Associations to fund sector coordination and support.**

### Support for Continuous Improvement

Community legal centres are committed to continuous improvement and quality assurance and are subject to a number of governance arrangements and accountability requirements.

One of the key mechanisms is the National Accreditation Scheme (NAS), which is an industry-led quality assurance partnership between NACLCL and the eight state and territory CLC associations. The NAS 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 NACLCL Accreditation Criteria.

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

Importantly, the independent review of the NAS conducted in late 2014 found that the Scheme had positive effects on the operation of CLCs and their delivery of services in the community.<sup>15</sup>

To administer the scheme and support and guide sector continuous improvement, NACLCLC employs a Sector Capacity Building Coordinator and several State and Territory CLC Associations employ Regional Accreditation Coordinators, responsible for reviewing every CLC within their jurisdiction and determine if they are meeting key Standards.

Another feature of the NAS is the availability, to all CLCs, of the Standards and Performance Pathways (SPP) through which CLCs can assess their organisation against the NAS, and other community sector, quality standards and access template policies and procedures to adapt to their requirements. NACLCLC subscribes to the SPP on behalf of the sector to make it available to all CLCs, free of charge. The Management Support Online (MSO) services and resources that focus on governance, management, operations and administration, are also available to CLCs at a heavily discounted rate.

Being a rigorous and consistent national scheme, funding bodies have expressed support for the NAS as a strong quality assurance framework for delivery of legal assistance services. The scheme has successfully replaced or supplemented a number of state government led reviews or audits of service standards, and is heavily relied on by the sector and its funders.

Government, clients and the broader community benefit from and have an interest in ensuring quality legal and related services provided by the community legal sector. Accordingly, it is appropriate that the Commonwealth (as well as State and Territory Governments) contribute to the ongoing continuous improvement and quality assurance work of the sector.

NACLCLC suggests that as part of the 2018-2019 Federal Budget, the Commonwealth allocate \$1.37 million to NACLCLC and/or each State and Territory CLC Association between 2018-2019 and 2020-2021 to enable this work.

Allocation of the funding to either NACLCLC or the State or Territory CLC Association should be decided following consultation with NACLCLC and the relevant State or Territory CLC Association.

**Recommendation 7: Support for the national quality and continuous improvement framework and scheme coordinated by NACLCLC through provision of \$1.37 million between 2018-2019 and 2020-2021 to enable ongoing support of the sector nationally, as well as in each state and territory.**

### Measurement of Legal Need

'Legal need' is defined as legal issues that individuals have not been able to resolve effectively by their own needs.<sup>16</sup> The distinction between 'met' and 'unmet' legal needs is an important one. 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.

At a national level the *Legal Australia-Wide (LAW) Survey*, undertaken in 2008, is the key piece of work that captures legal need in Australia. There has also been some work done in measuring legal need at a state level.

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<sup>15</sup> The Review Report is available from the NACLCLC website, here:

<http://www.naclc.org.au/resources/Final%20report%20of%20Review%20of%20the%20NAS%20%20November%202014.pdf>

<sup>16</sup> 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.



There is a need for funding of a regular national survey of legal need, similar to the LAW Survey to examine met and unmet legal need in Australia. It is important that the legal need of particular groups, including Aboriginal and Torres Strait Islander people is appropriately considered as part of mapping legal need.

This approach was supported and recommended by the Productivity Commission in 2014: ‘the *Legal Australia-Wide (LAW) Survey*, undertaken in 2008, examined legal need and responses to legal need. A more contained survey should be repeated on a regular basis’ and ‘regular surveys should be undertaken to better measure unmet need of particular groups, including Aboriginal and Torres Strait Islander people’.<sup>17</sup>

**Recommendation 8: Provide funding for a regular national survey of legal need, similar to the *Legal Australia-Wide (LAW) Survey*, to examine met and unmet legal need in Australia.**

### Planning for Increases in Demand for Community Legal Help

The introduction of new policies or legislation, or reform of existing policy and law in a range of areas of public policy often has flow-on effects that result in members of the community requiring legal information and assistance.

To ensure that there are appropriate resources allocated to the community legal sector to be able to meet such unexpected increases in demand for legal help, NACLC recommends that the Federal Government consider what if any impact such initiatives or reforms will have on the justice system, and in particular on demand for legal help, as part of its decision-making process. This would then provide an opportunity to divert or provide additional resources to the community legal sector to meet this demand.

There are a number of recent instances where such consideration and allocation would have made a significant difference to the ability of people to access legal help. For example, NACLC welcomes recent proposed reforms in relation to the protection of vulnerable witnesses from cross-examination by perpetrators (and alleged perpetrators) of family violence in family law proceedings. However, it was apparent that no additional resources were allocated to implement the reforms, which are likely to have an impact on the work of the legal assistance sector.

NACLC considers that there are a number of possible areas in which the Government has signalled it is considering reform over 2018-2019 that may have a flow-on effect on demand for legal help and that warrant consideration of further resources, including for example work in relation to family law reform, measures to address elder abuse, the ongoing rollout of the National Disability Insurance Scheme, and social security reform.

**Recommendation 9: In considering policy, legislative and related initiatives and reforms, Government should consider what if any impact these will have on the need for access to legal help and appropriately fund the community legal sector to respond to and provide that help.**

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<sup>17</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) Appendix J, Table J.1.

## Community-Controlled Services for Aboriginal and Torres Strait Islander Peoples

It is NACLC policy and firm belief that the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the specifically dedicated ATSILS and FVPLS staffed and managed, as far as is possible, by Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander peoples have experienced, and continue, to experience, historical marginalisation from mainstream services, and generally prefer to and feel culturally secure in attending Aboriginal and Torres Strait Islander specific services. In some instances these providers may be unable to assist a client because of real or perceived conflict, lack of resources, or because it is a specialist area of law that is outside their practice expertise, in which case a CLC may offer assistance.

However given this, and the significant legal need of Aboriginal and Torres Strait Islander people, funding and support for the FVPLS and ATSILS should be a vital component of the Government's commitment to addressing the crisis in legal assistance.

Many of the recommendations outlined above apply to the entire legal assistance sector, including ATSILS and FVPLS, however NACLC also makes the following recommendations, consistent with the submissions made by NATSILS and NFVPLS:

### *Family Violence Prevention Legal Services*

Family Violence Prevention Legal Services provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victims/survivors of family violence. FVPLS also undertake important community legal education and early intervention and prevention work. There are 14 FVPLS across Australia.

As outlined above, FVPLS are the portfolio responsibility of PM&C while three other legal assistance services, LACs, CLCs and ATSILS, all remain the portfolio responsibility of AGD. Under the *Indigenous Advancement Strategy* (IAS) the FVPLS were required to apply for funding alongside other services to Aboriginal and Torres Strait Islander people. All FVPLSs were successful in their application under the IAS and in light of the funding announcement made in October 2016 of an additional \$9 million for 9 of the 14 FVPLS, all are now funded until the end of June 2018.

However, the National FVPLS Program was effectively defunded and continues to have no direct allocation which, according to the NFVPLS 'means there is no transparency or guarantee of funding for the program into the future, nor national recognition of the value of this model'. Accordingly, NACLC supports the ongoing calls by the National FVPLS Forum, including in its 2018-2019 Federal Budget submission, for reinstatement of the programme; additional funding for FVPLS to meet existing and rising demand for FVPLS services; and for long-term funding agreements to ensure funding certainty.

**Recommendation 10: Reinstate the Family Violence Prevention Legal Services as a stand-alone national programme and provide it with a direct allocation of funding.**

**Recommendation 11: Commit to 5-year funding agreements for Family Violence Prevention Legal Services, with CPI increases for all 14 services.**

**Recommendation 12: Provide \$2 million additional funding to each existing Family Violence Prevention Legal Service.**

**Recommendation 13: Commit to national coverage of Family Violence Prevention Legal Services commensurate with need within 3-5 years.**

## Funding for the National Family Violence Prevention Legal Services Forum

The National Family Violence Prevention Legal Services Forum (National FVPLS Forum) was established in May 2012. It provides a vital peak body for FVPLS and facilitates coordination and collaboration across FVPLS services and liaison with other peak bodies, including NACLC. NACLC supports NFVPLS Forum calls for ongoing funding and support of the Forum by the Federal Government.

**Recommendation 14: Provide the National Family Violence Prevention Legal Services Forum with additional funding and commit to long-term funding and support of the Forum.**

## *Aboriginal and Torres Strait Islander Legal Services*

ATSILS are the main providers of legal services to Aboriginal and Torres Strait Islander people, providing approximately 200,000 legal assistances to Aboriginal and Torres Strait Islanders annually. The ATSILS continue to be direct funded by AGD rather than being covered by the NPA and are primarily funded through the Indigenous Legal Assistance Program.

NACLC supports the submission made by NATSILS to the 2018-2019 Federal Budget with respect to funding for the ATSILS, emphasising the need for additional funding and long-term funding agreements for ATSILS moving forward.

**Recommendation 15: Reverse the 2020-2021 forward estimate budget reduction to Aboriginal and Torres Strait Islander Legal Services.**

**Recommendation 16: Provide Aboriginal and Torres Strait Islander Legal Services with additional long-term and predictable funding, including 5-year funding agreements.**

## Funding for National Aboriginal and Torres Strait Islander Legal Services

National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for ATSILS in Australia. It provides a vital voice for Aboriginal and Torres Strait Islander people in contact with the justice system and plays a key role in supporting its members across Australia in relation to organisational development and governance, and the sharing and implementation of best practice.

**Recommendation 17: Provide National Aboriginal and Torres Strait Islander Legal Services with additional funding and commit to long-term funding and support of National Aboriginal and Torres Strait Islander Legal Services.**



*NACLC acknowledges the traditional owners of the lands across Australia and particularly the Gadigal people of the Eora Nation, traditional owners of the land on which the NACLC office is situated. We pay deep respect to Elders past and present.*