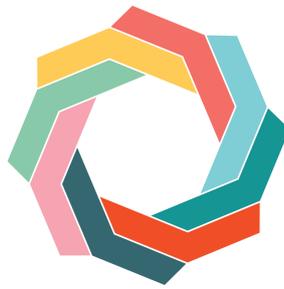


Community Legal Sector Submission in response to the NLAP Discussion Paper: Legal Assistance Service Data Requirements

This submission is made jointly by **Community Legal Centres Australia**,
the Federation of Community Legal Centres Victoria,
Community Legal Centres South Australia, **Community Legal Centres Queensland**,
Community Legal Centres Tasmania, **Community Legal Western Australia**,
Community Legal Centres NSW, the **ACT Association of Community Legal Centres**
and the **Northern Territory Association of Community Legal Centres**



Community Legal Centres
Australia



Introduction

We commend the Commonwealth's acknowledgement of the importance of quality data in the legal assistance sector and welcome the opportunity to provide feedback on the NLAP Legal Assistance Data Requirements. In response to the discussion paper *Legal Assistance Service Data Requirements (the paper)*, we outline the potential consequences of the proposed data collection and reporting requirements and suggests a more fruitful and collaborative way forward.

We accept the importance of data collection and reporting state-level aggregate data for the purposes of being accountable for funding. We also recognise the beneficial impact of quality data on our work and our understanding of services, as well as research and collaborative service planning. To support this, we are willing to work to provide additional state-level aggregate data to the Commonwealth (for example, number of services by priority client group).

However, it is unclear why the Commonwealth requires such a high level of additional data, particularly given the limitations of using bulk data and the fact that community legal centres are not sufficiently resourced to provide it.

Our core concerns centre on the following issues:

- The lack of a clear purpose or reason for collecting the data;
- Ethical, privacy and community concerns regarding data collection and storage; and
- Resourcing for community legal centres and their state and national peaks to collect data, and the feasibility of complying with additional data requirements.

We will discuss these elements further below.

Ultimately, we oppose the provision of unit-level data to the Commonwealth or states. Community legal centres take a client-centred approach and we have concerns regarding the impact of the proposed collection of additional service data on community legal centres and their clients. It must be remembered that many clients of the legal assistance sector are experiencing vulnerability and disadvantage. The Centres they come to for help have an obligation to protect their privacy and their data and ensure any data collected is used for an appropriate purpose that is in line with their expectations and in a way that complies with Australian Privacy Principles. We cannot support any measure that would result in breaching the rights of our clients.

We also question the rationale underlying the data's collection and consider doing so to be unnecessary regardless due to the lack of meaningful inferences that can be drawn from bulk data.

We strongly support the legal assistance sector receiving funding to collect and use data and enable better service provision and collaborative service planning.

We propose to work with the Commonwealth to help it better identify the additional information that it wants to collect and to develop solutions that meet its needs in a targeted way. We consider this a much more productive use of time and resources for both parties, especially given the significant limitations underpinning any attempt to use bulk data to draw meaningful conclusions about a range of issues, including legal need and service provision.

Purpose of data collection

The paper outlines several potential ways that the additional data could be used, which include policy, analysis, research and for statistical purposes. While there are of course several ways in which additional data could be used, they are heavily dependent on the quality and consistency of the data, as well as a significant investment in community legal centres' data tools, resources and expertise.

The community legal sector is very concerned about the fact that the additional data is not being sought for a specific and targeted purpose. Instead, the Commonwealth is asking for more data than has ever been requested. It appears as though it intends to receive the data and consider potential applications for its use down the track. We are greatly concerned by such open requests for data, and also highlight the distinction between the collection of data and meaningful data.

Bulk data collection cannot fit all needs and collecting data without considering its purpose or quality is actually counterproductive. In order to allow meaningful conclusions to be drawn from it, data needs to be collected in a targeted and well-designed way. Failing to do so creates significant risk that the data will be misinterpreted. It also raises significant compliance issues with Australian Privacy Principles.

Data collection and storage

While the sector strongly supports being accountable for its public funding, the proposed collection of unit-level data and other client data and its transmission to the Commonwealth raises significant privacy concerns.

Of particular concern are the community legal sector's obligations to comply with Australian Privacy Principles 3 and 6. Australian Privacy Principle 3 limits when an entity may collect solicited personal information and how it may collect sensitive information. Australian Privacy Principle 6 further limits the use or disclosure of personal information to the primary purpose for which it was collected and ways in which the individual would expect their information to be used.

Many of our clients would not consent to their data being collected in this way and it would be irresponsible for the sector to agree to share it without express consent. Community legal centres engage with some of the country's most disadvantaged and vulnerable community members, many of which are dealing with legal issues involving government departments. Community legal centres are able to work in such an effective and integrated way because we know our communities and are trusted by our clients to provide independent advice. Fears about data collection can prevent people from a range of communities from seeking help when they need it, which can lead to more complex legal problems and downstream costs to society. Many clients have had very challenging lives and lack faith in government processes and do not want to risk being tracked through the system. The lack of a clear and specific reason as to why the Commonwealth is collecting this data makes it difficult for us to rebut this possibility.

Community legal centres are obligated to stand up for their clients and protect their right to privacy. We urge the Commonwealth to value the downstream benefits of our doing so.

Much more consultation is also needed regarding how the data will be stored and accessed by others and several other areas relating to data security, including:

- Which data is of the highest priority for access and sharing?
- How will the community legal sector be consulted in the development of the National Legal Assistance Data Strategy and endorsement of publicly shared community legal data?
- Who can access the “Primary Data Source”?
- Where will the data be hosted (locally or internationally)?
- Will there be data access and data breach audit reports available?
- How will any differences in publicly shared data and Performance Reports be managed?

CLCs Australia and the legal assistance sector hope to work with the Commonwealth to address these issues and better identify the information that it needs.

The paper outlines the Commonwealth’s *intentions* regarding data security based on principles derived from the Five Safes Framework and existing Australian Government data use and sharing policy. While this framework is of an internationally recognised standard, the paper makes it clear that the data security policy and infrastructure for legal assistance data is still in the planning and exploratory stage. A key resource being developed is the *National Legal Assistance Data Strategy* which intends to detail the data policy and storage controls, along with other factors of interest such as strategic usage priorities and publication practices. For the community legal sector, privacy, security and confidentiality requirements are paramount.

Feasibility and resourcing for additional data collection

The legal assistance sector has been chronically underfunded for a long time and is in need of a significant investment in data collection. At present, community legal centres lack the resources needed for services. We do not have the capability to provide further data without a significant financial investment.

The sector is also seeking a clear delineation between accountability reporting requirements relating to funding and the additional data being sought. These are expected to be clarified in the yet to be developed National Legal Assistance Data Strategy and the Statement of Services and Funding and Jurisdictional Performance Report requirements. This is crucial to understanding reporting priorities, the business questions the data intends to answer and the intended use of each data requirement. It is recommended that an iterative and consultative approach is taken to meeting the reporting needs of the Commonwealth.

The proposed collection of additional data also raises significant issues regarding the feasibility and the practical implications of the legal assistance sector’s attempted compliance. The National Legal Assistance Data Standards Manual is the foundation for the sector’s data structure and content, and aims to establish a consistent and comparable national data resource. To obtain meaningful legal assistance data requires adequate investment in the sector’s data collection, management and reporting ecosystem. This is so the sector can access and thoroughly analyse and evaluate its own data, improve data structure and quality, establish skilled resources and explore appropriate reporting and data sharing solutions.

The new data reporting requirements under NLAP are a substantial increase to the existing requirements which only consisted of a small set of data items. For community legal centres, these data items are provided to the Commonwealth through the use of five pre-built NPA approved reports in the Community Legal Assistance Services System (**CLASS**) database. The new requirements also request the collection of new data items and an increase in data collection for some existing service types – most notably less intensive services. This requires substantial investment in developing reports (dataset extracts), data system and process changes and data collection training. Some data items in the requirements would need to be structured more appropriately to support the reporting needs, while other data items are notably missing. Outlined below are the key impacts of the new data requirements and proposed as well as recommendations going forward.

It is essential that community legal centres be sufficiently funded and resourced to collect useful data to support their own operations and service provision. This funding should also take account of centres' geographic, economic, cultural and broader demographic complexities, particularly in remote and regional areas. However, while community legal centres should have access to this data for their own use, it should not simply be handed over to the Commonwealth due to the concerns outlined above and the lack of understanding of the context to allow meaningful analysis. Rather, the Commonwealth should empower the legal assistance sector to collect and analyse data and then make targeted enquiries of community legal centres or their peak bodies about specific issues. We can then report to the Commonwealth with an appropriate degree of detail and, importantly, context. This would allow the legal assistance sector to benefit from the investment in its consistent collection of data and the Commonwealth would benefit from its receipt of targeted and meaningful reports in response to its enquiries. This investment would also improve jurisdictional planning processes.

Our data collection systems and reporting system (CLASS) is not currently configured to produce unit level data at the State, Territory or national level. Investment is required to develop new reports and/or dataset extracts based on the agreed data requirements. This also requires updates to sharing and security policies and ethics policies, ensuring that clients are aware of why their data is being collected and how it will be used and shared in the future. These reports would need to be thoroughly tested and approved for integrity within the sector so that they can benefit from the data.

New data and practical impact of data items

The sector has significant concerns that the impact of additional data reporting requirements on legal centres and their clients have not been fully considered.

The data capture requirements (outlined in the DSM) that are the foundation for our dataset structure have proven to be complex, ambiguous and resource intensive for data collection. The sector has invested in data education and is starting to see improvements and build a stable data resource, however work in this space is ongoing and has not yet begun in relation to community services. The sector also has limited investment and capacity in data systems, training and for appropriate resourcing at Centres. Based on these factors the sector is currently not well placed to absorb and implement an increased scope in data collection, particularly without investment.

It is recommended and common practice to reduce datasets over time by eliminating those items that have provided little to no value. Investing in producing a more useful, high quality dataset would yield greater value and meaning, while additional items can be implemented in a more established environment for a specific business need once the existing dataset has been thoroughly analysed. It is also recommended that investment in data systems be considered and focus on data collection automation and streamlining, reducing the effort to collect data and improving the quality. There are some great automation opportunities to be considered such as stop/start timers which capture session time, conditional data entry which prompts only relevant data entry or selecting of items based on previous responses and auto population based on client's service history or provider location. Investment in system data collection functionality and user experience improves data quality while absorbing additional data requirements and therefore building service capacity. The Commonwealth should fund the sector to invest in their data collection systems so that legal assistance sector can later provide it with meaningful reports in response to specific requests for information.

In any event, data collection processes should remain the same for the first 12 months of the new NLAP while further consultation takes place on this issue. The commitment to finalise the NLAP in advance of the June 30, 2020 expiry is vague and leaves inadequate time to implement any dataset changes by the end of FY 2019/20. This is critical because any changes made during the FY impacts the baseline data for an entire FY dataset - a key reporting timeframe. Any agreed upon changes ought to be made at the beginning of reporting periods so consideration for adequate time to implement system, process and practice changes are essential to retaining a good dataset and in line with good change management practice.

The proposal to collect three new data items, as well as a significant increase in data to be collected and reported for the less intensive service types - Information and Referral. New data items or changes to existing data collection require development in data systems, new data policies, amended reporting environments and change management strategies to ensure appropriate collection and reporting on the new data is implemented. Staff and volunteers will then need to be trained on all of these issues to ensure consistency. Users will be requested to begin collecting a large amount of data for Information and Referral services, particularly client characteristic data. Most CLCs collect this data via a monthly bulk insert tool, so this change would require the retirement of this tool and a widespread change in data capture practices for Information/Referrals services.

It is important that data is collected and stored in a way that is not detrimental to clients and reflects their needs. Information and referral services are provided over the phone, and in some cases are partially automated or are to individuals not classified as "clients". In many cases, collecting additional data would take longer than the information component of the call. It is not practical or in most cases possible to request and collect detailed client or service information from these individuals, particularly as many are being referred on to other service providers.

These services are also very high in volume and collecting additional data would absorb a significant portion of a Centre's capacity to deliver client services. As community legal centres are already under-resourced and under-funded, diverting resources away from services to data collection means that people in need miss out.

Collecting additional data can also add to a client's trauma and anxiety. Clients calling about matter such as family violence, or even for help after disasters such as the bushfires are often not mentally prepared to have to answer survey questions in order to get advice about how they can try and find a new home to live in or escape a violent relationship. Challenges in collecting certain types of data also need to be considered, such as the fact that many Aboriginal people will often not provide a postcode or date of birth.

The proposed amendment to the definitions and collection requirements for *Service Type* in order to understand whether a service was briefed out or provided using in house resources is unclear. We need to understand how this is different to clients referred on for services elsewhere or services provided by the sector, as this is already captured. Amending existing service types is highly problematic as extensive work has been done to build the sector's understanding of the current complex rules around service types, which is only just starting to lead to improved data consistency. Furthermore, changes can impact the baseline data that is only beginning to form, which is particularly important for the critical data item *Service Type*. If this is an additional service data item required to provide specific context, it needs to be specified in the data requirements specifications and considerations for additional data entry administration and system changes.

Using additional data to assess performance, research and analysis

Performance

The paper states that the "Data requirements under NLAP" will *not* be used for compliance, national security or law enforcement, however this statement does not include *performance*. While the paper does state performance will be measured using aggregate data provided through the Statement of Services and Funding and Jurisdictional Performance Report, there needs to be a clear statement or delineation of data usage. The sector needs to be confident that the additional data requirements will *not* be used for performance and funding, and performance data and usage should be clearly included in the "National Strategic Framework for Legal Assistance" process map (Infographic on page 10).

It is proposed that the sector's performance under the NLAP will be measured against the proposed *national* indicators. These proposed measures and indicators require significant further clarification and consideration of the community legal sector's diversity in service provision and community needs. The sector does not support its data being used to draw comparisons about services within a state or across states. Performance comparison across states or service providers would require the development of a nuanced and sophisticated performance model that at a minimum accounted for different legislation, population sizes and community characteristics and legal needs. To provide meaningful data, this model should take into account these factors and look to compare like for like service providers. Additionally more contextual data which describes the service provision intensity, complexity and outcomes would be needed to allow greater insight into service demand, usage of funding and effectiveness of meeting the community's legal need. Performance models that have worked well monitoring similar organisational models consist of numerous indicators, each with weighted scores linked to performance themes such as effectiveness, accessibility, sustainability and appropriateness.

Each service provider type uses a different service model by choice, based on multiple factors and in some cases 40 years of testing the market in terms of finding out what communities need. Furthermore, within a particular service model (Service Provider Type Group) there are a diverse range of service delivery practices. These were designed and have evolved to better meet the needs of specific communities, account for other legal service offerings in their community (catchment) and are driven by the sector's overall need for particular areas of legal service offerings.

For example, generalist services will utilise more localised, broad service models compared with specialist services that provide state-wide or national services for a particular cohort or area of law. Lawyers in generalist practices cannot use a standard approach or practice model given the need for constant research and reinvention to deal with such a wide range of incoming matters. Community legal centres with clients in remote or regional areas may have to travel five days to provide advice or representation and many need to ensure they provide culturally appropriate and secure services. This means that a high level of care needs to be used in attempting to compare legal centres to other legal centres, and especially between community legal centres and other state legal aid providers.

The sector supports providing state-level aggregate data for reporting purposes relating to funding. However, any proposed *national* indicators would require an extremely high level of sophistication that accounts for service provider variation factors and service type variations in duration, complexity and intensity. It's also recommended that a greater focus is placed on longitudinal data when developing performance measures. This approach should create better indicators which are based more on measuring improvement in service delivery and levels of met legal need from previous years. However, cross state comparison can be meaningful in identifying unbalanced service offering (type) proportions (large variations from national averages), but this requires agreed expectations that service mix targets are designed to best met the legal needs of that community or jurisdiction. It wouldn't be prudent to expect one State to deliver to a target of X services for a particular service type, based on a different State or national results if this wasn't addressing the legal need for that State. Comparison performance measures should only be a component of a larger performance indicator matrix.

The sector also strongly cautions against using this data to estimate unmet legal need as it is limited by the fact that it reports on people that centres are seeing rather than people they are not seeing.

Research and analysis

One of Commonwealth's research and analytical objectives is linking clients to other datasets and systems to understand their justice and legal need. While the sector recognises the value of sound research relating to legal assistance, this cannot be obtained through a large-scale 'data dump'. Instead, the Commonwealth should invest in increasing the sector's data collection capacity and then work with it to obtain reports about specific issues. This would allow meaningful and robust conclusions to be drawn in conjunction with the right stakeholders on certain issues. While understanding a client's journey through the system and the points of intervention and opportunities for increasing impact is an understandable goal, it is premature to consider this given the lack of support for quality data, systems and sufficient infrastructure, both across the sector and government. The aforementioned privacy and help-seeking issues also need to be considered.

Recommended NLAP reporting strategy

The community legal sector acknowledges the value of consistent and robust data. It is essential that the legal sector be resourced and funded to collect and analyse this data and use it to improve their service planning and provision. While we cannot agree to the provision of all of this data to the Commonwealth, we do want to work in a collaborative way and provide reports on specific issues that contain an appropriate level of data. By supporting the sector to build capacity and obtain quality data, legal centres can have a greater beneficial impact on their clients and communities while also developing improved ways to meet legal need.

The benefits that flow to communities and ultimately the Commonwealth from the integrated and preventative approach that community legal centres take to legal and social issues are significant and would be amplified if an investment were made in their data capacities. While it is not appropriate for legal centres to allow open-ended data mining or to share unit-level data of clients who are often experiencing disadvantage, a strong legal assistance sector would be well placed to work with the Commonwealth and convey meaningful data when requested.

Recommendation 1: Invest in improving community legal assistance data

Most of the Commonwealth's intended usage purposes and benefits can be achieved by the sector itself if it is invested in appropriately and given time to mature. Data tools and public reports using integrated data are already well in development and some are live. Much of the value in our data will be realised by the sector and other bodies that the sector works with closely, as trends, insights and gaps can have applied sector knowledge in the analysis and immediate application from decision making. The main constraint the sector has in realising the data value is the inadequate funding for data collection systems, processes and practices, skilled data system support and data analysis resources, as well as reporting capability. This investment gap prevents the sector from developing a well-structured, high quality dataset and sufficiently skilled resources to analyse and embedded in the sector's service planning, policy making and community campaigns. Resourcing the sector will provide a strong capability for detailed reporting, useful data insights and data sharing with other bodies, along with the ability to meaningfully integrate with other datasets.

Recommendation 2: Develop reports (datasets) that address specific questions or needs

What the paper does *not* outline are any business questions that are trying to be answered. A good inclusion in the *National Legal Assistance Data Strategy* strategic priorities would be a set of high priority reporting or organisational needs the Commonwealth is trying to answer with the data. Once the Commonwealth has decided upon the exact information it is seeking, the sector wants to work with it to build specific reports or datasets to support these needs, if it were sufficiently funded to do so. Where there are gaps in information, the sector then would then have the requirements to develop solutions to structure and capture the data appropriately. This process should be consultative as the requirements are often

complex and nuanced, requiring ongoing user testing, comprehension and feedback to interpret the output. A raw dump of data to an external party cannot be meaningfully relied upon for research and often leads to more questions, confusion and effort with no added value or certainty of meeting the need, particularly an undefined need.

Recommendation 3: Progress towards data sophistication

The sector peak and funding bodies have a strong desire for access to unit level data for their own use and need further investment to build capacity for the sector's collection and use of data. While many questions and needs can be met with specifically designed and multidimensional reports, the kind of data sought by the Commonwealth does not support meaningful data analysis and research needs. Detailed reports very rarely integrate with other datasets, systems and tools. Continual adequate investment and upskilling in the sector's data ecosystem and users should progress us towards developing a sophisticated unit level data capability.

Conclusion

The sector must have access to quality data to support its operations. While the sector accepts the importance of providing high level data for the purposes of reporting on its funding, it is not appropriate for it to mine its data or provide unit-level data to the Commonwealth. Data provided in this way would have little to no value, while at the same time placing an unreasonable burden on centres and consequently their clients and communities.

The desired data resource development and analytical intent is more aspirational at this stage rather than a proven model. There are notable omissions of data items requested, some existing data capture structures that prevent useful analysis, currently no technical specifications provided, nor is there a national data strategy or national data infrastructure in place.

National data collection standards only supports providers in collecting data in a manner that closely aligns to the service provisioned in a consistent practice across service providers and jurisdictions. Consistent data collection does not default to comparable data analysis. Cross state or provider comparisons can only be meaningful using a developed analytical or performance model designed to compare like for like service providers/service provider models & communities, a variation of metrics such as proportions and average services per client, as well as applying context such as service intensity, complexity and duration. Any generalised comparisons can be detrimental, leading to false targets or poor decisions with service modelling. Components of the *current* data capture design that supports intensity and complexity prohibits our ability to provide meaningful context.

The legal assistance sector requires a significant investment in data resource development and analysis, but cannot support any attempt by the Commonwealth to use its data to draw comparisons between centres and across states given the risk of false targets or poor decisions being made as a result of attempted generalised comparisons.

In any event, the current state and structure of centres' data does not support the provision of useful unit level data. We are willing to work with you to provide additional state-level aggregate data.

Investment in data collection systems, structure and practices are essential to produce this data at an acceptable and meaningful standard. Centres should be resourced to obtain this data and use it for their own purposes, but should have no obligation to provide it in bulk to the Commonwealth.

Ultimately, while we strongly support the legal assistance sector receiving funding to support their collection and use of data and enable better service provision, we do not consider it appropriate for this additional data to be provided to the Commonwealth.

Instead, we propose to work with Commonwealth to help it better identify the additional information that it wants to collect and to develop solutions that meet its needs, while protecting the privacy of our clients.