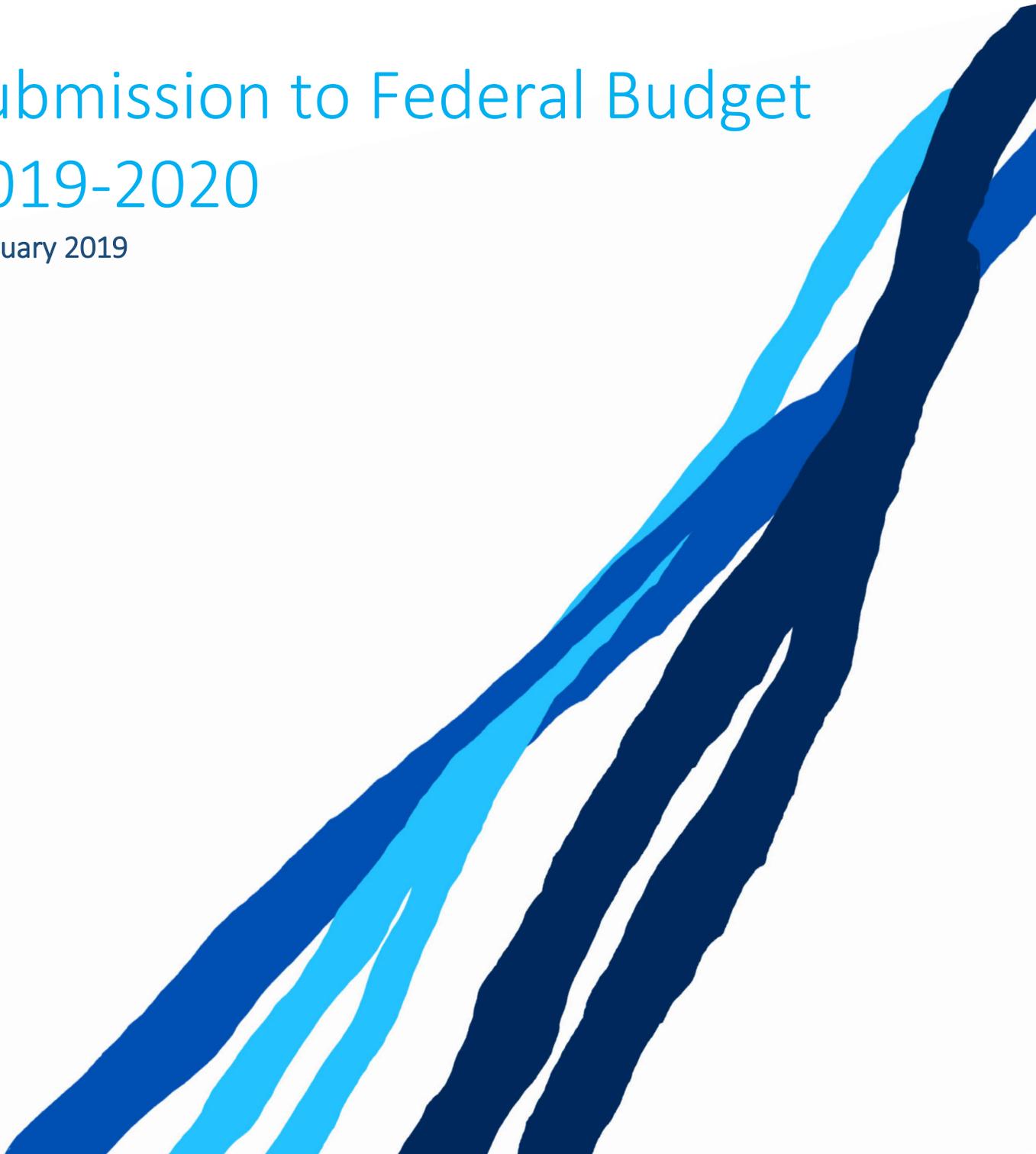




Submission to Federal Budget 2019-2020

February 2019



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Introduction

The National Association of Community Legal Centres (NACLC) welcomes the opportunity to make a submission to inform Commonwealth Government 2019-2020 Federal Budget priorities and decisions.

NACLC is the peak body for all community legal centres in Australia. Community legal centres are independent, non-profit, community-based organisations that provide free and accessible legal and related services to everyday people, including people experiencing discrimination and disadvantage. Our members are the eight State and Territory Community Legal Centre Associations.

We would welcome the opportunity to engage further with Treasury in relation to this submission. The relevant contact to discuss this submission in more detail is:

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Executive Summary and Recommendations

Community legal centres provide essential legal services to hundreds of thousands of everyday people, and people experiencing discrimination and disadvantage across Australia each year. Centres are imbedded in local communities, working in a holistic, client-centred and multidisciplinary way. Centres play a crucial and effective role in assisting people to resolve their legal problems at an early stage, in meeting rising demand for legal assistance and contributing to systemic reform.

The work of community legal centres cuts across a wide range of areas of law and policy including family law, credit/debt, consumer law, family violence, housing, elder abuse, employment and social security. Nationally, as well on an individual centre basis, the sector engages across areas of Commonwealth Government portfolio responsibility. As a result, there is strong rationale for a whole-of-government approach to the funding of the work of community legal centres.

We support a Federal Budget that ensures funding for essential services, including community services and community legal services as well as measures designed to support people in our communities who need it most.

This Federal Budget submission identifies a number of key areas in which additional investment would have a significant positive impact on the lives of individuals and communities, support high quality and efficient service delivery, and contribute to more effective operation of the justice and related systems.

The first part of the submission outlines the key **sector-related opportunities for government support and investment**, including:

1. Funding predictability and additional investment in community legal centres
2. Supporting delivery of high quality services by community legal centres
3. Funding and support to work with the sector to implement positive reforms and recommendations in the Final Report of the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA)

The second part of the submission outlines **broader policy areas** in which community legal centres have particular expertise and where new approaches and/or additional investment will make a significant difference to the lives of people as well as the more effective operation of the broader system. These include:

4. Consumer financial legal advice and assistance services
5. Keeping people experiencing family violence safe
6. Legal help and support for people engaging in the Royal Commission into Aged Care Quality and Safety
7. Preventing and responding to elder abuse
8. Improving the social security system, particularly for people experiencing family violence
9. Measuring legal need in Australia
10. Investment in other legal assistance services

1. Funding Predictability and Additional Investment in Community Legal Centres

A key part of ensuring the community legal sector can continue to deliver high quality services to people across Australia in an effective and efficient way is funding predictability.

The major source of Commonwealth Government funding to community legal centres is the National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA). The current NPA expires on 30 June 2020, with no future funding allocation for community legal centres beyond next year.

If no provision for funding for the sector is allocated in the upcoming 2019-2020 Federal Budget and it is left until the 2020-2021 Federal Budget, it will leave only a matter of weeks between the announcement of any funding and the end of current Commonwealth funding on 30 June 2020. This is not enough time for Commonwealth, State and Territory Government decisions and processes and will lead to significant funding uncertainty and inefficiency.

In allocating funding to community legal centres moving forward we recommend, at a minimum the current level of Commonwealth funding to community legal centres under the NPA (\$50.7 million for 2019-2020) as well as appropriate indexation should be the baseline for any future funding. It is also important that the Commonwealth continue to fund its share of the wage increases arising from Equal Remuneration Order in the Social and Community Services (SACS) sector.

In addition to funding certainty, there is also a need to increase the overall quantum of funding to the sector contributed by both Commonwealth as well as State and Territory Governments. A number of key inquiries and reports have recommended an immediate increase in overall funding to the legal assistance sector to address critical and immediate needs, including:

- In 2014, the Productivity Commission of Australia recommended a \$200 million increase per annum as an interim measure (including \$120 million of Commonwealth funding), and
- In 2018, the Law Council of Australia Justice Project recommended a \$390 million increase per annum, at a minimum.

More broadly, we support the call in the ACOSS Budget Priorities Statement for additional funding for community services, which includes funding for community legal centres.

Recommendation 1: The 2019-2020 Federal Budget should include a Commonwealth funding commitment for community legal centres beyond 2020 over the forward estimates.

Recommendation 2: Funding for community legal centres beyond 2020 should use the 2019-2020 Commonwealth funding level of \$50.7 million under the National Partnership Agreement for Legal Assistance Services, as well as indexation, as a minimum baseline.

Recommendation 3: The Commonwealth Government should ensure funding certainty and predictability for community legal centres. This should include a requirement that any future Commonwealth funding be provided under funding agreements for period of at least five years.

Recommendation 4: The Commonwealth Government should increase funding to the legal assistance sector, including Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Legal Aid Commissions. The increase should include an immediate injection of at least \$120 million additional funding per year.

2. Support for Delivery of High Quality Services by Community Legal Centres

There are a range of national and state-based mechanisms in place that support the effective and efficient operation of community legal centres sector, as well as an ongoing commitment to high quality service provision and continuous improvement

Peak community legal centre bodies, including NALCLC as the national peak, play a vital role in supporting this work and coordinating engagement across the legal assistance sector and with government.

Funding and support for, as well as engagement with, peak community legal centre bodies results in more positive outcomes for government, the sector, the justice system and the broader community. To support this work, we recommend that the Commonwealth Government should provide \$5.1 million in additional funding between 2019-2020 and 2022-2023 to NALCLC and State and Territory Community Legal Centre Associations.

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. As a result, we also recommend that the Commonwealth Government contribute \$1.47 million between 2019-2020 and 2021-2022 to support the ongoing continuous improvement and quality assurance work of the sector.

Recommendation 5: The Commonwealth Government should recognise the vital and increased role played by peak community legal centre bodies in facilitating the efficient and effective operation of the sector and coordinating engagement with Government, through provision of \$5.1 million in additional funding between 2019-2020 and 2022-2023 to NALCLC and State and Territory community legal centre peak bodies.

Recommendation 6: The Commonwealth Government should support the national community legal sector quality and continuous improvement framework and scheme coordinated by NALCLC through provision of \$1.47 million between 2019-2020 and 2021-2022 additional funding to enable ongoing support of the sector nationally, as well as in each State and Territory.

3. Implement the NPA Review Final Report

The 2018 Review of the NPA was completed in December 2018. While it has not yet been made publicly available, it is likely that the Report will contain findings and recommendations for ways to reform the funding and administration of the legal assistance sector, including for example in relation to collaborative service planning, national forums and mechanisms for information sharing and sector engagement, innovation, as well as data, evidence and research.

The Commonwealth Attorney-General's Department submission to the NPA Review already flagged a number of areas for possible reform which are likely to require additional investment.

As a result, to enable Government to appropriately consider and implement reform in line with the Report, jointly with the sector, we suggest that the Commonwealth Attorney-General's Department allocate new and specific funding for these purposes.

It is important that this is additional/new funding and does not divert existing legal assistance funding and that any such reform is implemented in consultation with the sector.

Recommendation 7: To facilitate implementation of positive sector reform in line with the NPA Review Final Report, the Commonwealth Attorney-General's Department should allocate new and specific funding for these purposes, separate from existing legal assistance funding.

4. Consumer Financial Legal Advice and Assistance Services

In response to the evidence of misconduct uncovered by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and growing demand for counselling and legal advice, there is a need for substantial additional investment in consumer financial legal advice and assistance services.

The Final Report of the Royal Commission explicitly acknowledged the valuable work of the legal assistance sector and the need for predictable funding.

Boosting financial counselling and community legal services, through a levy on industry in addition to existing Government funding, is an effective and fair way to ensure people can access help to assert their rights, get out of debt, and protect their livelihoods.

NACLC and Financial Counselling Australia (FCA) are jointly calling for funding of \$157 million per annum to create a properly funded network of community financial counselling and community legal services. This is composed of: \$1 million for the National Debt Helpline, \$130 million for 1,000 financial counsellors, and \$26 million for an additional 200 community financial service lawyers located in community legal centres across Australia.

Importantly, the cost to the Commonwealth Government would be neutral, as we recommend that the expanded network be funded either through an increase in the Major Bank Levy or by expanding the existing ASIC industry funding levy on financial services institutions. This funding model has been canvassed before, and is currently operating effectively in the United Kingdom.

We estimate that this expanded network will triple the number of people helped – increasing from around 250,000 to 800,000 people a year.

Recommendation 8: The Commonwealth Government should support an increase in the Major Bank Levy or expansion of the ASIC Industry Funding Levy of \$157 million per year to create a properly funded network of financial counselling and legal assistance services. This should include:

- a) \$1 million for the National Debt Helpline
- b) \$130 million for 1,000 financial counsellors, and
- c) \$26 million for an additional 200 community financial service lawyers

5. Keeping People Experiencing Family Violence Safe

Community legal centres are at the frontline of providing crucial expert legal and related help to people experiencing family violence.

Specific family violence-related funding for community legal centres under the Women’s Safety Package has increased access to legal help for women experiencing family violence across Australia through the establishment of 15 specialist domestic violence units and 5 health justice partnerships.

In November 2018, the Commonwealth Government announced an additional \$29.8 million to extend funding for these existing units over 3 years from 2019-2020.

However, the small number of units and partnerships were initially funded as a pilot project. The 2018 evaluation of the units and partnerships conducted by Social Compass has not been publicly released. However, we understand it is a positive evaluation. The success of the pilot units and partnerships in increasing access to safe and appropriate legal help for women experiencing family violence provides strong evidence to support broader roll-out of the units and partnerships.

As a result, we encourage the Government to use the evaluation as the basis for national roll-out of the units and partnerships. Funding additional units and partnerships would build on existing good practice and the expertise of the sector and contribute to ensuring women and children across Australia are safer and can access the legal help they need.

Recommendation 9: Building on the Commonwealth Government’s commitment to addressing family violence, the Commonwealth Government should provide additional funding to the legal assistance sector for national roll-out of specialist domestic violence units and health justice partnerships across Australia.

6. Legal Help and Support for People Engaging in the Royal Commission into Aged Care Quality and Safety

Community legal centres have a long history of, and are experts in, providing legal help to older people, including people in aged care. NALCC and community legal centres also have significant experience and expertise in supporting the work of and assisting people to engage in Royal Commissions.

We welcome the Commonwealth Government’s announcement of a Royal Commission into Aged Care Quality and Safety. However, it is important that older people and their families have access to legal help to engage with the Royal Commission.

In our experience (through knowmore, the legal service established to assist people engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse which is a program of NACLCL), this support is a vital part of ensuring people have the information and advice they need to more effectively engage with the Royal Commission.

As a result, we recommend allocation of funding to community legal centres to provide older people and their family's access to legal help to engage with the Royal Commission. In our view, the funding should be allocated across the existing network of specialist and generalist community legal centres, rather than being allocated to establish a new stand-alone service.

Recommendation 10: The Commonwealth Government should provide community legal centres with additional funding to provide legal help and support for people engaging in the Royal Commission into Aged Care Quality and Safety.

7. Preventing and Responding to Elder Abuse

Community legal centres are experts at working with people and their families where an older person is experiencing elder abuse. Older people represent over 10% of all people helped by community legal centres in 2017-2018 and there is significant and rising demand for legal help relating to experiences of elder abuse.

We welcomed the Commonwealth Government's provision of \$22 million in the 2018-2019 Federal Budget to establish a number of specialist elder abuse units, health justice partnerships and case management and mediation services to assist people experiencing elder abuse.

However, we understand that this funding will only be sufficient to establish a handful of units/partnerships/services and that only 30 organisations nationally have been invited to proceed to a restricted competitive tender process.

Given the limited existing funding and significant need, we recommend provision of additional funding to community legal centres to ensure older people experiencing elder abuse can access the legal help they need, building on the Government's existing commitment.

Recommendation 11: The Commonwealth Government should provide community legal centres with additional funding to provide legal advice and related assistance to people experiencing elder abuse.

8. Improving the Social Security System

In August 2018, the National Social Security Rights Network (NSSRN), a national network of NACLCL, released a key research report, *How Well Does Australia's Social Security System Support Victims of Domestic Violence?* It outlined a number of key measures to improve access to the social security system for people experiencing family violence.

The Report, as well as the NSSRN submission to the 2019-2020 Federal Budget make a number of recommendations for reform, including in relation to making Centrelink easier to access; making Crisis Payment easier to access; removing the Newly Arrived Residents Waiting Period for Special Benefit; reforming the Targeted Compliance Framework; making ParentsNext voluntary; abolishing the Community Development Program.

We support the measures outlined in that report and we welcome Government actions to date to implement several of the measures outlined in that report.

We also endorse the social security policy reforms outlined in the NSSRN Federal Budget submission which build on the measures outlined in the report, as well as calling for increases to the rates of Newstart, Youth Allowance and related payments.

With respect to additional funding, we emphasise the significant social security legal need in Australia and recommend additional Commonwealth funding for community legal centres to assist people in relation to social security-related matters.

More broadly, we support the social security reforms outlined in the ACOSS Budget Priorities Statement.

Recommendation 12: The Commonwealth Government should implement the recommendations made in the National Social Security Rights Network 2018 Report, *How Well Does Australia's Social Security System Support Victims of Domestic Violence?*

9. Measuring Legal Need in Australia

Understanding and measuring legal need in Australia and having access to accurate and recent data underlies effective service delivery and planning across the justice system, including the 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. However, this work is over ten years old. Accordingly, 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.

Recommendation 13: The Commonwealth Government should 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.

10. Investment in Other Legal Assistance Services

There are four publicly funded legal assistance services: Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLS) and Legal Aid Commissions (LACs) and each play an important, unique and complimentary role in providing legal help to people across Australia.

In addition to the recommendations made above, in light of 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.

As a result, we support the ongoing calls by the National FVPLS Forum, for additional funding for FVPLS to meet existing and rising demand for FVPLS services; a move to national coverage of services; and long-term funding agreements to ensure funding certainty.

We also support National Aboriginal and Torres Strait Islander Legal Services (NATSILS) calls for the Commonwealth Government to retain a separate, standalone and specific Indigenous Legal Assistance Program. This should recognise the unique, culturally safe and community-controlled services provided

by ATSILS and ensure that ATSILS are not included under the NPA and continue to receive direct funding. We also support ongoing funding for the ATSILS, emphasising the need for additional funding and long-term funding agreements moving forward.

Recommendation 14: The Commonwealth Government should:

- a) reinstate the Family Violence Prevention Legal Services as a stand-alone national programme and provide it with a direct allocation of funding
- b) ensure funding certainty and predictability for Family Violence Prevention Legal Services, including funding agreements for period of at least five years and funding increases that incorporate indexation for all services, and
- c) commit to national coverage of Family Violence Prevention Legal Services commensurate with need.

Recommendation 15: The Commonwealth Government should support the National Family Violence Prevention Legal Services Forum including through additional funding and a commitment to long-term funding and support.

Recommendation 16: The Commonwealth Government should:

- a) retain a separate, standalone and specific Indigenous Legal Assistance Programme
- b) ensure funding certainty and predictability for Aboriginal and Torres Strait Islander Legal Services, including through provision of funding upfront on an annual basis and under funding agreements for period of at least five years

Recommendation 17: The Commonwealth Government should overturn funding cuts to Aboriginal and Torres Strait Islander Legal Services under the Indigenous Legal Assistance Programme of \$10 million forecast in the Forward Estimates from 2020-22 and the related ongoing Mid-Year Economic and Fiscal Outlook Government savings measure.

Recommendation 18: The Commonwealth Government should fund Aboriginal and Torres Strait Islander Legal Services to meet unmet legal need and address the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system, including through an injection of \$81.351 million over 5 years (a total of \$85.094 million per annum in 2019-20 including CPI).

Recommendation 19: The Commonwealth Government should support National Aboriginal and Torres Strait Islander Legal Services (NATSILS), including through additional funding and a commitment to long-term funding and support.

What Are Community Legal Centres and How Do They Help?

There are 181 community legal centres nationally. In 2017-2018 centres provided over 470,000 services to people across Australia.

Community legal centres are independent, non-profit, community-based organisations that provide free and accessible legal and related services to everyday people, including people experiencing discrimination and disadvantage.

Community legal centres provide a range of services including information, referral, legal advice, non-legal support, duty lawyer services, and casework including representation services. Centres 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, community legal centres play a key role in community engagement, developing and facilitating partnerships between legal assistance providers and legal and non-legal services (for example, domestic violence organisations, community health organisations, housing services and drug and alcohol services) and developing and maintaining referral networks and protocols.

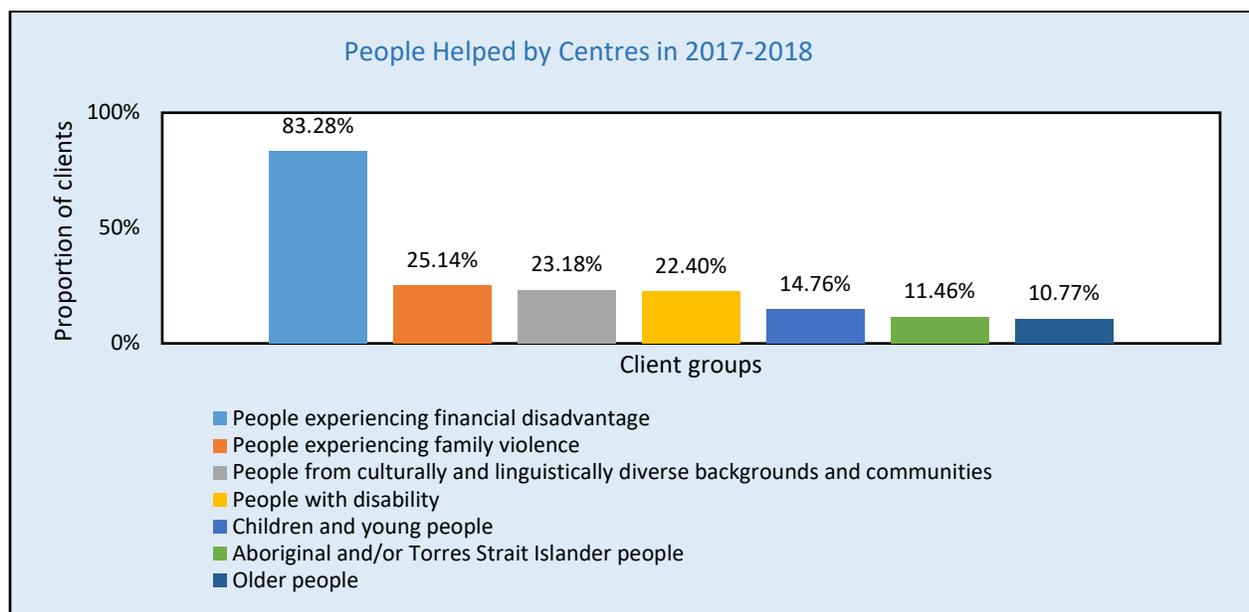
Key Areas of Law

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

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

Who Do We Work With?

Centres help a broad range of clients and communities. For example, in 2017-2018, the profile of clients assisted nationally is outlined in the graph below:



Benefits, Efficiency and Value of Sector and Service Delivery

The work of the sector has significant benefits not only for the individuals that centres assist and their families and communities, but also for governments and the broader community.

For example, the Productivity Commission has highlighted that the work of centres generates savings for government and the community, noting that the ‘positive spill-over or flow on effects to the wider community from providing legal assistance services’¹ 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.²

Other reviews of the sector have also outlined the key benefits of the sector, including:

- ensuring that legal rights can be enforced
- preventing civil problems from escalating into criminal matters
- avoiding costs to other government services, and
- improving the efficiency of court proceedings.³

The 2018 NSW Review of Community Legal Services noted that community legal centres ‘deliver tangible benefits both to individuals and the broader community’ and that the ‘services provided by CLCs are also delivered at very low cost to government. Centres are extremely efficient, leveraging volunteer and pro bono support to maximise the total hours, dollar value and range of services they provide’.⁴

The recently released Final Report of the Banking Royal Commission also acknowledged that ‘the legal assistance sector and financial counselling services perform very valuable work. Their services, like financial services, are a necessity to the community. They add strength to customers who are otherwise disadvantaged in disputes with financial services entities. In that sense, their role in the financial services sector is complementary to the broader recommendations in this Report that are designed to hold entities to account’.⁵

The sector is committed to achieving the best possible outcomes for our clients and communities through the delivery of efficient, effective and innovative services and commitment to continuous improvement. As part of this, centres are at the forefront of leveraging better outcomes through a variety of means and the peak bodies such as NACLC further support and enhance the efficiency of operations and service delivery.

¹ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.

² See, eg, Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) Appendix K, 1054.

³ Alan Cameron, *Review of NSW Community Legal Services* (2017), [2.4.2].

⁴ *Ibid*, 5, 6.

⁵ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (2019), 491.

What Is Needed?

This Federal Budget submission identifies a number of key areas in which additional investment would have a significant positive impact on the lives of individuals and communities, support high quality and efficient service delivery, and contribute to more effective operation of the justice and related systems. These include:

1. Funding predictability and additional investment in community legal centres
2. Supporting delivery of high quality services by community legal centres
3. Funding and support to work with the sector to implement positive reforms and recommendations in the NPA Review Final Report
4. Consumer financial legal advice and assistance services
5. Keeping people experiencing family violence safe
6. Legal help and support for people engaging in the Royal Commission into Aged Care Quality and Safety
7. Preventing and responding to elder abuse
8. Measuring legal need in Australia
9. Investment in other legal assistance services

1. Funding Predictability and Additional Investment in Community Legal Centres

- Ensuring certain, predictable, long-term and sustainable funding for the sector is a vital part of ensuring it can operate most effectively. Funding certainty and predictability allows organisations to appropriately and effectively plan for organisational sustainability and service provision.
- As a result, the 2019-2020 Federal Budget should include a funding commitment for community legal centres beyond 2020 in the forward estimates.
- Current levels of Commonwealth (as well as State and Territory Government) funding are insufficient to meet rising demand for services.
- There is a need to increase the overall quantum of funding to the sector contributed by both Commonwealth as well as State and Territory Governments.
- Previous inquiries and reports have recommended an immediate increase in overall funding to the legal assistance sector of at least \$200 million- \$390 million per year
- The current level of Commonwealth funding to the sector under the NPA (\$50.7 million for 2019-2020) as well as appropriate indexation should be a baseline for any future funding
- Commonwealth funding should support early intervention and prevention work, including systemic law reform, policy and advocacy work

Funding Certainty and Predictability

Funding for community legal centres has been characterised by significant uncertainty.

Community legal centres need funding certainty to plan and provide efficient and effective services. The people and communities we help across Australia need to know we will be there to help them when they need it most. Our organisational partners and supporters need to know it is worth investing in relationships, partnerships and collaborations that increase the provision of effective and joined-up services and referrals.

Funding certainty increases the effectiveness of centres, enabling them to make decisions about service delivery, staffing and organisational sustainability. It also increases the capacity of centres to dedicate resources to frontline service delivery and exploring innovative service delivery models, rather than the almost 4,000 hours per week currently spent by the sector on funding-related activities each year.⁶

As a result, we have consistently advocated for greater certainty and predictability in Commonwealth funding for the sector.

A number of key reviews, reports and submissions have highlighted the importance of funding predictability. For example:

- The Commonwealth Attorney-General's Department submission to the recent NPA Review also supported greater funding certainty for the sector, recommending '*the implementation of longer term Commonwealth funding arrangements, for example a 10 year funding mechanism such as an NPA. This option would address funding certainty and assist with planning*'.⁷
- The Final Report of the Banking Royal Commission recently noted that 'the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration. Such consideration should look at all options that may be available to supplement existing funding'.⁸
- The Government Response to the Royal Commission Report, stated that 'the government agrees with the suggestion by Commission Hayne that there is a need for predictable and stable funding for the legal assistance sector and for counselling services'.⁹

Why the Urgency?

If no provision for funding for the sector is included in the Federal Budget in April 2019 and is instead announced in the 2020-2021 Federal Budget, it will leave only a matter of weeks between the announcement of any funding and the end of current Commonwealth funding on 30 June 2020. This is not enough time for Commonwealth, State and Territory Government decisions and processes and will lead to significant funding uncertainty and inefficiency.

Between the release of the NPA Review Report (expected in mid-February 2019) and the provision of funding to individual community legal centres across Australia there are a number of decisions and processes, including:

- Commonwealth and State and Territory Governments to consider and respond to the Report and make appropriate decisions about amending the existing NPA
- Commonwealth and State and Territory Governments to make appropriate decisions about and negotiate any future NPA
- Commonwealth allocation of funding to the States and Territories using a Funding Allocation Model agreed under any future NPA

⁶ For example, the results of the 2017 NACLC Census indicate that CLCs spent over 3,857.2 hours per week during 2016-17 on these funding-related activities.

⁷ Commonwealth Attorney-General's Department, *Submission to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020* (2018) 7.

⁸ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (2019), 493.

⁹ Australian Government, *Restoring trust in Australia's financial system: The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (February 2019), 39.

- State and Territory Governments to undertake their own various process to determine individual centre funding allocations, finalise funding agreements with centres and provide centres with funding.

In particular, if funding is not allocated until 2020-2021 Federal Budget, announced in May 2020 (before funding ends one month later in June 2020) **this would leave a matter of weeks** for:

- the Commonwealth to transfer the funding to the State and Territory Governments using the Funding Allocation Model
- State and Territory Governments to make decisions about allocation of funding to individual community legal centres (including in many jurisdictions running an application process), and
- individual centres to be informed about their funding allocation.

This would perpetuate the lack of funding certainty for the sector and have real and negative consequences on the people that need the help of the sector every day.

What is the Solution?

The immediate solution is for the Commonwealth Government to make provision for community legal centre funding in the 2019-2020 Federal Budget over the forward estimates, in anticipation of any new NPA taking effect in July 2020.

In allocating funding to community legal centres moving forward, at a minimum the current level of Commonwealth funding to community legal centres under the NPA (\$50.7 million for 2019-2020) as well as appropriate indexation (aligned with annual CPI increases) should be the baseline. It is also important that the Commonwealth continue to fund its share of the wage increases arising from Equal Remuneration Order in the Social and Community Services (SACS) sector.

Building on this, the longer-term solution is to ensure that any future NPA requires the introduction of longer-term funding agreements, ideally for the full period of five years. NACLC made separate submissions on this point in the course of the 2018 NPA Review.¹⁰

Recommendation 1: The 2019-2020 Federal Budget should include a Commonwealth funding commitment for community legal centres beyond 2020 over the forward estimates.

Recommendation 2: Funding for community legal centres beyond 2020 should use the 2019-2020 Commonwealth funding level of \$50.7 million under the National Partnership Agreement for Legal Assistance Services, as well as indexation, as a minimum baseline.

Recommendation 3: The Commonwealth Government should ensure funding certainty and predictability for community legal centres. This should include a requirement that any future Commonwealth funding be provided under funding agreements for period of at least five years.

¹⁰ See NACLC, *National Submission to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020* (2018):

<http://www.naccl.org.au/resources/181004%20NACLCNPARReviewMainSubmissionFINAL.pdf>

Additional Investment

In the face of rising demand for legal help across Australia there is an urgent need for additional funding for the legal assistance sector.

The NPA provides \$1 billion over 4 years for Legal Aid Commissions and community legal centres. However community legal centres only receive \$142.90 million of total NPA funding, and approximately 12% of overall Commonwealth funding for the legal assistance sector.

The Productivity Commission was clear in its key Access to Justice Arrangements Inquiry—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.¹¹ Since 2014 there has been four Federal Budgets and each has failed to address these services gaps by providing additional funding, resulting in thousands of people turned away from essential legal services.

As a result, and based on the recommendations made by the Productivity Commission, we recommend 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 did not recommend exactly how all of that funding amount should be allocated between legal assistance providers. We do 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 overall quantum of funding for the sector.

More recently, the Law Council’s Justice Project found and recommended that Commonwealth, State and Territory Governments should invest significant additional resources in the legal assistance sector to address critical civil and criminal legal assistance service gaps. The Report suggested that at a minimum it should include \$390 million per annum, encompassing the \$200 million recommended by the Productivity Commission as well as an additional \$190 million for Legal Aid Commissions (noting that this additional ask did not quantify the additional funding needed for CLCs, ATSILS and FVPLS).¹²

Recommendation 4: The Commonwealth Government should increase funding to the legal assistance sector, including Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Legal Aid Commissions. The increase should include an immediate injection of at least \$120 million additional funding per year.

¹¹ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 738-739.

¹² Law Council of Australia, Justice Project (2018), rec 2.1.

2. Support for Delivery of High Quality Services by Community Legal Centres

- There are a range of national and state-based mechanisms in place that support the effective and efficient operation of the sector, as well as an ongoing commitment to high quality service provision and continuous improvement
- Peak community legal centre bodies, including NALCLC as the national peak, play a vital role in supporting this work and coordinating engagement across the legal assistance sector and with government.
- Funding and support for, as well as engagement with, peak community legal centre bodies results in more positive outcomes for government, the sector, the justice system and the broader community.
- To facilitate the efficient and effective operation of the sector, as well as enhance coordination and engagement with government, we recommend provision of \$5.1 million in additional funding between 2019-2020 and 2022-2023 to NALCLC and State and Territory Community Legal Centre Associations.
- 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.
- As a result, we also recommend that the Commonwealth Government contribute \$1.37 million between 2019-2020 and 2021-2022 to support the ongoing continuous improvement and quality assurance work of the sector.

National and State and Territory Support and Coordination

NALCLC plays a key national coordination and support role assisting governments, State and Territory CLC Associations and centres across Australia in relation to the funding and administration of the sector, including under the NPA. We provide national expertise and guidance to inform sector and government decision-making, contribute to the evidence base that underlies quality services and decision-making and support good practice service delivery. We also provides a number of high quality and cost effective national services to the sector.

Importantly, effective administration and funding of the sector moving forward, as well as implementation of any reforms arising from the recent NPA Review will rely on NALCLC to be an effective and funded national peak.

States and Territory Governments are now responsible for allocation of Commonwealth funding to community legal centres under the NPA. These decisions require expert input, coordination and information sharing by CLC peak bodies. In particular, collaborative service planning, as a key mechanism for informing service delivery under the NPA. Good practice, effective and evidence-based approaches to collaborative service planning and funding allocation involve the relevant CLC Association in the jurisdiction and/or NALCLC.

However, no additional Commonwealth funding was provided to NALCLC, community legal centres or State or Territory CLC Associations across jurisdictions to support these functions which ultimately involve the allocation and use of Commonwealth funding.

Based on our 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. We strongly recommend ongoing funding for these state peaks as well as constructive, timely engagement around funding, administration, service delivery planning and policy development for legal assistance services.

Supporting National and State and Territory Support and Coordination

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

- NACLCLC: \$500,000 additional funding per year
- State and Territory Associations (or NACLCLC) for jurisdictions with large numbers of centres: (NSW, Queensland, Victoria and WA): \$200,000 per year
- State and Territory Associations (or NACLCLC) for jurisdictions with small numbers of centres (SA, ACT, NT and Tasmania): \$100,000 per year
- Total funding between 2019-2020 and 2021-2022: \$5.1 million.

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 5: The Commonwealth Government should recognise the vital and increased role played by peak community legal centre bodies in facilitating the efficient and effective operation of the sector and coordinating engagement with Government, through provision of \$5.1 million in additional funding between 2019-2020 and 2022-2023 to NACLCLC and State and Territory community legal centre peak bodies.

Support for Continuous Improvement

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.

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 NACLCLC and the eight State and Territory CLC Associations. The NAS was developed in 2011 to provide an industry based certification process for centres 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 Accreditation Criteria. The National Accreditation Standards cover four main areas including: Governance, Management and Administration; Provision of Legal Services; Community Development, Education and Reform Activities; and 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 centres and their delivery of services in the community.¹³

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

Another feature of the NAS is the availability, to all centres, of the Standards and Performance Pathways (SPP) through which centres can assess their organisation against the NAS, and other community sector, quality standards and access template policies and procedures to adapt to their requirements. NACLCL subscribes to the SPP on behalf of the sector to make it available to all centres, free of charge.

The NAS is a rigorous and consistent national scheme and 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.

We suggest that as part of the 2019-2020 Federal Budget, the Commonwealth allocate \$1.47 million to NACLCL and/or each State and Territory Community Legal Centre peak bodies over 3 years to enable this work. 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: The Commonwealth Government should support the national community legal sector quality and continuous improvement framework and scheme coordinated by NACLCL through provision of \$1.47 million between 2019-2020 and 2021-2022 to enable ongoing support of the sector nationally, as well as in each State and Territory.

3. Implementation of the NPA Review Final Report

- The Final NPA Review Report is likely to contain findings and recommendations for ways to reform the funding and administration of the legal assistance sector.
- Implementation of the Report should be undertaken jointly with the sector, including NACLCL as the national peak.
- We support provision of additional funding should be allocated to facilitate implementation of reform in line with the Report, including for example in relation to collaborative service planning, national forums/mechanisms for information sharing and sector engagement, innovation, as well as data, evidence and research.

There have been a number of key inquiries and reviews of relevance to the sector, its funding and administration which provide a strong evidence base for many of the recommendations outlined in this submission.

¹³ The National Accreditation Scheme 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>

The most recent review is the 2018 Review of the National Partnership Agreement on Legal Assistance Services conducted by Urbis. The Final Report was provided to Government in December 2018, however it has not yet been made publicly available. It is likely that the Report will contain findings and recommendations about ways to reform the funding and administration of the legal assistance sector.

For example, the Commonwealth Attorney-General's Department submission to the NPA Review has already flagged a number of areas for possible reform which are likely to require additional investment, including for example: 'dedicated assistance, which may include financial or non-financial contributions, to support and administer collaborative service planning processes thereby strengthening consistency across jurisdictions and assist to identify and address cross-border issues with other jurisdictions'.

As a result, to enable Government to appropriately consider and implement reform in line with the Report, we suggest that the Commonwealth Attorney-General's Department allocate specific funding for these purposes. It is important that this is additional/new funding and does not divert existing legal assistance funding and that any such reform is implemented in consultation with the sector.

Recommendation 7: To facilitate implementation of positive sector reform in line with the NPA Review Final Report, the Commonwealth Attorney-General's Department should allocate new and specific funding for these purposes, separate from existing legal assistance funding.

4. Consumer Financial Legal Advice and Assistance Services

- The misconduct uncovered by the Royal Commission is not isolated and has affected hundreds of thousands of people in Australia. This has resulted in significant demand for financial counselling and legal help.
- The Final Report of the Royal Commission explicitly acknowledged the valuable work of the legal assistance sector and the need for predictable funding.
- In response to the Royal Commission and growing demand for counselling and legal advice, there is a need for substantial additional investment in consumer financial legal advice and assistance services.
- Boosting financial counselling and community legal services, through a levy on industry in addition to existing Government funding, is an effective and fair way to ensure people can access help to assert their rights, get out of debt, and protect their livelihoods.
- We recommend the Commonwealth Government support an increase in the Major Bank Levy or expansion of the ASIC Industry Funding Levy of \$157 million per year to create a properly funded network of financial counselling and legal assistance services.

The Royal Commission into Banking, Superannuation and Financial Services Industry (the Royal Commission) has revealed evidence of misconduct and conduct falling below community standards across Australia's finance sector, including lending, investments and insurance.

The Royal Commission has found that financial services institutions have not complied with their own codes of practice, lent irresponsibly and pushed unnecessary products, such as add-on insurance, onto consumers. The practices uncovered by the Royal Commission have adversely affected hundreds of thousands - if not millions - of people across Australia.

This has resulted in significant demand for financial counselling and legal help across Australia. For example, it is estimated that approximately 240,000 people a year are financially disadvantaged who are experiencing a credit or debt legal issue and need access to free legal information and/or advice.¹⁴ Credit and debt is the second highest area of law in which community legal centres helped people in 2017-2018. However, the current service system is struggling to meet demand.

The recently released Final Report of the Royal Commission explicitly acknowledged the valuable work of the legal assistance sector and the need for predictable funding:

- In acknowledging the **value of the sector and its work**, the Final Report notes: “The legal assistance sector and financial counselling services perform very valuable work. Their services, like financial services, are a necessity to the community. They add strength to customers who are otherwise disadvantaged in disputes with financial services entities. In that sense, their role in the financial services sector is complementary to the broader recommendations in this Report that are designed to hold entities to account”.
- In highlighting the **difference access to free legal help can make**, the Final Report states: “A number of the consumer witnesses before the Commission received free assistance from the legal assistance sector or free financial counselling services. Often, perhaps in part by force of the situation that gave rise to the dispute, they could not have afforded private financial advice or legal representation. Often, the difference between the result the witness ultimately achieved and the situation that they initially faced before they received legal assistance was very large.”
- In acknowledging the expertise and value of the sector in engaging in **policy, advocacy and law reform** work the Final Report emphasised the important role of community legal centres in “providing a balancing consumer voice in policy development”.
- Addressing the need for **predictable and stable funding**, the Final Report concluded that “the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration. Such consideration should look at all options that may be available to supplement existing funding.”

This builds on one of three recommendations made by the Senate Economics References Committee in its 2018 final report of the inquiry into consumer protection in the banking, insurance and financial sector: *‘The committee recommends that the Commonwealth Government consider increased funding for community legal and financial counselling services dealing with victims of financial misconduct’*.¹⁵

As a result, it is time to better resource financial counselling and community legal services to help people in need.

¹⁴ See NACLC and FCA, Submission, 6.

¹⁵ Parliament of Australia, Senate Economics References Committee, *Regulatory framework for the protection of consumers in the banking, insurance and financial services sector: Final Report* (November 2018), rec 3.

NACLC and Financial Counselling Australia (FCA) jointly call for funding of \$157 million per annum to create a properly funded network of community financial counselling and community legal services. The breakdown of this funding is as follows:

- \$1 million for the National Debt Helpline
- \$130 million for 1,000 financial counsellors, and
- \$26 million for an additional 200 community financial service lawyers located in existing community legal centres across Australia.

We estimate that this expanded network will triple the number of people – **increasing from around 250,000 to 800,000 people a year** - who are able to access information, self-help resources, phone financial counselling services, face-to-face financial counsellors, legal advice, or other legal support to help them resolve disputes, structure their debts, and negotiate with financial services.

Importantly, we recommend that the expanded network be funded either through an increase in the Major Bank Levy or by expanding the existing ASIC industry funding levy on financial services institutions. This funding model has been canvassed before, and is currently operating effectively in the UK.

Increasing access to free, community-based services will:

- mean vulnerable and disadvantaged people will be able to benefit from any changes the Commission recommends to improve consumers' experience of the financial services industry
- strengthen the integrity of financial services
- benefit the financial sector, given financial institutions themselves routinely refer customers with financial hardship issues to community based financial counsellors, and
- enhance the effectiveness of the Australian Financial Complaints Authority (AFCA) and other regulators such as ASIC, given financial counsellors and community lawyers are skilled at provide early resolution and heading off matters before they need to be taken to AFCA.

More detailed information about this proposal can be found in the joint NACLC and FCA submission to the Royal Commission provided at Attachment 1 to this submission.

Recommendation 8: The Commonwealth Government should support an increase in the Major Bank Levy or expansion of the ASIC Industry Funding Levy of \$157 million per year to create a properly funded network of financial counselling and legal assistance services. This should include:

a) \$1 million for the National Debt Helpline

b) \$130 million for 1,000 financial counsellors, and

c) \$26 million for an additional 200 community financial service lawyers

5. Keeping People Experiencing Family Violence Safe

- Community legal centres are at the frontline of providing crucial expert legal and related help to people experiencing family violence
- Family violence-related funding for community legal centres under the Women's Safety Package has increased access to legal help for women experiencing family violence across Australia through establishment of 15 specialist domestic violence units and 5 health justice partnerships.
- In 2018, the Commonwealth Government announced welcome additional funding to extend the existing units and partnerships for 3 years from 2019-2020
- However, the small number of units and partnerships were initially funded as a pilot project.
- The success of the pilot units and partnerships in increasing access to safe and appropriate legal help for women experiencing family violence provides strong evidence to support broader roll-out of the units and partnerships.
- As a result, we encourage the Government to use the evaluation as the basis for national roll-out of the units and partnerships.
- Funding to establish additional units and partnerships would build on existing good practice and expertise of the sector and contribute to ensuring women and children across Australia are safer and can access the legal help they need.

Community legal centres are at the frontline of providing crucial expert legal and related help to people experiencing family violence. Over 25% of people helped by community legal centres in 2017-2018 were experiencing family violence. Community legal centres are also a vital part of the legal framework in responding to and addressing family violence.

In recognition of this, some centres have received specific Commonwealth family violence-related funding in recent years. Including under the Women's Safety Package and Third Action Plan under the National Plan to Reduce Violence against Women and their Children as follows:

- \$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
- \$3.4 million to establish six new domestic violence units and support the expansion of an existing unit, announced in October 2017
- In November 2018, as part of the Women's Economic Security Statement, an additional \$29.8 million was provided to extend funding for the existing units over 3 years from 2019-2020. This includes \$2 million per year to support provision of integrated financial support services (such as advice, counselling and financial literacy) for women experiencing family violence.

The additional family violence-related funding for community legal centres under the Women's Safety Package has increased access to legal help for women experiencing family violence across Australia through establishing 15 specialist domestic violence units and 5 health justice partnerships.

However, the small number of units and partnerships were initially funded as a pilot project to establish appropriate and effective models of service delivery for people experiencing family violence.

The 2018 evaluation of the original units and partnerships conducted by Social Compass has not been publicly released. However, we understand it is a very positive evaluation.

The success of the pilot units and partnerships in increasing access to safe and appropriate legal help for women experiencing family violence provides strong evidence to support broader roll-out of the units and partnerships. As a result, we encourage the Government to use the evaluation as the basis for national roll-out of the units and partnerships.

Funding additional units and partnerships would build on existing good practice and expertise of the sector and contribute to ensuring women and children across Australia are safer and can access the legal help they need.

We also note that the flow-on effects of family violence are clear in a range of the other work centres undertake, including for example credit and debt, tenancy, homelessness and access to social security, which means core funding for centres (recommended earlier in this submission) is an integral part of ensuring people experiencing family violence have access to the legal assistance they need.

Recommendation 9: Building on the Commonwealth Government’s commitment to addressing family violence, the Commonwealth Government should provide additional funding to the legal assistance sector for national roll-out of specialist domestic violence units and health justice partnerships.

6. Legal Help and Support for People Engaging in the Royal Commission into Aged Care Quality & Safety

- Community legal centres have a long history of, and are experts in, providing legal help to older people, including people in aged care
- It is important that older people and their families have access to legal help to engage with the Royal Commission into Aged Care Quality and Safety
- In our experience (through knowmore, the legal service established to assist people engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse, which is a program of NACLC), this support is a vital part of ensuring they have the information and advice they need and to more effectively engaging with the Royal Commission.
- We suggest allocation of funding to community legal centres to provide legal help and support for people engaging in the Royal Commission into Aged Care Quality and Safety.

Community legal centres have a long history and are experts in providing legal help to older people, including people in aged care. NACLC and community legal centres also have significant experience and expertise in supporting the work of and assisting people to engage in Royal Commissions.

We welcome the Commonwealth Government’s announcement of a Royal Commission into Aged Care Quality and Safety. However, it is important that older people and their families have access to legal help to engage with the Royal Commission. This support is a vital part of ensuring they have the information and advice they need to more effectively engaging with the Royal Commission.

With Commonwealth Government funding, NACLCL established knowmore, the legal service established to assist people engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse. The independent evaluation of knowmore conducted in 2016 concluded that the existence of knowmore had a positive and demonstrable impact on clients' ability to reach the Royal Commission, and to participate in its structures'.¹⁶ It also concluded:

- the Royal Commission could not have functioned as well without knowmore
- the service has made positive impacts on the Royal Commission and Royal Commission processes
- the service is critical because vulnerable people in particular need access to free and appropriate legal advice and to know their legal rights and options
- the broader support service system would not have been able to support clients' needs for legal information and legal referrals, and therefore would not have been able to function as effectively on the provision of support services without knowmore.¹⁷

In addition, community legal centres have also supported, provided evidence to and worked with people to engage in a number of other key Royal Commissions in recent years, including the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. For example and as outlined earlier, the Final Report of that Royal Commission explicitly acknowledged the work and value of the legal assistance sector.

In light of the successes of NACLCL and the sector in supporting and enhancing the work of previous Royal Commissions and particular sector expertise working with older people, including in aged care, we recommend allocation of funding to community legal centres to provide older people and their family's access to legal help to engage with the Royal Commission.

In our view, the funding should be allocated across the existing network of specialist and generalist community legal centres, rather than being allocated to establish a new stand-alone service.

We would welcome the opportunity to discuss this proposal in more detail and emphasise the importance of appropriate sector consultation in ensuring an appropriate model of assistance is developed.

Recommendation 10: The Commonwealth should Government provide community legal centres with additional funding to provide legal help and support for people engaging in the Royal Commission into Aged Care Quality and Safety.

¹⁶ Effective Change, Independent Evaluation of knowmore Legal Service (2016) 39. Accessed at: <http://knowmore.org.au/wp-content/uploads/2013/05/Final-knowmore-Evaluation-Report-4.-v-6-April-2016.pdf>

¹⁷ Effective Change, Independent Evaluation of knowmore Legal Service (2016) 40. Accessed at: <http://knowmore.org.au/wp-content/uploads/2013/05/Final-knowmore-Evaluation-Report-4.-v-6-April-2016.pdf>

7. Preventing and Responding to Elder Abuse

- Community legal centres are experts at working with people and their families where an older person is experiencing elder abuse.
- We welcomed the Commonwealth Government's provision of \$22 million in the 2018-2019 Federal Budget to establish a number of specialist elder abuse units, health justice partnerships and case management and mediation services to assist people experiencing elder abuse.
- However, we understand that this funding will only be sufficient to establish a handful of units/partnerships/services across Australia.
- Given the limited existing funding and significant need, we recommend provision of additional funding to community legal centres to ensure older people experiencing elder abuse can access the legal help they need, building on the Government's existing commitment.

Community Legal Centres Support and Assist People Experiencing Elder Abuse

Community legal centres across Australia have, over a long period, been at the forefront of responding to and working to prevent elder abuse. Community legal centres are experts at working with people and their families where an older person is experiencing elder abuse. Older people represent over 10% of all people helped by community legal centres in 2017-2018.

Community legal centres provide vital legal and non-legal support and assistance to older people, their families and support services where elder abuse is occurring or suspected. Centres provide older people with holistic, wrap-around, client-centred and often multidisciplinary services and many operate good practice responses to elder abuse.

Community legal centres are experts at identifying legal problems arising from a person's individual circumstances and providing them with options for addressing the abuse and improving their overall safety and wellbeing.

Community legal centres are imbedded in community and have strong partnerships and relationships with other community services which means centres are able to provide older people with warm referrals to other services that can assist with housing, health and aged care, financial counselling and assistance.

Centres across Australia undertake a range of activities to support people experiencing elder abuse and assist with:

- legal information and advice
- social work services
- short-term counseling
- advocacy
- referrals to other legal, consumer and support services
- representation in court or before tribunals (in certain circumstances).

Some examples of assistance provided by centres include:

- obtaining domestic violence protection/intervention orders
- developing safety plans and supporting relocation to a place of safety
- advice on guardianship and on appointing or revoking a power of attorney
- advice and assistance with wills
- information on protective strategies to manage assets and prevent or stop financial abuse
- advocacy and negotiation on behalf of residents in retirement villages experiencing unfair contract terms and conditions, and
- advising on recovery of property or money following elder abuse or financial exploitation.

In addition to the direct services provided, centres also undertake a significant number and range of community legal education and awareness sessions and campaigns around elder abuse across communities. These sessions are designed to educate and empower older people as well as professionals who encounter elder abuse in professional or employment roles (for example, medical and allied health professionals, aged care workers, support and respite workers, Justices of Peace, and similar).

Many centres also engage in law reform, policy and strategic advocacy designed to ensure that laws and legal frameworks are effective in protecting the rights of older people. For example, many centres engaged in the recent Australian Law Reform Commission Inquiry into Elder Abuse and regularly provide submissions and evidence to relevant inquiries and reviews.

[Commonwealth Funding for Elder Abuse-Related Legal Services](#)

We welcomed the Commonwealth Government's provision of \$22 million in the 2018-2019 Federal Budget for a number of elder abuse initiatives/services, including establishment of:

1. Specialist elder abuse units
2. Health Justice Partnerships
3. Family counselling, case management and mediation services

Allocation of this funding has not yet been publicly announced. However, this funding will only be sufficient to establish a handful of these types of units, partnerships and services across Australia. Indeed, we understand that only 30 organisations nationally have been invited to proceed to a restricted competitive tender process.

Indeed, the Commonwealth Attorney-General's Department submission to the NPA Review expressed the view that: *There may be a growing need for access to legal support services, as part of an integrated service continuum, in relation to abuse of older Australians. Over the period 2018-19 to 2021-22, the government will fund a range of service trials to establish which support mechanisms work best in which circumstances. While this program is in its infancy, if it were to be successful, expansion of the role of CLCs and LACs to directly support older people experiencing abuse – by treating them as a priority clients – may be desirable.*¹⁸

¹⁸ Commonwealth Attorney-General's Department, Submission to the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020 (2018) 30.

As a result, given the limited existing funding and significant need, we recommend provision of additional funding to community legal centres to ensure older people experiencing elder abuse can access the legal help they need, building on the Government's existing commitment.

Recommendation 11: The Commonwealth Government should provide community legal centres with additional funding to provide legal advice and related assistance to people experiencing elder abuse.

8. Improving the Social Security System

[Improving Access to the Social Security System for People Experiencing Family Violence](#)

In August 2018, the National Social Security Rights Network (NSSRN), a national network of NALCLC, released a key research report, *How Well Does Australia's Social Security System Support Victims of Domestic Violence?*

The Report, as well as the NSSRN Submission to the 2019-2020 Federal Budget outline a number of key measures to improve access to the social security system for people experiencing family violence, including:

- making Centrelink easier to access
- making Crisis Payment easier to access
- removing the Newly Arrived Residents Waiting Period for Special Benefit
- reforming the Targeted Compliance Framework
- making ParentsNext voluntary, and
- abolishing the Community Development Program.

We support the measures outlined in the report, as well as endorsing the policy reforms recommended in the NSSRN submission to the 2019-2020 Federal Budget. We welcome Government actions to date to implement several of the measures outlined in the report,¹⁹ and encourage ongoing implementation, in consultation with NSSRN and affected people and communities.

[Supporting Access to Legal Help](#)

More broadly, the social security system plays a critical role in supporting people and their families across Australia. However, people who access the social security system have high levels of legal need.²⁰ For example, the 2018 Law Council Justice Project also highlighted that many people experiencing economic disadvantage have social security needs which, if left unresolved, may compromise their safety, rights or entitlements.²¹

¹⁹ For an overview of some of the positive reforms introduced by the Government in response to the report, see National Security Rights Network (NSSRN), Federal Budget Submission 2019-2020.

²⁰ See, eg, Christine Coumarelos et al, Law and Justice Foundation of New South Wales, Legal Australia-Wide Survey: Legal Need in Australia, 2012, xiii.

²¹ Law Council of Australia's The Justice Project, Final Report – Part 1, People Experiencing Economic Disadvantage, August 2018 p 3.

Ensuring that people who access the social security system understand their rights and entitlements, can navigate the system and achieve fair resolution of any issues contributes to improved outcomes for individuals; faster resolution of issues and disputes; more efficient operation of Centrelink and Government and the broader justice system.

As a result, we recommend provision of additional Commonwealth funding for community legal centres to assist people in relation to social security-related matters.

Recommendation 12: The Commonwealth Government should implement the recommendations made in the National Social Security Rights Network 2018 Report, *How Well Does Australia's Social Security System Support Victims of Domestic Violence?*

9. Measuring Legal Need in Australia

- Understanding and measuring legal need in Australia and having access to accurate and recent data underlies effective service delivery and planning across the justice system, including the legal assistance sector.
- As a result, there is a need for Commonwealth Government 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.

'Legal need' is defined as legal issues that individuals have not been able to resolve effectively by their own needs.²² 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.

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'.²³

²² 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.

²³ Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) Appendix J, Table J.1.

We recommend Commonwealth funding be provided to undertake the survey, but importantly any such funding should be new funding and not be diverted from existing legal assistance sector funding.

Recommendation 13: The Commonwealth Government should 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.

10. Funding and Support for Other Legal Assistance Providers

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 community legal centre 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 ensuring access to justice and addressing the crisis in legal assistance.

Many of the recommendations outlined above apply to the entire legal assistance sector, including ATSILS and FVPLS, however we also make 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 the Department of Prime Minister and Cabinet while three other legal assistance services, LACs, CLCs and ATSILS, all remain the portfolio responsibility of the Commonwealth Attorney-General's Department. 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 are currently funded until 2020.

However, we understand that thirteen of the fourteen FVPLS have had no increase in core funding since 2013-14 and no service has received increased funding commensurate with CPI over the last five years.

There are only 14 FVPLS, which are not currently funded to service vast areas of Australia which means Aboriginal and Torres Strait Islander victims/survivors in these areas do not have access to a community-controlled culturally safe FVPLS, despite extremely high and rising demand for services.

Accordingly, we support the ongoing calls by the National FVPLS Forum for additional funding for FVPLS to meet existing and rising demand for FVPLS services; a move to national coverage of services; and long-term funding agreements to ensure funding certainty.

Recommendation 14: The Commonwealth Government should:

- a) reinstate the Family Violence Prevention Legal Services as a stand-alone national programme and provide it with a direct allocation of funding**
- b) ensure funding certainty and predictability for Family Violence Prevention Legal Services, including funding agreements for period of at least five years and funding increases that incorporate indexation for all services, and**
- c) commit to national coverage of Family Violence Prevention Legal Services commensurate with need.**

Recommendation 15: The Commonwealth Government should support the National Family Violence Prevention Legal Services Forum including through additional funding and a commitment to long-term funding and support.

Aboriginal and Torres Strait Islander Legal Services

Aboriginal and Torres Strait Islander Legal Services 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 Islander people annually.

Importantly, 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 Programme (ILAP). As outlined in our submissions as part of the 2018 Review of the ILAP, we support NATSILS calls for the Commonwealth Government to retain a separate, standalone and specific Indigenous Legal Assistance Program.²⁴ This should recognise the unique, culturally safe and community-controlled services provided by ATSILS, ensure that ATSILS are not included under the NPA and continue to receive direct funding.

We also support the submission made by NATSILS to the 2019-2020 Federal Budget with respect to funding for the ATSILS, emphasising the need for additional funding and long-term funding agreements for ATSILS moving forward. We echo the recommendations made by NATSILS below.

In particular, we support reversal of the funding cuts to ATSILS under ILAP of \$10 million in the forward estimates from 2020-2022 and the ongoing government savings measure introduced in the 2013-14 Mid-Year Economic and Fiscal Outlook (MYEFO).

Finally, we work closely with NATSILS as 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. We support additional and long-term funding for NATSILS.

²⁴ See, NACLC, Submission to Review of Indigenous Legal Assistance Programme (2018), <http://www.naccl.org.au/resources/181004%20NACLCILAPReviewMainSubmissionFINAL.pdf>

Recommendation 16: The Commonwealth Government should:

a) retain a separate, standalone and specific Indigenous Legal Assistance Programme

b) ensure funding certainty and predictability for Aboriginal and Torres Strait Islander Legal Services, including through provision of funding upfront on an annual basis and under funding agreements for period of at least five years.

Recommendation 17: The Commonwealth Government should overturn funding cuts to Aboriginal and Torres Strait Islander Legal Services under the Indigenous Legal Assistance Programme of \$10 million forecast in the Forward Estimates from 2020-22 and the related ongoing Mid-Year Economic and Fiscal Outlook Government savings measure.

Recommendation 18: The Commonwealth Government should fund Aboriginal and Torres Strait Islander Legal Services to meet unmet legal need and address the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system, including through an injection of \$81.35 million over 5 years (a total of \$85.09 million per annum in 2019-20 including CPI).

Recommendation 19: The Commonwealth Government should support National Aboriginal and Torres Strait Islander Legal Services (NATSILS), including through additional funding and a commitment to long-term funding and support.